

Indiana Commission on Judicial Qualification  
115 W. Washington St.  
Suite 1080  
Indianapolis  
Indiana 46204

3299 Park Ridge Lane, NE  
Grand Rapids  
MI 49525

November 01, 2004

Re: Cause No. 20D050010DR640

Dear Sir/Madam,

The undersigned, Amir H. Sanjari, Respondent (Complainant) *pro se* in the above state custody case has, and/or is, hereby lodging this complaint against the four judges in this case since 1999, specifically the current presiding judge (**Special Judge Rex Reed** of Kosciusko 54<sup>th</sup> Circuit Court) and the immediate past presiding judge (**Special Judge Michael Cook** of Marshall 72<sup>nd</sup> Circuit Court ) in Indiana state courts and the **Elkhart Superior Court #5 Clerk (Stephanie Burgess)**.

This is not to absolve the earlier judges (**Special Judge David Denton & Judge Terry Shewmaker** of Elkhart County) of illegal and/or unethical conduct.

The Respondent is requesting that this Judicial Qualification Commission launch an investigation of the said judges and the Clerk and their conducts with a view to implementing appropriate disciplinary actions against the same.

The Respondent understands, and has evidence and witnesses to the effect that some of the above judges' illegal and unethical conducts are not confined to this case alone, forming a persistent pattern of such (corrupt) actions in Northern Indiana.

Furthermore, the Respondent (Plaintiff in the federal case), has petitioned to remove the state case to federal court due to the corruption and malfeasance in the state courts (see the enclosed Notice of Removal ...), and violations of his, and his minor children's, constitutional rights of, but not limited to, due process and equal protection by the said judges. The Respondent, a *pro se*, a man and a father did state in his removal notice that the “*state court has deliberately perpetrated discrimination and prejudice against the Petitioner* [Petitioner/Plaintiff in the federal case], *and his children, in its conduct of the state case before it*”. This racial, gender and paternal discrimination and prejudice throughout the whole process of the state case (since 1999)

was contributed to by the continuous and corrupt nature of the process in the (Northern Indiana) state courts with the participation of the opposing counsel, Mr. Max Walker, a disgraced (evidence available- also on the Plaintiff's website: [webpages.charter.net/lah1321](http://webpages.charter.net/lah1321) ) former Elkhart County Deputy Prosecutor. A similar complaint was lodged against Mr. Walker with the Indiana Supreme Court Disciplinary Commission.

Further evidence of, and witnesses to the “persistently corrupt process” and malfeasance in the state courts, maybe provided in due course and also made available to this Judicial Qualification Commission. Also included here are two affidavit by two independent observers testifying to the biased, discriminatory and prejudicial conduct of the state court.

Indeed, the enclosed notice includes proof indicating that state court records in the possession of the Elkhart court Clerk were indeed tampered with (please see Exhibits in the enclosed notice & CD-ROM), resulting in the illegal refusal of the Clerk in certifying the Respondent's praecipe [Rule 53.1 (c)] against Judge Reed.

Therefore, the decisions and orders of the state courts by the above four judges since the year 1999 are **VOID** due to the said judges having lost jurisdiction in this state (custody) case as a result of their violations of the U.S. Constitution (see below for legal case laws & cites).

Furthermore, the said judges a) have, as a result of these violations, lost any judicial immunity they might have had, and b) have, therefore, perpetrated treason (see below) against the United States for having violated the U.S. Constitution (also enshrined in the constitution of the State of Indiana) in contravention of their oaths of office.

The Respondent stands ready to provide further information and evidence and witnesses in support of his assertions herein.

The following are the legal case laws in support of the Respondent's assertions and also excerpts from the Respondent's (Plaintiff's in federal case) removal petition to the U.S. District Court.

I look forward to hearing from you at the earliest time.

