

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA -- ATLANTA DIVISION**

WILLIAM M. WINDSOR,
Plaintiff

v.

JUDGE WILLIAM S. DUFFEY,
MAID OF THE MIST
CORPORATION, MAID OF THE
MIST STEAMBOAT COMPANY,
LTD., JUDGE ORINDA D. EVANS,
JUDGE JULIE E. CARNES, JUDGE
JOEL F. DUBINA, JOHN LEY, AND
JAMES N. HATTEN,
Defendants.

CIVIL ACTION NO.

1:11-CV-01922-TWT

NOTICE OF APPEAL

1. Notice is hereby given that William M. Windsor (“Windsor” or “Plaintiff”) in the above-named case hereby appeals to the United States Court of Appeals from orders issued in Civil Action No. 1:11-CV-01922-TWT.
2. Windsor also moves the Eleventh Circuit to allow appeals filed tis date in Civil Actions 1:11-CV-01923-TWT, 1:11-CV-01922-TWT, AND 1:11-CV-02027-TWT to be considered as one appeal.
3. This interlocutory appeal includes denial of a Motion for Remand, issuance of a filing injunction without notice or an opportunity to be heard, and

more.

4. This appeal is necessary due to the violation of Windsor's Constitutional rights by Judge Thomas Woodrow Thrash ("TWT"), abuse of "discretion," fraud upon the court by TWT, and more. The appeal will be based upon abuse of discretion, violation of Constitutional rights, denial of due process, errors of law, violation of statutes, errors of fact, violations of various statutes, judicial bias, corruption, conspiracy, racketeering, and more.

5. The orders appealed are detailed and attached to the NOTICE OF APPEAL in Civil Action No. 1:11-CV-01923-TWT.

6. The orders appealed in Civil Action No. 1:11-CV-01922-TWT ("01922") are:

7. ORDER DATED JUNE 15, 2011 DENYING TRO (01922 Docket #19) (the "01922 TRO ORDER"). .)

8. ORDER DATED JUNE 16, 2011 GRANTING AN EXTENSION OF TIME TO ANSWER (01922 Docket #19) (the "01922 EXTENSION ORDER").

9. ORDER DATED JUNE 17, 2011 ISSUING A FILING INJUNCTION ("01922 PROTECTIVE ORDER") (01922 Docket #25.)

10. ORDER DATED July 1, 2011 DENYING MOTION TO RECUSE. (01922 Docket #39.)

11. ORDER DATED July 7, 2011 REFUSING TO ALLOW FILING OF PAPERS SUBMITTED BY WINDSOR TO THE CLERK OF THE COURT.

This order denied documents presented to the Clerk for filing on June 27, 2011, June 29, 2011, July 1, 2011, and July 5, 2011. (01922 Docket #41.)

12. ORDER DATED JULY 7, 2011 REFUSING TO ALLOW PAPERS SUBMITTED BY WINDSOR TO THE CLERK OF THE COURT ON JULY 7, 2011. (01922 Docket #42.)

13. TWT's orders were, and are, **void**. The U.S. Supreme Court has stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." (*Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).)

14. Fraud was committed in the removal of this case from the Fulton County Superior Court. This fraud means this Court does not have jurisdiction.

15. TWT has committed fraud upon the court as has the U.S. Attorney. This means this Court does not have subject matter jurisdiction.

16. TWT has not followed mandatory statutory procedures. This means this Court does not have subject matter jurisdiction.
17. TWT committed unlawful acts. This means this Court does not have subject matter jurisdiction.
18. TWT has violated due process. This means this Court does not have subject matter jurisdiction.
19. TWT is part of a criminal racketeering enterprise. This means this Court does not have subject matter jurisdiction.
20. TWT has not complied with the rules, the Code of Judicial Conduct, or the Federal Rules of Civil Procedure. This means this Court does not have subject matter jurisdiction.
21. Upon information and belief, TWT does not have a copy of his oath of office in his chambers. This means this Court does not have subject matter jurisdiction.
22. It is clear and well established law that a judge must first determine whether the judge has jurisdiction before hearing and ruling in any case. TWT failed to do so, and his so-called orders are void. (*Adams v. State*, No. 1:07-cv-2924-WSD-CCH (N.D.Ga. 03/05/2008).) (*See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998); see also *University of S. Ala. v. The Am. Tobacco*

