

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

Post Office Box 14106
Tallahassee, FL 32317
(850) 488-1581

COMPLAINT FORM

This form is designed to provide the Commission with information required to make an initial evaluation of your complaint.

PLEASE NOTE: COMPLAINT FORM MUST BE TYPED OR LEGIBLY HAND PRINTED, DATED AND SIGNED BEFORE IT WILL BE CONSIDERED.

(Note: This form can be typed into here, then printed, or print it out and fill it in by hand.)

I. Person Making Complaint

Name HUMINSKI SCOTT ALAN
Mr. (Last) (First) (Middle)
Ms.
Mrs.

Address 24544 KINGFISH ST
BONITA SPRINGS FL 34134

Telephone Number(s): (Day) 2393006656 (Evening) 2393006656

II. Judge Against Whom Complaint is Made

Name KRIER ELIZABETH V
(Last) (First) (Middle)

Address 1700 MONROE STREET
FORT MYERS FL 33901

Supreme Court _____

District Court of Appeal _____

Circuit Court 20TH

County Court _____

III. Statement of Facts

Please provide in as much detail as possible the information which you have knowledge which you believe constitutes judicial misconduct or disability. Include names, dates, places, addresses and telephone numbers which may assist the Commission.

After divested of jurisdiction by removal of Huminski v. Town of Glibert et al. to the U.S. Bankruptcy Court on 6/26/2017, Judge Krier continued to issue orders, hold hearings and set schedules in a matter removed to the bankruptcy court, Huminski v. Town of Gilbert. U.S. Bankruptcy Adversar proceeding 9:17-AP-00509-FMD.

After Judge Krier was divested of jurisdiction her conduct is prejudicial to the administration of justice and has caused jurisdictional chaos.

I filed a written objection noting that Judge Krier had no jurisdiction and argued the issue at a hearing before Judge Krier on 6/29/2017. A hearing prohibited by jurisdictional problems. At hearing it was evident that Judge Krier has insufficient knowledge of State/Federal jurisdictional precepts and is incompetant in her general knowledge of the law. She has failed to maintain an adequate knowledge of the law and has become a dangerously ignorant of the law.

The disrespect Judge Krier has for the authority, powers, jusrisdiction and integrity of the federal courts is astounding.

Judge Krier issued an order on 6/27 in full violation of federal jurisdiction, held a hearing on 6/29 and announced her plans to further violate the authority of the Bankruptcy Court. Her conduct and comments impugn the intergrity of the federal courts.

The bizzare conduct of the judge I believe to be related to early onset alzheimers as she can not remember simple legal concepts such as jurisdiction, at hearing she made it clear that she did not know what a Notice of Removal is.

IV. Additional Information (if available)

a. If your complaint arises out of a court case, please answer the following questions:

1. What is the name and number of the case?

Case name: Huminsk v. Town of Gilbert Case No. 9:17-AP-509-FMD

2. What kind of case is it?

civil criminal domestic relations probate
small claims traffic other (specify)

3. What is your relationship to the case?

plaintiff/petitioner defendant/respondent

attorney for _____:

witness for _____:

other (specify)

b. If you were represented by an attorney in this matter at the time of the judge's conduct, please identify the attorney:

Name none

Address _____

Phone _____

c. List and attach copies of any relevant documents which you believe support your claim that the judge has engaged in judicial misconduct or has a disability. (Note: Retain a copy for your records as these documents shall become the property of the Commission and may not be returned.)

Notice of Removal, Objection, Notice of Bankruptcy Court

docket and rule 9027

d. Identify, if you can, any other witnesses to the conduct about which you complain:

Name(s): none

Addresses: _____

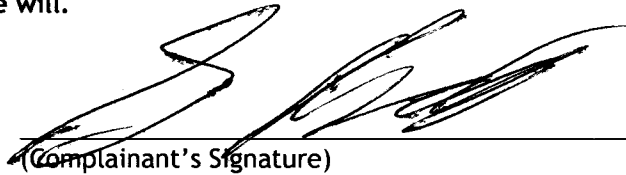
Phone Numbers: _____

IN FILING THIS COMPLAINT, I UNDERSTAND THE COMMISSION'S RULES PROVIDE THAT ALL PROCEEDINGS OF THE COMMISSION, INCLUDING COMPLAINTS FILED WITH THE COMMISSION, SHALL BE KEPT CONFIDENTIAL PRIOR TO THE FILING OF FORMAL CHARGES. I FURTHER UNDERSTAND THAT THIS RULE OF CONFIDENTIALITY ATTACHES AND BECOMES EFFECTIVE UPON THE FILING OF THIS COMPLAINT AND THAT ANY VIOLATION COULD RESULT IN A CITATION FOR CONTEMPT BY THE COMMISSION.

- V. Under penalty of perjury, I declare that I have examined and understand this complaint form and to the best of my knowledge and belief, the above information is true, correct and complete and submitted of my own free will.

7/1/2017

(Date)



(Complainant's Signature)

(Note: Only signed complaints will be considered.)

