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

WILLIAM M. WINDSOR, Plaintiff	)	
v.	)	CIVIL ACTION NO.
JUDGE WILLIAM S. DUFFEY, et al, Defendants.	)	1:11-CV-01922-TWT

REQUEST FOR CONSENT
TO FILE MOTION FOR RECONSIDERATION OF
MOTION TO PROCEED IN FORMA PAUPERIS

William M. Windsor ("Windsor" or "Plaintiff") hereby files this REQUEST FOR CONSENT TO FILE MOTION FOR RECONSIDERATION OF MOTION TO PROCEED IN FORMA PAUPERIS.

1. On August 12, 2011, an ORDER was entered (Docket #66) denying Windsor's Motion. As usual, this Court's ORDER contains perjury, cites erroneous law, contains information that this Court has no legal right to include in an order, and constitutes obstruction of justice in violation of 18 U.S.C. § 1503.

2. The Court has no legal right to quote something in an order from the Court of Appeals. (ORDER, P.1 ¶2 and P.2, ¶1, Lines 8-10.) ***Federal Rules of Evidence*** Rule 201 specifically disallows this. [ORDER is Exhibit C.]

3. This Court has no legal basis to claim the Motion (erroneously called an appeal on P.2, ¶1 of the ORDER) is not taken in good faith. The Motion was presented in the best of faith. There is no assertion by anyone that the Motion was brought in anything but the best of faith.

4. Windsor's website says absolutely nothing about an "intention to use lawsuits in a campaign of harassment and retaliation against the federal judiciary" as stated in ORDER, P.2 ¶1. This is PERJURY in violation of 18 U.S.C. § 1001, 18 U.S.C. § 1621, 18 U.S.C. § 1623, and obstruction of justice in violation of 18 U.S.C. § 1503. Government Exhibit 1 is quite clear, and Judge Thrash has claimed in this ORDER that it says something that it absolutely does not say. This is a criminal act. (A true and correct copy of Government Exhibit 1 is attached hereto as Exhibit A.)

5. Judge Thrash also falsely states, with no justification or legal authority whatsoever, that "This purpose is also evident in the reckless, malicious and scurrilous accusations that are littered throughout Mr. Windsor's voluminous papers." Windsor's filings in this Court are uncontroverted. The only facts before this Court are in affidavits sworn under oath under penalty of perjury by Windsor. Judge Thrash has no option to decide those sworn statements are false; he is obligated to accept them as true, as they are. Judge Thrash has no authority to

testify. Judge Thrash has violated Canon 3 B. (9) of the Code of Judicial Conduct (as well as many other Canons): "Judges shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing."

6. The cases cited by Judge Thrash are not valid. ***Fridman v. City of New York*** does not stand for what Judge Thrash claims. It cites ***Handley v. Union Carbide Corp.***, 622 F. Supp. 1065 (S.D.W.Va. 12/6/1985). In this case, Handley's expenses exceeded his income, and the Court granted IFP.

> In ***Adkins v. duPont Company***, 335 U.S. 331, 93 L. Ed. 43, 69 S. Ct. 85 (1948), the Supreme Court impliedly rejected the notion that an appellant should have to mortgage her home to pay the cost of appeal. As the Second Circuit recently noted in ***Potnick v. Eastern State Hospital***, 701 F.2d 243 (2d Cir. 1983): "Section 1915(a) does not require a litigant to demonstrate absolute destitution; no party must be made to choose between abandoning a potentially meritorious claim or foregoing the necessities of life." Id. at 244.

7. ***Fridman v. City of New York*** has never been adopted by any Circuit or the Supreme Court, nor has ***Williams v. Spencer***, or ***Dycus v. Astrue***. State laws vary, and only Georgia law applies here. For example, ***Fridman*** does not apply in part because the State of New York defines "marital property" as all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a "matrimonial action," which is

defined, in part, as an action for annulment, divorce, or separation. N.Y. Dom. Rel. Law, §§ 236 B (1) (c), 236 B (2).

8. Judge Thrash claims the Windsors jointly own a home worth $1,640,000. This is false. (ORDER, P.2 ¶2.) Judge Thrash claims that the Windsors had $48,000 in dividend income, but this is false. (ORDER, P.2 ¶2, P. 3 ¶1.) The Windsors did not receive a penny in dividend income. Even if they had, their expenses greatly exceeded their income. The ability to pay is determined by net cash flow, which has been significantly negative for the last five years. For the last five years, the Windsor's expenses have exceeded their income.

9. Judge Thrash claims Windsor's statements of his financial affairs is convoluted. This is false. There is nothing convoluted whatsoever. A true and correct copy of this information is attached as Exhibit B hereto.

