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5 This document is <http://www.lawyerdude.netfirms.com/7957.pdf>

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7 **Superior Court of California, Placer County**
Department 9. 11532 "B" Avenue, Auburn California 95603. (530) 886-1200
8 http://www.placercourts.org/d_crim.htm

9
10 Clerk unlawfully dba under false color of law as Case #62-056159
"The People of California"
11 v Document #7957 Version 1.000
Morgan Bates, one of the actual people of **Special Appearance to Challenge**
California **Jurisdiction.**
12 defendant,
Motion/ Demand to Dismiss/ Quash for
13 **lack of complaint and prosecutor**
14 **pursuant to PC 418.10 and 1000**
15 **years of Common Law.**
16 Date: **Thursday October 5, 2006**
17 Place: Court 9.
Time: 1:30 pm

18 **Notice of Motion**

19 To the clerk of court who is the prosecutor: At the venue designated in the caption or at
such other venue as the court shall designate, I will demand that you dismiss this case. You are
not a prosecutor.

20 Signed _____ Morgan Bates. Friday, September 8, 2006

21 Contents of this Demand

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Statement of the Case

On September 8, 2006, a police officer gave me a ticket. To this date, I have been served neither summons nor a verified complaint. I therefore demand dismissal. I demand that this court recognize that I have neither been properly summoned to court nor prosecuted by an authorized prosecutor. Instead a mere police officer performed the legal nullity of serving me a substitute for a summons. The officer has no authority to summons me to court. The clerk, who would ordinarily issue summonses, now elevates herself to the position of prosecutor by prosecuting this case without the formality of a complaint. Only a prosecutor can file a complaint.

Table of Authorities cited herein:

U.S. Constitution. Clauses cited herein:

14th amendment Page 4 of 7

California Constitution. Clauses cited herein:

California Constitution. Section 1. Clause 1. Page 4 of 7

Table of California Statutes cited herein:

Code of Civil Procedure § 412.20 Definition of a summons.

<http://caselaw.lp.findlaw.com/cacodes/ccp/412.10-412.30.html>

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Penal Code§ 740 states as follows: Except as otherwise provided by law, all misdemeanors and infractions must be prosecuted by written complaint under oath subscribed by the complainant.

..... Page 6 of 7

1 **Cases cited herein:**

2 **People v Dragomir** Feb 14, 2006 <http://www.lawyerdude.netfirms.com/Dragomir.html>

..... Page 3 of 7

3 **People v Carlucci** 1979 <http://www.lawyerdude.8k.com/Carlucci.htm>

4 <http://www.lawyerdude.netfirms.com/carlucc.html> Page 3 of 7

5 **Argument**

6 **The clerk is acting as prosecutor; that is wrong. Dismissal is the remedy.**

7 By stealthy encroachment over the court of generation, all governments and other
8 corporations encroach upon the personal freedoms of humans. The human lives only 75 years.
9 The father fails to warn the grandchild of the lies of the corporation. The lie remains unchallenged
10 generations later due to human ignorance and mortality. The immortality of the corporation gives
11 the government opportunity to encroach as such a speed as to be imperceptible by a single
12 generation of humans.

13 The summons was originally issued by the court only after the prosecutor had made a
14 decision to prosecute. As the court corporations became fatter they ordered the litigants: "write our
15 summonses and bring them to use for signature". Their fellow government minions in the
16 legislature wrote the corresponding rules. Then the courts saw the money flow and realized that
17 they should promote the traffic ticket game by processing the tickets without a prosecutor. This
18 is unconstitutional. The remedy is dismissal. Only a prosecutor can prosecute a criminal offense.
19 This is not an administrative tribunal. If it were, there would be a hearing officer or administrative
20 law judge.

21 The clerk may not prosecute. **People v Carlucci** 1979

22 <http://www.lawyerdude.8k.com/Carlucci.htm> <http://www.lawyerdude.netfirms.com/carlucc.html>

23 **People v Dragomir** Feb 14, 2006

24 <http://www.lawyerdude.netfirms.com/Dragomir.html>

25 **Declaration of Attorney Douglas Palaschak regarding the Law of Summonses**

26 I, Douglas Palaschak, declare the following under penalty of perjury: I am an Engineering
27 Graduate of the University of Illinois, Urbana, where I was an honors student. I marched in "The
28 Marching Illini", the world's undisputed Premiere Marching Band. I began my career as a
Registered Professional Engineer having consulted for the U.S. Navy, Mobil, and Exxon. I have
testified as an expert witness in the catastrophic failure of oil production machinery.

I have been a licensed lawyer for nearly a quarter century. I publish nearly 1200 legal
articles on the internet. My areas of expertise are:

- Licenses, Rights, and Privileges, and their use as Instruments of Oppression,
- Criminal Defense,

1 Internet-driven Improvements in the Efficiency of Litigation,
2 Empowerment of Pro Se Litigants,
3 Bankruptcy.

4 My most recent book is on the subject of Pre-trial Criminal Litigation of Malum Prohibitum
5 Crimes. It is available by mail order via the internet.

6 **A ticket can never be a summons.**

7 A summons is required for the court to gain jurisdiction over a putative defendant. Without
8 a summons and complaint there is a fatal absence of notice. Adequate Notice is a requisite of Due
9 Process. A Denial of **Due Process** would violate the **14th amendment** to the **U. S. Constitution**
10 and the **California Constitution**. A summons is a notification from the court addressed to the
11 defendant in a pending case. A ticket is never a summons despite the intentions of the legislature.

