IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Jeffrey T. Maehr,
Plaintiff,

v.

John Koskinen, CIR, et al,
Defendant(s).

Case# 1:16-cv-00512-LTB

MOTION TO RECONSIDER EVIDENCE OF RECORD, EN BANC, FOR CLARIFICATION, AND MOTION FOR RECUSAL IF NECESSARY

Plaintiff comes before this Court with Motion to Reconsider Judicially NOTICED facts of the previous Motion, and for clarification of statements made by Judge Babcock's. Apparently Judge Babcock failed to review the actual evidence in the record, and has committed Fraud on the Court.[1] (Also see Exhibit A). The mere fact that all relevant standing laws have been totally ignored suggests a bias.

Plaintiff apparently is being told that the District Court and Judge Babcock is actually defending the Defendants rather than through proper due process of law. He states...

"However, the Court should not be an advocate for a *pro se* litigant"...

but then progresses to do just that for the Defendants, failing to require a lawful response to standing laws being violated, and is prosecuting this case from the bench. Judge Babcock has erred on the following issues;

1. P. 2, second paragraph, Judge Babcock states...

"Therefore, the Court must dismiss the action if the claims in the amended complaint

[1] In 1994, the U.S. Supreme Court held that "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, 1162 (1994).

> are frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. *See* Neitzke v. Williams, 490 U.S. 319, 327-28 (1989). The Court will dismiss the action as legally frivolous.

Plaintiff clearly elucidated a claim upon which relief can be granted, (See Exhibit B) based on legally protected rights of standing record. The claim that his claim is "frivolous" is without merit, as not only have the laws been cited that have been violated, but the Court continues to stand on weak grounds in making the claim of "frivolous" despite clear evidence to the contrary. The definition of frivolous[2] cannot possibly be held as lawful in this case, as there is ample evidence of record of a "violation of a legal interest" and that Plaintiff did NOT fail to "assert facts" that "support an arguable claim."

Judge Babcock has failed to take judicial notice of most of Plaintiff's evidence, despite his biased castigation of the "form" of Plaintiff's evidence. He has failed to take required notice of the substance of the case[3] and is using frivolous hearsay, and without evidence in fact.

2. Judge Babcock states, P. 2, third paragraph...

> Mr. Maehr failed to pay his federal income taxes for several years and still owes the Internal Revenue Service ("IRS") the amount of his unpaid liabilities for those years. *See Maehr v. C.I.R.*, 480 F. App'x 921 (10th Cir. 2012).

This claim is a frivolous claim and is not based on any valid judgement or adjudication of lawful facts, or even any proof of debt, but hearsay alone. Plaintiff's case cited above was NOT involving the facts of the evidence herein, and itself was based on other court cites by the IRS which ALSO did not have the actual relevant

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[2] **Frivolous**; "An answer or plea is called 'frivolous' when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff. *Ervin v. Lowery*, 64 N. C. 321; *Strong v. Sproul*, 53 N. Y. 499; *Gray v. Gidiere*, 4 Strob. (S. C.) 442; *Peacock v. Williams*, 110 Fed. 910. *Liebowitz v. Aimexco Inc.*, Colo.App., 701 P.2d 140, 142." Black's Law Dictionary, 6th Edition. A frivolous demurrer has been defined to lie in one which is so clearly untenable, or its insufficiency so manifest upon a bare inspection of the pleadings, that its character may be determined without argument or research." *Cottrill v. Cramer*, 40 Wis. 558.

The question that needs to be addressed is exactly who has the "frivolous" responses in these and past court proceedings, and who has the actual evidence in fact that is being ignore?

[3] Plaintiff's motion can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' Id., at 520 521, quoting *Conley v. Gibson*, 355 U.S. 41,45 46 (1957). Plaintiff has clearly established his case which any "objective observer" would certainly see is being ignored, which is clear grounds for recusal.

evidence in the record to be able to make such a decision regarding his claims about what is lawful "income" that can be taxed, and most certainly about the protective laws already in place but ignored by Judge Babcock.

3. Plaintiff clearly established that any previous cases being cited by the IRS as evidence for a "frivolous" mantra label cannot be used in Plaintiff's case...