10. Georgia is a separate property state. In Georgia, a spouse's separate assets are not marital property. Marriage does not make a spouse liable for the separate debts of the other spouse. In Georgia, a husband may file bankruptcy separately from his wife. In Georgia, as long as the non-filing spouse can prove that the items belong to that spouse and not to the other, and are not community property or otherwise an asset of the filing spouse, they are not an asset of the bankruptcy estate, and therefore not subject to claims by the bankruptcy trustee or

by the creditors of the filing spouse. In Georgia, a spouse does not share in his or her spouse's liabilities as Georgia is a non-community property state. The Georgia Constitution provides that a spouse's separate property is SEPARATE. (Georgia Constitution, ¶ XXVII. "**Spouse's separate property.** The separate property of each spouse shall remain the separate property of that spouse except as otherwise provided by law.")

11. There is no law to make a spouse liable to use her separate property to pay for debts of her husband.

12. Judge Thrash has violated Canon 3 E. (1) of the Code of Judicial Conduct: "Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where: (c) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person, or any other member of the judge's family residing in the judge's household: (i) is a party to the proceeding, or an officer, director, or trustee of a party;" Judge Thrash is a defendant, and he is disqualified from presiding in this case.

> At least since the time of Lord Coke, (Nemo debet esse judex in propria causa -- no one may be a Judge in his own case), a fundamental precept of due process has been that an interested party in a dispute cannot also sit as a decision-maker. See, e.g., ***Withrow v. Larkin***, 421 U.S. 35, 46-47, 43 L. Ed. 2d 712, 95 S. Ct. 1456 (1975); ***Gibson v. Berryhill***, 411 U.S. 564, 578-79, 36 L. Ed. 2d 488, 93 S. Ct. 1689 (1973); ***Wolkenstein v. Reville***, 694 F.2d

35, 38-39 (2d Cir. 1982). (***International Association of Machinists and Aerospace Workers v. Metro-North Commuter Railroad***, 24 F.3d 369 (2nd Cir. 04/18/1994).)

"No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time . . . ." ***The Federalist No. 10***, p. 79 (C. Rossiter ed. 1961) (J. Madison). See ***In re Murchison***, 349 U. S. 133, 136 (1955) (Black, J.) ("[O]ur system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome."); ***Spencer v. Lapsley***, 20 How. 264, 266 (1858) (recognizing statute accords with this maxim); see also ***Publius Syrus, Moral Sayings 51*** (D. Lyman transl. 1856) ("No one should be judge in his own cause."); B. Pascal, ***Thoughts, Letters and Opuscules*** 182 (O. Wight transl. 1859) ("It is not permitted to the most equitable of men to be a judge in his own cause."); 1 W. Blackstone, ***Commentaries*** *91 ("[I]t is unreasonable that any man should determine his own quarrel."). (Gutierrez de Martinez v. Lamagno, 515 U.S. 417, 115 S.Ct. 2227 (U.S. 06/14/1995).)

Due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States requires that no man shall be judge in his own cause.

13. ***Hibben v. Smith***, 24 S. Ct. 88, 191 U.S. 310 (U.S. 11/30/1903)

acknowledged that it was well established no man can be a judge in his own case over 100 years ago:

Plaintiff claims while town trustees may apportion and determine the special benefits of a local assessment the benefits must be apportioned and determined by due process of law; and that among the certain established and recognized maxims of right that are guaranteed by the Federal Constitution, is that no man shall be a judge in his own cause. The old maxims show that this is essential. Coke, ***Litt***, 141 a; ***Broom Max***. (8th Am. ed.) 116; ***Littleto***n, § 212; ***Earl of Derby's case***, 12 Coke, 114; ***Jenk. Cent.***

Cas. 40; ***Pandect's Pass***. II, lib. 5, 17.

If the duty to be exercised is of such a judicial character that under the influence of his interest in the subject matter the judge may so decide as to give to himself an unjust or inequitable advantage and perforce impose upon other parties a corresponding inequity or disadvantage, it is a case where the constitutional guaranty of due process of law is applicable. ***North Bloomfield G. M. Co. v. Keyser***, 58 California, 315; ***Helbron v. Campbell***, 23 Pac. Rep. 122; ***Meyer v. City of San Diego***, 121 California, 102; ***Inhabitants of North Hampton v. Smith***, 11 Metc. (Mass.) 390; ***Taylor v. Williams***, 26 Texas, 583.

