

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.

**NOTICE OF
MOTION FOR RECUSAL**

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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Appellants submit this Motion for the Recusal of the Honorable Joseph A. Greenaway and Honorable Thomas I. Vanaskie based upon the following reason pursuant to the Federal Civil Rules Handbook:

- As this Court is aware it is without argument Respondent/Appellees failed to respond to Count 6 of Appellants Petition, thereby under the *Fed. Rules of Civ. P.*, 8(b) & (d) conceded that the said averment was correct.
- The Court refused to inform Appellants which Honorable Judges are or will preside on ours and Respondent/Appellees pending motions, therefore making this Motion necessary. Though customary, Litigants are usually informed and if there be any reasons

that a prejudice against him/them in favor of the adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear the proceedings. See, Title 28 Sec 41 # 144 Biases or prejudice of judge, the Court's refusal to inform Appellants makes it impossible for Appellants to adhere to the rules of this provision therefore requiring this Motion.

Disqualification of justice...

Title 28 Section 455 (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his partiality might reasonably be questioned. Part (b) He shall also disqualify himself in the following circumstances:

- (4) he knows that he, individually or as a fiduciary, ...has a financial interest in the subject matter in the controversy or a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding: Also see:
- (5) (iii) Is known by the judge to have a financial interest that could be substantially affected by the outcome of the proceeding;
- (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

For the purposes of this section the following words or phrases shall have the meaning indicated

- (d) (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation:
- (d) (4) "financial interest" means ownership of legal or equitable interest, however small, or relationship as

As this Court is aware, or should be aware, Respondent/Appellees failed to answer Count 6 of the Petition that concerns whether Mr. Barak Hussein Obama II is, pursuant to Article 2 of the U.S. Constitution, a "natural born Citizen" and was authorized to sign "H.R. 3590" into law. The question remains does Mr. Obama have executive power to also appoint judges to the District, Circuit and Supreme Court?

Legal Precedent: It is incontrovertible the request for recusal of Honorable Joseph A. Greenaway and Honorable Thomas I. Vanaskie is valid since each has a financial stake in the outcome of this litigation. At issue is whether Mr. Obama has authority to appoint them to the Circuit Court.

It is also indisputable Respondents forfeited regardless of the facts that support the “*People’s*” argument. Respondents’ counsels’ failure to respond was ignored by the District Court. By law, it warrants an automatic forfeiture, see *Gracedale Sports & Entertainment Inc. v. Ticket Inlet, LLC*, 1999 WL 618991 (N.D. Ill. 1999). Refusing to answer legal conclusions “flies in the face of the establishment doctrine that legal conclusions are a proper part of federal pleading, to which Rule 8(b) also compels a response”, *Saldana v Riddle*, 1998 WL373413 (N.D.Ill.1998), commenting that Rule 8(b) “**does not confer on any pleader a right of self-determination as to any allegation that the pleader believes does not require a response**”. *Ponce v. Sheahan* 1997 WL 798784 (N.D.Ill.1997): Rule 8(b) “**requires a defendant to respond to all allegations in a complaint and creates no exception for so-called ‘legal conclusions’**”). See also *Farrell v. Pike* 342 F. Supp.2d 433, 440-41 (M.D.N.C. 2004) noting that “**the rules do not permit defendants to avoid responding complaints legal allegations**”. See generally *Neitzke v. Williams*, 490 U.S. 319, 324, 109 S. Ct. 1827, 1831, 104 L.Ed.2d 338 (1989) observing that federal civil complaints “contain ...both factual allegations and legal conclusions”.

FRCP 8(d): See *Phelps v. McCellan*, 30 F3d 658, 663 *Lockwood v Wolf Corp.* 629 F2d 603, 611 (9th Cir) **by law, each allegation was to be treated as if Respondents do not deny the allegations**. When Respondent/Appellees failed to submit an affirmative defense supported by “documented proof”, such as the case at bar, each allegation **must be treated as if (defendants) Respondent/Appellees admitted to them!**

WHEREFORE, Appellants are in their legal right to request the Honorable Joseph A. Greenaway and Honorable Thomas I. Vanaskie not take any part in any stage of this litigation.

Special Note: In no way are Appellants questioning the honesty or integrity of either of these two former District Court Judges. This request for recusal adheres to the rules to assure the integrity of the Court does not come into questioned.

Respectfully Submitted,

Nicholas E. Purpura,
pro se

Donald R. Laster, Jr.
pro se

July 15, 2011