UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TY CLEVENGER, Respondent Member of the Bar of the District Court for the District of Columbia	Attorney Grievance Docket No. 15-19

OBJECTION and MOTION TO TRANSFER

NOW COMES Ty Clevenger, the Respondent, and moves the Court to transfer this case or refer it to a panel of outside judges for the reasons set forth below:

Introduction

In his selective-prosecution defense, the Respondent is attacking the integrity and motives of an arm of this Court, *i.e.*, the Committee on Grievances. In his Motion to Dismiss, the Respondent already produced indisputable evidence that the Committee is seeking his disbarment even as it refuses to investigate the crimes of the attorneys that he reported. The Respondent further intends to collaterally attack the sanctions orders of two judges of this Court as well as the judge of the bankruptcy court. In so doing, the Respondent will be required to attack the credibility of the presiding judges' colleagues. The Respondent already has been outspoken about misconduct by Judge Ellen S. Huvelle, and he has argued publicly that some of her colleagues in the E. Barrett Prettyman Courthouse are trying to protect her by discrediting the Respondent via disbarment. Under the unusual circumstances of this case, no one in the Respondent's position could expect a fair hearing in the U.S. District Court for the District of Columbia.

Facts

The Respondent incorporates by reference his simultaneously-filed Motion to Permit Discovery, Motion to Dismiss, and their respective attachments and exhibits (all three motions use the same appendix). On January 26, 2015, the Respondent filed a judicial misconduct complaint against U.S. District Judge Ellen S. Huvelle, and that complaint outlined the fraud on the Court perpetrated by Complainant Patrick Kearney and his colleagues. Appx., Exh. 19. The Respondent simultaneously sent a copy of the complaint to Judge Huvelle, Judge Lamberth, Judge Teel, and the judges of the D.C. Circuit, among others. *See* Declaration of Ty Clevenger, Appx., Exh. 1. On June 19, 2015, the Respondent sent a letter to Chief Judge Richard W. Roberts concerning the inappropriate actions of his assistant, Shannon McClellan, who also served as the Committee's clerk. Appx., Exh. 20. That letter was copied to Judge Huvelle, Judge Lamberth, and Judge Teel, and it outlined their legal duty to investigate frauds on the court. *See* Declaration of Ty Clevenger, Appx., Exh. 1. In response, they did nothing. *Id.* On September 29, 2015, the Respondent sent a letter to Chief Judge Merrick Garland inquiring about his inaction on the judicial misconduct complaint against Judge Huvelle, and noting that his only duty was to decide whether to dismiss the complaint or appoint an investigative committee. Appx., Exh. 21. "[W]hile I understand that it might take eight months (or longer) to investigate Judge Huvelle," the Respondent wrote, "I do not understand why it should take eight months to decide *whether* to investigate Judge Huvelle." *Id.* The Respondent further observed that "it appears that both the district and circuit judges are 'circling the wagons' to protect Judge Huvelle from the consequences of her misconduct." *Id.* The letter was copied to all active circuit judges and some senior judges, *see* Declaration of Ty Clevenger, Appx., Exh. 1, and the Respondent posted a copy of it at LawFlog.com. Appx., Exh. 12. In response to the letter, the recipients did nothing. On

January 16, 2016, the Respondent sent another letter to the circuit judges emphasizing their legal duty to investigate the fraud on their court. Appx., Exh. 22. To date, they have not responded. *See* Declaration of Ty Clevenger, Appx., Exh. 1.

While trying to get the judiciary to remedy Judge Huvelle's misconduct, the Respondent also filed misconduct complaints against Mr. Kearney and his colleagues. The Respondent filed identical complaints against Mr. Kearney and his colleagues in the district court and the circuit court on January 24, 2015. *See* Declaration of Ty Clevenger, Appx., Exh. 1. The D.C. Circuit opened grievance cases on April 7, 2015, Appx., Exh. 23, but the district court did not respond. In a May 28, 2015 letter to Chief Judge Richard W. Roberts, the Respondent wrote that he could understand why it would take four months or longer to investigate a bar complaint, but not why it would take that long to decide *whether* to investigate. Appx., Exh. 24. Eight days later, the Committee ordered the Respondent to respond to Mr. Kearney's complaint. Appx., Exh. 14. At the same time, Ms. McClellan refused to say whether the Committee was investigating Mr. Kearney, et al. On June 19, 2015, the Respondent wrote to Chief Judge Roberts objecting to the double standard and asking about the status of his complaints against Mr. Kearney, et al. Appx., Exh. 20. On June 27, 2015, the Respondent directed that request to the Committee. Finally, in a June 29, 2015 email, Ms. McClellan declared that the Respondent's "vague and casual" letter of January 24, 2015 did not constitute a complaint of misconduct, Appx., Exh. 25, even though she had been addressing it as such for five months, and even though the D.C. Circuit had treated the identical letter as a complaint of misconduct. *See* Declaration of Ty Clevenger, Appx., Exh. 1.