Please note that the Commission only has authority to investigate allegations of judicial misconduct or permanent disability by persons holding state judicial positions. The Commission has no jurisdiction over and does not consider complaints against Federal Judges, magistrates, lawyers, police, court personnel, or State Attorneys. The Commission does not act as an appellate court and cannot review, reverse or modify a legal decision made by a judge in the course of a court proceeding. For example, the Commission does not investigate claims that a judge wrongfully excluded evidence; imposed an improper sentence, awarded custody to the wrong party; incorrectly awarded alimony or child support; incorrectly resolved a legal issue or believed perjured testimony.

Please return this form and direct all future communications to:

Florida Judicial Qualifications Commission
Post Office Box 14106
Tallahassee, FL 32317

In The
Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF)
AND FOR THOSE SIMILARLY SITUATED,) CIVIL ACTION
PLAINTIFF)
v.) DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.)
DEFENDANTS.)

**OBJECTION TO CONTINUANCE OF PROCEEDINGS IN THIS MATTER
WHICH HAS BEEN REVOVED TO U.S. BANKRUPTCY COURT**

NOW COMES, Scott Huminski (“Huminski”), and hereby objects to these proceedings as this matter has been removed to Bankruptcy Court and this Court is deprived of jurisdiction as of 5:02 pm on 6/26/2017 when the Notice of Removal was filed in this Court.

Huminski has precisely complied with removal as set forth in Bankruptcy Rule 9027.

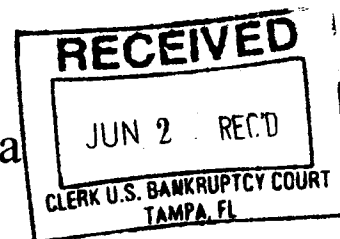
Huminski does not waive his claim of improper jurisdiction and all acts of Huminski in this Court do not constitute a waiver of any right and specifically the claim of improper jurisdiction and venue. All filings/communications Huminski makes in this proceeding are executed notwithstanding this objection.

Dated at Bonita Springs, Florida this 28th day of June 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

In The
United States Bankruptcy Court
For the Middle District of Florida



IN RE,)
SCOTT ALAN HUMINSKI,) CASE No.17-03658-9D7
DEBTOR)
) ADV. PROC. No.
)

NOTICE OF REMOVAL TO U.S. BANKRUPTCY COURT
and
PROSECUTION OF VIOLATIONS OF THE 11 U.S. Code § 362 –
AUTOMATIC STAY

NOW COMES, Debtor, Scott Huminski (“Huminski”), notices of the removal of Huminski v. Town of Gilbert, et al., 17CA421, 20th Judicial Circuit, Lee County, Florida.

Huminski also seeks to prosecute three violations of the automatic stay by one of the defendants in the removed case, Sheriff Mike Scott and his agency. Defendants and the Court below have ignored the automatic stay and, in hearing, the Judge below stated that she can ignore bankruptcies (paraphrase).

Huminski filed for bankruptcy on 4/28/2017. Meeting of creditors was held on 6/13/2017.

The State proceeding may be removed to this Court pursuant to 28 U.S.C. § 1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. § 1452(a).

Based on the language of § 1452, a party may remove any civil action over which a bankruptcy court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court has original jurisdiction over all civil proceedings “arising under title 11, or arising in or related to cases under Title 11.” 28 U.S.C. § 1334(b). The State suit was the catalyst that caused the filing of bankruptcy. Filed herewith are two motions requesting relief against a defendant in the removed matter for violation of the automatic stay. 11 U.S.C. § 362

The removed proceeding is related to the Debtor's Bankruptcy Case within the meaning of 28 U.S.C. § 1334 and it was essentially the sole motivation for bankruptcy.

The removed proceeding is a civil action within the meaning of 28 U.S.C. § 1452 because: a) the proceeding is a private party dispute between the Defendants and the Debtor in which the Plaintiff and Defendants seeks money and injunctive relief; and b) the Proceeding is not an action before the Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power.

Based on the foregoing, removal to this Court pursuant to 28 U.S.C. § 1452 is proper.

This Notice of Removal is timely pursuant to F.R.B.P. 9027 because the Debtor filed this Notice of Removal with this Court within ninety (90) days of entry of the order for relief under the Bankruptcy Code and within ninety (90) days of the Petition Date because the commencement of a voluntary Chapter 7 proceeding constitutes an order for relief. 11 U.S.C. § 301(b).

Upon removal, the Proceeding is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O). Moreover, because the Proceeding asserts a claim against the Debtor, it necessarily implicates the bankruptcy claims allowance process and is therefore constitutionally as well as statutorily "core" within the Supreme Court's recent ruling in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

Further removal is proper: (a) under 28 U.S.C. § 1452, because the Action arises under the United States Bankruptcy Code, 11 U.S.C. § 101, et seq., (the "Bankruptcy Code"), and relates to a case under the Bankruptcy Code, as contemplated by 28 U.S.C. §1334(b); (b) under 28 U.S.C. § 1441(b), because the case arises under federal law, as contemplated by 28 U.S.C. §1331.