As to taxpayers being disqualified the disqualification does not spring from the fact that the judge is a citizen, inhabitant and taxpayer of the city, but from the circumstance that he owns property within the city which may or may not be liable to taxation as he may decide. The authorities agree that in such a case the citizen and taxpayer is disqualified. ***City of Oakland v. Oakland Water Front Co.***, 118 California, 249; ***State v. Young***, 31 Florida, 594; ***Peck v. Freeholders of Essex***, 21 N. J. L. 656; ***Ex parte Harris***, 26 Florida, 77 (23 Am. St. Rep. 548); City of ***Guthrie v. Shaffer***, 7 Oklahoma, 459; ***Austin v. Nalle***, 85 Texas, 520; ***State v. City of Cisco*** (Tex. Civ.), 33 S. W. Rep. 244; ***Jefferson Co., etc., v. Milwaukee Co., etc.***, 20 Wisconsin, 139.

The disqualification is applicable to all officers and boards whose duties are judicial. ***Elliott on Muncp. Corporations***, § 130; ***Markley v. Rudy***, 115 Indiana, 533; ***Meyer v. Shields***, 61 Fed. Rep. 713, 723; ***Stockwell v. Township Board of White Lake***, 22 Michigan, 341; ***Conklin v. Squire***, 29 Weekly Law Bull. 157.

Had one of the appellees brought suit against the town to determine and collect the cost of paving the street crossings, and all the members of this town board had been on the jury, either plaintiff or defendant could have challenged them for cause, for the reason that they were residents and taxpayers of the town. ***Hern v. City of Greensburg***, 51 Indiana, 119; ***Town of Albion v. Hetrick***, 90 Indiana, 545, 549; ***City of Goshen v. England***, 119 Indiana, 368; ***Gaff v. State***, 155 Indiana, 277.

Necessity does not cure this defect except in general and universal questions

which do not apply to this case. ***Board of Com. of Fountain Co. v. Loeb***, 68 Indiana, 29; ***State v. Crane***, 36 N. J. L. 394, 400; ***Moses v. Julian***, 45 N.H. 52; 84 Am. Dec. 114; ***Washington Ins. Co. v. Price***, Hopk. Ch. 1; Anonymous, 1 Salk. 396.

Nor is the legislature the final judge of this necessity. To say that the legislature is the final judge in all cases of what interest will disqualify, would be to repudiate all our constitutions, both written and unwritten, and to leave the citizen at the mercy of every legislative whim and caprice. Such a legislative act is unconstitutional. ***Cooley's Const. Lim.*** (6th ed.) 506, et seq.; ***Conklin v. Squire***, 29 Weekly Law Bull. 157; ***Day v. Savadge***, Hob. 85; ***Hasketh v. Braddock***, 3 Burr. 1847; ***Bonham Case***, 8 Coke, 212, 219, 224; ***Great Charte v. Kensington***, 2 Stra. 1173; ***State v. Castleberry***, 23 Alabama, 85; ***Chamber v. Hodges***, 23 Texas, 104.

The judgment rendered under such circumstances is void -- not voidable and can be attacked collaterally. ***Sanborn v. Fellows***, 22 N. H. 473; ***Moses v. Julian***, 45 N. H. 52; ***Stearns v. Wright***, 51 N. H. 600; ***Bass v. City of Ft. Wayne***, 121 Indiana, 389; ***Chicago & Atlanta Ry. Co. v. Summers***, 113 Indiana, 10; ***Gay v. Minot***, 3 Cush. 353; ***Hall v. Thayer***, 105 Massachusetts, 219; ***Taylor v. County Com. of Worcester***, 105 Massachusetts, 225; ***State v. Crane***, 36 N. J. L. 394; ***Wetzel v. State***, 5 Tex. Civ. App. 17; ***Donnelly v. Howard***, 60 California, 291; ***Galbreath v. Newton***, 30 Mo. App. 380.

For other cases on the point that no one can be a judge in his own case, see ***Bacon's Abr.*** "Jury" M, 3; ***Bouvier Law Dict.*** tit. Judge; 1 ***Brook's Abr.*** 177, tit. conusans, 27; ***Burns's Justice***, III, 132; C. 3, 5, 1; ***Com. Dig.*** 101, 4, Justices, I, 3; ***Cooley Const. Lim.*** (6th ed.) 506; ***Domat's Public Law***, lib. 2, tit. 1, sec. 2, 14; ***Elliott on Mun. Corp.*** § 130; 4 Inst. 71; ***Just. Code***, lib. 1, tit. 1, 16; ***Pothier's Pro. Civ. C.*** 2, sec. 5; ***Rolle, Abr. Judges***, Pl. 11; Voet. ad. Pand. lib. 5, tit. 1, 43; ***Jenk. 40***, case 76; 90, case 74; ***Bonham Case***, 8 Coke, 212, 219, 224; ***Queen v. Com. for Cheltenham***, 1 A. & E.N.S. 468; ***Reg. v. Canal Co.***, 14 Q.B. 853; 68 E. C. L. R.; ***Regina v. Justices***, 14 Eng. L. & Eq. 93; ***Ranger v. Great Western Ry. Co.***, 5 H. L. Cas. 72, 88, 89; ***State v. Castleberry***, 23 Alabama, 85; ***Heydenfeldt v. Towns***, 27 Alabama, 423; ***Lent v. Tillson***, 72 California, 404, 428; ***Ramish v. Hartwell***, 126 California, 443; ***Hadley v. Dague***, 130 California, 207; ***Hawley v. Baldwin***, 19 Connecticut, 585; ***Appeal of Nettleton***, 28 Connecticut, 268; ***Ochus v.***

