

UNITED STATES DISTRICT COURT

FILED

MIDDLE DISTRICT OF FLORIDA

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ORLANDO DIVISION

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 6:08-cr-118-Orl-DDD-DAB

JUDE LACOUR,

Defendant

_____ /

**MOTION FOR RECUSAL / DISQUALIFICATION OF
VISITING JUDGE DAVID D. DOWD AND MAGISTRATE JUDGE DAVID A BAKER**

1. Section 455(a) of Title 28 of the United States Code requires a federal judge to disqualify himself "in any proceeding in which his / her impartiality might reasonably be questioned." Magistrate Judge David A. Baker and Visiting Judge David D. Dowd, have shown a propensity for rudeness, coercion, bias, abuse of power, and their continued service is causing immediate, irreparable, and public harm. Magistrate Judge David Baker and visiting Judge David Dowd have an obligation to disqualify themselves for engaging in conduct that is prejudicial to Defendant and to the Administration of Justice. **Disqualification is an essential means of assuring fairness and impartiality** and the two judges must disqualify themselves from the present case for reasons cited below,

which individually and or collectively brings their impartiality into question.

2. Defendant is a Pro Se inmate, not by choice but by necessity. This High School educated defendant has been demanding justice from a corrupt system in Orlando, Florida, involving the U.S. Attorney's Office and the Judiciary at the Middle District Court in Orlando. Even an imperfect man has a constitutional right to a fair trial, without malice, bias and prejudice. Judges are expected to be faithful to the law regardless of partisan interests, public clamor or fear of criticism. Thus, a judge has a duty to decide all matters that come before him / her, even in difficult cases involving Pro Se inmates.
3. Defendant alleges that Orlando Middle District Court Magistrate David A. Baker and visiting Judge David D. Dowd, Jr. have targeted the Defendant because he exposed a dishonorable prosecutor, Karen Gable, and caused the dismissal of three federal judges, a high profile defense attorney J.Cheney Mason, former federal prosecutor, William Bryan III. The Defendant further exposed the incestuous conflict between defense attorney Rick Jancha and prosecutor Karen Gable. Rick Jancha and Karen Gable were assigned to the same U.S. Attorney's Office at the time Defendant was being investigated and Mr. Jancha's involvement with the prosecutor in the instant case was in violation of the law which the prosecutor and the judiciary continue to cover up. (See Motion To Dismiss For Malicious, Criminal, and Outrageous Prosecutorial / Judicial Misconduct, Doc 422).
4. The Court is aware that any groundless attack against the prosecutor and or meritless recusal of judges would be illegal, improper and or unethical, to say the least. Defendant has written dozens of letters, notices and motions and had he intentionally misrepresented the facts, the Court would have taken prompt legal action against him a long time ago. Instead, the Court has retaliated against Defendant by engaging in judicial lynching and has embarked on a campaign to procedurally deny him the fundamental due process rights to get a fair trial to defend himself in the instant case. The Defendant has been absolutely truthful in all of his letters, notices, and motions and he has been seeking the appointment

of a Special Prosecutor for months to investigate this travesty of justice. Establishing the truth and or bias is not difficult. Either the Defendant is lying or the other side is lying. The Defendant alleged in his moving papers that the Orlando prosecutors and the judiciary is involved in multiple criminal misconduct and outlined his grievances via Doc. 422, entitled "Motion To Dismiss For Malicious, Criminal, and Outrageous Prosecutorial / Judicial Misconduct".

5. The fact that the Defendant successfully recused so many "Friends Of the Court" would lead any reasonable person to question if the Orlando judiciary, that is condoning corruption and cover ups, can set aside their bias, emotions, predilections and prejudices against this defendant and give him a fair trial that is absent of malice, perjury and vindictiveness. The answer is a simple "No". The accuser is being framed by the system to obscure and or conceal local corruption and prevent a multi million dollar law suit against the Akerman-Senterfitt law firm, whose partners dominate the federal bench in Orlando, Florida. By engaging in judicial "code of silence" and bias, Judge David Dowd and Magistrate David Baker have lost their moral authority and objectivity to remain impartial in this case. They have an obligation to disqualify themselves for consciously and injudiciously allowing the intrusion of insidious bias, perjury, obstruction of justice, and prejudice to transcend justice.
6. Defendant alleges that Magistrate Judge David A. Baker and David D. Dowd intentionally continue to deny this Pro Se inmate an opportunity to review 400,000 pages of discovery and goaded him to go to trial unprepared. Their intent is for the jury to render a guilty verdict so as to destroy Defendant's credibility in exposing prosecutorial and judicial misconduct that he witnessed in Orlando, Florida.
7. The judges were informed via various letters, notices and motions, that Defendant's private counsel (William Bryan) was forced to withdraw his representation on or about March 13, 2009, for criminal conflict involving Karen Gable and former federal

