

## NOTICE OF DECEPTIVE TRADE PRACTICES BRINGING "FRAUD ON THE COURT"

Affiant has no record or evidence that when a conviction is obtained any prosecutor or judge, by willfully and knowingly withholding information contained in government files, well established principles of law and judicial policy are not violated. See Code of Professional Responsibility Policy #DR7-102.A4 and US -v- Valentine 820 F2d., 565 [Second Circuit 1987] criminal law note #1171.1(i) stating: "Criminal conviction must be reversed for prosecutorial misconduct, where prosecutor's tactics have caused substantial prejudice to defendant and served to deprive him of a fair trial."

Affiant has no record or evidence Affiant is educated, knowledgeable, or crafty in the "crafts" of "Word-Smithing" or "Spin-Doctoring" utilized in improper procedures of Administrative or Judicial Remedies. GIDEON v. WAINRIGHT, 372 U.S. 335 , " A state cannot , by invoking the power to regulate the professional conduct of an attorney , infringe in any way on the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest, laymen cannot be expected to know how to protect their rights when dealing with practiced and careful adversaries."

Affiant has no record or evidence that any retaliation from a public official is not in violation of Section 1983. Duran v. City of Douglas, 904 F.2d 1372, 1378 (9th Cir. 1990) "the First Amendment right to criticize public officials is well-established and supported by ample case law. Furthermore, it is well-established that a public official's retaliation against an individual exercising his or her First Amendment rights is a violation of § 1983."

Affiant has no record or evidence that if Affiant fires any attorney it should ever be questioned, as per; Barr v Day, 124 Wn. 2d 318, at 328 (1994) "Attorney when fired, is fired without question."

Affiant has no record or evidence that Affiant should not bring charges against Libellee(s) in their living man/woman, Christian appellation. "When lawsuits are brought against federal officials, they must be brought against them in their "individual" capacity not their official capacity. When federal officials perpetrate constitutional torts, they do so ultra vires (beyond the powers) and lose the shield of immunity." Williamson v. U.S. Department of Agriculture, 815 F.2d. 369, ACLU Foundation v. Barr, 952 F.2d. 457, 293 U.S. App. DC 101, (CA DC 1991). [Now,

do you understand why I state that you should serve them by way of "conventional" service? Service by way of U.S. Postal Service only obtains jurisdiction over them in their "official" capacity.]

Affiant has no record or evidence that Affiant should not hold Libellee(s) personally liable for constitutional deprivation by direct deprivation and failure to remedy wrongs. "Federal employees may become personally liable for constitutional deprivation by direct participation, failure to remedy wrongs after learning about it, creation of a policy or custom under which unconstitutional practices occur or gross negligence in managing subordinates who cause violations." (Gallegos v. Haggerty, Northern District of New York, 689 F.Supp. 93).

Affiant has no record or evidence that governing principles of administrative law does not provide that courts are prohibited from substituting their evidence, testimony, record, arguments and rationale for that of the agency. "A judge ceases to sit as a judicial officer because the governing principle of administrative law provides that courts are prohibited from substituting their evidence, testimony, record, arguments, and rationale for that of the agency. Additionally, courts are prohibited from substituting their judgment for that of the agency. Courts in administrative issues are prohibited from even listening to or hearing arguments, presentation, or rationale." ASIS v. US, 568 F2d 284.

Affiant has no record or evidence that Libellee(s) and all others enjoined in the fraud, including all prosecutors, judges, clerks, sheriffs, and any others involved in such criminal activity, are not guilty of TITLE 18 § 1957. "Engaging in monetary transactions in property derived from specified unlawful activity." [SEE EXHIBIT on Unlawful Conversion]

Affiant has no record or evidence that all officers de facto are not just piss-ant actors. "Under a constitutional government such as ours, there can be no such thing as an OFFICE DE FACTO, as distinguished from an OFFICER DE FACTO. Hence, the general rule that the acts of an officer de facto are valid has no application where the office itself does not exist". BOYER v. FOWLER, 1 Wash. Terr. 101 (1860); 3 E. McQuillin, THE LAW OF MUNICIPAL CORPORATIONS 12.104 (3d ed. rev. 1973); DE JURE OFFICE AS CONDITION OF A DE FACTO OFFICER, Annot., 99 A.L.R. 294 (1935)." HIGGINS v. SALEWSKY, 17 Wn. App. 207, 210, 211, 212, 213, 562 P.2d 655 (March 28, 1977). [Remember, in 1860, the governments were, basically, de jure - Constitutional.]

Affiant has no record or evidence that Affiant has not given "Judicial Notice" to all parties involved, and especially, to the court (since this document is an act of court), concerning the issues of jurisdiction, due process, fraud, trespass and perjury. "Judicial notice is an adjudicative device that alleviates the parties' evidentiary duties at trial, serving as `a substitute for the conventional method of taking evidence to establish facts.'" York v. AT&T , 95 F.3d 948, 958 (10th Cir. 1996) (citing Grand Opera Co. v. Twentieth Century-Fox Film Corp. , 235 F.2d 303, 307 (7th Cir. 1956)).