12 When a person write a ticket there is no pending case. There will be no pending case until a
13 prosecutor has made a decision to prosecute. Then the prosecutor files a complaint. Only then
14 is a summons possible. There is then a pending case. I would then have the opportunity to settle
15 the case with the prosecutor. Most traffic courts today permit the clerk to prosecute the case. This
16 practice is unconstitutional. It is an example of denial of equal protection. I would like the clerk to
17 be working on my side of the case. The clerk has demonstrated a bias for the prosecution. Also,
18 the clerk is paid by the money earned by the ticket that she prosecutes. No. This will not stand.

19 Signed by permission _____ Douglas Palaschak Friday, September 8, 2006.

20 **A defendant may appear by motion.**

21 A defendant appears in an action when the defendant answers, demurs, files a notice of
22 motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for
23 reclassification pursuant to
24 Section 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice
25 of
26 appearance for the defendant.

27 I need not appear in person but may appear by motion because CCP § 1014 provides that
28 a defendant can appear by motion. This motion qualifies as an appearance as provided under CCP
§ 1014. 3. I have appeared as agreed by my signature on the notice to appear by entering this
motion to quash.

California Vehicle Code section § 40513(a) states as follow:

Whenever written notice to appear has been prepared, delivered,
and filed with the court, an exact and legible duplicate copy of the
notice when filed with the magistrate, in lieu of a verified complaint,
shall constitute a complaint to which the defendant **may** plead

1 "guilty" or "nolo contendere."

2 This statute is inherently deceptive in that the another statute permits me to demand a
3 complaint. However, the more offensive practice is permitting a defendant to be summoned to
4 court by somebody other than a plaintiff or the court.

4 **Here is the definition of a summons.** Code of Civil Procedure § 412.20. 9.

5 Taken from <http://caselaw.lp.findlaw.com/cacodes/ccp/412.10-412.30.html>

6 Code of Civil Procedure § 412.20. (A) Except as otherwise required
7 by statute, a summons shall be directed to the defendant, signed by
8 the clerk and issued under the seal of the court in which the action
9 is pending, and it shall contain:

9 (1) The title of the court in which the action is pending.

10 (2) The names of the parties to the action.

11 (3) A direction that the defendant file with the court a written
12 pleading in response to the complaint.

13 (4) A notice that, unless the defendant so responds, his or her
14 default will be entered upon application
15 by the plaintiff.

16 (5) The following statement in boldface type: "You may seek the
17 advice of an attorney in any matter
18 connected with the complaint or this summons.

19 (6) The following introductory legend at the top of the summons
20 above all other matter, in boldface
21 type, in English and Spanish:

22 "Notice! You have been sued. The court may decide against you
23 without your being heard unless
24 you respond within 30 days. Read information below."

25 The ticket is no kind of summons. To call it a summons is to redefine fundamental terms
26 in the middle of the game. This denies me due process. Changing the terms is a common
27 instrument of oppression. See the entire list of Modern Day Instruments of Oppression at:

28 <http://www.lawyerdude.8k.com/5724.html>

Permitting Police to Summon denies Equal Protection Under the Law

24 When I want to sue the police I must jump through the hoops of a summons and complaint
25 and filing fee. Conversely when he wants to "sue" me he uses his ticket book. Then the clerk
26 prosecutes for him. Wow, I wish that lawsuit were that quick and easy. That difference denies me
27 equal protection.

1 **The California Legislature may not give Police the Power to Summon and may not give**
2 **Clerks the power to prosecute.**

3 Penal Code § 740 states as follows:

4 Except as otherwise provided by law, all misdemeanors and
5 infractions must be prosecuted by written complaint under oath
6 subscribed by the complainant.

7 PC § 949 states as follows:

8 The first pleading on the part of the people in a misdemeanor or infraction case is
9 the complaint except as otherwise provided by law.

10 Penal Code § 950: states as follows:

11 The accusatory pleading must contain: 1. The title of the action, specifying the
12 name of the court to which the same is presented, and the names of the parties; 2.
13 A statement of the public offense or offenses charged therein.

14 Penal Code § 952 states as follows:

15 In charging an offense, each count shall contain, and shall be sufficient if it contains
16 in substance, a statement that the accused has committed some public offense
17 therein specified.

18 The notice to appear does not qualify as a complaint, because nowhere on the notice does
19 the
20 following appear:

- 21 a. Whether this is a criminal or civil action.
- 22 b. The name of the plaintiff in this action.
- 23 c. The nature of the proceeding.
- 24 d. The signature of the District Attorney or Prosecutor (if it is a criminal action).

25 Therefore the notice to appear is not a complaint for the reasons aforementioned.

26 **Conclusion**

27 In accordance with the foregoing points and authorities, this Court, pursuant to California
28 Code of
29 Civil Procedure § 418, should grant this motion to quash.

30 **Special Scrutiny and Prosecution for those who know the law denies equal**
31 **protection.**

32 You may not now subject me to special scrutiny on the basis of my having objected to your
33 systematic denial of due process. You must dismiss my case now. Should you deny me, I ask time
34 to seek writ of review in either the court of appeal or the superior court.

35 Signed _____ Morgan Bates. Friday, September 8, 2006

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Proof of Service.

I, Morgan Bates, declare the following under penalty of perjury. The only prosecution document in this case is ticket. The Officer stated no address. Therefore I serve this document today upon the prosecutor who is the court clerk.
Signed _____ Morgan Bates. Friday, September 8, 2006