

In the United States District Court
For the Eastern District of Wisconsin

Christopher L Wiesmueller,
Plaintiff,

v.

Case No: 2:14-CV-01384-RTR

Neal P. Nettesheim,
In his official and unofficial capacity
as State of Wisconsin Circuit Court Reserve Judge,
Defendant.

JURY TRIAL DEMANDED

Amended¹ Complaint under 42 U.S.C. §1983

Jurisdiction and Venue

1. Jurisdiction and Venue in this Court are proper under 28 U.S.C. § 1331, 1443(a)(3) & §1391(b)(1)&(2).

2. Plaintiff brings these causes of action to remedy Defendants' violations of the United States Constitution under 42 U.S.C. §1983, for violation of his constitutional rights by the Defendant, acting under color of state law.

Factual Allegations

3. The Plaintiff, Christopher L. Wiesmueller is a natural person, citizen of the United States, residing in the city and county of Waukesha, Wisconsin.

4. Plaintiff was a partner of The Wiesmueller Law Firm, which operated offices located at 2727 N Grandview Blvd, Suite 208, Waukesha, WI 53188 from September 2010-July 2014.

5. The Defendant, Neal P. Nettesheim is a natural person and a retired Wisconsin Court of Appeals judge, residing in Dousman, Waukesha County, Wisconsin.

¹ Pursuant to Fed. R. Civ. Pro R. 15(a)(1)A & R. 15(c)(1)C.

6. From May 2010 until February 2013, the Defendant, in his capacity as a reserve judge in the State of Wisconsin Circuit Court for Milwaukee County, presided over a John Doe investigation, Milwaukee County Case #2010JD07, pursuant to Wis. Stat. § 968.26.

7. In *State v. Cummings*, 199 Wis.2d 721; 546 N.W.2d 496 (Wis. 1996), the Wisconsin Supreme Court held that a John Doe judge, despite not being expressly provided for in the John Doe statute, Wis. Stat. §968.26, has the ability to issue search warrants, arising from his inherent state law powers as a judge. (This decision was devoid of any 4th Amendment discussion.)

8. On December 4, 2011, the Defendant, in his capacity as the judge presiding in John Doe investigation Case # 10JD07, issued a search warrant of Plaintiff's law office. The search warrant was file-stamped December 5, 2011 and executed December 6, 2011.

9. The search warrant also required that the Plaintiff, under threat of contempt of court, not discuss the search warrant or its execution with anyone but counsel for the Plaintiff. Though not expressly allowed as a matter of state statute, John Doe search warrants are expressly allowed for under state law, specifically in the aforementioned *Cummings* case.

10. John Doe proceeding Milwaukee County Case #2010JD07 is closed. The Plaintiff was not charged with a crime and will not be. There are no ongoing state court proceedings related to or derived from the search warrant in question, as to Plaintiff. As to this John Doe, there is only one matter still known to be pending in state courts, a criminal appeal, which does not raise these issues.

Claim #1 – Defendant, in his official capacity, violated the 4th Am to U.S.

Constitution’s requirement that a search warrant be issued by a detached and neutral magistrate. Injunctive and Declaratory Relief sought, pursuant to 42 U.S.C. §1983; *Ex Parte Young*, 209 U.S. 123 (1908); and Declaratory Judgment, 28 U.S.C. §2201.

11. Paragraphs 1-10 are reiterated herein.

12. In this Claim, the Defendant is sued in his official capacity. *Ex Parte Young*, 209 U.S. 123 (1908).

13. The 4th Amendment of the United States Constitution requires that a search warrant be issued only by a detached and neutral magistrate. This protection has been applied to the States by virtue of the 14th Amendment to the U.S. Constitution.

14. Under Wisconsin Law, Wis. Stat § 928.26 and the *Cummings* case, a John Doe judge is, in fact, leading an investigation, attempting to ferret out crime, and is attached, not detached and neutral for the purposes of the 4th Amendment. *See Also* ¶ 23.

15. The Defendant, acting as a reserve judge, had a financial interest in perpetuation and extension of the John Doe investigation, as a source of income; therefore, the Defendant was not neutral, but had a financial interest in perpetuating the John Doe investigatory proceedings.

