United States Court of Appeals
for the Fifth Circuit

No. 22-30614

Ashton R. O'Dwyer, Jr.,

Plaintiff—

Appellant,

versus

Ron Carter; Jennifer Fagan; Advanced Property Restoration Services, L.L.C.; Jason Houp; Strategic Claim Consultants, L.L.C.; Brandon Lewis; GNO Property Management, L.L.C.; Robert Kirk Phillips; Cynthia Bologna; Loeb Law Firm, L.L.C.; Jack K. Whitehead, Jr.,

Defendants—

Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-2813

Before Higginbotham, Southwick, and Willett, *Circuit Judges.* Per Curiam:*

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* This opinion is not designated for publication. *See* 5TH CIR, R. 47.5.

Former attorney Ashton O'Dwyer, proceeding pro se, appeals from the dismissal of a suit that he filed in the United States District Court for the Eastern District of Louisiana. He has been disbarred from practicing in that court since 2009, and he was "removed from the roll of attorneys admitted to practice as a member of the bar of this court" in 2019. *In re O'Dwyer*, 771 F. App'x 556, 557 (5th Cir. 2019) (per curiam). He is also disbarred and "permanently prohibited from being readmitted to the practice of law" in the state of Louisiana. *In re O'Dwyer*, 221 So. 3d 1, 20 (La. 2017) (per curiam). Although the Eastern District of Louisiana's disbarment order allows him to petition for reinstatement, he has not done so. Because the disbarment order is still in effect, he cannot "file pleadings or documents" in the Eastern District of Louisiana—even as a pro se litigant—"without *first*" taking two steps: (1) "obtaining an Order from a member of th[e] Court" that authorizes his filing, and (2) "paying all outstanding monetary sanctions issued against him."

He did not take either step before filing the complaint in this case.

First, as the district court noted, O'Dwyer neither "s[ought]" nor "receive[d] authorization to file" this suit. And on appeal, O'Dwyer has forfeited any contrary arguments by failing to present them. *See Procter & Gamble Co. v. Amway Corp.*, 376 F.3d 496, 499 n.1 (5th Cir. 2004). Nor do we discern even the possibility of such an argument. While O'Dwyer did eventually ask for "Leave of Court" to file, that request appeared for the first time in a motion to reopen the dismissed case. By contrast, the disbarment order requires O'Dwyer to obtain the court's permission *before* ever filing suit. He did not do that, so dismissal

was proper.

Second, and independently, O'Dwyer has "failed to pay... the outstanding monetary sanctions issued against him." He argues that the various sanctions he faces are each around 15 years old, and thus that they are not collectable under "the Louisiana Civil Code." We disagree. A federal court's inherent power to "vindicate[e] judicial authority" cannot "be made subservient to" state statutes of limitations. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991) (quoting *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 705 (5th Cir. 1990)).

O'Dwyer also argues that the sanctions he faces were discharged in a bankruptcy proceeding that ended in 2015. Taking judicial notice of the record in that proceeding, we agree with the district court that the sanctions "were [not] listed or scheduled for discharge" in O'Dwyer's bankruptcy. Even if they had been listed, bankruptcy cannot discharge "a fine, penalty, or forfeiture" that is "payable to and for the benefit of a governmental unit" and that "is not compensation for actual pecuniary loss." 11 U.S.C. § 523(a)(7); *see In re Schaffer*, 515 F.3d 424, 428 (5th Cir. 2008). O'Dwyer concedes that at least one of the unpaid sanctions was imposed as a "penalty." That sanction is payable to the Eastern District of Louisiana's Attorney Disciplinary Fund. O'Dwyer argues that this sanction is dischargeable because the disciplinary fund does not "actually exist[]" as a "government unit." Yet the Eastern District's rules show otherwise. The fund exists, and its monies are devoted to, among other things, "reimbursement of reasonable out-of-pocket expenses" for attorneys who serve to prosecute

disciplinary actions.[1]

We find O'Dwyer's remaining arguments unavailing, and we therefore AFFIRM.

