



Motion To Recuse The Judge

 SB277RICO · MONDAY, 16 JANUARY 2017

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

Travis Middleton, et al.,

Plaintiff(s),

vs.

Richard Pan, et al.

Defendant(s) Incorporated Case No.: 2:16-cv-05224-SVW-AGR

PLAINTIFFS' MOTION TO RECUSE THE HON. STEVEN V. WILSON

This Application/Motion is filed under the American Free Flag of peace of the united states of America. No jurisdiction under any American flags of war will be accepted in this Case Incorporation

COMES NOW:

Plaintiffs, in the above encaptioned matter, Travis Middleton, Eric Durak, Jade Baxter, Julianna Pearce, Candyce Estave, Denise Michele Derusha, Melissa Christou, Andrea Lewis, Rachil Vincent, Don Demanlevesde, Jessica Haas, Paige Murphy, Lori Strantz, Anwanur Gielow, Lisa Ostendorf, JuliaAnne Whitney, Alice Tropper, Bret Nielsen, Brent Haas, Muriel Rosensweet, Marina Read, to move this Court to recuse itself from this action pursuant to 28 U.S.C. §§ 144 and 455(a).

On December 15, 2016, the Magistrate Judge issued a Report and Recommendation (Docket No. 123) that Plaintiffs "RICO" / Civil Rights suit be dismissed with prejudice, with leave to amend within 30 days after the District Judge's Order. Usually, the District Judge follows the Magistrate Judge's recommendations. The Magistrate Judge failed to address Plaintiffs' "RICO" and Civil Rights issues, establishing differential treatment between Plaintiffs who are Pro Se litigants and the professional attorneys representing the government Defendants.

In previous cases where this Court has adjudicated "RICO" and Civil Rights actions by Plaintiff Middleton (Case No. 2:15-CV-9818 - Middleton v. Santa Barbara Police Dept. et al; No. CV-07-8089-SVW-AGR - Middleton v. Raul Vasquez, et al.; No. CV-08-8231-SVW-AGR - Middleton v. Raul Vasquez, et al.), this Court has applied the wrong legal standard for dismissal of all the aforementioned cases. The dismissal of Middleton's cases show a bias and prejudice towards Middleton, a Pro Se litigant and the defendants who are city and or county officials. The United States Statutes 42 U.S.C. § 1983 and 18 U.S.C. §§1961, 1962 and 1964 are plain on their face. See

FACTS AND LAW IN SUPPORT OF MOTION

I.

The oath of office that every federal judge takes is:

Each justice or judge of the United States shall take

the following oath or affirmation before performing
 the duties of his office: " I, _____, do solemnly
 swear (or affirm) that I will administer justice without
 respect to persons, and do equal right to the poor and
 to the rich, and that I will faithfully and impartially
 discharge and perform all the duties incumbent upon
 me as under the Constitution and laws of the United States.
 So help me God."

28 U.S.C. §453

That oath comes to us from ancient precedents. For example: Deuteronomy 1:16-17 (quoted in *Canons of Judicial Ethics*, *Black's Law Dictionary*, 4th Ed. Rev. LXIX). That oath became one of the Statutes of Westminster in 1275 A.D.

Depending upon which authority one cares to believe, Edward I removed either all or all but two of his judges in 1289 A.D. for violations of that statute. The English system that our ancestors fought to abolish appears to mirror our own:

"Heart-breaking delays and ruinous costs were the lot of suitors. Justice was dilatory, expensive, uncertain, and remote. To the rich it was a costly lottery: to the poor a denial of right, or certain ruin. The class who profited most by its dark mysteries were the lawyers themselves. A suitor might be reduced to beggary or madness, but his advisors revelled in the chicane and artifice of a lifelong suit and grew rich."