Yours Sincerely,



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Dr. Amir H. Sanjari, *pro se*

FILED

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CLERK  
OF THE NORTHERN DISTRICT  
OF INDIANA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Cause No: 3:04CV 470AS

OR ORIGINAL

AMIR H. SANJARI,	)	In a petition for removal from the
Petitioner (Defendant Below)	)	Superior No. 5 Court of
	)	
	)	Elkhart County, Indiana
v.	)	
	)	
ALISON GRATZOL,	)	Indiana Court Cause
Respondent (Plaintiff Below)	)	No.: 20D050010DR640
	)	
	)	Honorable Rex L. Reed, Special Judge
and, in re: the support and welfare of the	)	
parties' minor children (AFS & MRS)	)	

**Notice of Petition And Verified Petition For  
Warrant Of Removal and Retention**

Comes now the Petitioner, Amir H. Sanjari, *Pro Se*, and in direct support of this request for removal, and retention, of the above-encaptioned state court cause into, and through, the various jurisdiction of this United States District Court provided under at least 28 USC § 1331, 28 USC § 1367, 28 USC 1441(b), 28 USC § 1441(c), 28 USC § 1441(e), 28 USC § 1443(1), 28 USC § 1443(2), and/or 28 USC § 1446, and on the federal questions involved, herein alleges, states, and provides the following:

## JURISDICTION

1. This District Court of the United States has original, concurrent, and supplementary jurisdiction over this cause of action, pursuant to the authorities cited above, including, but not limited to the following, to-wit: 28 USC § 1331, 28 USC § 1367, 28 USC 1441(b), 28 USC § 1441(c), 28 USC § 1441(e), 28 USC § 1443(1), 28 USC § 1443(2), and/or 28 USC § 1446.
2. The District Court of the United States is an Article III court with authority to hear questions arising under the Constitution, Laws, and Treaties of the United States, including but not limited to the Bill of Rights, the Ninth Amendment, the Eleventh Amendment, the original Thirteenth Amendment, the Fourteenth Amendment, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights, with Reservations. *See* the Article VI Supremacy Clause of the Constitution of the United States of America, as lawfully amended (*hereinafter* "U.S. Constitution").
3. Petitioner has filed this **Removal (and Retention) Petition solely on the basis of the violations of his, and his children's, constitutional, due process, and equal protection rights by the state court** (Elkhart Superior Court No. 5, its Clerk, and presiding Special Judge in the case- Special Judge Rex L. Reed of Kosciusko Circuit Court).
4. Petitioner, being resident of Grand Rapids, MI, filed his motion (on May 28, 2004) for removal with US District Court, Western District of Michigan, which advised the Petitioner that the proper venue for filing this petition is the US Disctric Court, Northern District of Indiana (South Bend). Hence, this filing.

### RESERVATION OF RIGHTS DUE TO FRAUD

5. Petitioner hereby explicitly reserves his fundamental Right to amend this and all subsequent pleadings, should future events and/or discoveries prove that he has failed adequately to comprehend the full extent of the damage(s) which he has suffered at the hands of the Respondent, the state court, and other involved parties, both named and unnamed, now and at all times in the future. *See* Rules 8, 15, and 18 of the Federal Rules of Civil Procedure.

### RECORD OF STATE PROCEEDINGS

6. Petitioner is now proceeding on the basis of the presumption that the Indiana state court record will be made available to this Honorable Court upon Notice and Demand for Mandatory Judicial Notice, pursuant to Rules 201 and 902 of the Federal Rules of Evidence, the Full Faith and Credit Clause contained under Article IV of the U.S. Constitution, and 28 U.S.C. § 1449.

### INCORPORATION OF PRIOR PLEADINGS

7. Petitioner hereby incorporates by reference all pleadings, papers, and effects heretofore filed or otherwise lodged within the state proceedings the same as if fully set forth herein. (H.I).