In addition, removal of this Action is proper under 28 U.S.C. § 1441(b) because this Court has federal question jurisdiction over Plaintiff's claims under 28 U.S.C. § 1331. Debtor has alleged a violation of his human rights in treaties the U.S. is a party to and under the supremacy clause such treaties become "law of the land" and Debtor seeks relief for vioations of 11 U.S.C. § 362, the automatic stay.

Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person or subject matter; (2) arguments that venue is improper; (3) insufficiency of process; (4) failure to state a claim; (5)

and any other pertinent defense available under applicable state or federal law, or otherwise, which rights are expressly reserved.

Further, nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights and protections under the automatic stay provided pursuant to § 362 of the Bankruptcy Code and any other provision of the Bankruptcy Code, which rights and protections are expressly reserved.

Notice of this filing is being served upon defendants and will be filed in the State Court as soon as possible. When service is complete, Debtor will file a certificate of service.

WHEREFORE the Debtor hereby removes the aforementioned State Proceeding, Huminski v. Town of Gilbert, et al. to the United States Bankruptcy Court for the Middle District of Florida pursuant to 28 U.S.C. §§ 1441, 1452 and F.R.B.P. 9027.

Dated at Bonita Springs, Florida this 25th day of June, 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

In The
Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF)
AND FOR THOSE SIMILARLY SITUATED,) CIVIL ACTION
PLAINTIFF)
v.) DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.)
DEFENDANTS.)

**NOTICE OF BANKRUPTCY COURT DOCKET INDICATING REMOVAL
OF THIS MATTER AND TEXT TO BANKRUPTCY RULE 9027**

NOW COMES, Scott Huminski (“Huminski”), and provides docket listings from bankruptcy court evidencing removal of this case and reproduces Bankruptcy Rule 9027 which caused removal of this matter on 6/26/2017. Further litigation in State Court constitutes contempt of the federal court. This matter is being addressed in the adversary proceedings. Please contact the Clerk of Bankruptcy Court to avoid further contempt of federal court. The State Court has been divested of all jurisdiction in this case.

Adversary Proceeding #: 9:17-ap-00509-FMD

Assigned to: Caryl E. Delano

Date Filed: 06/26/17

Lead BK Case: [17-03658](#)

Date Removed From State: 06/26/17

Lead BK Title: Scott Alan Huminski

Lead BK Chapter: 7

[Show Associated Cases](#)

Demand:

Nature[s] of Suit: 01 Determination of removed claim or cause

Plaintiff

Scott Alan Huminski

represented by **Scott Alan Huminski**

24544 Kingfish Street
Bonita Springs, FL 34134
239-300-6656
SSN / ITIN: xxx-xx-4327

PRO SE

V.

Defendant

Town of Gilbert, AZ

represented by **Town of Gilbert, AZ**
PRO SE

Defendant

Gilbert Police Department

represented by **Gilbert Police Department**
PRO SE

Defendant

Ryan Pillar

represented by **Ryan Pillar**
PRO SE

Defendant

Stephanie Ameiss

represented by **Stephanie Ameiss**
PRO SE

Defendant

City of Surprise, AZ

represented by **City of Surprise, AZ**
PRO SE

Defendant

City of Phoenix, AZ

represented by **City of Phoenix, AZ**
PRO SE

Defendant

Phoenix Police Department

represented by **Phoenix Police Department**
PRO SE

Defendant

Heather Ard

represented by **Heather Ard**
PRO SE

Defendant

Scribd, Inc.

represented by **Scribd, Inc.**
PRO SE

Defendant

Jason Bentley

represented by **Jason Bentley**
PRO SE

Defendant

Lee County, Florida

represented by **Lee County, Florida**
PRO SE

Defendant

Lee County Sheriff's Office

represented by **Lee County Sheriff's Office**
PRO SE

Defendant

Sheriff Mike Scott

represented by **Sheriff Mike Scott**
PRO SE

Defendant

Brian Allen

represented by **Brian Allen**
PRO SE

Defendant

City of Glendale, AZ

represented by **City of Glendale, AZ**
PRO SE

Defendant

Glendale Police

represented by **Glendale Police**
PRO SE

Defendant

Tracey Wood

represented by **Tracey Wood**
PRO SE

Defendant

Surprise Police Department

represented by **Surprise Police Department**
PRO SE

Filing Date	#	Docket Text
06/26/2017	<u>1</u> (95 pgs; 4 docs)	Notice of Removal by Scott Alan Huminski against Town of Gilbert, AZ, Gilbert Police Department, Ryan Pillar, Stephanie Ameiss, City of Surprise, AZ, Surprise Police Department, City of Phoenix, AZ, Phoenix Police Department, Heather Ard, Scribd, Inc., Jason Bentley, Lee County, Florida, Lee County Sheriff's Office, Sheriff Mike Scott, Brian Allen, City of Glendale, AZ, Glendale Police, Tracey Wood. Filing Fee Not Required. Nature of Suit: [01 (Determination of removed claim or cause)]. (Attachments: # <u>1</u> Exhibit Verified Complaint - Lee County 17-CA-421 # <u>2</u> Exhibit Notice of Appeal of Judgment, et al, CT USDC 3-14-cv-01390-MPS # <u>3</u> Exhibit LCSO Polygraph Report)