Shelden, 12 Florida, 138; ***Klein v. Tuhey***, 13 Ind. App. 74; ***Hudson v. Wood***, 52 N. E. Rep. 612 (Ind. App.); ***Shoemaker v. Smith***, 74 Indiana, 71, 75; ***Fechheimer v. Washington***, 77 Indiana, 366; ***Bradley v. City of Frankfort***, 99 Indiana, 417; ***Block v. State***, 100 Indiana, 357; ***Pearcy v. Mich. Mutual Life Ins. Co.***, 111 Indiana, 59; ***Zimmerman v. State***, 115 Indiana, 129; ***Board v. Heaston***, 144 Indiana, 583; ***Chicago &c. Co. v. City of Huntington***, 149 Indiana, 518; ***Adams v. City of Shelbyville***, 154 Indiana, 467; ***Clifford v. York Co. Com.***, 59 Maine, 262; ***Buckingham v. Davis***, 9 Maryland, 324; ***Gay v. Minot***, 3 Cush. 352, 354; ***Tolland v. County Com.***, 13 Gray, 12; ***Pearce v. Atwood***, 13 Massachusetts, 324; ***Taylor v. County Com. of Worcester***, 105 Massachusetts, 225; ***Hall v. Thayer***, 105 Massachusetts, 219; ***Ames v. Port Huron Log Driving & Booming Co.***, 11 Michigan, 139; ***Paul v. Detroit***, 32 Michigan, 108, 117; ***Russell v. Perry***, 14 N. H. 152; ***State v. Newark***, 1 Dutcher, 399, 405; ***Schroder v. Ehlers***, 31 N. J. L. 44; ***Traction Co. v. Board of Works***, 56 N. J. L. 431; ***Foster v. Cape May***, 60 N. J. L. 78, 82; ***Oakley v. Aspinwall***, 3 N. Y. 547; ***Converse v. McArthur***, 17 Barb. 410, 411; ***Edwards v. Russell***, 21 Wend. 64; ***Diveny v. City of Elmira***, 51 N. Y. 506; ***White v. Connelly***, 105 N. C. 65; ***Gregory v. Cleveland R. R. Co.***, 4 Ohio St. 675; ***Schroder v. Government***, 61 Ohio St. 1; ***Cleveland v. Tripp***, 13 R. I. 50; ***Templeton v. Giddings***, 12 S. W. Rep. 851 (Tex.); ***Barnett v. Ashmore***, 5 Washington St. 163; ***Findley v. Smith***, 42 W. Va. 299; ***Case v. Hoffman***, 100 Wisconsin, 314, 351; ***Aultman & Taylor Co. v. Brumfield***, 94 Fed. Rep. 423; ***Calder v. Bull***, 3 Dallas, 386, 388; ***Pennoyer v. Neff***, 95 U.S. 714, 733; ***Wight v. Davidson***, 181 U.S. 371.

HIBBEN v. SMITH, 24 S. Ct. 88, 191 U.S. 310 (U.S. 11/30/1903)
HUDSON v. CHICAGO TEACHERS UNION, LOCAL NO. 1, 573 F.Supp. 1505 (N.D.Ill. 11/03/1983)
Nevada Commission on Ethics v. Carrigan, 131 S.Ct. 2343 (U.S. 06/13/2011)
UNITED STATES v. WUNDERLICH ET AL., 72 S. Ct. 154, 342 U.S. 98 (U.S. 11/26/1951)
TUMEY v. OHIO, 47 S. Ct. 437, 273 U.S. 510 (U.S. 03/07/1927)
HOME TELEPHONE AND TELEGRAPH COMPANY v. CITY LOS ANGELES., 29 S. Ct. 50, 211 U.S. 265 (U.S. 11/30/1908)

