

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Civil Docket No. 11-2303

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

**MOTION FOR DEFAULT
OF APPEAL
AND
ORDER FOR DECLARATOY RELIEF**

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

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Respondents again show contempt for the Court, as well as the *Fed. Rules of Civ. P.*, the *Federal Rules of Appellant Procedure*, and the Third Circuit’s *Local Rules of Procedure*, by failing to properly respond to the Appellants Appeal due on July 10, 2011.

According to the Rules, forwarded to *pro se* litigants on page 4, Titled “**Time Requirements for Briefs and Appendix**” explicitly states:

“Extension of Time: If you need an extension of time in which to file your brief and/or appendix, you must request the extension (well before the brief is due) by filing a motion for extension of time with the Clerk. **Extensions are rarely granted.** Failure to file a brief when due or to request an extension may result in **dismissal** of the appeal for failure to timely prosecute the appeal. 3rd Cir. LAR Misc. 107.2” [Emphasis Added]

Furthermore Local Appellate Rules (LAR) 31.4 explicitly states:

“... 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. ... 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.” [Emphasis Added]

In their motion “GOVERNMENT’S COMBINED OPPOSITION TO PRO SE PLAINTIFF’S MOTION FOR A TEMPORARY RESTRAINING ORDER AND MOTION TO VACATE THIS COURT’S ORDER GRANTING AN EXTENSION” the Respondent/Appellee dismissively state on page 3 of the “motion” they claim the basis for extension was spelled out in their prior motion stating

“Although plaintiffs assert that there was no good cause for the extension, the basis for the extension was set out in the government’s extension motion, which was properly granted by this Court.”

Instead of answering the Appellants’ explicit showing that the Respondent/Appellee were given a procedurally infirm and illicit extension of time, in clear violations of the Rules, they claim their procedurally infirm request was legitimate in spite of the Court’s Rules and based upon the Clerk’s violation of the *FRAP* and *LAR*. Even though their stated reason was “We are too busy”.

Thus claiming the Court has no authority to revoke the illicit extension of time and claiming the rules do not apply to them. Are Respondent/Appellee above the law and rules of the Court? Do the Clerks of the Court have authority to usurp the Rules? Do Respondent/Appellee dictate the rules of the Court?

Previously Respondent/Appellee requested multiple procedurally infirm extension of time, after repeatedly forfeiting by failing to respond as required by the Federal Rules of Civil Procedures (FRCP), acting in connivance with the District Court Judge. The blatant connivance is obvious by a simple examination of the District Court Record.

Respondent/Appellee are continuing the same game in this prayerfully Honorable Circuit Court. This Court has a fiduciary duty to put an end to these games and illicit behavior, that is occurring

under the *color of law*, that brings this Court's integrity in question and usurps the authority of Justices of this Court.

The actions of the Respondent/Appellees reflect the arrogance of self-imputed governmental exemptions from judicial review as repeatedly cited in Petitioners' Appeal by page and provisions that renders our Judiciary irrelevant, since no judicial review of the Government's behavior is allowed. So why should one expect them to adhere to the *FRCP*, *FRAP* and Court's *Local Rules of Procedures*.

We respectfully remind the Court, neither the DOJ or the Clerk of the Court are above or exempt from the rules.

WHEREFORE,

Appellees prayerfully ask this Honorable Court to declare an immediate default for failure to respond within the requirements as required under this Court's specific Rules of Procedures;

To issue an immediate Order declaring the "*Patient Protection and Affordable Care*" Act, known as "H.R. 3590", is invalid and unconstitutional based upon all 15 Counts submitted to this Court for failure to demonstrate a single Count was incorrect;

Defendants (Respondent/Appellee) are hereby order to cease and desist from all implementation of the "Act" known as "*Patient Protection and Affordable Care*" or "H.R. 3590";

At the very least, as an alternative to the relief requested above, this Court should sign the Temporary Restraining Order that is awaiting a signature before this Court. If this Honorable Court or Defendants can show legal and legitimate justification to adjudicate further.

Respectfully Submitted,

Nicholas E. Purpura,
pro se

Donald R. Laster, Jr.
pro se

July 10, 2011