prosecutor Rick Jancha. The trial was scheduled to commence on March 30th, and Defendant's motion to continue for good cause was denied. It is doubtful that the Judges even read the motions which Defendant prepared. The prosecutor and Judge David Dowd gutted Defendant's ability to defend himself by preventing him from arguing before the jury that his defense is based on law enforcement shoddy investigation, selective prosecution, entrapment, advice of counsel and prosecutorial misconduct, to name a few. During his Opening Statement the prosecutor and Judge Dowd repeatedly interrupted this Pro Se defendant to a point where he was forced to abort his opening arguments. The prosecutor and Judge David Dowd were intent on exploiting an embarrassing moment for Defendant in an effort to make him look unprepared and disorganized.

8. Defendant alleges that immediately upon assuming the bench, after four federal judges were removed and or recused for good cause, visiting Judge David D. Dowd became an advocate of the government and proceeded to coerce plea agreements and "move the calendar" in such a way so as to ensure plea compliance. **Visiting Judge David D. Dowd inserted himself in the instant matter weeks before he was certified for this case by United States Supreme Court Justice, John Roberts.** Judges are required to be selected at random for each case and using deceptive methods to shop for a favorable judge is illegal and reprehensible.

9. The Court Hearing transcripts are replete with Judge David Dowd's plea bargaining comments and his downward sentencing caused almost half a dozen defendants to plea in order to secure much shorter sentences. All the defendants were told, more or less, if they go to trial they will get long sentences and if they plea the judge will be very lenient with them. Defendant was being pressured to plea guilty and was told that Judge David Dowd had been involved in ex-parte negotiations with other defendants. Judge David Dowd's personal role and conduct in administering his plea agreements gives rise to an appearance of impropriety and bias.

10. To further illustrate Judge Dowd's pervasive overreaching of authority, Defendant states that on March 10, 2009, he caused his conflicted attorney William Bryan to prepare a "Notice Of Joinder to Co-Defendant Jeffery Lacour's "Verified Motion to Dismiss Indictment Or In The Alternative To Inspect Grand Jury Minutes, Disqualify Prosecutor and Case Agent and Suppress Evidence". At the time of this request, Defendant had signed a Joint Defense Agreement with attorneys representing his father, Jeff Lacour. On March 11, 2009, the Court directed the government to file a response, which was done the following day. Over the governments objection the Court ordered an evidentiary hearing on March 18, 2009. Defendant prepared a set of questions for the hearing pertaining to FBI agent John Groeschner and prosecutor Karen Gable. When Defendant appeared at the March 18, 2009 hearing he was informed verbally by the Court that his joinder motion was too late and that he would not able to participate at this evidentiary hearing. Defendant states with absolute certainty and or conviction that **the Court deliberately misrepresented his joinder motion as being too late** and manufactured the excuse in order to prevent the Defendant from questioning FBI agent John Groeschner and prosecutor Karen Gable under oath, concerning their involvement in the Akerman-Senterfitt matter. As the Court knows, **Defendant has accused the prosecutor of using the Grand Jury subpoena to falsely obtain his corporate files, by claiming she had a valid waiver.**

11. After Jeff Lacour's testimony, the participants met with Judge David Dowd in private and the motion was suddenly withdrawn. Defendant was excluded from the process even though he filed a joinder notice and signed a joint defense agreement with the attorney(s) that Judge Dowd was "dealing" with. A week or so later, Defendant's father negotiated a plea agreement with the prosecutor and Judge David Dowd. Following this plea agreement Defendant was pressured to plea out his case so his father would get straight probation. Defendant informed his father (in writing) that he would be willing to consider a plea to ensure that his mother and brother were provided for . Defendant has previously told his father and others that he would consider a plea that consisted of a Corporate Fine,

similar to what McKesson Drug Co. negotiated with the Middle District of Florida, just two days before Defendant was arrested, on May 9, 2008.

12. In addition to the already stated reasons, Judge David D. Dowd has an obligation to disqualify himself for his personal embroilment and offensive / abusive interaction with this Pro Se inmate. On or about April 6, 2009, Judge David D. Dowd angrily pointed his finger at Defendant telling him **"...I must warn you that he who lives by the sword dies by the sword...."**. Defendant has no access to Court transcripts for the exact quote that Judge David D. Dowd uttered but it was obvious that this personally offensive remark from the bench was an ominous warning that unless Defendant pleas out his case he is a "Dead Man Walking" and or "Dead On Arrival".