Co., 168 F.3d 405, 410 (11th Cir. 1999) ("[O]nce a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue."). (*Jean Dean v. Wells Fargo Home Mortgage*, No. 2:10-cv-564-FtM-29SPC (M.D.Fla. 04/21/2011).) (*Taylor v. Appleton*, 30 F.3d 1365, 1366 (11th Cir. 1994).)

23. TWT has demonstrated pervasive bias, and he lost jurisdiction when he failed to recuse himself. A study of pro se cases that TWT has handled reveals that TWT has a proven overwhelming bias against pro se plaintiffs. TWT has an "extra-judicial" bias against pro se parties. According to Windsor's review of every case TWT has handled in his career using www.versuslaw.com, no pro se plaintiff has ever won in TWT's court; 90% of pro se cases are dismissed, and 10% are defeated at summary judgment; no pro se plaintiff has ever received a jury trial

24. Failure to follow the mandatory requirements of the law is a further evidence of the appearance of partiality of TWT. This required recusal.

"Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge **must be disqualified.**" (*Liteky v. U.S.*, 114 S.Ct. 1147 (1994).)

Rankin v. Howard (1980) 633 F.2d 844, cert den. *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326. When a judge knows that he lacks jurisdiction, or acts face of clearly statutes valid statutes expressly depriving him of jurisdiction, judicial immunity is lost.

"When there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall 335, 20 L. Ed. 646 (1872).

25. TWT has committed treason.

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).

26. Amendment V of the U.S. Constitution provides: "No person shall be...deprived of life, liberty, or property, without due process of law...." Article 1 of the Georgia Constitution provides: "No person shall be deprived of life, liberty, or property except by due process of law."

27. All of these rights have been violated.

28. TWT has improperly foreclosed Windsor's access to the court. TWT issued an injunction without giving Windsor the opportunity to be heard at a hearing. Procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property or liberty interest. (*Zipperer v. City of Fort Myers*, 41 F.3d 619, 623 (11th Cir. 1995).)

29. Meaningful access to the courts is a Constitutional right that has been denied by TWT, and this latest order denies significant rights.

(See *Procup v. Strickland*, 792 F.2d 1069, 1072 (11th Cir. 1986) (per curiam) (en banc); *Christopher v. Harbury*, 536 U.S. 403, 415 & n.12, 122 S.Ct. 2179, 2187 & n.12, 153 L.Ed.2d 413 (2002).)

30. There has been no Show Cause order issued to Windsor as required by Eleventh Circuit law. Windsor has had no proper notice.

Upon these findings and **consistent with Eleventh Circuit law, this Court required Plaintiff to show cause within ten days... why a Martin-Trigona injunction should not be entered.** (See *Procup v. Strickland*, 792 F.2d 1069 (11th Cir. 1986); *Torres v. McCoun*, No. 8:08-cv-1605-T-33MSS (M.D.Fla. 09/10/2008); *Western Water Management, Inc. v. Brown*, 40 F.3d 105, 109 (5th Cir. 1994).) [**emphasis added.**]

31. Every judge or government attorney takes an oath to support the U.S. Constitution. Whenever any judge violates the Constitution in the course of performing his/her duties, as TWT has, then he has defrauded not only the Plaintiff involved, but has also the government. TWT is paid to support the U.S. Constitution. By not supporting the Constitution, TWT is collecting monies for work not performed.

32. The Court of Appeals has jurisdiction pursuant to 28 U.S.C. § 1292(a)(1) because one of the district court's rulings (1) imposed an injunction; or (2) had the practical effect of an injunction; or (3) worked a modification of an injunction. The PROTECTIVE ORDER denies rights to Windsor and implicitly enjoins Windsor from future exercise of rights.

