

ORIGINAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta**

AUG 13 2008

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

SCOTT HINTZ,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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No.1:08-CV-758-CC
(No.1:03-CR-131-CC)

Emergency Motion.
Immediate Reply Respectfully Requested.

**EMERGENCY MOTION
TO STAY ALL PROCEEDINGS PENDING FINAL RESOLUTION OF RECUSAL**

Petitioner, proceeding Pro Se, respectfully requests:

(A) The stay of all proceedings in the above-referenced cases pending the final resolution of the recusal requests brought under the authority of 28 U.S.C. §144 and 28 U.S.C. §455 and as more fully articulated in filings already before this Court (see, and herein incorporate, Doc.#258, Doc.#263 and Doc.#266),

(B) U.S. District Court Judge Clarence Cooper recuse himself from this case pursuant to the authority provided under 28 U.S.C. §144 and/or 28 U.S.C. §455. If this recusal is not decided based solely on the record already before the Court, Petitioner respectfully requests:

- a. Due to recently discovered evidence coupled with the statements of Mark Kadish, Paul Morochnik and U.S. Magistrate Judge Alan Baverman, Petitioner respectfully requests U.S. District Court Judge Clarence Cooper clarify items for concern by answering the following questions and present them into the record of this case, under oath (so as to be admissible as

evidence), in response to evidence already in the record of this case and for use in future proceedings:

1. At any time between February 1, 2001 and now, has Mark Kadish had any conversations with you not reflected in the record of this court?
2. At any time between February 1, 2001 and now, has Alan Baverman had any conversations with you not reflected in the record of this court?
3. At any time between February 1, 2001 and now, has Mark Kadish met you outside of the Richard B. Russell Federal Building?
4. At any time between February 1, 2001 and now, has Alan Baverman met you outside of the Richard B. Russell Federal Building?
5. At any time between February 1, 2001 and now, has Mark Kadish spoken to you about ANY item concerning this case other than what is reflected in the transcripts of this case including, but not limited to, the approximately \$1,000,000.00 worth of assets transferred from Petitioner to the Morochnik-Baverman family?
6. At any time between February 1, 2001 and now, has Alan Baverman spoken to you about ANY item concerning this case including, but not limited to, the approximately \$1,000,000.00 worth of assets transferred from this Petitioner to the Morochnik-Baverman family?
7. At any time between February 1, 2001 and now, have you received anything of value from Mark Kadish, Alan Baverman or anyone else informing you to be acting on behalf of any member of Mark Kadish's or Alan Baverman's family?

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8. Did you invite Mark Kadish to a personal, outside-of-court meeting on March 12, 2003 from inside your court, but before the record of the Plea Hearing of this case began?
9. Have you ever invited Mark Kadish to any personal, outside-of-court meeting in the presence of this Petitioner?
10. Did you meet Mark Kadish in a personal, outside-of-court meeting after the Plea Hearing of this case?

SUPPORT

11. Petitioner herein incorporates, as if set forth at length, the statements and evidence presented in the Doc.#258, Doc.#263 and Doc.#266 filings of this case.

"As we are required to do, we accept as true the allegations contained in the affidavits." In Re: Corrugated Container, 614 F.2d 958, 967 (former 5th Cir. 1980); see also **"Affidavit must be considered as true"** Christo v. Padgett, 223 F3d 1324, 1333 (11th Cir. 2000); see also Berger v. US, 41 S.Ct. 230, 234 (1921).

12. Petitioner prays Judge Cooper's actions were only personal mistakes easily corrected with: (1) Judge Cooper's recusal and reassignment of this case, and (2) Judge Cooper's immediate action to punish Mark Kadish and/or Magistrate Baverman for their proven perjuries before U.S. District Court Judge Clarence Cooper (see Doc.260) and/or their previous egregious behavior relating to Judge Cooper and this Petitioner.

"A judge is under an affirmative, self-enforcing obligation to recuse himself sua sponte whenever the proper grounds exist...The duty of recusal applies equally before, during and after a judicial proceeding." U.S. v. Kelly, 888 F2d@744 (11th Cir. 1989, emphasis added).