> "Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the (IR) Service **only for the particular taxpayer and the years litigated**,"[4]

...thus any use of those courts being cited against Plaintiff can be put out of view, and the evidence of Plaintiff's case alone must be properly considered if justice is to be found in this court or with Judge Babcock.

4. Judge Babcock states, P. 3, third paragraph...

> Mr. Maehr fails to allege specific facts that support an arguable claim for relief challenging the manner in which his unpaid taxes are being collected and, to the extent he is challenging the validity of his tax liability, his tax protester arguments repeatedly have been rejected by the United States Court of Appeals for the Tenth Circuit. *See Maehr v. C.I.R.*, 480 F. App'x 921, 923 (10th Cir. 2012) (collecting cases).

Plaintiff most certainly alleged "specific facts that support an arguable claim for relief" with VERY specific violations of standing code and statutes never addressed in the stated Appeals court case, and with evidence that the assessment is outside lawful parameters on what is "income". Plaintiff has also provided binding U.S. Supreme Court cases in support of the unlawful assessment. How much MORE clearly could such a claim be made?

The claim that Plaintiff's "tax protester arguments" have "repeatedly" been rejected is incorrect, as the actual arguments were NOT adjudicated or even touched on by said court, or any courts in the past, and no such evidence can be provided by said court to prove the "frivolous" label on Plaintiff's clear evidence.

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[4] *Internal Revenue Manual:*4.10.7.2.9.8 (01-01-2006) Importance of Court Decisions;

1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.
2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.
3. Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the (IR) Service **only for the particular taxpayer and the years litigated**... (Emphasis added).

✦ The use of "28 U.S.C. § 1915(e)(2)(B)(I)... is frivolous or malicious" is not based on evidence in the record. In order for "frivolous" to hold, there MUST be clear refuting of the issue of "income" being wages which the U.S. Supreme Court has clearly stated is NOT, and which Plaintiff stands on but is being ignored by this court.

In addition, even "IF" the court disagrees with the Supreme Court evidence position on "income", it has provided no evidence in support of that disagreement, and it cannot turn a blind eye to the other issues per the following;

✦ The use of the term "tax protester" (an illegal term[5]) is in itself, a derogatory and biased term clearly showing prima facie evidence that Judge Babcock is clearly biased against Plaintiff, and clearly prejudiced against his evidence, and defending Defendants without so much as a peep from Defendant's to support the alleged claim.

✦ Judge Babcock has NOT clearly controverted "the material points of the opposite pleading", unlike Plaintiff, and has ignored most of the relevant evidence which still has not been controverted by Defendant's OR this Court. If Judge Babcock can show this court the evidence where Plaintiff's actual evidence on multiple fronts has been adjudicated in ANY court in this Republic, he has failed to do so.

✦ Plaintiff DEMANDS, by authority of the U.S. Supreme Court, Findings of Fact and Conclusions of Law[6], on the relevant issues raised by Plaintiff and never addressed by this court or Defendants. The Court appears to be claiming that all laws cited are frivolous. Plaintiff demands evidence via Findings of Fact and Conclusions of Law on the following evidence in the record on Plaintiff's behalf.

A) What part of the 5th Amendment right to due process of law is frivolous, how is it frivolous in Plaintiff's case, and where is it in evidence?

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[5] Sec. 3707(a), Pub. L. No. 105-206, 112 Stat. 685 (July 22, 1998;

[6] "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). *Federal Maritime Commission v. South Carolina State Ports Authority et al.* certiorari to the united states court of appeals for the fourth circuit No. 01-46. 2.535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962, (2002). Argued February 25, 2002--Decided May 28, 2002. See also FRCPA Rule 52(a) and *United States v. Lovasco* 431 U.S. 783 (06/09/77), 97 S. Ct. 2044, 52 L. Ed. 2d 752, and *Holt v. United States* 218 U.S. 245 (10/31/10), 54 L. Ed. 1021, 31 S. Ct.

B) What parts of the U.S. Supreme Court original case rulings provided, which are binding on this court, are frivolous in Plaintiff's case, how are they frivolous, and where is it in evidence?