Affiant has no record or evidence that Judicial Notice does not replace evidentiary procedure. "Because judicial notice replaces the evidentiary procedure that would otherwise be necessary to establish adjudicative facts, courts can take notice without formal proof only where the fact in question is "one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)." USA v COX No. 97-6254

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Misc. information concerning various points; It is the responsibility and duty of Prosecuting Attorney, IRS, and various "Handlers" and Administrators for the Corporate United States government who knew, or should have known, to make determinations concerning alleged activities, upon known facts of evidence, which may lead to proof, whether Affiant has defected against actual Law in this regard before initiating this action against Affiant. The purpose and intent of this Notice is to bring realistic value and measurement to the table of justice before this public forum, knowing that accusations, even when unreal and especially when unreal, will create extreme distress and embarrassment in the public forum, i.e., "It's good to know that John Jones, who lives in the southend trailer park, is no longer beating his wife and is no longer chasing wild women", when the fact is, he has never beaten his wife, nor chased wild women. The damage is irreparable and irreversible. The damage is the direct result of a voice (of authority - government) in the public defaming his character and destroying his right of Truth, who should have made realistic determinations (knew, or should have known) before displaying such damaging comments to the public at large.

When any public official mis-represents Truth by means other than by facts of evidence, which may lead to proof, to be determined in oral examination, written rebuttals, and declarations on the record, it is deemed the willful failure of that

public official (the Prosecuting Attorney, IRS, etc.,) to properly address the issues of conduct, contract, or of jurisdiction and/or standing, constituting a willful effort by that public official (Prosecuting Attorney, IRS, etc.,) and other Administrators to avoid, or hide, these facts and to deceive both the Court and this Affiant on issues legally material to this case rising to this level is "fraud on the Court", which vitiates the entire proceeding and makes void the orders and judgments of the court of no legal force or effect,

Therefore, this present claim against the Affiant brought by Prosecuting Attorney, IRS, etc., and all enjoined Administrators should be dismissed and/or expunged and absolved from the Case records with full Exoneration to Affiant, with restoration of Truth, Rights, and Compensation as a tort remedy.

And, Affiant hereby Notices the Court that it should be so Ordered.

Further, Under section California Business and Professions Code 6102, subdivision (c), (and, like statutes in most other states) an attorney must be summarily disbarred, regardless of mitigating circumstances, if (1) an element of his offense involves the intent to deceive or defraud (6102, sub. (c)(1)); (2) the attorney committed the offense while practicing law (6102, sub. (c)(2)).

And, Affiant further Notices the Court that Prosecuting Attorney be sanctioned by the Court and further barred from this case until such charges against him can be adjudicated in a court of law or before the state's proper disciplinary body or both.

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Clarity and Definition Displayed Below;

"Fraud On The Court By An Officer Of The Court"

And "Disqualification Of Judges, State and Federal"

[Illinois Law and most State's Law agrees with Federal Law]

1. Who is an "officer of the court"?

2. What is "fraud on the court"?

3. What effect does an act of "fraud upon the court" have upon the court proceeding?

4. What causes the "Disqualification of Judges?"

1. Who is an "officer of the court"?

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. State and federal attorneys fall into the same general category and must meet the same requirements. A judge is not the court. People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

## 2. What is "fraud on the court"?

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."

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23.

The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

## 3. What effect does an act of "fraud upon the court" have upon the court proceeding?

"Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); *In re Village of Willowbrook*, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); *Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); *Thomas Stasel v. The American Home Security Corporation*, 362 Ill. 350; 199 N.E. 798 (1935).

Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

## 4. What causes the "Disqualification of Judges?"

Federal law requires the automatic disqualification of a Federal judge under certain circumstances.

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. Balistreri*, 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."

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). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.

"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." *Balistreri*, 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, possibly, 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.

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

Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce". The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge). However some judges may not follow the law.

If you were a non-represented litigant, and should the court not follow the law as to non-represented litigants, then the judge has expressed an "appearance of partiality" and, under the law, it would seem that he/she has disqualified him/herself.

However, since not all judges keep up to date in the law, and since not all judges follow the law, it is possible that a judge may not know the ruling of the U.S. Supreme Court and the other courts on this subject. Notice that it states "disqualification is required" and that a judge "must be disqualified" under certain circumstances.

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts.

Fraud On The Court as determined by the 7th Circuit Court of Appeals;  
A judge is not the court. *People v. Zajic*, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980). A judge is a state judicial officer, paid by the State to act impartially and lawfully. A judge is also an officer of the court, as well as are all attorneys. [The judge also pays taxes.]

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."

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

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