

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

EDDIE ANDREWS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 06-CV-460-TCK-PJC
)	
UNITED STATES, et al.,)	
)	
Defendants.)	

**MOTION TO DISMISS ON BEHALF OF OKLAHOMA ATTORNEY
GENERAL DREW EDMONDSON AND BRIEF IN SUPPORT**

Oklahoma Attorney General Drew Edmondson respectfully submits this motion to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that Plaintiffs' Complaint fails to state a claim for relief. The grounds for this Motion are set forth in the following Brief.

**BRIEF IN SUPPORT OF MOTION TO DISMISS
ON BEHALF OF DEFENDANT EDMONDSON**

STATEMENT OF THE CASE

Plaintiffs, appearing *pro se*, filed this civil action against numerous federal and state officials and organizations. Plaintiffs appear to allege in their voluminous but vague Complaint that Defendants participated in numerous acts which amounted to constitutional violations and violations of federal criminal statutes. Most of the Complaint consists merely of Plaintiffs' opinions regarding the court system, the legal system, and various political issues.¹

¹ Plaintiff Eddie Andrews filed two lawsuits which were similar to the instant action in the United States District Court for the Western District of Oklahoma. Those lawsuits were consolidated, and that Court sanctioned Eddie Andrews because of his filing of groundless and vexatious lawsuits. *See* Exhibit 1.

Plaintiffs' allegations against Attorney General Edmondson consist of conclusory statements that Edmondson and the other Defendants routinely violate the federal criminal statutes listed in the Complaint (pp. 82-83) and that these parties are "technically thugs" and lead "a life of crime" (p. 70).

ARGUMENT AND AUTHORITY

PROPOSITION I

PLAINTIFFS' CLAIMS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM FOR RELIEF AS REQUIRED BY RULE 8(a).

Although Plaintiffs appear *pro se*, they are required to adhere to the same rules of procedure as any other litigant. *Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992). *See also, Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994) (A party's *pro se* status does not relieve them from complying with the fundamental requirements of the Federal Rules of Civil Procedure). Even *pro se* litigants must meet certain minimal standards of pleading. *Holsey v. Collins*, 90 F.R.D. 122, 128 (D. Md. 1981). One of those minimal standards is providing the Defendant with notice of the allegations against them, as set forth in Fed. R. Civ. P. Rule 8(a).

Fed. R. Civ. P. Rule 8(a) provides as follows:

“(a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claims needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.”

The purpose of the requirement set forth in Fed. R. Civ. P. Rule 8(a) that pleadings contain a “short and plain statement” of the cause of action is to give notice to the defendant of the nature of the plaintiff's claim, and the grounds upon which it rests. *Burks v. City of Philadelphia*, 904 F.

Supp. 421, 423 (E.D. Pa. 1995). *See also, Howard v. Koch*, 575 F. Supp. 1299, 1304 (E.D.N.Y.1982) (Purpose of Fed. R. Civ. P. 8 is to protect Defendants from undefined charges and free federal courts from frivolous cases).

Plaintiffs' Complaint contains no short and plain statement of the claims as required under Rule 8(a)(2) showing that Plaintiffs are entitled to relief. Plaintiffs cite various constitutional rights which they claim have been violated, but they allege no facts and make only broad conclusory statements. Defendant Edmondson cannot initiate a realistic defense against Plaintiffs' generalized grievances. Therefore, this case should be dismissed under Fed. R. Civ. P. Rule 12(b)(6).

PROPOSITION II

ANY OFFICIAL CAPACITY CLAIMS ARE BARRED BY THE ELEVENTH AMENDMENT AND SHOULD BE DISMISSED.

The Eleventh Amendment provides that “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” Although the language of the Amendment explicitly refers only to suits brought against a state by citizens of another state, it has long been interpreted to bar suits against a state by its own citizens. *Hans v. Louisiana*, 134 U.S. 1, 21 (1890). The immunity afforded by the Eleventh Amendment “bars suits by private citizens against a state in federal court, irrespective of the nature of the relief requested.” *Okpalobi v. Foster*, 244 F.3d 405, 411, (5th Cir. 2001) (citing *Hutto v. Finney*, 437 U.S. 678, 700, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978)).

The immunity is enjoyed not only by the state, but also its instrumentalities and officers acting in their official capacities. *Mount Healthy City School Dist. Bd. Of Educ. v. Doyle*, 429 U.S.

274, 280 (1977). Therefore, a suit brought against a state official in his official capacity is the same as a suit brought against the state. *Russ v. Uppah*, 972 F.2d 300, 303 (10th Cir. 1992). Based on these grounds, the suit against Attorney General Edmondson is barred by the Eleventh Amendment.

PROPOSITION III

PLAINTIFFS HAVE FAILED TO AFFIRMATIVELY LINK ATTORNEY GENERAL EDMONDSON TO A CONSTITUTIONAL VIOLATION.

Plaintiffs have identified no action directly taken by Attorney General Edmondson which led to this action against him. It is well settled that personal participation is an essential element of a § 1983 claim against a public official. *Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996). *See also, Mee v. Ortega*, 967 F.2d 423, 430-31 (10th Cir. 1992). An official is not individually liable unless an affirmative link exists between that official's personal conduct and the alleged constitutional deprivation. *Grimsley v. MacKay*, 93 F.3d 676, 679 (10th Cir. 1996). In this case, Plaintiffs have asserted only conclusory allegations regarding Attorney General Edmondson and have failed to specify any personal action on his part which violated their rights. Therefore, their claims against Defendant Edmondson must be dismissed.