Concise History of the Common Law, by Plucknett (Little Brown & Co. 1956) 5th Ed. page 73. The Judicial Improvements Act of 1990, P.L. 101-650 (18 U.S.C., § 471 et seq.) indicates the same problem is now rampant in our courts. See page 6809, U.S. code Cong. & Administrative News 1990 (legislative history of the Judicial Improvements Act.).

As the legislative history of 28 U.S.C. § 471 et seq. points out:

"The purpose of this legislation is to promote for all citizens- rich or poor, individual or corporation, plaintiff or defendant- the just, speedy and inexpensive resolution of civil disputes in our Nation's Federal courts." U.S. Code Cong & Admin News, pg. 6804 (1990).

The courthouse door rapidly being slammed shut on the middle class in this country is addressed on page 6809. Confidence in the judiciary being sustained and preserved so long as the populace respects individual judges is addressed on page 6882.

Failure to administer justice without respect to persons, to do equal right, and to impartially discharge duties incumbent upon the court is more than a petty annoyance to the citizen.

Violation of a federal judge's oath of office is grounds for impeachment. U.S. Code Cong & Admin. News, pg. 6896 (1990).

II.

What appears to be brewing in the instant case is a dismissal predicated upon the concept of absolute immunity. Plaintiffs have properly plead and argued that no legislative or any other type of immunity extends to a government official who has perjured his or her oath of office to support and defend the united States Constitution. The court is attempting to show the defendants a way out that does not exist. Refusing to address Plaintiffs' legal claims denies Plaintiffs equal access to the court, which constitutes a denial of equal protection of law and denial of due process of law within the mandates of the 14th Amendment.

It is unfortunate that the federal courts do not have an automatic peremptory challenge to recuse a judge as many states do. However, there is still statute law to cure the problem, if the court will follow it. Congress, by statute, has outlined the conditions for disqualification of a judge in 28 U.S.C. §455. Section 455 is designed to assure that all parties receive a trial before a judge who is not biased against them, and, if a judge's impartiality might be questioned, disqualification is mandatory. *Beverly Hills Bancorp v. Commercial Paper Holders*, 752 F.2d 1334, 1341 (9th Cir. 1984); 32 Am.Jur.2d, Federal Practice and Procedure, section 40. Any judge of the United States shall disqualify himself in any proceeding in which his or her "impartiality might reasonably be questioned". 28 U.S.C. § 455 (a). Or whenever he "has a personal bias or prejudice concerning a party". Id. § 455 (b)(1). Under Canon 3 of the Code of Judicial Conduct, a judge must avoid the appearance of impropriety in all of his activities. In short, Canon 3 defines the ethical boundaries while § 455 outlines the legal boundaries.

Congress in 1974 shifted the focus of 28 U.S.C. § 455 in order to promote public confidence in the federal judicial system. See H.R. Report No. 93-1453, 93d Congress, 2d Session (1974), reprinted in U.S. Code Cong. and Admin. News at p. 6351 and note 8 at p. 6355. 28 U.S.C. sec. 455 contains two sections that provide for disqualification. The first section is 455(a), which provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned".

The second section is 455(b), which provides for disqualification on a showing of certain facts, e.g., personal bias, pecuniary interest in the case, etc., without the necessity of demonstrating that those facts establish impartiality.

A federal judge is required to take the steps necessary to maintain public confidence in the impartiality of the judiciary. *Liljeberg v. Health Services Acquisition Corp.*, 108 S. Ct. 2194, 2203 (1988). At this point, Plaintiffs have no confidence in the judiciary due to the obvious direction this case is headed in the district court. The statute enacted by Congress under 18 U.S.C. §§1961 1962, 1964 and 42 U.S.C., § 1983, are plain on their face. The sole function of the court is to enforce the law according to statute. *Caminetti v. U.S.*, 37 S.Ct 192,

194 (1917). Not according to misapplied doctrine.

WHEREFORE, in order that Plaintiffs may have meaningful access to the courts and due process of law, this court must recuse itself.

Respectfully submitted

Dated this January 9, 2017

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