## ASSERTIONS, ALLEGATIONS AND EVIDENCE

8. Petitioner **specifically complains on matters which go to related federal questions**, such as federal criminal jurisdiction within the several States of the Union, and the denial or the inability to enforce, in the courts of a State, one or more rights under any law providing for the equal rights of citizens of the United States, or of all persons within the jurisdiction thereof, to-wit:
9. Petitioner complains of various **systematic and premeditated deprivations of fundamental Rights guaranteed by the U.S. Constitution, by the Constitution of the State of Indiana**, as lawfully amended (*hereinafter* "Indiana Constitution"), and by federal law, and which deprivations are criminal violations of 18 U.S.C. §§ 241 and 242. *See also* 28 U.S.C. § 1652. Such willful and consistent violations and deprivations of Petitioner's, and his children's, constitutional rights have been perpetrated since the former filed the above-mentioned state case for the custody of his minor children in September 2002.
10. The state court willfully and consistently failed to set a prompt hearing to deal with the said case, in violation of the Petitioner's constitutional rights. This case has still not been heard.
11. During May 17-18, 2004, evidence (please see clauses 11 to 32 here and Attached **Exhibit A** (page 21), **an audio CD-ROM in support of Petitioner's assertions outlined herein**) indicates that the **state court's** (Elkhart Superior Court No. 5, its Clerk & Special Judge Rex L. Reed of Kosciuski Circuit Court presiding) **records of Chronological Case Summary (CCS) of the case were unduly, illegally, and in violation of the due process and equal protection of the Petitioner and his children, modified** in order to frustrate the Petitioner's filing of a praecipe to remove Special Judge Rex Reed from the state case .

In support of the above, Petitioner further provides the following, including Exhibits A & B (pages 21 & 22 respectively):

12. That, the failure of the state court to act when it was under a duty to act has been raised in the state court by a written motion (Petitioner's filing of May 17, 2004, praecipe) filed therein and brought to the attention of the state court special judge, and the written motion was denied or not ruled on timely; in any case the petition need not show this in applications involving a change of venue from the judge or county;
13. That, the Petitioner, on April 12, 2004 (hereafter referred to as "April 12 filing"), filed a MOTION FOR CONDUCT OF PSYCHOLOGICAL EVALUATION, pertaining to a custody case, first filed by the Petitioner in September 2002, which is still ongoing,
14. That, as of 02:40 p.m. on May 17, 2004, (the time and date of the filing of the praecipe to Elkhart Superior Court No. 5), the above motion had neither been ruled upon nor set for a hearing,
15. That, the Petitioner's motion was not repetitive, as it addressed actions taken by Dr. Anthony Berardi (Court appointed psychologist) and the state court in the periods February and March 2004. The motion required a prompt and timely decision by the court well before the hearing set for June 01, 2004. The above-mentioned request had not been previously presented to the Court in any motion,
16. That, the state court (Judge Rex Reed) had not entered an order stating that Petitioner's motion will be addressed at the upcoming hearing,
17. That, on May 17, 2004, Petitioner personally went to Elkhart Court to file a praecipe to Remove Motion And Appoint Special Judge,

18. That, immediately prior to filing the praecipe, at the request of the Petitioner, the clerk's office personnel checked the records and chronological case summary (CCS) entries and confirmed that there had, indeed, been **no** order or decision placed by Judge Reed pertaining to Petitioner's April 12, 2004, Motion,
19. That, the attached **Exhibit A** (page 21), is an **audio CD-ROM** which contains the tape recording of the Petitioner's conversation with the clerk's office personnel, who **confirmed the absence of any order or entry by Judge Reed for the April 12 Motion,**
20. That, the same audio CD-ROM indicates the Petitioner asking, and the **clerk's personnel confirming a number of times that there were, indeed, no records of any orders** for the April 12 motion. The clerk's office personnel's thorough search continued for sometime and covered the period from March through May 17<sup>th</sup>, 2004, and yet she **found no records** of an order or decision,
21. That, the Elkhart clerk's personnel wrote a list (Attached **Exhibit B**, Page 22) of three (3) filings (including the April 12 motion) in response to the Petitioner's request for a list of motions for which the court **had not issued orders**. The hand-written note was written on May 17, 2004, immediately prior to the Petitioner's filing of the praecipe, and is supported by **Exhibit A** (audio CD-ROM),
22. That, the Petitioner **additionally** asked the Elkhart Superior Court No. 5 personnel (in a different office) to run another, **independent, check** as to whether any order or decision had been recorded or issued by Judge Reed pertaining to the April 12 Motion. The Court personnel, after having checked its own CCS records, **also confirmed that, indeed, no such order or decision existed** in the records. Please refer to the attached **Exhibit A** (page 21),

23. That, coincidentally, one day after this petition (praecipe) was filed on May 17<sup>th</sup>, an order emerged (on May 18, 2004) which was not part of the CCS previously,