		(Deanna) Modified on 6/27/2017 (Deanna). (Entered: 06/27/2017)
06/26/2017	<u>2</u> (2 pgs)	Motion to Vacate <i>State Orders of Judge Krier</i> Filed by Plaintiff Scott Alan Huminski. (Deanna) (Entered: 06/27/2017)
06/26/2017	<u>3</u> (5 pgs)	Motion to Vacate <i>Protective Orders as Void Ab Initio or Void and for Declaratory Relief</i> Filed by Plaintiff Scott Alan Huminski. (Deanna) (Entered: 06/27/2017)
06/26/2017	<u>4</u> (1 pg)	Motion for Order to Show Cause <i>as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and</i> , Motion for Protective Order <i>Enjoining Contact with Debtor Arising from any Civil Case by Sheriff Mike Scott, His Agents or Employees</i> Filed by Plaintiff Scott Alan Huminski (Deanna) (Entered: 06/27/2017)
06/26/2017	<u>5</u> (2 pgs)	Second Motion for Order to Show Cause <i>as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and</i> , Motion for Protective Order <i>Enjoining Contact with Debtor Arising from any Civil Case by Sheriff Mike Scott, His Agents or Employees</i> Filed by Plaintiff Scott Alan Huminski (related document(s) <u>4</u>). (Deanna) (Entered: 06/27/2017)
06/28/2017	<u>6</u> (8 pgs)	Summons issued on Town of Gilbert, AZ, Gilbert Police Department, Ryan Pillar, Stephanie Ameiss, City of Surprise, AZ, Surprise Police Department, City of Phoenix, AZ, Phoenix Police Department, Heather Ard, Scribd, Inc., Jason Bentley, Lee County, Florida, Lee County Sheriff and #039;s Office, Sheriff Mike Scott, Brian Allen, City of Glendale, AZ, Glendale Police, Tracey Wood along with Local Rule 7001-1 - Adversary Proceedings - Procedures. Answer Due 07/28/2017. If one or more defendants are the United States or an officer or agency thereof, add an additional five days to the Answer Due date. A copy of this summons must be included when filing proof of service of this summons. (ADIClerk) (Entered: 06/28/2017)

U.S. Bankruptcy Court
Middle District of Florida (Ft. Myers)
Bankruptcy Petition #: 9:17-bk-03658-FMD

Assigned to: Caryl E. Delano
Chapter 7
Voluntary

Date filed: 04/28/2017
341 meeting: 06/13/2017
Deadline for objecting to discharge: 08/14/2017

No asset
Show Associated Cases

Debtor

Scott Alan Huminski
24544 Kingfish Street
Bonita Springs, FL 34134
LEE-FL
239-300-6656
SSN / ITIN: xxx-xx-4327

represented by **Scott Alan Huminski**
PRO SE

Trustee

Luis E Rivera, II
Henderson Franklin Starnes & Holt PA
Post Office Box 280
1715 Monroe Street
Fort Myers, FL 33902-0280
(239) 344-1104
TERMINATED: 05/11/2017

represented by **Luis E Rivera, II**
PRO SE

Trustee

Robert E Tardif, Jr.
Trustee
Post Office Box 2140
Fort Myers, FL 33902
(239) 362-2755

U.S. Trustee

United States Trustee - FTM7/13
Timberlake Annex, Suite 1200
501 E Polk Street
Tampa, FL 33602
813-228-2000

Filing Date	#	Docket Text
04/28/2017	<u>1</u> (56 pgs)	Voluntary Petition under Chapter 7. Installments Schedules and Summary of Assets. Statement of Financial Affairs. Statement of Intentions. Statement of Income and Means Test Calculation. <i>Disclosure of Compensation Not Filed or Not Required</i> . Filed by Scott Alan Huminski. (Jeffery H.) (Entered: 04/28/2017)
04/28/2017	<u>2</u>	Statement of Debtors Social Security Numbers Filed by Debtor Scott Alan Huminski. (Jeffery H.) (Entered: 04/28/2017)
04/28/2017	<u>3</u> (1 pg)	Application to Pay Filing Fee in Installments Filed by Debtor Scott Alan Huminski (Jeffery H.) (Entered: 04/28/2017)

04/28/2017)

04/28/2017 4
(2 pgs) Notice of Commencement of Case, Section 341 Meeting of Creditors, and Fixing Deadlines . Section 341(a) meeting to be held on 5/30/2017 at 02:30 PM at Ft. Myers, FL (892) - 2-101 United States Courthouse, 2110 First Street. Last day to oppose discharge or dischargeability is 7/31/2017. (Jeffery H.) (Entered: 04/28/2017)

04/28/2017 The Clerk's Office has reviewed this case and it appears that the requirements of 11 U.S.C. Section 521(a)(1) have been met. (ADIClerk) (Entered: 04/28/2017)

04/28/2017 Receipt of Installment Payment. Receipt Number 135781, Fee Amount \$100.00. (Dkt) (Entered: 04/29/2017)

