

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

**MARY WEBB, individually, and in
her capacity as Administratrix of the
Estate of Robert A. Webb,**

Plaintiff,

v.

**Civil Action No. 5:09-cv-1253
(Formerly Raleigh County Circuit Court
Civil Action No. 08-C-406(B))**

**RALEIGH COUNTY SHERIFF'S DEPARTMENT;
RALEIGH COUNTY COMMISSION;
SHERIFF DANNY MOORE, individually, and in his
official capacity; CHIEF DEPUTY STEVE TANNER,
individually and in his official capacity;
DEPUTY GREG S. KADE, individually and in his
official capacity; and DEPUTY JOHN E. HAJASH,
individually and in his official capacity,**

Defendants.

NOTICE OF REMOVAL

NOW COME the Defendants, the Raleigh County Sheriff's Department, the Raleigh County Commission, Sheriff Danny Moore, individually and in his official capacity, Chief Deputy Steve Tanner, individually and in his official capacity, and Deputy Greg S. Kade, individually and in his official capacity (hereinafter collectively referred to as "Defendants"), pursuant to 28 U.S.C. §§ 1441, 1443, 1446, 1331, and 1367(a), by and through their counsel, Chip E. Williams, Wesley V. Queen, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and hereby give notice of removal of the case *sub judice*, Civil Action No. 08-C-406(B), from the Circuit Court of

Raleigh County, West Virginia, to the United States District Court for the Southern District of West Virginia. In support of this Notice of Removal, the Defendants hereby state as follows:

1. On or about May 5, 2008, the Plaintiff, Mary Webb, individually and in her capacity as Administratrix of the Estate of Robert A. Webb (hereinafter "Plaintiff"), instituted the present civil action by filing of a Complaint in the Circuit Court of Raleigh County, West Virginia designated Civil Action No. 08-C-406, and seeking the issuance of Summonses for the defendants. Copies of the original Summonses and Complaint are collectively attached hereto as "Exhibit A."

2. On or about September 8, 2009, the Plaintiff filed a Motion for Leave to File an Amended Complaint asking that the Circuit Court of Raleigh County, West Virginia, to grant her leave for the purpose of filing a civil rights claim under 42 U.S.C. §1983. Specifically, the Plaintiff asked the Court to enter "an Order granting leave to amend her Complaint in order to [add] a Count for violation of civil rights pursuant to 42 U.S.C. §1983. See, Plaintiff Mary Webb's Motion for Leave to File an Amended Complaint attached hereto as "Exhibit B."

3. On or about November 3, 2009, the Plaintiff, pursuant to Court Order, filed an Amended Complaint asserting a civil rights claim under 42 U.S.C. §1983. See, Amended Complaint attached hereto as "Exhibit C."

4. This Notice of Removal is being filed within thirty (30) days after the Defendants' receipt of the Plaintiff's Amended Complaint which, for the first time, raised claims removable to the United States District Court for the Southern District of West Virginia.

5. This Court has "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 25 U.S.C. §1331.

6. In her Amended Complaint, the Plaintiff alleges that the Defendants “violated the civil rights of Robert A. Webb on or about July 4, 2006” and “deprived Robert A. Webb of his right to life.” *See*, Amended Complaint, ¶¶102-103, attached hereto as “Exhibit C.” Furthermore, when seeking leave from the Circuit Court of Raleigh County, West Virginia, to amend her Complaint, the Plaintiff contended that the alleged acts and/or omissions of the Defendants “rise to the deprivation of the civil right to life and a violation of 42 U.S.C.A §1983.” *See*, Memorandum of Law in Support of Plaintiff Mary Webb’s Motion for Leave to File an Amended Complaint, p. 3, attached hereto as “Exhibit D.”

7. Removal of this action to the United States District Court for the Southern District of West Virginia is proper pursuant to 28 U.S.C. §§ 1441, 1443, 1446, 1331, and 1367(a).

8. In accordance with Section 28 U.S.C. §1446(a), these Defendants state that the Summonses, Complaint, and Amended Complaint constitute all the process, pleadings, and orders served upon these Defendants. A certified copy of the Docket Sheet for Civil Action No. 08-C-406(B) is attached hereto as “Exhibit E.”

9. Pursuant to the provisions of Section 28 U.S.C. §1446(a), all of the Defendants heretofore served with the Amended Complaint remove this action to the United States District Court for the Southern District of West Virginia. *See*, Consent to Removal attached hereto as “Exhibit F.”

10. A true and correct copy of this “Notice of Removal” will be promptly filed with the Circuit Clerk of Raleigh County, West Virginia, and written notice thereof is given to counsel for the Plaintiff in accordance with 28 U.S.C. § 1446(b). A copy of the Notice of Filing of Notice of Removal is attached hereto as “Exhibit G.”

WHEREFORE, the Defendants, the Raleigh County Sheriff's Department, the Raleigh County Commission, Sheriff Danny Moore, individually and in his official capacity, Chief Deputy Steve Tanner, individually and in his official capacity, and Deputy Greg S. Kade, individually and in his official capacity, hereby remove the above-referenced devil action from the Circuit Court of Raleigh County, West Virginia, to the United States District Court for the Southern District of West Virginia, and that said State Court may proceed no further with this action.

**RALEIGH COUNTY SHERIFF'S DEPARTMENT;
RALEIGH COUNTY COMMISSION;
SHERIFF DANNY MOORE, individually, and in his
official capacity; CHIEF DEPUTY STEVE TANNER,
individually and in his official capacity;
DEPUTY GREG S. KADE, individually and in his
official capacity; and DEPUTY JOHN E. HAJASH,
individually and in his official capacity,**

By Counsel:

/s/ Wesley V. Queen

Chip E. Williams (WV State Bar No. 8116)
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Defendants.

CERTIFICATE OF SERVICE

I, Chip E. Williams, Wesley V. Queen, counsel for Defendants, do hereby certify that a true copy of the foregoing **"NOTICE OF REMOVAL"** was served upon counsel of record as follows:

Michael A. Olivio, # 7923
ROMANO & OLIVIO
813 Quarrier Street
Charleston, WV 25301

Travis A. Griffith, # 9343
GRIFFITH LAW OFFICES, PLLC
707 Virginia St., Suite 400
PO Box 3865
Charleston, WV 25338

by electronically filing the same on the PACER system, and by depositing a true copy of the same in the United States Mail, properly addressed and with postage fully paid, on this the 16th day of November, 2009.

/s/ Wesley V. Queen

Chip E. Williams (WV State Bar No. 8116)

Wesley Queen, (WV State Bar No. 9707)

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