Plaut v. Spendthrift Farm Inc., 1 F.3d 1487 (6th Cir. 08/03/1993)
UNITED STATES STEEL CORP. v. UMW, 393 F. Supp. 942 (W.D.Pa. 04/24/1975)
METROPOLITAN NATL. BANK v. UNITED STATES, 716 F. Supp. 946 (S.D.Miss. 07/7/1989)
TUN v. FORT WAYNE COMMUNITY SCHOOLS, 326 F.Supp.2d 932 (N.D.Ind. 07/22/2004)
Moore v. Langlois, No. CV-09-793-ST (D.Ore. 07/13/2009)
U.S. v. SIDHOM, 144 F.Supp.2d 41 (D.Mass. 06/19/2001)
Garvey v. Freeman, 397 F.2d 600 (10th Cir. 06/28/1968)
Schwegmann Brothers Giant Super Market v. Lilly, 205 F.2d 788 (5th Cir. 06/30/1953)
Home Indemnity Co. v. Williamson, 183 F.2d 572 (5th Cir. 07/21/1950)
Grant v. Shalala, 989 F.2d 1332 (3d Cir. 03/05/1993)
Bethlehem Mines Corp. v. United Mine Workers of America, 476 F.2d 860 (3rd Cir. 02/12/1973)
International Association of Machinists and Aerospace Workers v. Metro-North Commuter Railroad, 24 F.3d 369 (2nd Cir. 04/18/1994)

Railey v. Webb, 540 F.3d 393 (6th Cir. 08/26/2008)
Richard D. Hurles v. Charles L. Ryan, No. 08-99032 (9th Cir. 07/07/2011)
AETNA LIFE INSURANCE CO. v. LAVOIE ET AL., 106 S. Ct. 1580, 475 U.S. 813 (U.S. 04/22/1986)
Caperton v. A. T. Massey Coal Co., Inc., 129 S.Ct. 2252, 173 L.Ed.2d 1208 (U.S. 06/08/2009)
Davis v. Jones, 441 F.Supp.2d 1138 (M.D.Ala. 07/07/2006)
01/15/88 Blinder, Robinson & Co., v. Securities & Exchange
Callahan v. Campbell, 427 F.3d 897 (11th Cir. 10/05/2005)
Bracy v. Schomig, 286 F.3d 406 (7th Cir. 03/29/2002)

MURCHISON ET AL., 75 S. Ct. 623, 349 U.S. 133 (U.S. 05/16/1955)
Jones v. Luebbers, 359 F.3d 1005 (8th Cir. 03/03/2004)
United States v. Cuyler, 584 F.2d 644 (3rd Cir. 09/29/1978)
In re City of Houston, 745 F.2d 925 (5th Cir. 10/10/1984)
Johnson v. Carroll, 369 F.3d 253 (3d Cir. 05/24/2004)
United States v. Barnett, 330 F.2d 369 (5th Cir. 04/09/1963)
LAYER v. LYLES, 598 F. Supp. 95 (D.Md. 10/1/1984)
HOBSON v. HANSEN, 265 F. Supp. 902 (D.D.C. 02/9/1967)
Crater v. Galaza, No. 05-17027 GGH (9th Cir. 07/09/2007)
Commonwealth of Northern Mariana Islands v. Kaipat, 94 F.3d 574 (9th Cir. 08/27/1996)
Montgomery v. Uchtman, 426 F.3d 905 (7th Cir. 10/20/2005)
HARRISON v. ANDERSON, 300 F. Supp.2d 690 99-0933-C-B/S (S.D.Ind. 01/22/2004)
HARRISON v. ANDERSON, 99-0933-C-B/S (S.D.Ind. 01/22/2004)
U.S. v. WALLS, 02C3400 (N.D.Ill. 03/31/2004)
LAKE MICHIGAN COLLEGE FEDN. OF TEACHERS v. LAKE MI, 390 F. Supp. 103 (W.D.Mich. 09/27/1974)
DABABNAH v. WEST VIRGINIA BD. OF MEDICINE, 47 F.Supp.2d 734 (S.D.W.Va. 05/11/1999)
Galvan v. Ayers, No. CIV S-00-1142 DFL DAD P (E.D.Cal. 03/15/2006)
DEMBOWSKI v. NEW JERSEY TRANSIT RAIL OPERATIONS, 221 F.Supp.2d 504 (D.N.J. 09/12/2002)
QUINONES v. MATESANZ, 151 F.Supp.2d 140 (D.Mass. 06/22/2001)
Stivers v. Pierce, 71 F.3d 732 (9th Cir. 12/01/1995)
Harrison v. McBride, 428 F.3d 652 (7th Cir. 10/27/2005)
White v. Indiana Parole Board, 266 F.3d 759 (7th Cir. 09/26/2001)
Trust & Investment Advisers, Inc. v. Hogsett, 43 F.3d 290 (7th Cir. 12/19/1994)