24. That, late in the afternoon of May 18, 2004, the Petitioner was informed by the Court of the emergence of the entry,

25. That, **curiously, neither party was served with a copy of this allegedly timely order,**

26. That, the Petitioner was, on May 18, 2004, also informed by the (Elkhart) clerk's office that it would not certify, nor enclose the said praecipe motion to the Indiana Supreme Court,

27. That, the Petitioner, on May 19, 2004, acquired a copy of the CCS entries.

A partial listing of the CCS entries, from January 2004 through May 19, 2004, indicates that indeed there are no orders entered for the motions on the clerk's personnel's hand-written list except, coincidentally, for the April 12 motion, which happens to be the basis of the Petitioner's May 17, 2004, praecipe to the Elkhart Superior Court No. 5 to remove Special Judge Reed,

28. That, April 12 motion, unusually, appears to have been entered twice in the CCS, once on April 12, and another on April 16 (pages 39 and 40 of the CCS). The latter entry, coincidentally, includes denial of motion by Judge Reed.

This indicates a break in the pattern of entries.

29. That, a review of the CCS entries seems to indicate a departure from the norm for entering this particular (April 12) motion that happens to be the basis for the Petitioner's praecipe. This is especially perplexing in view of the fact that, as confirmed by the Elkhart Superior Court No. 5's personnel, no order was sent to the parties,

30. That, yet another departure from the norm seems to have started around or soon after the April 16 entry (a duplicate of April 12 motion), with the Respondent Judge's decisions being entered on the same dates (same entries) that the motions were filed with the Elkhart court, this is in view of the fact that Respondent Special Judge sits in Warsaw, IN and the motions are filed with Elkhart Superior Court No. 5 in Elkhart which then passes the filing along to the Special Judge,

31. That, under Indiana Trial Rule 53.1(c), the court is deemed to have ruled on the motion at the time the ruling is entered into the public record or at such time as the ruling is received in the clerk's office for filing. However, the evidence presented by Petitioner shows there is a dispute of fact as to this question. It is Petitioner's contention that **this order only materialized after his praecipe was filed with the clerk to remove the matter from the court**, and justice dictates that Petitioner receive the opportunity through the calling of witnesses and production of evidence to prove the same,

32. That, the illegal modification of the state court records (the CCS entries) **has deprived the Petitioner, and his minor children, of their due process rights** in pursuit of legal remedy to remove Special Judge Reed,

33. The state court has deliberately perpetrated **discrimination and prejudice against the Petitioner, and his children, in its conduct of the state case before it, resulting in violations of their equal protection and due process rights**. This is verified by the Attached Affidavits, **Exhibits C & D** (pages 23 & 24 respectively), by two independent and unrelated (to Petitioner) observers.

34. The above (10 - 32) are but some of many occasions on which violations of due process and equal protection have been perpetrated against the Petitioner and his children throughout the custody case in progress in the state court since August 2001, for which no hearing has hitherto been held.

35. Furthermore, the state court, by issuing, and insisting upon enforcing, an illegal order, further deprived the Petitioner, and his minor children, of a prompt hearing of the case which is in violation of due process and equal protection.

36. Further violations of the Petitioner's 1<sup>st</sup> and 14<sup>th</sup> Amendments rights included when a special judge in the state case refused to allow the Petitioner to obtain crucial testimony from relevant witnesses (14<sup>th</sup> Amendment). And by illegally, cancelling an already scheduled custody hearing, the state court attempted to muzzle the Petitioner (1<sup>st</sup> Amendment) to save court embarrassment due to misconduct.

37. That, a special judge in the case further abused his position and violated the Constitutional rights of the Petitioner (and his children) by threatening the Petitioner and trying to intimidate him during the pre-hearing.

38. After having being informed on a number of occasions by the Petitioner that one of the minor children had been self-mutilating, a special judge in the case willfully and knowingly and negligently endangered the safety and well-being of the minor child by refusing to take prompt, timely and appropriate action in regards to the residency of the child and custody hearing, hence perpetuating the physical and psychological suffering of the minor child. This was further violation of the Petitioner's and his minor children's rights of *due process of law* and *equal protection* (14<sup>th</sup> Amendment) by depriving them of a prompt hearing and equal

protection of the law. The First Amendment to the U.S. Constitution states that all entities have the mandatory right of an adequate, complete, effective, fair, full meaningful and timely access to the court. These principles have been consistently violated in this case by the state court.