33. Injunctions are appealable pursuant to 28 U.S.C. §1292(a). A court order prohibiting someone from doing some specified act is an injunction. The PROTECTIVE ORDER prohibits Windsor from filing anything.

See *Black's Law Dictionary* 784 (6th ed. 1990) (defining "injunction" as "[a] court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury"). (*Nken v. Holder*, 129 S.Ct. 1749, 173 L.Ed.2d 550 (U.S. 04/22/2009).) (See also *KPMG, LLP v. SEC*, 289 F.3d 109, 124 (D.C. Cir. 2002); *Lundberg v. United States*, No. 09-01466 (D.D.C. 07/01/2010).)

34. TWT entered "a court order prohibiting someone from doing some specified act," and that is an injunction (or a restraining order). It is immaterial that TWT did not call the prohibitions on Windsor an injunction or restraining order.

"...we have jurisdiction under 28 U.S.C. § 1292(a)(1) (1982), which permits an immediate appeal from the issuance of a new or modified injunction. It is immaterial that the court characterized the March order as a finding of contempt. 'an injunction does not cease to be appealable under section 1292(a) (1) merely because it is contained in an order for civil contempt.' *Szabo v. U.S. Marine Corp.*, 819 F.2d 714, 718 (7th Cir. 1987); see also *I.A.M. Nat'l Pension Fund Benefit Plan A v. Cooper Indus.*, 252 U.S. App. D.C. 189, 789 F.2d 21, 23-24 (D.C. Cir.), cert. denied, 479 U.S. 971, 107 S. Ct. 473, 93 L. Ed. 2d 417 (1986). Accordingly, we have jurisdiction over Eastern's appeal under 28 U.S.C. § 1292(a) (1)." (06/07/88 *International Association v. Eastern Airlines, Inc.*, No. 88-7079, UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.)

...preliminary injunctions are appealable orders under 28 U.S.C. § 1292(a)(1). See, e.g., *El Paso Natural Gas Co. v. Neztosie*, 526 U.S. 473, 482 (1999).

...we have appellate jurisdiction to review the District Court's granting or denying of a preliminary injunction. See *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291 (D.C. Cir. 2009). A restraining order lasting longer than 14 days generally is considered an injunction, the granting or denying of which is subject to appeal. See *Sampson v. Murray*, 415 U.S. 61, 86 (1974); *United States v. E-Gold, Ltd.*, 521 F.3d 411, 414-15 (D.C. Cir. 2008) (order restraining "assets pending trial and judgment" is an "injunction" under 28 U.S.C. § 1292(a)(1)). (*In re Any and all Funds or Other Assets, in Brown Brothers Harriman & Co. Account #8870792 in the Name of Tiger Eye Investments Ltd.*, 613 F.3d 1122 (D.C.Cir. 07/16/2010).)

Under 28 U.S.C. § 1292(a)(1), the court has jurisdiction to review "[i]nterlocutory orders of the district courts of the United States ... granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions...." 28 U.S.C. § 1292(a)(1). Although the provision is typically invoked to appeal preliminary injunctions, it can be invoked to appeal permanent injunctions that are interlocutory in nature. *Smith v. Vulcan Iron Works*, 165 U.S. 518 (1897); see also *Ty, Inc. v. Publ'ns Int'l Ltd.*, 292 F.3d 512, 516 (7th Cir. 2002), cert. denied, 123 S. Ct. 892 (2003); *Cohen v. Bd. of Trs. of Univ. of Med. & Dentistry*, 867 F.2d 1455, 1464 n.7 (3d Cir. 1989); *CFTC v. Preferred Capital Inv. Co.*, 664 F.2d 1316, 1319 n.4 (5th Cir. 1982); 16 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3924 (2d ed. 1996). (*National Railroad Passenger Corporation v. ExpressTrak, L.L.C.*, 330 F.3d 523 (D.C.Cir. 06/06/2003).)