Robert Titus v. City of Prairie City, A Municipal Corporation, No. CV-08-1330-SU (D.Ore. 07/14/2011)
Gutierrez de Martinez v. Lamagno, 515 U.S. 417, 115 S.Ct. 2227 (U.S. 06/14/1995)
GREEN ET AL. v. UNITED STATES, 78 S. Ct. 632, 356 U.S. 165 (U.S. 03/31/1958)
NILVA v. UNITED STATES, 77 S. Ct. 431, 352 U.S. 385 (U.S. 02/25/1957)
American Cyanamid Co. v. Federal Trade Commission, 363 F.2d 757 (6th Cir. 06/16/1966)
SHEPPARD v. MAXWELL, 231 F. Supp. 37 (S.D.Ohio 07/15/1964)
GEOTES v. MISSISSIPPI BD. OF VETERINARY MED., 986 F. Supp. 1028 (S.D.Miss. 05/13/1997)
BERRYHILL v. GIBSON, 331 F. Supp. 122 (N.D.Ala. 09/3/1971)
Peterson v. Roe, No. CIV S-02-1720 FCD DAD P (E.D.Cal. 05/23/2006)
HILLERY v. PULLEY, 563 F. Supp. 1228 (E.D.Cal. 05/12/1983)
UNITED STATES v. ZAROWITZ, 326 F. Supp. 90 (C.D.Cal. 04/19/1971)
Girard v. Klopfenstein, 930 F.2d 738 (9th Cir. 04/15/1991)
United Church of Medical Center v. Medical Center Commission, 689 F.2d 693 (7th Cir. 09/23/1982)
In re Literary Works in Electronic Databases Copyright Litigation, No. 05-5943-cv (2d Cir. 11/29/2007)

14. ***Jones v. Luebbers***, 359 F.3d 1005 (8th Cir. 03/03/2004) says:

"[C]learly established Federal law, as determined by the Supreme Court of the United States", 28 U.S.C. § 2254(d)(1), recognizes not only actual bias, but also the appearance of bias, as grounds for disqualification:

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our

system has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "Every procedure which would offer a possible temptation to the average man as a judge... not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law."

In re Murchison, 349 U.S. 133, 136 (1955) (quoting ***Tumey v. Ohio***, 273 U.S. 510, 535 (1927)) (omission in original).

Where a judge's interest in the outcome of a case is pecuniary, application of the rule from ***Murchison*** and ***Tumey*** is simple and the need for disqualification usually will be clear. For example, the Court found a due process violation and held there to be an impermissible appearance of bias where a judicial officer's compensation depended at least in part on obtaining convictions. ***Tumey***, 273 U.S. at 535. Similarly, the Court found a due process violation where an appellate judge participated in a case and set forth a rule of law applicable in a separate, pending proceeding in which the appellate judge was personally involved as a litigant. ***Aetna Life Ins. Co. v. Lavoie***, 475 U.S. 813, 821 (1986).

15. Eleventh Circuit Defendants TJOFLAT, BLACK and WILSON said this in ***Callahan v. Campbell***, 427 F.3d 897 (11th Cir. 10/05/2005):

A fair trial in a fair tribunal is a basic requirement of due process. . . .

To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. . . . It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. Id. at 136--37, 75 S.Ct. at 625. Callahan interprets ***Murchison*** as holding that "when a judge's participation in a case allows the judge to acquire extra-judicial knowledge that directly relates to issues over which the judge is presiding, recusal is required because it is difficult if not impossible for a judge to free himself from the influence of what took place."

16. Judge Thrash has a proven bias against pro se parties as no pro se plaintiff has ever won in his court.

> The appearance of impropriety may also result where the judge has evidenced a bias directed against a class of which the defendant is a member. See ***Berger v. U. S.***, 255 U.S. 22, 41 S. Ct. 230, 65 L. Ed. 481 (1921) (espionage convictions of German-American defendants overturned as result of trial judge's alleged anti-German-American remarks); ***U. S. v. Thompson***, 483 F.2d 527 (3d Cir. 1973), (draft violator's conviction overturned because judge's alleged statement that he had a policy of ordering a standard sentence for all such violators evidenced a bias against the class of which defendant was a member). (***United States v. Cuyler***, 584 F.2d 644 (3rd Cir. 09/29/1978).)

17. Eleventh Circuit Defendants EDMONDSON, BIRCH, and BLACK said this in ***Whisenhant v. Allen***, 556 F.3d 1198 (11th Cir. 02/03/2009):

> It is long established that "[a] fair trial in a fair tribunal is a basic requirement of due process." ***In re Murchison***, 349 U.S. at 136, 75 S.Ct. at 625. The Supreme Court has identified various situations in which "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." ***Withrow v. Larkin***, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464 (1975). Such cases include those in which the judge has a pecuniary interest in the outcome or has been personally abused or criticized by the party before him. Id.