04/30/2017 5
(3 pgs) BNC Certificate of Mailing - Notice of Meeting of Creditors. (related document(s) (Related Doc # 4)). Notice Date 04/30/2017. (Admin.) (Entered: 05/01/2017)

05/01/2017 Prior Bankruptcy Case(s) for debtor Scott Alan Huminski Case Number 96-10391, Chapter 7 filed in Vermont Bankruptcy Court on 04/12/1996 , Standard Discharge on 07/22/1996.(Admin) (Entered: 05/01/2017)

05/01/2017 6
(2 pgs) Order Approving Application To Pay Filing Fees In Installments. (Related Doc # 3). Service Instructions: Clerks Office to serve. (Christiane) (Entered: 05/01/2017)

05/03/2017 7
(3 pgs) BNC Certificate of Mailing - Order (related document(s) (Related Doc # 6)). Notice Date 05/03/2017. (Admin.) (Entered: 05/04/2017)

05/09/2017 8
(1 pg) Notice of Resignation of Trustee Filed by Trustee Luis E Rivera II. (Rivera, Luis) (Entered: 05/09/2017)

05/11/2017 9
(1 pg) Notice of Withdrawal of Trustee and Appointment of New Trustee. Luis E Rivera, II withdrew from case, Robert E Tardif, Jr. appointed as Trustee (related document(s)8). (Lidia) (Entered: 05/11/2017)

05/11/2017 10
(2 pgs) Amended Notice of Commencement of Case, Section 341 Meeting of Creditors, and Fixing Deadlines . Amended for new Chapter 7 Trustee and Meeting date and time. Section 341(a) meeting to be held on 6/13/2017 at 09:00 AM at Ft. Myers, FL (892) - 2-101 United States Courthouse, 2110 First Street. Last day to oppose discharge or dischargeability is 8/14/2017. (Lidia) Modified on 5/11/2017 (Lidia).

(Entered: 05/11/2017)

05/12/2017	<u>11</u> (1 pg)	Motion for Order to Show Cause <i>as to Sheriff Mike Scott Should Not be Held in Violation of the 11 US Code 362 and Motion for Protective order Enjoining Contact With Debtor Arising From Any Civil Case by Sheriff Mike Scott His Agents or Employees</i> Filed by Debtor Scott Alan Huminski (Alyssa) (Entered: 05/12/2017)
05/12/2017		Receipt of Installment Payment. Receipt Number 136047, Fee Amount \$100.00. (Dkt) (Entered: 05/12/2017)
05/13/2017	<u>12</u> (3 pgs)	BNC Certificate of Mailing - Notice of Meeting of Creditors. (related document(s) (Related Doc # <u>10</u>)). Notice Date 05/13/2017. (Admin.) (Entered: 05/14/2017)
05/13/2017	<u>13</u> (2 pgs)	BNC Certificate of Mailing - Notice to Creditors and Parties in Interest (related document(s) (Related Doc # <u>9</u>)). Notice Date 05/13/2017. (Admin.) (Entered: 05/14/2017)
05/31/2017	<u>14</u> (2 pgs)	Order Denying Motion For Order to Show Cause without Prejudice (Related Doc # <u>11</u>). Service Instructions: Clerks Office to serve. (Pamella) (Entered: 05/31/2017)
06/02/2017	<u>15</u> (3 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # <u>14</u>)). Notice Date 06/02/2017. (Admin.) (Entered: 06/03/2017)
06/14/2017		The trustee appointed in this case states that the initial meeting of creditors was held and concluded on 6/13/2017 . (Tardif, Robert) (Entered: 06/14/2017)
06/26/2017		Receipt of Installment Payment. Receipt Number 136810, Fee Amount \$75.00. (Dkt) (Entered: 06/26/2017)
06/27/2017		Adversary Proceeding Filed # 9:17-ap-00509-FMD; 01 Determination of removed claim or cause - Lee County 17-CA-421.; Scott Alan Huminski vs. Town of Gilbert, AZ, et al.,... (Deanna) (Entered: 06/27/2017)

PACER Service Center

Transaction Receipt

06/29/2017 16:33:26

PACER Login:	mollydog123:5271502:0	Client Code:	
Description:	Docket Report	Search Criteria:	9:17-bk-03658-FMD Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Headers: included Format: html Page counts for documents: included
Billable Pages:	2	Cost:	0.20

1. **Federal Rules of Bankruptcy Procedure** > **PART IX—GENERAL PROVISIONS** > Rule 9027.

Removal

Rule 9027. Removal

(a) Notice of Removal.

(1) Where Filed; Form and Content. A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.

(2) Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code. If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under §362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) Time for filing; civil action initiated after commencement of the case under the Code. If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) Notice. Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.

(c) Filing in Non-Bankruptcy Court. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of

action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(d) Remand. A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.

(e) Procedure After Removal.

(1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

(f) Process After Removal. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case.

(g) Applicability of Part VII. The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 21 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 21 days following the service of summons on such initial pleading, or within seven days following the filing of the notice of removal, whichever period is longest.

(h) Record Supplied. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings,

trial and judgment may be had in the court, and all process awarded, as if certified copies had been filed.