39. This state case has been presided over, since September 2002, by various Special Judges and has been trapped in the same cycle of violations of due process and equal protection primarily due to the state court's lack of regards for the law and the constitutional rights of the Petitioner and his minor children.

40. The state court's special judges continually and willfully refused to timely and adequately address and remedy the interference and violations (at least 13 times- documented and admitted by the Respondent/mother), by the Respondent (the custodial mother), of the Petitioner's (father's) parental visitation rights. This is in clear violation of the Fourteenth Amendment to the U.S. Constitution which provides that the interest of parents in the care, custody and control of their children, is perhaps the oldest of the fundamental liberty interests recognized by the court, *Troxel V. Granville*, USC, (2000).

41. The prejudicial conduct by the state court and its violations of the Petitioner's, and his children's, constitutional rights have extended to other areas, such as child support assignment, than just the custody hearing and parental visitation. Violating the equal protection rights of the Petitioner, the state court has continually and consistently acted prejudicially against the Petitioner. Such a disparate treatment between the Respondent (mother) and the Petitioner (father) violates the guarantees of equal protection. *Jones v. Helms*, 452 U.S. 412, 101 S.Ct.

STATE OF INDIANA )  
                          ) SS:  
ELKHART COUNTY )

IN THE ELKHART SUPERIOR COURT NO. 5

CAUSE NO. 20D050010DR640

EXHIBIT C

**AFFIDAVIT OF BIAS AND PREJUDICE**

Comes now (affiant's name) ROXANNE VARGA, of (affiant's address) 409 TURNBERRY AVE., BRISTOL, IN 46507, being duly sworn upon his/her oath, states that (s)he believes the Honorable Rex L. Reed, of Kosciusko Circuit Court, is biased and prejudiced against Dr. Amir H. Sanjari, Respondent in the above captioned case. This prejudice, by extension and consequence, is also perpetrated against Dr. Sanjari's two minor children. The undersigned arrived at this conclusion by witnessing Special Judge Reed's conduct of the case during a full day's court hearing.

Roxanne Varga  
Roxanne Varga (AFFIANT)

**VERIFICATION AND AFFIDAVIT**

Before me, the undersigned authority, personally came and appeared the affiant named below, who, being first duly sworn upon oath, stated that she has read the above and foregoing document and knows the contents thereof, and that all statements of fact contained therein are true.

Roxanne Varga  
Roxanne Varga (AFFIANT)

Subscribed and sworn to before me, this 11<sup>th</sup> day of July 2004.

Denis J. Roeder  
NOTARY PUBLIC  
Address of notary:

Denis J. Roeder  
Notary Public, State of Indiana  
St. Joseph County  
My Commission Expires 11-04-06

STATE OF INDIANA )  
                          ) SS:  
ELKHART COUNTY )

IN THE ELKHART SUPERIOR COURT NO. 5  
CAUSE NO. 20D050010DR640

EXHIBIT D

**AFFIDAVIT OF BIAS AND PREJUDICE**

Comes now (affiant's name) Tim Miller, of (affiant's address) 409 TURNBERRY AVE, PRISMA, IN 46507, being duly sworn upon his/her oath, states that (s)he believes the Honorable Rex L. Reed, of Kosciusko Circuit Court, is biased and prejudiced against Dr. Amir H. Sanjari, Respondent in the above captioned case. This prejudice, by extension and consequence, is also perpetrated against Dr. Sanjari's two minor children.

The undersigned arrived at this conclusion by witnessing Special Judge Reed's conduct of the case during a full day's court hearing.

Tim Miller  
Tim Miller (AFFIANT)

**VERIFICATION AND AFFIDAVIT**

Before me, the undersigned authority, personally came and appeared the affiant named below, who, being first duly sworn upon oath, stated that she has read the above and foregoing document and knows the contents thereof, and that all statements of fact contained therein are true.

Tim Miller  
Tim Miller (AFFIANT)

Subscribed and sworn to before me, this 13<sup>th</sup> day of July 2004.