PROPOSITION IV

PLAINTIFFS HAVE NO PRIVATE CAUSE OF ACTION BASED ON THE FEDERAL CRIMINAL STATUTES THEY CITE.

Plaintiffs' unsupported claims regarding the alleged violation of federal criminal statutes should be dismissed. Plaintiffs allege that Defendant Edmondson and others violated several federal criminal statutes, including: 18 U.S.C. § 241 (making it a crime to conspire against the rights of others), 18 U.S.C. § 242 (regarding the deprivation of the rights of others by those acting other the color of law), 18 U.S.C. § 371 (involving the conspiracy to commit an offense against the United

States or to defraud the United States), 18 U.S.C. § 1001 (involving fraud and false statements), 18 U.S.C. § 1341 (involving mail fraud), 26 U.S.C. § 7214 (regarding offenses by United States officers and employees), and 18 U.S.C. §§ 1581 and 1584 (making it a crime to sell persons into involuntary servitude).

The general rule is that “private citizens cannot prosecute criminal actions.” *Mamer v. Collie Club of America, Inc.*, 229 F.3d 1164 (Table), 2000 WL 1114237 at *2 (10th Cir. 2000) (unpublished) (citing *Higgins v. Neal*, 52 F.3d 337 (Table), 1995 WL 216920 at *1 (10th Cir. Apr.12, 1995) (unpublished)² (stating that “[b]ecause allowing private citizens to initiate prosecutions would undermine prosecutorial discretion and the authority of federal prosecutors, we conclude [the defendant] lacks standing to maintain this criminal action); see *Newcomb v. Ingle*, 827 F.2d 675, 677 n. 1 (10th Cir. 1987) (noting that federal conspiracy statute 18 U.S.C. § 241 does not authorize a private right of action); see generally *Diamond v. Charles*, 476 U.S. 54, 64-65, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986) (holding that private citizens cannot compel enforcement of criminal law). Plaintiffs present no authority finding an implied private civil cause of action in any of the cited criminal statutes. The statutes are criminal in nature and offer nothing from which to infer an available civil remedy. Private causes of action based on a bare criminal statute, with absolutely no indication that civil enforcement of any kind was available to a private citizen, should not be entertained. *Winslow v. Romer*, 759 F.Supp. 670, 674 (D.Colo.1991). Plaintiffs have not shown that the criminal statutes on which they base their claims provide independent bases for causes of action, and their claims based on the statutes must be dismissed.

² The unpublished opinions cited herein are cited in accordance with Rule 36.3 of the Tenth Circuit Rules and are attached as Exhibits in accordance with Rule 36.3.

PROPOSITION V

**PLAINTIFFS FAILED TO ALLEGE FACTS SUFFICIENT
TO SUPPORT A CONSPIRACY CAUSE OF ACTION.**

Plaintiffs allege that Defendant Edmondson conspired with the numerous other individuals named as Defendants in this action to violate the above-referenced federal criminal statutes. However, Plaintiffs' claims of conspiracy are deficient and must be dismissed.

In order to recover under a civil conspiracy theory, a plaintiff must plead and prove not only a conspiracy between individuals but also an actual deprivation of federally protected rights. *Dixon v. City of Lawton, Oklahoma*, 898 F.2d 1443, 1449 (10th Cir. 1990). Furthermore, mere conclusory allegations of conspiracy are insufficient. *Sooner Products Co. v. McBride*, 708 F.2d 510, 512 (10th Cir. 1983).

Plaintiffs' conspiracy claims have significant shortcomings. First, they have failed to allege any specific facts reflecting any agreement or concerted action between the Defendants. In addition, as stated above, they have failed to demonstrate the deprivation of any of their federally protected rights. Because they have offered only unsupported statements regarding a conspiracy, their conspiracy cause of action must be dismissed.

PROPOSITION VI

**PLAINTIFFS FAILED TO ALLEGE FACTS
SUFFICIENT TO ALLEGE A RICO CAUSE OF ACTION.**

Plaintiffs' RICO claim against Defendant Edmondson must be dismissed pursuant to Fed. Rule Civ. Pro. 9(b). Under Rule 9(b), a RICO claim must be plead with particularity in order to provide the Defendants and the court with clear notice of the factual basis of the claim. *Cayman Exploration Corp. v. United Gas Pipe Line Co.*, 873 F.2d 1357, 1362 (10th Cir. 1989). Broad-

brushed and conclusory allegations are insufficient to allege a RICO cause of action. *Ad-X International, Inc. v. Kolbjornsen*, 97 Fed.Appx. 263, 265 (10th Cir. 2004) (unpublished). Dismissal is proper in a RICO claim where insufficient facts have been plead. *Farlow v. Peat, Marwick, Mitchell & Co.*, 956 F.2d 982, 989-990 (10th Cir. 1992). Plaintiffs have not alleged any facts supporting a RICO claim against Defendant Edmondson, and their insufficient claims must be dismissed.

CONCLUSION

Plaintiffs failed to establish that Defendant Edmondson personally participated in a violation of their federally protected rights, and any possible claims against Defendant Edmondson are barred by the Eleventh Amendment. Even if the claims were not barred, Plaintiffs have failed to allege sufficient facts to satisfy either Rule 8(a) or Rule 9(b) of the Federal Rules of Civil Procedure and have failed to support his claims of conspiracy. Furthermore, the federal criminal statutes Plaintiffs cite do not bestow upon them private civil causes of action. For these reasons, Plaintiffs' action against Defendant Edmondson must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

s/ Linda Soper

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and served the attached document by U.S. Mail, postage prepaid, on the following persons who are not registered participants of the ECF System:

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