(i) Attachment or Sequestration; Securities. When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.

Notes

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec 1, 2016.)

Notes of Advisory Committee on Rules—1983

Under 28 U.S.C. §1478(a) “any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce [a] . . . regulatory or police power” may be removed “if the bankruptcy courts have jurisdiction over such claim or cause of action.” This rule specifies how removal is accomplished, the procedure thereafter, and the procedure to request remand of the removed claim or cause of action. If the claim or cause of action which is removed to the bankruptcy court is subject to the automatic stay of §362 of the Code, the litigation may not proceed in the bankruptcy court until relief from the stay is granted.

The subdivisions of this rule conform substantially to 28 U.S.C. §§1446–1450 and Rule 81(a) F.R.Civ.P. pertaining to removal to the district courts.

Subdivision (a)(1) is derived from 28 U.S.C. §1446(a).

Subdivisions (a)(2) and (a)(3) are derived from paragraphs one and two of 28 U.S.C. §1446(b). Timely exercise of the right to remove is as important in bankruptcy cases as in removals from a state court to a district court.

Subdivision (a)(2) governs the situation in which there is litigation pending and a party to the litigation becomes a debtor under the Code. Frequently, removal would be of little utility in such cases because the pending litigation will be stayed by §362(a) on commencement of the case under the Code. As long as the stay remains in effect there is no reason to impose a time limit for removal to the bankruptcy court and, therefore, clause (B) of subdivision (a)(2) provides that a removal application may be filed within 30 days of entry of an order terminating the stay. Parties to stayed litigation will not be required to act immediately on commencement of a case under the Code to protect their right to remove. If the pending litigation is not stayed by §362(a) of the Code, the removal application must ordinarily be filed within 90 days of the order for relief.

Clause (C) contains an alternative period for a chapter 11 case. If a trustee is appointed, the removal application may be filed within 30 days of the trustee's qualification, provided that the removal application is filed not more than 180 days after the order for relief.

The removal application must be filed within the longest of the three possible periods. For example, in a chapter 11 case if the 90 day period expires but a trustee is appointed shortly thereafter, the removal application may be filed within 30 days of the trustee's qualification but not later than 180 days after the order for relief. Nevertheless, if the claim or cause of action in the civil action is stayed under §362, the application may be filed after the 180 day period expires, provided the application is filed within 30 days of an order terminating the stay.

Subdivision (a)(3) applies to the situation in which the case under the Code is pending when the removable claim or cause of action is asserted in a civil action initiated in other than the bankruptcy court. The time for filing the application for removal begins to run on receipt of the first pleading containing the removable claim or cause of action. Only litigation not stayed by the Code or by court order may properly be initiated after the case under the Code is commenced. See e.g., §362(a).

Subdivision (b). With one exception, this subdivision is the same as 28 U.S.C. §1446(d). The exemption from the bond requirement is enlarged to include a trustee or debtor in possession. Complete exemption from the bond requirement for removal is appropriate because of the limited resources which may be available at the beginning of a case and the small probability that an action will be improperly removed.

Recovery on the bond is permitted only when the removal was improper. If the removal is proper but the bankruptcy court orders the action remanded on equitable grounds, 28 U.S.C. §1478(b), there is no recovery on the bond.

Subdivisions (c) and (d) are patterned on 28 U.S.C. §1446(e).

Subdivision (e). There is no provision in the Federal Rules of Civil Procedure for seeking remand. The first sentence of this subdivision requires that a request for remand be by motion and that the moving party serve all other parties; however, no hearing is required. In recognition of the intrusion of the removal practice on the state and federal courts from which claims or causes of action are removed, the subdivision directs the bankruptcy court to decide remand motions as soon as practicable. The last sentence of this subdivision is derived from 28 U.S.C. §1446(c)

Subdivisions (f) and (g), with appropriate changes to conform them to the bankruptcy context, are the same as 28 U.S.C. §1447(a) and (b) and 28 U.S.C. §1448, respectively.

Subdivisions (h) and (i) are taken from Rule 81(c) F.R.Civ.P.

Subdivisions (j) and (k) are derived from 28 U.S.C. §1449 and §1450, respectively.

Remand orders of bankruptcy judges are not appealable. 28 U.S.C. §1478(b).

This rule does not deal with the question whether a single plaintiff or defendant may remove a claim or cause of action if there are two or more plaintiffs or defendants. See 28 U.S.C. §1478.

Notes of Advisory Committee on Rules—1987 Amendment

Section 1452 of title 28, with certain exceptions, provides for removal of claims or causes of action in civil actions pending in state or federal courts when the claim or cause of action is within the jurisdiction conferred by 28 U.S.C. §1334. An order granting or denying a motion for remand is not appealable. 28 U.S.C. §1452(b). Under subdivision (e), as amended, the district court must enter the order on the remand motion; however, the bankruptcy judge conducts the initial hearing on the motion and files a report and recommendation. The parties may file objections. Review of the report and recommendation is pursuant to Rule 9033.

Subdivision (f) has been amended to provide that if there has been a referral pursuant to 28 U.S.C. §157(a) the bankruptcy judge will preside over the removed civil action.

