Curtis Richmond

From: Curtis Richmond [info@atf2.com]
Sent: Saturday, November 15, 2008 8:03 PM
To: danc_collier@yahoo.com
Subject: FW: F18 USC 1918

Dan,

This is the second e-mail.

Curt

-----Original Message-----
From: ezrider4477 [mailto:ezrider4477@yahoo.com]
Sent: Friday, November 14, 2008 7:08 PM
To: Curtis_Ric
Subject: F18 USC 1918

Federal Criminal Penalty for Violation of Oath of Office

Federal criminal law is explicit and direct regarding a violation of oath of office by federal officials which includes all members of Congress. The law requires the removal of the office holder as well a prison term or fine for the offender.

18 U.S.C. 1918:
"Whoever violates the provisions of section 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he (1) advocates the overthrow of our constitutional form of government [and]shall be fined under this title or imprisoned not more than one year and a day or both."

ty court practice, transfer to another ge, 78-4-24.

Justices' courts, jurisdiction of successor justice, 78-5-20.

Proceedings completed.

Where original judge had entered his ruling in writing at conclusion of trial and had noted what his findings would be, the trial and conviction of defendant was complete even though the findings of fact and conclusions of law were entered by a successor judge. State v. Kelsey, 532 P. 2d 1001.

Validity of rulings.

Where timely motion to vacate ex parte order on grounds of lack of notice and excusable neglect was placed on the general law and motion calendar at direction of the judge who had issued the order, rulings of judge who assumed jurisdiction were valid and effective, and could not be overruled by another district judge. In re Estate of Mecham, 537 P. 2d 312.

Collateral References.

Judges⟹13-19, 21.

48 C.J.S. Judges §§ 8, 91, 98-108.

46 Am. Jur. 2d 266 et seq., Judges § 248 et seq.

Interlocutory ruling or order of one judge as binding on another in same case, 132 A. L. R. 14.

Power of successor judge taking office during termtime to vacate, etc., judgment entered by his predecessor, 11 A. L. R. 2d 1117.

Power of successor or substituted judge, in civil case, to render decision or enter judgment on testimony heard by predecessor, 22 A. L. R. 3d 922.

Receipt of verdict in civil case in absence of trial judge, 20 A. L. R. 2d 281.

Requiring successor judge to journalize finding or decision of predecessor, 4 A. L. R. 2d 584.

(b) **Disqualification**. Whenever a party to any action or proceeding, civil or criminal, or his attorney shall make and file an affidavit that the judge before whom such action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his attorney or in favor of any opposite party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter.

Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming him) of the same court or of a court of like jurisdiction, which judge shall then pass upon the legal sufficiency of the affidavit. If the judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No party shall be entitled in any case to file more than one affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

Compiler's Notes.

Rule 63(b) was amended by the Supreme Court, effective November 13, 1964. The amendment was made in the court's opinion in Pons v. Faux, 16 U. (2d) 93, 396 P. 2d 407. The amendment inserted the words "civil or criminal" after "proceeding" in the first paragraph.

The order of the court read: "It is hereby ordered that effective November 13, 1964, Rule 63(b), Utah Rules of Civil Procedure, is amended to supersede Sec. 77-25-6, Utah Code Annotated, to read as follows: * * *."

This Rule has no counterpart in the Fed. Rules, but is somewhat similar to the federal statute on disqualification of judges, 28 U.S.C. § 144 (1970).

Cross-References.

City court practice, transfer to another judge, 78-4-24.

FROM Motion To Set Aside Forfeiture

In Property Shall Not Be Forfeited Under Any Forfeiture Statute." ASD Members had a Valid Contract with ASD, but were totally unaware of the Day To Day Operation Of ASD. Without a "Preponderance of Evidence" of Knowledge and Participation by the ASD Members of any Illegal Acts which is not available, the ASD Members Are Innocent Owners with an Ownership Interest. As a result, the U.S. Government has No Legal Authority to Steal ASD Members' Ownership Interest as of Aug. 1, 2008 because they had an Innocent Ownership Interest that MUST Be Returned According to Federal Statute. By Definition, an "Ownership Interest" includes both the Principal Amount & Any Profit Accumulated as of Aug. 1, 2000. The U.S. Government has No Legal Claim To Any ASD Money Until After the ASD Member Claims Have Been Satisfied according to 18 U.S.C. Sec. 983.