13. Judge David Dowd's intemperate comments that **"...You chose to represent yourself and you will be held to the same standards as the government...."** is beyond hypocritical. The Judge is protecting the government. Defendant was ripped off for tens of thousands of dollars by his attorney who just happens to be a friend of Karen Gable and Rick Jancha. The attorney in question totally undermined Defendant's defense by lying that he would do appropriate motions, serve SDT on various law enforcement agencies, comply with reciprocal discovery, and so on. The Court has the discretion to report any attorney to State Bar if and when it determines that the attorney's conduct is unlawful and or constitutes misconduct. The Court is intentionally ignoring the role of former prosecutor William Bryan so as to justify their judicial lynching of this defendant and misrepresent his record. The Court is aware that Defendant's conflicted attorney failed to provide the prosecution with his reciprocal discovery and Court's comments of **"....Don't expect to be able to introduce any documents because you did not comply with reciprocal discovery...."** are designed to misstate the record. This is a premeditated and pre-emptive maneuver by the Court to justify a future and anticipated judicial ruling of preventing the Defendant from introducing documents which were in possession of his conflicted attorney. As noted earlier, the reciprocal discovery was not

turned over to the prosecution by attorney William Bryan in order to create such a ruling, on behalf of the prosecution. In essence, William Bryan is the ultimate Trojan Horse serving the U.S. Attorney's Office. The fix is in.... andthe principal architects of this miscarriage of justice are none other than the prosecutor, defense attorney William Bryan, visiting Judge David D. Dowd and Magistrate Judge David A. Baker.

14. As noted, defendant is a victim of a corrupt system that protects the lawyers and punishes their prey. It is astonishing that the Court continues to patently misrepresent this Pro Se inmate's standing in the instant case while giving a free pass to the legal community that is not interested in justice, only in winning at all cost, even if it means breaking the law. Defendant will be happy to provide the Court with the letters and emails that were sent to attorney William Bryan but he knows the Court does not have the intestinal fortitude to look at the documentary evidence for fear that the defendant would be vindicated and the Court would have to admit that it's reliance on fraudulent Orlando legal community was based on distortion and mistaken loyalty.
15. For the record, this incarcerated Pro Se inmate begged attorney William Bryan to comply with reciprocal discovery, to file appropriate motions, serve the subpoenas and live up to a retainer agreement that he signed on or about September 8, 2008. The Court had ample opportunities to question attorney William Bryan to determine for itself if he prepared for the trial but chose not to so it can falsely accuse the Defendant of **"...throwing a monkey wrench into these proceedings...."**. It is apparent from the scurrilous comments the Court has made over the past few weeks that the Court denied Defendant's motions without ever reading them and that the trial is a sham.
16. Judge David Dowd comports himself with patience, dignity and courtesy in his interactions with the government which is quite the opposite of the way the Defendant is being treated. Judge David Dowd's bias and contempt for Defendant has carried over to the jury and other defense lawyers. Defendant sought a severance that was denied.

When Defendant objects to anything in court the Judge simply removes the jury from the court room so they would not hear what the objection was about. Judge David Dowd further chose to silence the Defendant by relying on excessive sidebar conferences and is condoning a trial by objections. Defendant is intentionally being rushed to abort his questioning of government witnesses and on April 9, 2009 when Defendant objected to a question, Judge David Dowd snapped at him and said “...I’m not going to hear from you...”. This Pro Se defendant is being debased and degraded on a daily basis by the Court and these exchanges are taking place in front of the jury. Defendant has been ridiculed by defense attorney Robert Leventhal who is using Judge Dowd’s bias against the Defendant as an opportunity to score some cheap points with the Judge. The judicial bias is overwhelming and has done irreparable damage to defendant’s case.

17. The trial is entering it’s third week and Defendant has still not seen 400,000 pages of discovery, has not been able to interview a single witness, has not been able to comply with reciprocal discovery, has not been able to subpoena witnesses and or obtain appropriate SDT involving various law enforcement entities. Defendant continues to be incarcerated in a County Jail without being able to prepare for trial, make phone calls and interview witnesses. Defendant was denied a speedy trial and faced Magistrate Judge David A. Baker who used bail in a manner to cajole a plea bargain. The bail hearing before Magistrate Baker was based on perjury and obstruction of justice. Defendant was forced to abort his Opening Statement for constant interruptions and he is being persecuted every time he utters the words “objection”, “attorney” or “misconduct”.