Subdivision (i) has been abrogated consistent with the abrogation of Rule 9015.

Notes of Advisory Committee on Rules—1991 Amendment

The abrogation of subdivision (b) is consistent with the repeal of 28 U.S.C. §1446(d). The changes substituting the notice of removal for the application for removal conform to the 1988 amendments to 28 U.S.C. §1446.

Rules 7008(a) and 7012(b) were amended in 1987 to require parties to allege in pleadings whether a proceeding is core or non-core and, if non-core, whether the parties consent to the entry of final orders or judgment by the bankruptcy judge. Subdivision (a)(1) is amended and subdivision (f)(3) is added to require parties to a removed claim or cause of action to make the same allegations. The party filing the notice of removal must include the allegation in the notice and the other parties who have filed pleadings must respond to the allegation in a separate statement filed within 10 days after removal. However, if a party to the removed claim or cause of action has not filed a pleading prior to removal, there is no need to file a separate statement under subdivision (f)(3) because the allegation must be included in the responsive pleading filed pursuant to Rule 7012(b).

Subdivision (e), redesignated as subdivision (d), is amended to delete the restriction that limits the role of the bankruptcy court to the filing of a report and recommendation for disposition of a motion for remand under 28 U.S.C. §1452(b). This amendment is consistent with §309(c) of the Judicial Improvements Act of 1990, which amended §1452(b) so that it allows an appeal to the district court of a bankruptcy court's order determining a motion for remand. This subdivision is also amended to clarify that the motion is a contested matter governed by Rule 9014. The words “filed with the clerk” are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Committee Notes on Rules—2002 Amendment

Subdivision (a)(3) is amended to clarify that if a claim or cause of action is initiated after the commencement of a bankruptcy case, the time limits for filing a notice of removal of the claim

or cause of action apply whether the case is still pending or has been suspended, dismissed, or closed.

Changes Made After Publication and Comments. No changes were made.

Committee Notes on Rules—2009 Amendment

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Committee Notes on Rules—2016 Amendment

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to require in all removed actions a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to Rule 7012(b). Rule 7016 governs the bankruptcy court's decision whether to hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding.

Dated at Bonita Springs, Florida this 1st day of July 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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IMPORTANT INSTRUCTIONS YOU MUST READ PRIOR TO FILLING OUT THE INQUIRY/COMPLAINT FORM

Please read all instructions carefully before completing the inquiry/complaint form. If the form is not properly completed it may be returned for correction. **You may submit up to a total of 25 pages including the inquiry/complaint form and exhibits.** You may indicate that additional evidence or exhibits are available upon request. If you have not already done so, you may contact the Attorney/Consumer Assistance Program (ACAP) at the above toll free number, to see if they can help resolve the matter about which you wish to complain. Please legibly print or type in black ink only.

PLEASE NOTE: The Florida Bar cannot intervene on your behalf in a civil or criminal case, nor can we give you legal advice. We do not have jurisdiction to consider complaints against judges and many elected officials. Our lawyer regulation department considers whether an attorney has violated our rules of conduct and determines whether, under the totality of the circumstances, The Florida Bar will seek discipline against the attorney. If your inquiry/complaint is closed, you will receive a written explanation of the reasons for the closure.

PART ONE – Complainant Information. You must give your name, address, email address and phone number.. If you have already contacted ACAP, please indicate your ACAP reference number in the space provided. If your inquiry/complaint pertains to a matter currently in litigation, please indicate that in the space provided.

PART TWO – Attorney Information. You must give the name, Bar Number, address, email and phone number of the subject attorney. The Bar Number and address of the attorney are particularly important as many lawyers have the same or similar names. You may find the attorney’s Bar Number and contact information by going to www.floridabar.org and searching under Find A Lawyer. **List only one attorney per form (you may copy this form if you need additional copies). The Florida Bar processes inquiry/complaint forms only against individual attorneys, not against law firms or offices.**

PART THREE – Facts/Allegations. Describe each thing about which you are complaining. Recite all of the details, in chronological order, supplying dates where possible. Please be aware that simply alleging conclusions without setting out facts that support those conclusions will result in the need for the Bar to ask you for additional information and may delay a disposition of your complaint. Please number any additional pages you attach. If you have letters, documents or other evidence, you should attach photocopies (**DO NOT SEND ORIGINAL DOCUMENTS**). It is helpful if you mark your attachments as exhibits (A, B, C, etc.), and refer to them in your description of your complaint. **Please do not bind, staple, tab or index your documents. You may underline but DO NOT HIGHLIGHT documents under any circumstances.** Highlighting will obscure the underlying text when scanned into our computers. **Please do not attach media such as audio tapes, thumb/flash drives, CDs, oversized documents, or photographs.** We cannot process any media that cannot be scanned into the electronic record. It is not necessary to include a copy of these instructions.

PART FOUR – Witnesses. Your inquiry/complaint will be considered even if there are no witnesses. If you have witnesses, attach an additional sheet with the name, address and telephone number for each witness, and include a brief description of the facts about which that witness would testify. If you do not attach a list of witnesses, we will presume that you have no witnesses, other than the attorney and yourself.