U.S. ATTORNEYS VIOLATED 18 U.S.C. 983
General Rules For Civil Forfeiture Proceedings

Under (A) (i) "Government is required to send Written Notice to Interested Parties, such Notice shall be sent in a manner to achieve Proper Notice as soon as practicable, and in No Case More Than 60 days after the Date of the Seizure." **It has now been over 6 months since the Seizure of ASD Assets and the U.S. Government Has Not Notified the required "Interested Parties" that are the Innocent ASD Membership Owners who had an Innocent Ownership Interest as of Aug. 1, 2008.**

Under (A) (F) "If the Government does not send Notice of a Seizure of Property in accordance with subparagraph (A) to the person from whom the Property Was Seized, and no extension of time is granted, the Government shall return the property to that Person ..." The ASD Members who had an Ownership Interest have not been Notified. It is time for the U.S. Government to Return the ASD Ownership Interest as of Aug. 1, 2008 as soon as possible. For P.M.G. Int. who Curtis Richmond is Chairman that amount was around $41,000 as of Aug. 1, 2008 counting the Upgrade Bonuses promised between July 14th and Aug. 1, 2008.

Under (2) (A) "Any person claiming Property Seized in a non judicial Civil Forfeiture proceeding under a Civil Forfeiture Statute may File a Claim with the appropriate Official After the Seizure." This proves ASD Members have a Lawful Right to Make & File a Claim as well as to Receive Their Ownership Interest.

On Page 4 of 18 U.S.C. Sec. 983 (c) "Burden of Proof (1) The Burden of Proof is on the Government to establish, by a Preponderance of the Evidence that the Property is subject to Forfeiture."

On Page 4 (d) Innocent Owner Defense. (1) "An innocent Owner's Interest in Property SHALL NOT Be Forfeited under Any Civil Forfeiture Statute. The Claimant shall have the Burden of proving that the Claimant is an Innocent Owner by a Preponderance of the Evidence." The 20 plus Non Rebutted & Notarized Demand For Legal Evidence Affidavits are Prima Facie Evidence that the U.S. Atty. has No Legal Evidence against the ASD Members who had a Valid Contract and Ownership Interest in ASD. The Amount of Ownership Interest is in the Seized Computers as of Aug. 1, 2008.

On Page 6 (e) Motion To Set Aside Forfeiture. (1) "Any person entitled to Written Notice in any non judicial civil forfeiture proceeding under a Civil Procedure Statute who does not receive such notice may file a Motion To Set Aside a Declaration of Forfeiture with respect to that person's interest in the property, which motion shall be granted if-" (A) "The Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with Notice;" (2) (A) "Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the Interest of the Moving Party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party." Curtis Richmond filed a Motion To Dismiss, similar to a Motion To Set Aside Forfeiture, but Judge Collyer Denied the Right To File. She also Denied a Petition To Vacate a Void Judgment Under Rule 60(b). By not allowing these two pleadings to be Filed and heard was clear Evidence of Extreme Bias & Abuse of Discretion as the Facts Relate To & Violate 18 U.S.C. Sec. 983 and a clear Violation of 18 U.S.C. Sec. 1951 Interference With Commerce, a Felony.

(f) Release Of Seized Property- (1) "A claimant under subsection (a) is entitled to Immediate Release of Seized Property if-" (A) "The claimant has a possessory interest in the property;" (C) "The continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the Claimant," (D) "The Claimant's likely hardship from the continued possession by the Government outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred it if is returned to the Claimant during the pendency of the proceeding;"

(5) "The court shall render a decision on a Petition filed under paragraph (3) not later than 30 days after the date of the filing." Curtis Richmond filed both a Motion To Dismiss relating to ASD Members and a Petition To Vacate a Void Judgment, but Judges Collyer & Lambert would not allow either Pleading to be Filed, thus Violating the ASD Members Constitutional Right of Due Process plus Violating 18 U.S.C. Sec. 1951 Interference With Commerce. Neither Judge

ANY COURT MUST PROCEED ACCORDING TO LAW OR STATUTE

In a court of Limited Jurisdiction, the Court MUST Proceed exactly according to the Law or Statute Under Which It Operates. Flake v. Pretzel, 381 Ill. 498, 46 N.E.2d 375 (1943) ("the actions, being Statutory Proceedings,... were void for want of power to make them.") ("The Judgments were based on orders which were void because the Court Exceeded Its Jurisdiction in entering them.")

Whenever a Judge does not exactly comply with the Statute, he/she has lost Subject Matter Jurisdiction and All Orders or Judgments issued Without Subject Matter Jurisdiction Are Void, of no legal force or effect. (See Exhibit 6 Pages Re "Subject Matter Jurisdiction)

The Supreme Court has said: "The state citizen [Private Citizen] is immune from any and all government attacks and procedures, Absent Contract. Dred Scott vs. Sandford, 60 U.S. (19 How.) 393.

