

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Civil Docket No. 11-2303

-----x
Nicholas E. Purpura, *pro se*
Donald R. Laster Jr. *pro se*
et al.

**MOTION TO VACATE
OR MODIFY
THE CLERKS ORDER
GRANTING EXTENSION OF TIME**

Plaintiffs/Appellants

v.

Request For Declaratory Judgment
Individually & in their Official Capacity
UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES;
KATHLEEN SEBELIUS, in her official capacity
Individually & in their Official Capacity as the
Secretary of the United States, Department of Health
And Human Services;
UNITED STATES DEPARTMENT OF THE TREASURY;
TIMOTHY F. GEITHNER, in his official capacity as the
Secretary of the United States Department of the Treasury;
UNITED STATES DEPARTMENT OF LABOR; and HILDA
L. SOLIS, in her official capacity as Secretary of the United States
Department of Labor,

Respondents/Defendants
-----x

Appellants come before this Circuit Court requesting the ORDER(see, attachment) issued on June 23, 2011 by the Clerk Marcia M. Waldron be immediately recalled and vacated. Appellants respectfully allege said ORDER was improperly granted. While Federal Rules of Appellate Procedure (FRAP) Rule 27 states:

“Rule 27. Motions

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order—including a motion under Rule 26(b)—at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court’s, or the

clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.”

Allowing Respondents/Appellees specific Motion to be granted by an authorized Clerk in this particular incident, the approval of the Motion is clearly prohibited under the Local Appellate Rules (LAR) 31.4 which specifically states:

“31.4 Motions for Extension of Time to File a Brief

A party's first request for an extension of time to file a brief must set forth good cause. **Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient.** A first request for an extension of **14 days or less** may be made by telephone or in writing. Counsel should endeavor to notify opposing counsel in advance that such a request is being made. The grant or denial by the clerk of the extension must be entered on the court docket. If a request for extension of time is made and granted orally, counsel must file a confirming letter to the clerk and to opposing counsel within 7 days. A first request for an extension of time should be made at least 3 days in advance of the due date for filing the brief. A motion filed less than 3 days in advance of the due date must be in writing **and must demonstrate that the good cause on which the motion is based** did not exist earlier or could not with due diligence have been known or communicated to the court earlier. Subsequent requests for an extension of time must be made in writing and will be granted only upon a showing of good cause that was not foreseeable at the time the first request was made. Only one motion for extension of time to file a reply brief may be granted.” [Emphasis Added]

The issue of Rules of Procedure, as stated the *FRAP*, fail to state the number of days the Clerk is authorized to allow, therefore the Clerk is obligated to adhere to the Local Appellate Rules of the Third Circuit see, 31.4.

While Respondent/Appellees went “on and on” about this and that case they had to handle they did not in any fashion state any good cause as required by the Rule 31.4. The two (2) paragraphs taking up 11 lines at the end of their Motion is nothing more than a statement of:

We are too busy to answer this Petition at this time.

Or based upon past history, and numerous procedurally infirm extensions of time, Respondents have demonstrated:

We do not want to answer this Petition since they are correct on all counts.

Such excuses are clearly and explicitly **NOT** a reason to grant an extension of time. LAR 31.4 does **NOT** allow for 30 day extensions. At most, providing a valid good cause is set forth, **only 14 or fewer days** may be granted.

Throughout the District Court Proceedings, and into this Court, the Respondent/Appellees have tried to ignore the Petition and engaged in prevarication, stalling and collusion with the District Court in obvious violations of Judicial Procedures. Even in their “MOTION FOR 30 DAY EXTENSION IN WHICH TO FILE APPELLEES’ BRIEF” they continue in their prevarication by misrepresenting Appellants’ Petition as well as facts. In fact the Clerk of the Court ignored their outright lie that they never received any extensions of time when in truth they received THREE (3) procedurally infirm extensions of time. And thereafter failed/refused to answer the Petition or the Summary Judgment.

It is without argument Appellants Petition, authorized under Amendment 1 [confirmed and reinforced by *Bond v United States* (09-1227)], specifically addresses 19 violations of the U.S. Constitution and four (4) existing Statues. Respondent/Appellees failed to answer the original Petition that by law, as stated in the FRCP warranted default on six counts. When forced to answer, consistently failed to answer six (6) Counts and gave spurious replies to nine (9) Counts. One can only expect this behavior to continue based upon the current actions.

WHEREFORE, the Appellants pray this Court immediately recall and vacate the Clerks ORDER of June 23, 2011 based upon the law and true facts presented.

Respondents Opposition was due on July 11, 2011;

By the Courts own Rule the maximum time the Clerk would have been allowed would be 14-day, that is if good cause was presented

Respectfully submitted,

Nicholas E. Purpura,

Donald R. Laster, Jr.

June 27, 2011