13. Although sworn statements, already in the record (see Doc.#266), provide support for recusal under the various other provisions of 28 U.S.C. §144 and 28 U.S.C. §455, it should be noted §455 (a) does not require the existence of actual bias or prejudice but rather requires recusal of a judge "in any proceeding in which his impartiality might reasonably be questioned." The Court must ask whether a reasonable person would entertain "doubt" about the Judge's impartiality, not whether the Judge would actually be biased, or whether such bias would change the outcome of the case. See U.S. v. Patti, 337 F.3d 1317, 1321 (11th Cir. 2003).
14. In examining the "doubt" of impartiality by this reasonable person, the Court must be
- "mindful that an observer of our judicial system is less likely to credit judge's impartiality than the judiciary." U.S. v. Jordan, 49 F.3d 152, 157 (5th Cir. 1995).
- The man-on-the-street "lay person" standard is important because
- "people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges." In re Kensington Int'l Ltd, F.3d 289, 302 (3rd Cir. 2004).
15. A recusal motion ruling should be made in the totality of all the circumstances involved. The Court need not decide whether any of the "facts alone would require[] disqualification," if the Court "believe[s] that together they create an appearance of partiality" In re School Asbestos Litigation, 977 f.2d 764, 782 (3rd Cir. 1992).
16. In the event of a close call, the judge must recuse. Kelly, 888 F.2d at 745, Patti, 337 F.3d at 1321. §455 indeed "liberalized greatly the scope of disqualification in

the federal courts," Murray v. Scott, 253 F.3d 1308, 1310 (11th Cir. 2001) and eliminated "the old 'duty to sit' doctrine," and replaced it with the requirement that "judges[] resolve any doubts they may have in favor of disqualification," Kelly, 888F.2d at 744.

17. The language of the new statute eliminated the 'duty to sit' with the use of "might reasonably be questioned" in §455(a) mandating that it would be preferable for a judge to err on the side of caution and disqualify himself in a questionable case. Potashnick v. Port City Const. Co., 609 F.2d 1101, 1112 (5th Cir. 1980).

18. What matters is not the reality of bias or prejudice, but its appearance.

"the protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system. U.S. v. Alabama, 828 F.2d 1532, 1540 (11th Cir. 1987).

Any question of a judge's impartiality threatens the purity of the judicial process and its institutions, Potashnick, 609 F.2d at 1111. Application of this

"stringent rule may sometimes bar trial by judges who have no actual bias and who would do their 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." In re Boston's Children First, 244 F.3d 164, 171 (1st Cir. 2001).

19. Again, Petitioner prays Judge Cooper will look at the totality of this case and examine the recusal requests not through his own eyes, but rather through the eyes of a lay person (see paragraph numbers 14 and 15, above) in determining his own recusal. Judge Cooper, himself, knows his own actions and if they were only personal, non-criminal, mistakes they can easily be corrected with: (1) Judge Cooper's recusal and reassignment of this case, and (2) Judge Cooper's immediate action to punish Mark Kadish and/or Magistrate Baverman for their

proven perjuries before U.S. District Court Judge Clarence Cooper (see Doc.260) and/or for their previous egregious behavior relating to Judge Cooper and this Petitioner.

20. The provisions and authorities under 28 U.S.C. §144 and 28 U.S.C. §455 require the recusal requests first be addressed before proceeding. Additionally, this filing very specifically requests the stay of proceedings pending final resolution to the recusal requests in the record of this case based on new evidence only recently made available.

CONCLUSION

For all of the above reasons and the reasons already before this Court (either individually or as a whole), this Court should ORDER (A) the stay of all proceedings pending the final resolution of the recusal requests already before this Court, (B) the recusal of U.S. District Court Clarence Cooper, and (C) the entry, into the record of this case, of U.S. District Court Clarence Cooper's sworn answers to the questions enumerated in paragraph numbers 1 through 10, above.

Respectfully submitted this 13th day of August 2008.



Scott Hintz,
Pro Se Petitioner

CERTIFICATE OF SERVICE

I, Scott Hintz, certify I have mailed a copy of the foregoing:

**EMERGENCY MOTION
TO STAY ALL PROCEEDINGS PENDING FINAL RESOLUTION OF RECUSAL**

via 1st class mail addressed to the following:

U.S. Attorney's Office
AUSA Charysse Alexander
75 Spring Street SW
Atlanta, GA 30303

This 13th day of August 2008.

Sincerely,

A handwritten signature in black ink, appearing to be 'SH' with a long horizontal flourish extending to the right.

Scott Hintz