C) What part of "26 U.S. Code § 6334 - Property exempt from levy (10) Certain service-connected disability payments" is frivolous in Plaintiff's case, how is it frivolous, and where is it in evidence?

D) What part of the Taxpayer Relief Act (Public Law 105-34) Section 1024, h) Continuing Levy on Certain Payments - up to 15%..." is frivolous in Plaintiff's case, how is it frivolous, and where is it in evidence?

E) What part of "Title 42, Subchapter II - Federal Old-age, Survivors, and Disability Insurance Benefits, Title 42 U.S. Code, Subchapter II § 407" is frivolous in Plaintiff's case, how is it frivolous, and where is it in evidence?

F) What part of "USC, Title 38, § 5301" is frivolous, how is it frivolous in Plaintiff's case, and where is it in evidence?

G) What part of the "Seventy Fourth Congress, Chapter 510" is frivolous, how is it frivolous in Plaintiff's case, and where is it in evidence?

Can Judge Babcock lawfully dismiss all these laws as frivolous and give no heed to them in Plaintiff's case?

5. Judge Babcock further stated...

> FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

But goes on to state...

> If Plaintiff files a notice of appeal he also must pay the full $505 appellate filing fee **or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit** within thirty days in accordance with Fed. R. App. P. 24.

Plaintiff is confused by the seeming contradictions being stated. If he is being denied proceeding in forma pauperis in the Court of Appeals, this effectively means he has NO appeal recourse, and his right to be heard is being denied due to his economic condition of being destitute because of unlawful taking of all his living.

Judge Babcock took an oath to defend the constitutions and rule of law, but has failed in both. If Judge Babcock fails to properly recognize Plaintiff's rights and the clearly non-frivolous code, statutes and Supreme Court cases cited, **Plaintiff moves to have Judge Babcock recused (See Exhibit C) immediately for bias and prejudice** against the Plaintiff's clear evidence, and to reassign another judge, "en banc" if applicable in this court, to this case for justice and proper consideration of the evidence of record, and to provide non-discretional Findings of Fact and Conclusions of Law.

The conclusions of Judge Babcock are that Plaintiff has no 5th amendment rights, that the existing laws protecting him are frivolous arguments, that the taking of all his living outside due process is just and right, and the lack of evidence for standing to be doing any of it is irrelevant and frivolous. This effectively destroys our constitution and the very purpose of this court's existence.

This court, and Judge Babcock, appear to have taken the position of supporting tyranny and lawlessness against Plaintiff by Defendants. If so, the truth and law have fallen in the streets.

Respectfully submitted for justice,

Date: 5-6-16

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EXHIBIT A

"Fraud On The Court By An Officer Of The Court" And "Disqualification Of Judges, State and Federal"

Memorandum of Law

1. Who is an "officer of the court"?

   A judge is an officer of the court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. *A judge is not the court.* People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

2. What is "fraud on the court"?
   Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated;

   "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or **where the judge has not performed his judicial function** --- thus where the impartial functions of the court have been directly corrupted."

   "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication**." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

3. What effect does an act of "fraud upon the court" have upon the court proceeding?
   "Fraud upon the court" makes void the orders and judgments of that court.
   It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" **vitiates the entire proceeding**. The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934)

("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929)

("The maxim that fraud vitiates every transaction into which it enters ..."); In re Village of Willowbrook, 37 Ill.App.2d 393 (1962)

("It is axiomatic that fraud vitiates everything."); Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935).

Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

4. What causes the "Disqualification of Judges?"

Federal law requires the automatic disqualification of a judge under certain circumstances.

In 1994, the U.S. Supreme Court held that "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." [Emphasis added]. Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994).

Courts have repeatedly held that **positive proof of the partiality of a judge is not a requirement, only the appearance of partiality**. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "**is directed against the appearance of partiality, whether or not the judge is actually biased.**") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

That Court also stated that Section 455(a) "**requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned.**" Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038

(1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.

"Recusal under Section 455 is self-executing; **a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances.**" Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989).

Further, **the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification**. The Seventh Circuit Court of Appeals further stated that "**We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed.**" Balistrieri, at 1202.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. **None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.**

Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause").

Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce" (RICO). The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge). However some judges may not follow the law.

If you were a non-represented litigant, and should the court not follow the law as to non-represented litigants, then the judge has expressed an "appearance of partiality" and, under the law, it would seem that he/she has disqualified him/herself.

However, since not all judges keep up to date in the law, and since not all judges follow the law, it is possible that a judge may not know the ruling of the U.S. Supreme Court and the other courts on this subject. Notice that it states "disqualification is required" and that a judge "must be disqualified" under certain circumstances.

The Supreme Court has also held that **if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.**

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce **(RICO)** are criminal acts, no judge has immunity to engage in such acts.

EXHIBIT B

ALLEGED FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

"The general rule in appraising the sufficiency of a complaint for failure to state a claim is that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson* (1957), 355 U.S. 41, 45, 46, 78 S.Ct. 99, 102, 2LEd 2d 80; *Seymour v. Union News Company*, 7 Cir., 1954, 217 F.2d 168; and see rule 54c, demand for judgment, FEDERAL RULES OF CIVIL PROCEDURE, 28 USCA: "Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." *U.S. v. White County Bridge Commission* (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535.

"A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may eventually prove to be, and inartistically as the complaint may be drawn. The complaint is hard to understand but this, with nothing more, should not bring about a dismissal of the complaint, particularly is this true where a defendant is not represented by counsel, and in view of rule 8{f} of the rules of civil procedure, 28 U.S.C., which requires that all pleadings shall be construed as to do substantial justice. *Burt v. City of New York*, 2Cir., (1946) 156 F.2d 791.

Accordingly, the complaint will not be dismissed for insufficiency. Since the Federal Courts are courts of limited jurisdiction, a plaintiff must always show in his complaint the grounds upon which that jurisdiction depends. " *Stein v. Brotherhood of Painters, Decorators, and Paper Hangers of America, Dccdj* (1950), 11 F.R.D. 153.

"A complaint will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts..." *John Edward Crockard v. Publishers, Saturday Evening Post Magazine of Philadelphia, Pa* (1956) Fr Serv 29, 19 F.R.D. 511, DCED Pa 19 (1958)

"FRCP 8f: CONSTRUCTION OF pleadings. All pleadings shall be so construed as to do substantial justice." *Dioguardi v. Durning*, 2 CIR., (1944) 139 F2d 774.

"Counterclaims will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts..." *Lynn vs Valentine v. Levy*, 23 Fr 46, 19 FDR, DSCDNY (1956)

EXHIBIT C

Recusal of Judge For Cause

1. For acting as a witness in this case, and/or,

2. For showing prejudice and bias in this case against me and for the Plaintiff...

CASE LAW IN SUPPORT

The right to a completely fair and unbiased fact finder is a right. Any action that indicates his is biased voids his personal jurisdiction over the case and he cannot refuse to be recused without violating the rules of due process.

28 USC Sec. 455, and *Marshall v Jerrico Inc., 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980)*: **"The Due Process Clause [of the 14th] entitles a person to an impartial and disinterested tribunal** in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Piphus, 435 U.S. 247, 259 - 262, 266-267 (1978).* The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."

"Parties who, by the constitution and laws of the United States, have a right to have their controversies decided in their tribunals, **have a right to demand the unbiased judgment of the court**." *PEASE v. PECK, 59 U.S. 595 (1855).*

In 1994, the U.S. Supreme Court held that "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, 1162 (1994).* (Supreme Court).

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protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

That Court also stated that Section 455(a) "**requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned.**" *Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989).*

In *Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972),* the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", *Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960),* (Supreme Court) citing *Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).* (Supreme Court)

"Recusal under Section 455 is self-executing; **a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances.**" *Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989).*

Further, **the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification.** The Seventh Circuit Court of Appeals further stated that "**We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed.**" *Balistrieri,* (supra) at 1202.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. **None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.**

Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996)* ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *COOPER v. AARON, 358 U.S. 1,*

78 S. Ct. 1401 (1958). **See also the U.S. Supreme Court holding in** *COHENS v VIRGINIA 19 U.S. 264, 404, 5 L.Ed. 257, 6 Wheat. 264 (1821).*

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