PART FIVE – Signature. You must sign the form and certify under penalty of perjury that your allegations are true. Unsworn complaints are not considered. **Submit the original inquiry/complaint form to our office via U.S. Mail. Photocopies of your signature are not accepted.**

RETURN TO:

The Florida Bar, Attn.: ACAP
651 East Jefferson Street Tallahassee, Florida 32399-2300

IMPORTANT NOTICE FOR COMPLAINANTS AND RESPONDENT-ATTORNEYS

MAILING INSTRUCTIONS

Materials Received That Do Not Comply With These Instructions May Be Returned Or Not Otherwise Incorporated Into The File

The Florida Bar converts its disciplinary files to electronic media. All submissions are scanned into an electronic record and hard copies are discarded. To help ensure the timely processing of inquiries/complaints, responses and rebuttals, please review the following instructions prior to providing your submission.

1. Please limit your submission to **no more than 25 pages including exhibits**. If you have additional documents or material available, please make reference to those documents and/or materials in your written submission as available upon request. Should The Florida Bar need to obtain copies of any such documents and/or materials, a subsequent request will be sent to you.
2. **Please do not bind, staple, tab or index your documents. You may underline but do not highlight documents under any circumstances. Please do not submit materials in color.** When documents are scanned in our disciplinary files, highlighting and color will obscure the underlying text.
3. **Please do not attach media such as audio tapes, thumb/flash drives, CDs, or photographs.** We cannot process any media which cannot be scanned into the electronic record.
4. **Please do not submit your original documents.** All documents will be discarded after scanning and we will not be able to return any originals submitted to our office. The only original documents that should be provided to our office are the inquiry/complaint form, response and certificate of disclosure.
5. **Whether you are a complainant or a respondent-attorney, please do not submit confidential or privileged information.** Documents submitted to our office become public record. (Respondent-attorneys may wish to consult Rule 4-1.6 (e) of the Rules Regulating The Florida Bar.) Confidential/privileged information should be redacted. Such information includes, but is not limited to, bank account numbers, social security numbers, credit card account numbers, medical records, dependency matters, termination of parental rights, guardian ad litem records, child abuse records, adoption records, documents containing names of minor children, original birth and death certificates, biometric data such as fingerprints, Baker Act records, grand jury records, and juvenile delinquency records. If information of this nature is important to your submission, please describe the nature of the information and indicate that it is available upon request. Bar counsel will contact you to make appropriate arrangements for the protection of any such information (to the extent permitted by law) as part of the investigation of the complaint.
6. **Please provide your submission only one time. Do not submit duplicates via email, facsimile transmission or by any other means. Do not include these instructions. Respondent-attorneys do not need to include a copy of the complaint.**

Please be aware that materials received that do not meet these instructions may be returned or not otherwise incorporated into the file. Thank you for your consideration in this respect.

The Florida Bar Inquiry/Complaint Form

PART ONE (See Page 1, PART ONE – Complainant Information.):

Your Name: scott huminski

Organization: self

Address: 24544 kingfish street

City, State, Zip Code: bonita springs, fl 34134

Telephone: 239 300 6656

E-mail: s_huminski@live.co

ACAP Reference No.: _____

Does this complaint pertain to a matter currently in litigation? Yes No

PART TWO (See Page 1, PART TWO – Attorney Information.):

Attorney's Name: Elizabeth Krier Florida Bar No.: 476323

Address: 1700 Monroe Street

City, State, Zip Code: Fort Myers, fl 33901

Telephone: 239 533 2600

PART THREE (See Page 1, PART THREE – Facts/Allegations.): The specific thing or things I am complaining about are: (attach additional sheets as necessary)

Judge Krier was presiding over a state court case 17-CA-421, Huminski v. Town of Gilbert. The case was removed to federal bankruptcy court, 9:17-ap-00509-FMD, Huminski v. Town of Gilbert.

Judge Krier continues to try to litigate and preside over a case not in her court completely without jurisdiction.

This is conduct that is prejudicial to the administration of justice. Judge Krier appeared very confused when in hearing her jurisdiction was questioned and she remarked that case can not be removed to federal court even after she was made aware of the Bankruptcy Rule that removed the case #9027 and after the Notice of Removal (citing copious federal statutes) was filed in the State Court on 6/26/2017.

Krier proceeding to issue an order the day after removal and held a hearing on 6/29/2017 where she made it absolutely clear that she intended to litigate the case despite it was removed to federal court.

Krier appears to have lost a connection to reality, is suffering from alzheimers or has some other cognitive disability that has prevented her ability to understand pleadings she has read.

See attached Notice of Removal, Notice of Docketing in U.S. Bankruptcy Court and Objection.

PART FOUR (See Page 1, PART FOUR – Witnesses.): The witnesses in support of my allegations are: [see attached sheet].

PART FIVE (See Page 1, PART FIVE – Signature.): Under penalties of perjury, I declare that the foregoing facts are true, correct and complete.

Scott Huminski

Print Name

Signature

7/2/2017

Date