Denis J. Roeder  
NOTARY PUBLIC  
Address of notary:

Denis J. Roeder  
Notary Public, State of Indiana  
St. Joseph County  
My Commission Expires 11-04-06

.....

.....

.....

*5. The second-prong of the Eleventh Amendment, which the district court applied here, was never duly ratified and is thus unconstitutional and inapplicable to this case.*

*Another untenable excuse used by the federal courts to allow governmental defendants to escape liability and accountability is the Eleventh Amendment. Like the doctrine of judicial immunity, the nascence of the second prong of the Eleventh Amendment was without the potency of any Congress. It was birthed almost 100 years after the duly-ratified first prong of the Eleventh Amendment, which has no application here whatsoever, by a court acting outside the scope of its authority. *Hans v. Louisiana*, 134 U.S. 1 (1890) (enhanced the Eleventh Amendment by judicial fiat by holding that a citizen cannot sue his/her own State in federal court). It was a court that when circumventing the legislature by usurping its law-making power, transformed our government into one that oppressed the governed.*

*This was contrary to what our Framers intended.\FNI / To prevent such oppression, the Framers gave the public the right to return those oppressing the governed to private life. U.S. Const., Art. 3, §1. Mass. Declaration of Rights, art. VIII. It is reasonable to conclude that the Framers considered that the public would choose*

*from the full spectrum of sanctions: from the giving of relief for one identifiable wrongdoing to the harsh sanction of impeachment. Thus the district court here holding that the Eleventh Amendment barred Johnson's §1983 claims in Counts 7-9 was reversible error.*

*Moreover, where Article V of the Massachusetts Declaration of Rights explicitly guarantees accountability by all magistrates and officers of each branch of government to all the people at all times, and where it does not distinguish between the Commonwealth of Massachusetts or the individuals in their individual or official capacities, article V constitutes the state's express and unequivocal consent to suit by the people. Thus the Eleventh Amendment may neither override the Commonwealth's constitutional guarantee of accountability nor bestow sovereign immunity on the Commonwealth where there was no immunity ab initio (id.). Certainly the Eleventh Amendment cannot preempt article V of the Declaration. Notwithstanding the obvious issue of competing constitutions, Article VI of the federal constitution would have to be invoked, and that is impossible. To invoke the Article VI, the intent of the United States Congress to preempt the Massachusetts Declaration of Rights would have to be shown, and where no United States Congress took part in the birth or the development of the Eleventh Amendment, no such intent can be shown.*

*Johnson's First Amendment and other constitutional interests should trump the defendants or the federal and state governments' interests in precluding Johnson's*

*claims, which is, in effect, an unlawful bestowing of immunity on the defendants.  
Immunity is immunity is immunity and by any other name would smell as foul.*

*By not having an existing statute or a constitutional provision upon which judicial or quasijudicial or quasiprosecutorial immunity or the second prong of the Eleventh Amendment are based, and no ordinary constitutional analysis -- using strict or intermediate scrutiny or a rational basis test -- of the facts of the case or of Johnson's legal arguments, the decisions below leave unsettled the critical conflict between the judicially-created law and the constitutions.*

*Where the second prong of the Eleventh Amendment has never been scrutinized and cannot be attributed to the Framers or to any Congress, the application of the unratified second prong of the Eleventh Amendment, must not be continued as de facto constitutionalized policies or practices.*

*FNI Not having been duly ratified, the second prong of the Eleventh Amendment may not be invoked against the petitioner. Nor may it override or preempt article V of the Mass. Declaration of Rights, which has since 1780 constitutionally guaranteed accountability at all times by all three branches of government to the people, of which he is one. Nor may it supercede the Fourteenth Amendment, duly ratified 22 years prior to the grenade thrown at the civil rights of individuals in Hans. Nor may it override the plain language of §1983, enacted to enforce the provisions of the Fourteenth Amendment. Nor may it overrule the intent of Congress not to afford immunity to those judges who deprive citizens of their civil rights.*

If a judge does not fully comply with the Constitution, then his orders are void, *In re Sawyer*, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of treason.

The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."  
*Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401 (1958).

Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason. *U.S. v. Will*, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821)