Judgment was an Exhibit titled "No Judge can use discretion outside the Law." Both Judges Collyer & Lamberth ignored these statutes showing Extreme Bias. They also fulfilled Black's Law Dictionary Definition of a Kangaroo Court. The Petition To Vacate a Void Judgment contained Irrefutable Legal Evidence of Judge Collyer's Denial of Curtis Richmond's Motion To Dismiss Being a Void Judgment.

Under Fed. Rule 4, the Return Receipt can be Evidence of a Default Contract. The following are legal citations proving that Non Rebutted Affidavits Are Affidavits of Truth. The U.S. Supreme Court Ruled a Non Rebutted Affidavit Is "Prima Facie Evidence in the Case."

United States v. Kis, 658 F.2d, 526, 536-537 (7th Cir. 1981); Cert. Denied, 50 U.S.L.W. 2169; S.Ct. March 22, 1982. "Indeed, no more than (Affidavits is necessary to make a Prima Facie Case."

Seitzer v. Seitzer, 80 Cal. Rptr. 688 "Uncontested Affidavit taken as true in Support of Summary Judgment."

Melorich Builders v. The SUPERIOR COURT of San Bernardino County (Serbia) 207 Cal. Rptr. 47 (Cal.App.4 Dist. 1984. "Uncontested Affidavit taken as true in Opposition of Summary Judgment."

Law Notes: 1. Silence constitutes acquiescence and it can equate to fraud for one who has the duty to respond.

2. Silence constitutes an implied representation of the existence of the state of facts in question and will operate as an estoppel.

3. "Silence can only be equated with fraud when there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading." U.S.v. Tweel, 550 F.2d. 297, 299 (5th Cir. 1977), quoting U.S. v. Prudden, 424 F.2d 1021, 1032 and Carmine v. Bowen, 64 A. 932 (1906)

4. "He who is silent when conscience requires him to speak shall be debarred from speaking when conscience requires him to be silent." Seaboard Air Line Railway Co. v. D.A. Dorsey, 1932.Fl.40867, 149 So. 759 (1932)

5. Federal Rules of Evidence Rule 301 provides for "Admission by silence."

The Previous Legal Citations provide Irrefutable Evidence that the U.S. Attorney & Judge Collyer Knowingly, Willingly Defaulted and the Demand For Legal Evidence Proved the ASD Members had a Constitutional Right To Make a

Federal Rules of Evidence/Presumptions in Civil Actions

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Article III of the Federal Rules of Evidence deals with **presumptions** and **burdens of proof**. It applies to civil actions—cases arising under non-criminal laws, such as contract, property and tort.

Rule 301. Presumptions in General Civil Actions and Proceedings

> *In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.*

The term "burden of proof" is often used in legal discourse, but for a technical analysis of the law, it is too vague. There are actually two forms of the burden of proof, commonly referred to as the **burden of going forward** and the **burden of persuasion**. Both of these burdens are addressed by Rule 301.

Burden of going forward

At any given time, one party is obligated to produce evidence regarding a claim or defense. This is the burden of going forward. Rule 301 adopts a **bursting bubble approach** to the burden. When evidence is introduced that leads to a presumption of fact, the other side has the burden of going forward to rebut that presumption. If the presumption is adequately rebutted, it "bursts." Otherwise, the presumption is left intact.

For example, take a hypothetical civil case where one element of the claim is that it was raining on a given night. The plaintiff introduces evidence that the ground was wet the next morning. This creates a presumption that it rained the night before. The defendant must then rebut this presumption with other evidence: maybe eyewitnesses who say it wasn't raining, maybe evidence that a truck dumped water on the ground overnight. If a preponderance of the evidence disproves the presumption, the bubble bursts, the presumption is lifted, and the factfinder cannot presume that it was raining that night. If the evidence is insufficient, the factfinder can make the presumption.

This approach is unique to civil cases. Presumptions are not found in criminal cases because of the due process guarantees of the Constitution. The prosecution must always prove each element of the crime beyond a reasonable doubt.

Burden of persuasion

Beyond a reasonable doubt is one example of a burden of persuasion. That particular burden is the burden that applies when proving a criminal charge. In civil cases, the usual burden of persuasion is either **preponderance of the evidence** ("more likely than not") or **clear and convincing evidence**.

Unlike the burden of going forward, the burden of persuasion never shifts. Allowing it to shift would make no sense, because it only applies in the context of the factfinder's final decision—to the reasoning of the judge or jury in reaching their verdict. The plaintiff always has the burden to persuade the factfinder that their claim is valid; the civil defendant always has the burden to persuade the factfinder that their defense is valid.

Note that in criminal cases, the burden of persuasion rests with the prosecution at all times, even when the burden of going forward shifts to the defendant. For example, if the defendant raises an affirmative defense, the prosecution must persuade the jury beyond a reasonable doubt that the defense is invalid.

