UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Jeffrey T. Maehr, Petitioner/Appellant	)	
v.	)	Docket No. 11-9019
COMMISSIONER OF INTERNAL REVENUE, Respondent/Appellee	)	

Response to U.S. Appeals Court, 10th Circuit's "ORDER AND JUDGMENT" NOTICE OF JURISDICTION CONFLICT, NOTICE TO RECUSE

Comes now, Jeffrey T. Maehr, pro Se, before this Court, with Response.

Petitioner is somewhat confused regarding the "Order and Judgment" in that he was waiting for the decision on the *in forma pauperis* application, but it appears the judges have made a decision at the same time as denying Petitioner's *in forma pauperis* application. Petitioner was NOT agreeing to move forward with this appeal if he was denied his application, and was waiting to make that decision, and even requested that decision much earlier in this case.

If the judges have already reviewed all the previous documents, and have made this the official ruling, and denied *in forma pauperis*, than Petitioner must address the only two issues left to address;

1. The issue of in personam jurisdiction was raised by Petitioner in providing his "political determination as evidenced in his "Notarial Verification." (See previous filings). The judges ignored this jurisdictional challenge and ruled without comment on jurisdiction or proof such jurisdiction exists. Petitioner clearly stated in previous pleadings that either the court lacks jurisdiction in this instant case, in which case, so does the Respondent over Petitioner. If this court has determined that it lawfully has in personam jurisdiction over Petitioner, then Petitioner moves this court for findings of fact and conclusions of law.

"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).* (Emphasis added). 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)...* [W]hen a judge acts where he or she does not have jurisdiction to act, **the judge is engaged in an act of treason**." (Emphasis added).

If the judges maintain they have jurisdiction to continue, then...

2. Petitioner files this complaint of prejudice and bias by the 10th Circuit judges **MURPHY**, **BALDOCK**, and **HARTZ** so named in the Order and Judgment.

It appears the court has been compromised and the named judges are acting in contempt of court for rejecting the rule of law and the justice and truth of law in this court, and are biased against Petitioner. The named judges have violated their own lex fori rules, and the court's own laws.

"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**... **A judge is not the court**." *People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).* (Emphasis added).

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." (Emphasis added).

Petitioner maintains such acts have been committed against him in this case if the court has jurisdiction. It appears that the judges involved have abandoned their God-given duties to stand on godly principles and to defend the law and Petitioner instead of be manipulated by a corrupt government agency that appears to be a homegrown domestic terrorist organization (according to the government's own definition... Terrorism = "the unlawful use of force and violence against persons or property to intimidate or coerce... the civilian population, or any segment thereof, in furtherance of political or social objectives" *(28 CFR 0.85(l))*.

Further, the United States Supreme Court stated... "Any legislative scheme that denies subjects an opportunity to seek judicial review of administrative orders except by refusing to comply, and so put themselves in immediate jeopardy of possible penalties 'so heavy as to prohibit resort to that remedy,' *(Oklahoma*

Operating Co. v. Love, 252 U.S. 331, 333 (1920)), runs afoul of the due process requirements of the Fifth and Fourteenth Amendments." *Schulz v. IRS and Anthony Roundtree*.

Petitioner comes before this court, once again, in the name of Jesus Christ and the true God of the universe, to disqualify named judges. Petitioner is being denied any hearing regarding the issues raised, thereby effectively preventing due process of law.

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."

Petitioner does NOT believe that he has received any justice in this issue whatsoever.

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).*

Petitioner is certainly NOT receiving a just hearing into the merits of this case, and

the “appearance of justice” does not exist herein.

"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 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, and represent treason

according to the courts.

Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. See *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.")

Facts in evidence

1. The judges, **MURPHY**, **BALDOCK**, and **HARTZ**, have clearly ignored the substance of the case, and there has been nothing that has been "construed," let alone "liberally construed," in this instant case except for form, and that "form" ignores the actual laws governing both the Respondent AND this court's judges, via lex fori. The court cannot adjudicate itself... that is why judges are there to be sure the court is NOT being "contempted" by fraudulent actions and rulings warring against the constitution and rule of law.

The issue brought before this court was one of standing which was ignored by the tax court judges, and the named judges herein have also ignored the rule of law regarding standing of the Respondent's frivolous "deficiency" paper bullets. There

can be no justice or truth heard in this court if standing and other foundational, threshold issues are not complied with.

2. The Judges are merely restating the same "form" requirements, and ignoring substance. It appears the named judges are aiding and abetting the Respondent in ignoring standing and other valid lawful issues raised in this case, and siding against Petitioner. This is a violation of law. The named judges are so NOTICED.