On September 22, 2015, the Respondent updated his misconduct complaints against Mr. Kearney, et al. to comply with the local rules (whereas the Committee *asked* Mr. Kearney to update his complaint after the Respondent noted that it failed comply with the local rules, the

Committee never afforded the Respondent such an opportunity, so the Respondent did it on his own initiative). Appx., Exh. 26. The Committee never responded. *See* Declaration of Ty Clevenger, Appx., Exh. 1. On September 29, 2015, the Respondent wrote to the judges presiding over this proceeding and asked them to remedy the double standard being applied to the Respondent versus Mr. Kearney, et al. Appx., Exh. 27. The presiding judges never responded. *See* Declaration of Ty Clevenger, Appx., Exh. 1.

Argument

"Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C.A. § 455(a).

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' Tumey v. State of Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 444, 71 L.Ed. 749. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13.

In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L. Ed. 942 (1955). To any outside observer, it appears that the judges in the E. Barrett Prettyman U.S. Courthouse are trying to protect a colleague – *i.e.*, Judge Huvelle – by scapegoating the Respondent. Time and again, the Respondent has produced unequivocal evidence of gross misconduct (including *criminal* misconduct) and double standards. Time and again, the judges of the E. Barrett Prettyman U.S. Courthouse have turned a blind eye. Consider, for example, Judge Lamberth's 2014 anti-filing injunction. That order was issued after the launch of DirtyRottenJudges.com, and since then the

Respondent has twice informed Judge Lamberth in writing about the fraud infecting the proceedings. *See* Declaration of Ty Clevenger, Appx., Exh. 1; *see also* Appx., Exh. 19 and Exh. 20. Not only has Judge Lamberth failed to inquire into the fraud, as the law requires, he has maintained an injunction that prevents the victims from remedying the fraud, *e.g.*, by preventing them from filing a motion to vacate the judgment. Meanwhile, the Court's Committee is seeking to disbar the person who has been most outspoken about the fraud, *i.e.*, the Respondent. To an outside observer, that looks like a cover up. In such an atmosphere, the Respondent's case should not be tried in the D.C. District, or at least not by Judge Huvelle's colleagues.

As part of his collateral attack on the sanctions orders against him, the Respondent is seeking discovery from Judge Huvelle and possibly from Judge Lamberth and Judge Teel. The Respondent intends to prove that the sanctions orders of Judge Huvelle, Judge Lamberth, and Judge Teel were tainted by ex parte communications, extrinsic fraud, and other misconduct. The Respondent can already prove that Judge Huvelle, Judge Lamberth, and Judge Tell have ignored the fraud on their respective courts for more than a year, and even after the Respondent informed them of their legal duty to inquire into the fraud.

As Chief Justice John Roberts, Jr. observed, the atmosphere of the E. Barrett Prettyman U.S. Courthouse is unique:

> When I joined the D.C. Circuit three years ago, I began to appreciate that the court was different in significant respects from the other courts of appeals with which I was familiar around the country. Some of these differences are very obvious. For example, all the D.C. Circuit judges are in the same building, along with all the district court judges. This allows the circuit judges the unique opportunity of sitting down to lunch right next to a judge who, moments before, they had announced was guilty of abuse of discretion or clear error. It can make for a very short lunch.

Hon. John G. Roberts, Jr., *What makes the D.C. Circuit Different? A Historical View*, 92 VA. L. Rev. 375, 376 (May 2006). In this case, the presiding judges will not only be charged with

deciding whether the Respondent – an outsider – can propound discovery on colleagues that they see almost daily, they will also be charged with deciding whether their colleagues' orders should be denied preclusive effect on the grounds of misconduct. That's considerably more serious than deciding whether a colleague abused her or her discretion or committed clear error. Furthermore, the presiding judges have failed to act when presented with unequivocal evidence of the Committee's double standard, Appx., Exh. 27, thus the Respondent must wonder whether his disbarment has been foreordained. Even if the Respondent had violated the professional standards of the Court, that would not explain why the presiding judges would stand silently as the Committee covered up for attorneys who had committed crimes against the Court.

According to 28 U.S.C. §455, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.," *id.* § 455(a), and also shall disqualify himself "[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding," *id.* § 455(b)(1). "These sections establish a more stringent standard for disqualification than is required by the right to a fair trial guaranteed by the due process clause." *Southern Pacific Communications Co. v. American Telephone & Telegraph Co.*, 740 F.2d 980, 990 at n.9 (D.C.Cir.1984)(citations omitted). "The standard for disqualification under § 455(a) is an objective one. The question is whether a reasonable and informed observer would question the judge's impartiality." *United States v. Microsoft*, 253 F.3d 34, 114 (D.C. Cir. 2001). The Respondent has been an outspoken critic of judicial misconduct in the D.C. District and in the Committee, and he has already shown that he has been singled out for selective prosecution. At the same time, at least some of Judge Huvelle's colleagues appear to be covering up her misconduct. Under these circumstances, no one in the Respondent's position could expect

impartiality in the D.C. District. Accordingly, this case should be transferred outside the D.C. District or adjudicated by a panel of judges from outside the D.C. District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 5, 2016 a copy of the foregoing document was provided to the Committee on Grievances of the U.S. District Court for the District of Columbia via email attachment to the individual and address below:

Brigett N. Tenor, Clerk
Committee on Grievances
U.S. District Court for the District of Columbia
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Ty Clevenger