Under 28 U.S.C. § 1292(a)(1), circuit courts have jurisdiction to review "[i]nterlocutory orders . . . granting, continuing, modifying, refusing or dissolving injunctions." Regardless of how the district court may choose to characterize its order, **section 1292(a)(1) applies to any order that has "the practical effect of granting or denying an injunction,"** so long as it also "might have a serious, perhaps irreparable, consequence, and . . . can be effectually challenged only by immediate appeal." *I.A.M. Nat'l Pension Fund Benefit Plan A.v. Cooper Indus., Inc.*, 789 F.2d 21, 23-24 (D.C. Cir. 1986) (internal quotation marks omitted). **[emphasis added.]**

35. Windsor will suffer irreparable harm if the PROTECTIVE ORDER is allowed to stand and Windsor loses the legal right to file actions due to the statute of limitations. Windsor will lose because he can't file anything.

36. In this matter, practicality and fundamental fairness require that the orders be appealable. TWT has obliterated Windsor's Constitutional rights and rights to due process.

37. Windsor's fundamental rights are seriously prejudiced by the appealed orders. Many jurisdictions make an exception for decisions that are particularly prejudicial to the rights of one of the parties. The Court of Appeals has the recognized right to do what is fair and practical. The Court of Appeals cannot allow TWT to blatantly violate Windsor's rights. The courthouse doors have been closed to Windsor in violation of extensive case law. Windsor has been denied the right to petition the government for redress of grievances. Windsor has been denied rights pursuant to the Constitution and Bill of Rights.

It is sometimes appropriate to give the finality requirement a practical rather than a technical construction. *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 375, 66 L. Ed. 2d 571, 101 S. Ct. 669 (1981). See *In Re Coordinated Pretrial Proceedings*, 747 F.2d 1303, 1305 (9th Cir. 1984). "Final . . . does not necessarily mean the last order possible to be made in a case." *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152, 13 L. Ed. 2d 199, 85 S. Ct. 308 (1964). (*United States v. Washington*, 761 F.2d 1404 (9th Cir. 05/28/1985).)

38. Some of the appealed orders may be considered "collateral orders." It deals with an important issue that is completely separate from the underlying civil action, and it is effectively unreviewable on appeal from a final judgment because the impact cannot be reversed, and no compensation is available for the wrongdoing.

In order to be considered a collateral order, it would have to "...resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978) (footnote omitted). See *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949) (setting out the collateral order doctrine). (See also *Kassuelke v. Alliant Techsystems, Inc.*, 223 F.3d 929, 931 (8th Cir. 2000).)

To be appealable as a collateral order under *Cohen*, "the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." *Risjord*, 449 U.S. at 375 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 57 L. Ed. 2d 351, 98 S. Ct. 2454 (1978)). (*United States v. One 1986 Ford Pickup*, 56 F.3d 1181 (9th Cir. 06/08/1995).)

39. In this matter, TWT issued an order that had immediate and irreparable impact on Windsor. The statute of limitations is running on claims that Windsor needs to file, and TWT is blocking Windsor from filing anything and taking action to protect his rights. When the statute of limitations expires, Windsor suffers irreparable harm. If Windsor is not given the opportunity to have his

motions for remand considered, he will be irreparably harmed as he will have no recourse.

The courts of appeal have considered "irreparable harm" relevant in determining whether jurisdiction is available pursuant to the collateral order doctrine -- which the Government does not invoke -- but not pursuant to § 1291 itself. See *Trout*, 891 F.2d at 335; *Rosenfeld*, 859 F.2d at 721-22; *Palmer v. City of Chicago*, 806 F.2d 1316, 1318 (7th Cir. 1986).

Forgay v. Conrad, 47 U.S. (6 How.) 201, 204 (1848), which held an interlocutory appeal will lie from an order that "directs the property in dispute to be delivered to the complainant" and "subject[s the appellant] to irreparable injury."

40. The orders issued by TWT are invalid. Orders have not been signed, issued under seal, or signed by the Clerk of the Court in violation of 28 U.S.C. 1691.