18. Windsor has been treated unfairly, and his due process rights have been violated. Judge Duffey has personal and financial incentives to rule against Windsor.

> A litigant is denied due process if he is in fact treated unfairly. ***Margoles***, 660 F.2d at 296. After reviewing various judicial disqualification cases, the court stated that "those few cases in which due process considerations were

> the basis for reversal involved serious facts supporting a finding of prejudice, not mere speculation and 'appearances.'" Id. Due process violations occur where there [is] actually some incentive [for the judge] to find one way or the other, i.e., financial considerations [Ward, 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d 267 ; ***Tumey v. Ohio***, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927); ***Aetna***, 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823] or previous participation by the trying judge in the proceedings at which the contempt occurred [***In re Murchison***, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 2d 942; ***Taylor v. Hayes***, 418 U.S. 488, 94 S. Ct. 2697, 2704-05 (1974); ***Mayberry v. Pennsylvania***, 400 U.S. 455, 91 S. Ct. 499, 504-05, 27 L. Ed. 2d 532 (1971)]. ***Margoles***, 660 F.2d at 297 (quoting ***Howell v. Jones***, 516 F.2d 53 (5th Cir. 1975)). (***UNITED STATES EX REL. DEL VECCHIO v. ILLINOIS DEPT***, 795 F. Supp. 1406 (N.D.Ill. 06/9/1992).)

"A fair trial in a fair tribunal is a basic requirement of due process." ***In re Murchison***, 349 U.S. 133, 136 (1955); see also ***Ward v. Village of Monroeville***, 409 U.S. 57 (1972). Due process demands more than that the sentencer actually be impartial; rather, "'justice must satisfy the appearance of justice.'" ***In re Murchison***, 349 U.S., at 136, quoting Offutt v. United States, 348 U.S. 11, 14 (1954); see also In re Murchison, 349 U.S., at 136 ("Our system of law has always endeavored to prevent even the probability of unfairness."); ***Mayberry v. Pennsylvania***, 400 U.S. 455, 469 (1971) (Harlan, J., concurring) ("The appearance of even-handed justice . . . is at the core of due process"). The risk that Judge Chapman may have brought to bear on his decision specific information about Robertson not presented as evidence in the sentencing proceeding is too great in this case to satisfy the demands of the Due Process Clause. (***ANDREW EDWARD ROBERTSON v. CALIFORNIA***, 111 S. Ct. 568, 498 U.S. 1004 (U.S. 12/03/1990).)

19. Judge Thrash has become embroiled in a bitter dispute, and he is disqualified. The Ninth Circuit recently said this in ***Richard D. Hurles v. Charles L. Ryan***, No. 08-99032 (9th Cir. 07/07/2011):

> "A fair trial in a fair tribunal is a basic requirement of due process." ***In re Murchison***, 349 U.S. 133, 136 (1955). Indeed, the "legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and

nonpartisan-ship." ***Mistretta v. United States***, 488 U.S. 361, 407 (1989). This most basic tenet of our judicial system helps to ensure both litigants' and the public's confidence that each case has been fairly adjudicated by a neutral and detached arbiter. An appearance of impropriety, regardless of whether such impropriety is actually present or proven, erodes that confidence and weakens our system of justice.

While most claims of judicial bias are resolved "by common law, statute, or the professional standards of the bench and bar," the Due Process Clause of the Fourteenth Amendment "establishes a constitutional floor." ***Bracy v. Gramley***, 520 U.S. 899, 904 (1997) (citations omitted). To safeguard the right to a fair trial, the Constitution requires judicial recusal in cases where "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." ***Withrow v. Larkin***, 421 U.S. 35, 47 (1975). "The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias." ***Caperton v. A.T. Massey Coal Co.***, 129 S. Ct. 2252, 2262 (2009) (internal quotation marks omitted). The Supreme Court has declared:

Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused, denies the latter due process of law. (Tumey v. Ohio, 273 U.S. 510, 532 (1927).)

A claimant need not prove actual bias to make out a due process violation. ***Johnson v. Mississippi***, 403 U.S. 212, 215 (1971); ***Aetna Life Ins. Co. v. Lavoie***, 475 U.S. 813, 825 (1986). Indeed, the Supreme Court has pointed out that it would be nearly impossible for a litigant to prove actual bias on the part of a judge. ***Caperton***, 129 S. Ct. at 2262-63; see also ***Vasquez v. Hillery***, 474 U.S. 254, 263 (1986) ("[W]hen the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from view, and we must presume the process was impaired." (citing ***Tumey***, 273 U.S. at 535). It is for this reason that the Court's precedents on judicial bias focus on the appearance of and potential for bias, not actual, proven bias. Due process thus mandates a "stringent rule" for judicial conduct, and requires recusal even of judges "who would do their

very best to weigh the scales of justice equally" if the risk of bias is too high. Murchison, 349 U.S. at 136.