It should be noted that just a few days ago, in a very similar internet pharmacy case in Miami, the Judge dismissed the case against multiple defendants because they, among other things, were victims of misconduct and relied on the advice of counsel to conduct internet pharmacy business. In the instant case, Judge David Dowd will not permit mentioning words such as “reliance on the advice of counsel”. If the Court’s position is that the Defendant is receiving a fair trial and not qualified for due process rights because

he is a Pro Se inmate, the jury should be informed that he is not entitled to his 400,000 pages of discovery and other grievances which the defendant put it on the record. Most importantly, the defendant is respectfully requesting of this biased Court not to misrepresent the facts and falsely claim that Defendant chose to represent himself in Pro Se. **Throwing someone in the middle of Atlantic ocean without a life raft is not about choice or justice.** Defendant is drowning through no fault of his and filed a motion to continue, following his attorney's forced withdrawal on March 17, 2009. The Motion To Continue was denied and by doing so the Court ensured that the Defendant could not retain a private attorney to represent him. Instead, the Court pressured the Defendant to seek a Court Appointed attorney. No attorney in his right mind could go forward and litigate a case without reviewing 400,000 pages of discovery. To do otherwise, would subject the attorney to legal malpractice. Moreover, the Defendant is not totally indigent and it wouldn't be fair to the Florida taxpayers to use public tax resources to pay for his defense.

18. The actions by the Orlando judiciary clearly and convincingly reflects bad faith effort, bias, abuse of authority, disregard for fundamental rights, and intentional disregard of the law. **A failure to adhere to the law becomes especially serious when the judge is informed of his / her misconduct and does not act to correct it.** Widespread abrogation of fundamental rights by a judge becomes a matter of judicial misconduct, not mere legal error and accusing Defendant of exhibiting a "bad attitude" is no excuse for judicial "bad faith". Exercising one's Constitutional right should never be equated with having a "bad attitude" or being disrespectful toward the Court or the U.S. Attorney's Office. As the Court is aware, **bad faith is the equivalent to actual malice** and encompasses the intentional commission of acts which the judges should know are beyond their lawful power. The resulting misconduct entails the most insidious kind of official lawlessness—disregard for the statutory and constitutional rules by which a society of millions and a heritage of centuries have sought to preserve.

ARGUMENT

19. Though “judges are presumed to be impartial,” *Tripp v. Executive Office of the President*, 104 F. Supp. 2d 30, 34 (D.D.C., 2000), 28 U.S.C. 455(a) requires a federal judge to disqualify himself “in any proceeding in which his impartiality might reasonably be questioned.” The standard for disqualification under this statute is an objective standard, *Liteky v. United States*, 510 U.S. 540, 548 (1994), and the purpose of the statute is “to promote public confidence in the integrity of the judicial process.” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988). No actual bias need be demonstrated by the moving party, for §455(a) “focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, [and] a judge faced with a potential ground for disqualification ought to consider how his / her participation in a given case looks to the average person on the street.” *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980). In stark terms “what matters is not the reality of bias or prejudice but its appearance.” *Liteky* at 458.

20. The apparent integrity of the judicial process and maintenance of the perception that courts are impartial venues are the chief goals of the statute, and judges must disqualify themselves even when “false and erroneous . . . allegations” are the bases of a motion for recusal if the court’s impartiality may reasonably be questioned because of such allegations. *Church of Scientology v Cooper* 495 F Supp 455, 461 (C.D. Cal. 1980). Section 455 was intended to overrule the “duty to sit” concept, and once a movant demonstrates facts that reasonably call into question a judge’s impartiality the judge must disqualify himself. *Smith v. Pepsico, Inc.*, 434 F Supp 524 (S.D. Fla. 1977); *United States v. Corr*, 434 F. Supp. 408 (S.D.N.Y. 1977).

CONCLUSION

The conditions of §455(a) have been met, and Defendant prays for Judge David D. Dowd and Magistrate David A. Baker's disqualification or recusal in the present case.

I HEREBY CERTIFY that on April 12, 2009, I caused the foregoing to be filed with the Clerk of the Court and Assistant U.S. Attorney by hand delivering this motion to the following entities:

Clerk's Office, US. District Court
Middle District of Florida, Orlando Division
United States Courthouse, Suite 1200
401 West Central Boulevard
Orlando, FL 32801

Karen L. Gable, Assistant U.S. Attorney
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Orlando, FL 32801

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jude Lacour", written over a horizontal line.

Jude T. Lacour, Pro Se Inmate