The Judges stated... "After review of Maehr's petition, we conclude it contains no valid challenges to the notices of deficiency and fails to specifically identify errors related to the determination of his income tax deficiencies. It, instead, raises conclusory challenges to the constitutionality of the Internal Revenue Code and power of the Commissioner to impose income taxes. *See id.* at 952-53 (holding frivolous assertions in a taxpayer's petition do not satisfy the requirements of Rule 34). The petition raises no genuine challenge to the notices of deficiency because Maehr's arguments have been repeatedly rejected by this court. *See, e.g., Wheeler v. Comm'r*, *528 F.3d 773, 777 (10th Cir. 2008)* ("We have held that an argument that no statutory authority exists for imposing an income tax on individuals is completely lacking in legal merit and patently frivolous."

Petitioner denies having ever stated that there is no law regarding taxation. The issue is one of "lawful" taxation of lawful "income." No such "law" has been presented that overrules Supreme Court case law, as well as Constitutional forms of taxation, period.

The judges, as those in the tax court, ignore the standing issue, as well as the clearly "genuine challenge" supported by the actual evidence. Is this valid and lawful in this court? No previous court has ever ruled Petitioner's claims as "frivolous," **based on valid Supreme Court and Congressional testimony placed as evidence in fact**. NO evidence such as Petitioner's evidence has been actually considered by the courts.

Petitioner NOTICES the judges of the following case: Robert A. McNeil v. Internal Revenue Service, wherein the assessment for 8 years of alleged owed taxes, were dismissed based on similar grounds as Petitioner has presented.

The conflict in the above case centers on the following points:

a) The Internal Revenue Code does not "plainly and clearly" lay any liability for an

income tax.

b) Plaintiffs activities and revenues are exempt from federal excise taxation as being outside the taxing authority of the federal government.

c) Plaintiffs revenues are exempt from federal excise taxation because the activity is the exercise of a fundamental, constitutionally protected right, and therefore, outside the taxing authority of the federal government.

d) Plaintiffs revenues did not constitute "income" within the meaning of the Sixteenth Amendment and the Constitution.

Petitioner has far more evidence than presented in this case, and which was dismissed in favor of the Plaintiff. How much more plain does this have to become to show clearly that there is something grossly wrong with the Respondent's position, and the judges beliefs?

3. Judges named have ignored the requirements for Respondent to have provided a valid 23C assessment, proving bias against Petitioner.

4. Judges named have ignored the jurisdiction of Respondent over Petitioner, used wrong laws for adjudication (*TITLE 28 > PART V> CHAPTER Ill>§ I652*. - State

laws are to be used as rules of decision in this forum), and *Federal Rule of Civil Procedure 17(b)*, among many other cases rejected in new evidence.

5. Judges restate Petitioner's position in their Order and Judgment, also including... "Form 1040 is illegitimate because it is not imprinted with an OMB control number;" but failed to address this, or any of the other restated issues with any "findings of fact or conclusions of law."

44 USC § 3512 - Public protection

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if—

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or

judicial action applicable thereto.

The Tenth Circuit in Collins held the PRA (Paperwork Reduction Act) was applicable to Sec. 7201 tax evasion "including **Federal Income Tax Returns within the category of information collection requests under the Act**." *920 F.2d at 630 (n.12); cited to Gross, 626 F.3d at 295(n.5)*. (Emphasis added).

In *U.S. v. Chisum*, the Court held "Tax Forms are covered by the PRA" citing *Dole, 494 U.S. at 33. 502 F.3d 1237, 1243-44 (10th Cir. 2007)*. In **Springer v. U.S.**, the Tenth Circuit specifically directed Petitioner in the cited case, 2 months before trial, that the PRA applied to Tax Return Forms like 1040. *580 F.3d at 1144.* In *Lewis v. CIR*, the Tenth Circuit applied the PRA to both the 1980 and 1995 public protection. *523 F.3d 1272, 1275 (10th Cir. 2008*). Petitioner in this case was even told he could only raise the PRA as a defense. *Springer, 231 F.Appx. 793, 795-799 (10th Cir. 2007)*.

Petitioner herein included this argument as one of the threshold issues of standing. Respondent is alleging that Petitioner was allegedly required to file said 1040 forms for alleged years, which Petitioner has clearly shown is incorrect, as the 1040 form

is in gross violation of law, and Petitioner is NOT required, by law, to file a "bootleg" form.

The 10th Circuit has held for over 20 years that the Form 1040 MUST comply with the Paperwork Reduction Act or no person can be subject to any penalty including criminal for any claim inexorably linked to failing to file a Form 1040 tax return. Are the named judges now reversing the court's own ruling? (And, need we delve into the clear elimination of "districts," or does this have to be brought to a higher court?)