Rule 302. Applicability of State Law in Civil Actions and Proceedings

> *In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.*

Rule 302 applies to civil cases brought to federal court under diversity jurisdiction. Diversity jurisdiction is a complex issue of civil procedure that merits little discussion here, except to say that it involves federal courts interpreting the law of states. Whenever a federal court is considering an issue of state law, Rule 302 requires the court to apply that state's law on presumptions to the proceeding. This means that the burden of going forward in such cases may not necessarily follow Rule 301.

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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. 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."

Our 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.

One of our members not only did not receive justice from a prejudiced judge, but he does not believe that he received justice from the judge, as required by law.

"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. Does your judge 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 disqualified himself/herself. None of the orders issued any judge who has been disqualified by law are valid, they are **void** as a matter of law, and are of no legal force or effect.

However, as we know, many judges ignore the law, but by doing so, they not only attempt to harm you, the public, but they have made a mockery of the law, and have evidenced a disdain for Justices of higher courts, such as the Supreme Court and the Courts of Appeal. If judges do not have respect for other judges, why should judges expect the respect of the public?

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. The judge has no more lawful authority than your next-door neighbor (provided that he is not a judge). However since some judges believe that they are the Lord, they may not follow the law. (Judge Rosen entered his courtroom each day, stood before the court audience, raised his hand, and stated that he was the Lord. The night before he was to be indicted, he took a gun and blew his brains out. So much for a judge being the Lord.)

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, 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 your 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.

One of our members has filed several motions for disqualification, only to have the judge ignore the motions. The member will post on this web-site several of the motions filed, to give the public a taste of the law and how judges ignore the Supreme Law of the Land. 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 we 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.

This member will post some of his motions here for educational purposes, and links to these motions will be found on this page.

We will also inform you on what you can do to assist others in disqualifying

Crimes against the U.S. Government

What is the difference between a judge who acts without jurisdiction, and therefore, according to the U.S. Supreme Court, is engaged in an act of treason to the U.S. Constitution, and Usama bin Ladin?

Both are enemies of the United States. The latter is a foreign enemy of the United States, the former is a domestic enemy of the United States.

Both have declared war against the United States. Both have engaged in a crime against the U.S. Government.

The United States Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. **U.S. v. Will**, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); **Cohens v. Virginia**, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

Engaging in an act of treason against the United States Constitution by any citizen of the United States is an act of war against the United States. **Cooper v. Aaron**, 358 U.S. 1, 78 S.Ct. 1401 (1958).

The United States Supreme Court, in **Twining v. New Jersey**, 211 U.S. 78, 29 S.Ct. 14, 24 (1908), stated that "Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction."; citing **Old Wayne Mut. Life Assoc. v. McDonough**, 204 U.S. 8, 27 S.Ct. 236 (1907); **Scott v. McNeal**, 154 U.S. 34, 14 S.Ct. 1108 (1894); **Pennoyer v. Neff**, 95 U.S. 714, 733 (1877).

Due Process is a requirement of the U.S. Constitution. Violation of the United States Constitution by a judge deprives that person from acting as a judge under the law. He/she is acting as a private person, and not in the capacity of being a judge.

All enlisted personnel of the U.S. Military, the National Guard, all U.S. attorneys, all members of the U.S. Senate and U.S. House of Representatives, all Cabinet secretaries, have taken the following oath of office: "I, __________, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; ...".

The Illinois Supreme Court has held that those who aid, abet, advise, act or execute the order of a judge who acts without jurisdiction are equally guilty. They are equally guilty of a crime against the government.

U.S. Department of Justice

Criminal Division

Washington, DC 20530-0001

April 30, 2009

Curtis Richmond
P.O. Box 742
Solana Beach, CA 92075

Dear Mr. Richmond:

Thank you for your letter to the Attorney General. I have been asked to respond to you on his behalf.

Pursuant to Title 28, United States Code, Section 351, if you believe that a federal judge has engaged in conduct that is "prejudicial to the effective and expeditious administration of the business of the courts," you may file a written complaint with the clerk of the court of appeals for the appropriate federal circuit. The complaint will be reviewed by the Chief Judge for the circuit.

In addition, you may wish to provide this information to the disciplinary committee of the state bar association, which has the authority to review allegations of professional misconduct by attorneys.

We rely on investigative agencies to gather the relevant facts. If you believe this matter may constitute criminal activity, please contact the Federal Bureau of Investigation (FBI), the investigative arm of the Department of Justice. The FBI will determine whether a federal investigation may be warranted. If appropriate, the FBI will refer the matter to a United States Attorney for a final determination regarding legal action.

Thank you for writing to the Attorney General.

Sincerely,

Correspondence Management Staff
Office of Administration