

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

EUGENE FORTE)
)
 Plaintiff,)
)
 v.)
)
 COUNTY OF MERCED; DISTRICT)
 ATTORNEY LARRY MORSE; DEPUTY)
 DISTRICT ATTORNEY ALAN)
 TURNER; COUNTY COUNSEL JAMES)
 FINCHER; MERCED COUNTY)
 SHERIFF MARK PAZIN; MERCED)
 COUNTY SHERIFF DEPUTIES)
 PACINICH, JASKOWIEAC, HILL and)
 LEUCHNER; JAMES PADRON;)
 SUPERVISOR JERRY O'BANION;)
 CITY OF LOS BANOS; LOS BANOS)
 POLICE OFFICERS GARY BRIZZEE)
 and ANTHONY PARKER; CATHOLIC)
 DIOCESE OF FRESNO; CONNIE)
 McGHEE; McCLATCHY)
 NEWSPAPERS; LOS BANOS)
 ENTERPRISE; GENE LIEB; COREY)
 PRIDE; and DOES 1 through 100, et al.,)
)
 Defendants.)
 _____)

1:11-CV-0318 AWI BAM

**RESPONSE TO PLAINTIFF'S
REQUEST FOR
INTERVENTION AND ORDER
REQUIRING DEFENDANTS
UPDATE STATUS OF
CRIMINAL PROCEEDINGS IN
SUPERIOR COURT**

Doc. No's 113, 116 and 117

On January 11, 2012, the court issued a Memorandum Opinion and Order granting in part and denying in part Defendants' motion to dismiss Plaintiff's First Amended Complaint. Doc. # 96 (hereinafter, the "January 11 Order"). The Order was later amended to correct

1 clerical errors and Plaintiff's motion for reconsideration was denied, however the portion of
2 the Order that stayed Plaintiff's remaining claims pursuant to Younger v. Harris, 401 U.S. 37
3 (1071) pending the conclusion of criminal proceedings in Merced County Superior Court
4 remains in effect. As of this writing, the court has not received notification of the conclusion
5 of the criminal case or cases in Merced Superior Court, but the court has received two
6 pleadings from Plaintiff. The first pleading was filed on October 1, 2012, and is styled as a
7 report on the status of Plaintiff's criminal cases in Superior Court and a "Request for
8 Intervention by the Court to Stop Defendants from Obstructing Justice in the Criminal
9 Cases". Doc. # 113 (hereinafter "Request for Intervention"). The second pleading was filed
10 on November 21, 2012, and is titled "Request for Adherence to Judicial Canon 2.15
11 Responding to Judicial And Lawyer Misconduct . . ." Doc. # 116 and 117 (hereinafter, the
12 "Request for Adherence").

13 Although the requests are quite different in terms of what they seek; neither request
14 can be granted because both seek this court's intervention in, or review of, another court's
15 proceedings. As this court understands Plaintiff's Request for Intervention, it is Plaintiff's
16 request that this court intervene in the Superior Court proceedings to either: (1) prevent the
17 dismissal of Plaintiff's criminal cases based on a finding of Plaintiff's mental incompetence
18 to stand trial, or (2) assure that any finding of mental incompetence by the Superior Court be
19 made by a jury. There are at least two reason this request cannot be granted. The first reason
20 was explained in some detail in the court's January 11 Order. In a nutshell, this or any other
21 court can only direct the actions of anyone outside the court by means of injunction; and the
22 issuance of an injunction by a federal court that interferes in the proceedings in a state court
23 is precisely what is prohibited by Younger. The Supreme Court's reason for establishing
24 what has come to be called the doctrine of "Younger Abstention" is based on our concept of
25 "federalism" and is very eloquently set forth at pages 43 to 45 of the Younger decision.
26 Plaintiff is encouraged to read that portion of the Younger decision.

27 The second, and less important, reason Plaintiff's Request for Intervention cannot be
28 granted is also explained in some detail in the court's January 11 Order. As the court pointed

1 out in that order, the decision to prosecute or not prosecute is at the sole and exclusive
2 discretion of the district attorney of that jurisdiction. Contrary perhaps to Plaintiff's
3 understanding, district attorneys are representatives of the executive branch of government,
4 not the judicial branch, and courts may not interfere in the discretion vested by the executive
5 branch regarding the prosecution of crimes. See United States v. Miller, 722 F.2d 562, 565
6 (9th Cir. 1983) (charging decisions are generally within the prosecutor's exclusive domain).
7 While the Sixth Amendment definitely assures that a person cannot be convicted of a crime
8 without the opportunity of a trial before a jury, there is no right, constitutional or otherwise,
9 to the maintenance of a criminal prosecution and a jury trial where the district attorney
10 decides for any reason to dismiss the proceeding.

11 Plaintiff's Request for Adherence pertains to an action filed by Plaintiff in the District
12 Court of Northern California that alleges constitutional violations against the Pleasanton
13 Police Department, among others. Plaintiff's Request for Adherence suggests that the judge
14 in that case, Judge Claudia Wilken, has preliminarily indicated that she will grant the motion
15 for one or more of the defendants in that case for summary judgment notwithstanding
16 Plaintiff's allegation that a portion of the argument presented at the hearing on the motion for
17 summary judgment was based on facts that were knowingly misrepresented by the
18 defendants' attorneys. In short, Plaintiff requests that this court act to prevent the occurrence
19 of fraud upon the court that he feels is imminent in the Northern District. The court cannot
20 grant Plaintiff's request for the simple reason district courts do not supervise each other, they
21 are each supervised by the Ninth Circuit Court of Appeal. The issue is basically one of
22 venue. The case involving the Pleasanton Police Department was filed in the Northern
23 District because the town of Pleasanton is in that District. When a party to an action seeks
24 out a district court in a different district to rectify perceived errors in the original court, that is
25 the essence of "forum shopping" and is prohibited. If, after the Northern District issues its
26 decision on the motion for summary judgment, Plaintiff is of the opinion that the decision
27 was a product of fraud upon the court, his only recourse is to the Ninth Circuit Court of
28 Appeals. This court cannot carry out the supervisory duties of an appellate court.

1 While the court cannot grant Plaintiff's requests for intervention in other courts, the
2 concerns raised in October of last year do raise a question of the status of the criminal
3 proceedings in Superior Court. Since it appears that the issue of competency was raised at
4 least four months ago, and the court has not received an update on the status of the case from
5 Defendants in a considerably longer time, the court will direct that Defendants submit an
6 update as to the status of criminal proceedings regarding Plaintiff in the Superior Court.
7

8 THEREFORE, it is hereby ordered that Plaintiff's requests as expressed in docket
9 numbers 113, 116 and 117 are each DENIED. Defendants shall submit an update on the
10 status of criminal proceedings and shall provide a non-binding estimate of time to resolution
11 of those proceedings not later than fifteen (15) days from the date of service of this order.
12

13 IT IS SO ORDERED.

14 Dated: March 25, 2013



15 _____
16 SENIOR DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28