The Senate Report analysis of Sec. 3512 states that 21 [i]nformation collection requests which do not display a current control number or, if not, indicate why not are to be **considered 'bootleg' requests and may be ignored by the public**.... *S.Rep. No. 930, 96th Cong., 2d Sess. 52, reprinted in 1980 U.S. Code Cong. & Admin. News 6241, 6292.*

See also *5 C.F.R. Sec. 1320.5(c)* ("Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, **such penalty may not be imposed by an agency**

directly, by an agency through judicial process, or by any other person through judicial or administrative process."). (Emphasis added). (See Exhibit M, original pleadings, for complete case law and argument in support).

6. Petitioner is living well below the poverty line, but the judges still require his payment of $455 for the docket fee to "continue in the appeal." Bank statements would clearly prove the poverty level, but such copies would be almost 100 pages of text. The judges stated "Because Maehr's motion to proceed *in forma pauperis* indicates he is able to pay the costs associated with pursuing this appeal..." is denied by Petitioner, as no such statement was made.

This docket fee is 3 months groceries for Petitioner, 2 months utilities, 1 month rent, and 2-3 months extraneous costs, so the judges are requiring that Petitioner take several months to save up the $455 out of his disability compensation from the VA (his only source) in order to pay for a right he has... a right that shouldn't cost anyone to exercise, as pleaded previously.

In addition, no facts were presented as to the levels of assets someone must have in order to fall under the in forma pauperis application. To be required to take funds

from his business account, which is rarely available, could put him out of business in a matter of days due to high overhead payments made daily.

7. The issue of religious freedom and violation of religious protection was also ignored, including Supreme Court case law in Hosanna-Tabor, as pleaded. In addition, there are now 12 law suites by the Catholic Church against the Federal government, to wit... “It is not about whether people have access to certain services; it is about whether the government may force religious institutions and individuals to facilitate and fund services which violate their religious beliefs.” (http://cnsnews.com/news/article/breaking-cardinal-dolan-ny-cardinal-wuerl-dc-notre-dame-and-40-other-catholic-dioceses).

"The First Amendment enshrines in our nation’s Constitution the principle that religious organizations must be able to practice their faith free from government interference," Cardinal Wuerl said.

Petitioner is not only being unlawfully assessed, but said assessment will be used for illegal and unconstitutional activities that violate his religious beliefs, practices and conscience. The judges, in denying Petitioner’s evidence to be heard, and to

disregard his religious beliefs and practices, are violating his First Amendment religious protection.

Conclusion

Any "objective observer" having even a modicum of understanding of the facts presented throughout this case "would entertain reasonable questions about the judge's impartiality." *Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994)*.

All Petitioner has requested these past 10 years is to be heard on the merits of the cases and evidence presented, and not be judged by hearsay, presumption and false and deceptive manufacturing of law. Justice and truth have fallen in these courts.

Since it is clear that the named judges have shown evidence of bias and prejudice against Petitioner and this case, and are in breach of duty, in violation of their oath of office, and warring against the constitution and rule of law, Petitioner holds that the named judges have...

1. Exhibited (unanimous) consent to not comply with federal laws and lex loci laws governing jurisdiction over Petitioner,

2. Not complied with court standing requirements to be proven by Respondent or the court under lex fori,

3. Ignored Supreme Court case precedent, and Congressional testimony,

4. Ignored the bootleg 1040 form evidence,

5. Ignored Petitioner's claims of religious beliefs and violations of them in being willfully, wantonly unlawfully assessed for monies to be used for unconscionable and unbiblical activities.

6. Ignored the many other lawful and constitutional issues raised,

7. Ignored docket payment issue, despite clear poverty level and hardship to pay, and the requirement to pay for a right,

8. Ignored the lack of any evidence in the record of the documents used to allegedly assess deficiencies against Petitioner,

9. Deprived Petitioner of his due process rights under law to be heard, and to have a full and meaningful defense against unlawful deficiencies,

Petitioner, therefore, based on court precedent requirements, requires that all three named judges recuse themselves from this case, and assign this case to other judges who WILL comply with the law, or must this case go to the Colorado Supreme Court for proper adjudication, correction of error, and remedy in your own lex fori,

or Petitioner's one supreme Court in lex loci? Petitioner herein offers judges the opportunity to correct the errors, or recuse.

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Jeffrey T. Maehr, Petitioner, (Digital)

CERTIFICATE OF SERVICE

I, Jeffrey T. Maehr, Pro Se hereby certify that a copy of the foregoing **Response to Order and Judgment-NOTICE OF JURISDICTION CONFLICT - NOTICE TO RECUSE** was furnished through (ECF) electronic service to the following on this the 29th day of May, 2012:

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Jeffrey T. Maehr (Digital)