16. The Plaintiff seeks declaratory judgment that a Wisconsin John Doe judge, is by natural consequence of Wis. Stat §928.26 and *Cummings*, attached to the investigation, not detached and neutral from law enforcement investigation.

17. The Plaintiff seeks further declaratory judgment, that a judge presiding over a Wisconsin Stat. §928.26 ‘John Doe’ investigatory proceeding violates the 4th Amendment when authorizing search warrants related to that investigation.

18. Further, the Plaintiff seeks injunctive relief barring defendant from issuing any search warrants related to his duties in any Wis. Stat. §928.26 John Doe proceeding in the future. This authority is pursuant to *Ex parte Young*, 209 U.S. 123 (1908); *see also Pulliam v. Allen*, 466 U.S. 522 (1984) (Immunity does not bar injunctive relief against a judge).

19. Upon prevailing on this Claim, Plaintiff seeks recovery of reasonable attorney fees, if any, and costs, pursuant to 42 U.S.C. §1988(b), *see also Pulliam v. Allen*, 466 U.S. 522 (1984).

Claim #2 - Violation of U.S. Constitution 4th Amendment requirement that a search warrant be issued by a detached and neutral magistrate. Monetary damages, with applicable qualified immunity, pursuant to 42 U.S.C. §1983.

20. Paragraphs 1-10, 13-15 are fully reiterated and incorporated herein.

21. As to this Claim, the Defendant is sued in his unofficial capacity.

22. The Defendant, acting as a John Doe judge was acting, under color of state law, in an investigative capacity and is thus entitled to qualified, not absolute, immunity.

23. A John Doe Judge, by virtue of Wisconsin state law, is authorized to “conduct a John Doe investigation” and the judge’s jurisdiction serves a broader “investigatory purpose.” *State v. Cummings*, 199 Wis.2d 721,736; 546 N.W.2d 406 (Wis. 1996).

24. Qualified immunity is the applicable standard, as the Defendant was acting in an investigatory or administrative, but not judicial, capacity. It is neither appropriate nor justifiable that for the same act, immunity should protect persons differently based on title. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). A judge is not entitled to absolute immunity for administrative functions. *Forrester v. White*, 484 U.S. 219 (1988). Prosecutors are not immune when aiding in an investigation or performing an administrative function. *Buckley*, 509 U.S. at

273. Therefore, a judge should not be entitled to absolute immunity when he is leading an investigation.

25. The Defendant does not meet the qualified immunity test. The Defendant, as a reasonable and highly-competent Wisconsin jurist, under existing case law, knew or should have known that his act of issuing a search warrant as the head of an investigation, in a reserve judge capacity, violated clearly-established constitutional jurisprudence, to wit:

A. A magistrate paid upon only the granting of a search warrant was not detached and neutral for 4th Am. Purposes. *Connally v. Georgia*, 429 U.S. 245 (1977), *but see* ¶ 15, *supra*.

B. An attorney general, though otherwise qualified under state law, was not detached and neutral for 4th Am purposes, where he was the one leading the investigation. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *but compare with* ¶ 14 & ¶ 23 *supra*, *citing State v. Cummings*, 199 Wis.2d 721,736; 546 N.W.2d 406 (Wis. 1996).

26. As a result of Defendant's illegal search warrant, Plaintiff had his private office illegally invaded by government agents, Plaintiff suffered undo stress and anxiety, and his reputation and career were harmed.

27. Plaintiff seeks compensatory damages sufficient to compensate for his injuries.

28. Upon prevailing on this Claim, Plaintiff seeks recovery of reasonable attorney fees, if any, and costs, pursuant to 42 U.S.C. §1988(b).

Claim #3 – Defendant, in his official capacity, violated U.S. Constitution 1st Amendment prohibitions against prior restraint of speech. Injunctive and Declaratory Relief sought, pursuant to 42 U.S.C. §1983; *Ex Parte Young*, 209 U.S. 123 (1908); and, 28 U.S.C. §2201.

29. Paragraphs 1-10 are reiterated herein.

30. In this Claim, the Defendant is sued in his official capacity. *Ex Parte Young*, 209 U.S. 123 (1908).

31. Not only did the search warrant's secrecy order bar any discussion by Plaintiff of the warrant during the John Doe investigation, but according to the Defendant's order of February 21, 2013, the secrecy orders remain in place in perpetuity.