The word "process" at 28 U.S.C. 1691 means a court order. See *Middleton Paper Co. v. Rock River Paper Co.*, 19 F. 252 (C.C. W.D. Wisconsin 1884); *Taylor v. U.S.*, 45 F. 531 (C.C. E.D. Tennessee 1891); *U.S. v. Murphy*, 82 F. 893 (DCUS Delaware 1897); *Leas & McVitty v. Merriman*, 132 F. 510 (C.C. W.D. Virginia 1904); *U.S. v. Sharrock*, 276 F. 30 (DCUS Montana 1921); *In re Simon*, 297 F. 942, 34 ALR 1404 (2nd Cir. 1924); *Scanbe Mfg. Co. v. Tryon*, 400 F.2d 598 (9th Cir. 1968); and *Miles v. Gussin*, 104 B.R. 553 (Bankruptcy D.C. 1989).

41. This is a case of the most overt bias imaginable. TWT has made absolutely false statements in his orders and has announced that he has reached a decision in the case without having any facts before him except Windsor's.

42. These civil actions are now on appeal and are stayed.

43. In the words of Judge William S. Duffey:

("[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance--it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."). (*Bryant v. Jones*, No. 1:04-cv-2462-WSD (N.D.Ga. 01/10/2007).)

44. TWT must confirm through an order that this civil action is stayed due to this pending appeal.

45. Windsor has many orders from the United States Court of Appeals for the Eleventh Circuit that provide that this civil action is stayed and hundreds from federal courts everywhere. See *Mahone v. Ray*, 326 F.3d 1176, 1179 (11th Cir. 2003) and hundreds of others.

46. Windsor has not yet fully researched the legal issues, but he will do so by the time he files his Appeal, so he reserves the right to include anything deemed appropriate in the Appellant's Brief.

Submitted, this 14th day of July 2011.



William M. Windsor
Pro Se

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Facsimile: 770-234-4106
Email: williamwindsor@bellsouth.net

VERIFICATION OF WILLIAM M. WINDSOR

I, William M. Windsor, swear that I am authorized to make this verification and that the facts alleged in the foregoing NOTICE are true and correct based upon my personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 14th day of July 2011.

A handwritten signature in black ink, appearing to read "William M. Windsor", written in a cursive style.

William M. Windsor

CERTIFICATE OF COMPLIANCE

As required by Local Rule 7.1D, N.D. Ga., I hereby certify that this pleading has been prepared in Times New Roman 14-point font, one of the font and point selections approved by this Court in Local Rule 5.1B, N.D. Ga.



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Pro Se

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing NOTICE OF APPEAL by depositing the same with the United States Postal Service with sufficient postage and addressed as follows:

CHRISTOPHER J. HUBER
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 545627
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Telephone: (404) 581-6292 -- Facsimile: (404) 581-6181
Email: chris.huber@usdoj.gov
Counsel for Judge Orinda D. Evans

This 14th day of July 2011.



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA -- ATLANTA DIVISION

WILLIAM M. WINDSOR,
Plaintiff

v.

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JOEL F. DUBINA, JOHN LEY, AND
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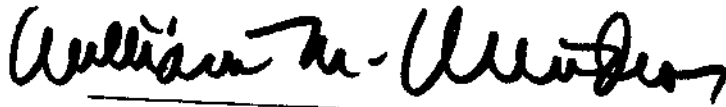
CIVIL ACTION NO.

1:11-CV-01922-TWT

NOTICE OF FILING OF NOTICE OF APPEAL

Plaintiff William M. Windsor hereby gives NOTICE OF FILING OF
NOTICE OF APPEAL for consideration in connection with this matter.

Respectfully submitted, this 14th day of July 2011.



William M. Windsor
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CERTIFICATE OF COMPLIANCE

As required by Local Rule 7.1D, N.D. Ga., I hereby certify that this pleading has been prepared in Times New Roman 14-point font, one of the font and point selections approved by this Court in Local Rule 5.1B, N.D. Ga.



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CERTIFICATE OF SERVICE

I hereby certify that I served this NOTICE OF FILING by depositing in the United States Mail with sufficient postage addressed as follows:

CHRISTOPHER J. HUBER
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I have also prepared a copy for each Defendant to be served with the Summons and Complaint.

This 14th day of July 2011.



William M. Windsor
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