In determining what constitutes a risk of bias that is "too high," the Supreme Court has emphasized that no mechanical definition exists; cases requiring recusal "cannot be defined with precision" because "[c]ircumstances and relationships must be considered." Id.; see also ***Lavoie***, 475 U.S. at 822 (internal citations omitted). The Supreme Court has just re-affirmed this functional approach. See ***Caperton***, 129 S. Ct. at 2265-66.

The Court's call for pragmatism is particularly important in this instance, for capital cases mandate an even "greater degree of reliability" than other cases do. ***Murray v. Giarratano***, 492 U.S. 1, 9 (1989); ***Woodson v. North Carolina***, 428 U.S. 280, 304 (1976). We are compelled to acknowledge "that the penalty of death is qualitatively different" from any other penalty and that "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment." ***Woodson***, 428 U.S. at 305. As required by the Supreme Court, we therefore utilize a functional approach to the facts of this case as they relate to the Court's established case law.

The Supreme Court's judicial bias doctrine has evolved as it confronts new scenarios "which, as an objective matter, require recusal." ***Caperton***, 129 S. Ct. at 2259. The most basic example of probable bias occurs when the judge " 'has a direct, personal, substantial pecuniary interest in reaching a conclusion against [one of the litigants].' " ***Crater v. Galaza***, 491 F.3d 1119, 1131 (9th Cir. 2007) (quoting ***Tumey***, 273 U.S. at 523). The Court has also held that other financial interests may mandate recusal, even when they are not "as direct or positive as [they] appeared to be in [***Tumey***]." ***Gibson v. Berryhill***, 411 U.S. 564, 579 (1973); see also ***Ward v. Monroeville***, 409 U.S. 57 (1972); ***Lavoie***, 475 U.S. 813. However, financial conflicts of interest are not the only relevant conflicts for judicial bias purposes. See ***Caperton***, 129 S. Ct. at 2260 (explaining that judicial bias doctrine encompasses "a more general concept of interests that tempt adjudicators to disregard neutrality"). The Court has thus required recusal if the judge "becomes 'embroiled in a running, bitter controversy' " with one of the litigants, id. at 2262 (quoting ***Mayberry v. Pennsylvania***, 400 U.S. 455, 465 (1971)); if she becomes "enmeshed in matters involving [a litigant]," ***Johnson v. Mississippi***, 403

> U.S. 212, 215 (1971); or "if the judge acts as 'part of the accusatory process,' " ***Crater***, 491 F.3d at 1131 (quoting ***Murchison***, 349 U.S. at 137). At bottom, then, the Court has found a due process violation when a judge holds two irreconcilable roles, such that her role as an impartial arbiter could become compromised. ***Murchison***, 349 U.S. at 137; see also ***Crater***, 491 F.3d at 1131.

20. Judge Thrash's bias is dripping from his orders. He prejudged every issue in this and all other cases. Judge Thrash is a criminal who is hell bent on doing whatever it takes to violate all of Windsor's rights.

> Bias exists where a court has prejudged, or reasonably appears to have prejudged, an issue. The disciplinary proceedings must "satisfy the appearance of justice." ***In re Murchison***, 349 U.S. at 136 (quoting ***Offutt v. United States***, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954). (***Partington v. Gedan***, 880 F.2d 116 (9th Cir. 03/13/1989).)

21. Judge Thrash has violated just about every rule in the book. He must be disqualified, indicted, convicted, imprisoned, disgraced, and impeached.

WHEREFORE, Windsor respectfully requests that this Court:

a. grant this Request;

b. allow Windsor to file a Motion;

c. schedule a hearing;

d. recognize that this Court has had no jurisdiction and declare all orders void;

e. order that Judge Thrash is disqualified;

f. remand this case to Fulton County Superior Court; and

g. grant any other relief this Court deems just and proper.

Submitted, this 15th day of August 2011.

William M. Windsor
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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 are true and correct based upon my personal knowledge, except as to the matters herein stated to be alleged on information and belief and citations of law, and that as to those matters I believe them to be true. This Verification makes this REQUEST a sworn affidavit.

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 15th day of August 2011.

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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CERTIFICATE OF SERVICE

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

CHRISTOPHER J. HUBER
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75 Spring Street, S.W. -- Atlanta, Georgia 30303
Telephone: (404) 581-6292 -- Facsimile: (404) 581-6181
Email: chris.huber@usdoj.gov

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

This 15th day of August 2011.

William M. Windsor
Pro Se

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