32. Plaintiff should be, and desires to be, free to talk and write about his experience with the John Doe, (and to seek a confidentiality release from the former client.)

33. Perpetual bars on witnesses disclosing their own testimony or investigatory experiences, even after the termination of the secret proceeding, violate the First Amendment. *Butterworth v. Smith*, 494 U.S. 624 (1990). (Plaintiff is not challenging secrecy during the investigation, only the secrecy order continuing after the conclusion of the investigation.)

34. Therefore, the Plaintiff seeks further declaratory judgment that the Defendant cannot perpetuate a perpetual secrecy order, preventing individual citizens from discussing their contact, testimony, or involvement in the John Doe investigatory proceeding, specifically Milwaukee County Case #10JD07, after it has ended.

35. Further, to the extent that declaratory relief is inadequate, the Plaintiff seeks injunctive relief, enjoining the continuing effect of the John Doe secrecy order on witnesses in John Doe Milwaukee County Case #10JD07, to the extent it bars ordinary citizens from discussing their experiences with this John Doe investigation.

36. Upon prevailing on this Claim, Plaintiff seeks recovery of reasonable attorney fees, if any, and costs, pursuant to 42 U.S.C. §1988(b), *see also Pulliam v. Allen*, 466 U.S. 522 (1984).

Claim #4 – Concealment of potential 4th Amendment violations. Injunctive and Declaratory Relief, pursuant to 42 U.S.C. §1983, *Ex Parte Young*, 209 U.S. 123 (1908), *Singleton v. Wulff*, 408 U.S. 106 (1976).

37. Paragraphs 1-10, 13-15, 23-25, 31-32 are reiterated herein.

38. Plaintiff regularly uses, for personal and business purposes, a web-based email account hosted and maintained by Google.

39. During the course of the 2010JD07 “John Doe” investigation, the Defendant on several occasions, later made public in criminal complaints, issued search warrants upon targets’ and witnesses’ email service internet providers. These warrants were sealed and the returns sealed within the John Doe proceeding, subject to the same secrecy orders prevalent in the proceeding.

40. According to public court filings, the Defendant issued a search warrant for all Kelly Rindfleisch’s emails, with the stated purpose of shoring up the investigation of her co-worker Timothy Russell. Furthermore, the John Doe investigation also obtained an email from Russell’s attorney to a radio talk show host.

41. Plaintiff has a reasonable fear that his business and personal emails may have been seized and read by Government agents, at the direction of the Defendant, utilizing a John Doe search warrant, infringing the 6th Amendment rights of Plaintiff’s clients, and potential additional 4th Amendment violations, as Plaintiff has a reasonable expectation of privacy in his email account.

42. Plaintiff seeks an injunctive order the Defendant disclose whether such a search warrant was executed under seal on Plaintiff's email provider relative to Plaintiff's email account or on any other person or entity possessing material in which Plaintiff had a reasonable expectation of privacy.

43. Further, the Plaintiff also seeks an injunctive order that the Defendant disclose to the registered account users, any and all search warrants issued upon email and internet service providers in John Doe investigation, Milwaukee County Case # 2010JD07.

44. Plaintiff also seeks an injunctive order that the Defendant disclose or permit disclosure of John Doe search warrants to all those having an expectation of privacy in the premises searched or ownership interest in items seized. (For example, if Plaintiff's law partner/wife had not been present at the time of the search, he would not have been able to tell her about it.)

45. These requests on behalf of others, ¶¶43 &44, are sought pursuant to the 3rd party rights outlined in *Singleton v. Wulff*, 408 U.S. 106 (1976). The other subjects of the search warrants are closely related in interest to Plaintiff and are potentially unable to remedy 4th Amendment violations, such as outlined above, due to the Defendant's continued concealment.

Conclusion

Wherefore, the Plaintiff prays the Court for relief as specified in each Claim, together with any and all costs, and, if applicable, reasonable attorney fees.

Pursuant to Fed. R. Civ. P. 38(b), a jury trial is demanded as to all issues triable by a jury in this complaint.

Respectfully Submitted,
November 12, 2014

/s/Christopher L. Wiesmueller
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Wis. Bar #1066660

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