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[1] E.D. La., *Rules for Lawyer Disciplinary Enforcement*, R. 9.1.1 (Mar. 1, 2022), https://www.laed.uscourts.gov/sites/default/files/pdfs/LAWYER%20DISC%20RULES%20Amendments%203.1.22.pdf.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ASHTON R. O'DWYER, JR.	CIVIL ACTION
VERSUS	NO. 22-2813
RON CARTER, ET AL.	SECTION "J"(4)

ORDER

Before the Court is a *Complaint for Compensatory and Exemplary Damages* **(Rec Doc. 1).** The Complaint was filed *pro-se* by Ashton R. O'Dwyer, Jr. Mr. O'Dwyer is a Louisiana attorney disbarred from the practice of law before this court. See *In the Matter of Ashton E. O'Dwyer, Jr.*, No 08-mc-5170, Rec. Doc. 5 (E.D. La. Mar. 4, 2009). The *en banc* Order of Disbarment provided:

> During the disbarment period ... Respondent shall not file pleadings or documents in any proceeding before this Court, whether existing or sought to be initiated, including as a *pro se* litigant, without first paying all outstanding monetary sanctions issued against him and without first obtaining an Order from a member of this court.

Id. at 11. The disbarment order became final when Mr. O'Dwyer's appeal was dismissed by the Fifth Circuit. Therefore, the *en banc* Order remains valid and enforceable.

According to the Clerk's Office, Mr. O'Dwyer has failed to pay any of the outstanding monetary sanctions

issued against him.[1] Additionally, Mr. O'Dwyer has not filed a motion seeking authorization to file the instant pleading.

Accordingly,

IT IS HEREBY ORDERED that this case is **DISMISSED** without prejudice, subject to Mr. O'Dwyer's payment of all outstanding monetary sanctions imposed by this Court within 21 days of this Order.

New Orleans, Louisiana, this 1st day of September, 2022.

CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

[1] The following sanctions awards remain outstanding: Civil Action 06-7280, Order of Judge Chasez to pay $500.00 in sanctions to defendant, Louisiana Supreme Court; Civil Action 06-7280, Order of Judge Berrigan to pay $10,000.00 to the Attorney Disciplinary Fund; and Civil Action 05-4182, Order of Judge Duval to pay $7,058.50 to the State of Louisiana.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ASHTON R. O'DWYER, JR.	CIVIL ACTION
VERSUS	NO. 22-2813
RON CARTER, ET AL.	SECTION "J"(4)

MOTION TO REOPEN CASE AND TO SET ASIDE SUMMARILY-ISSUED SUA SPONTE ORDER (WITHOUT NOTICE, MUCH LESS A HEARING OF ANY TYPE), TOGETHER WITH INCORPORATED MEMORANDUM IN SUPPORT

COMES NOW, Ashton R. O'Dwyer, Jr. (AROD), Plaintiff, appearing in propria persona, with a full reservation of his procedural and substantive rights, including his objections to the inadequacy of Notice and Service of Process, and the lack of a hearing of any type prior to the summary dismissal of AROD's civil action, and files this "Motion to Reopen Case and to Set Aside Summarily-Issued Sua Sponte Order, together with Incorporated Memorandum in Support," and moves This Honorable Court as follows:

(1) For an IMMEDIATE STAY of the provisions of Judge Barbier's Order of September 1, 2022, a copy of which is appended hereto and marked for identification as "AROD Exhibit No. 1," until such time as AROD's legal rights can be fully adjudicated by an unbiased and unprejudiced Judge.

(2) For Leave of Court to re-open the above-

styled and numbered cause for the limited purpose of (a) permitting the filing of and (b) granting oral argument on this Motion, because Judge Barbier's improvident sua sponte Order of September 1, 2022, which summarily dismissed the entire case, placed AROD in "a Catch-22 position," since dismissing the case and imposing conditions that preclude any judicial review by an unbiased and unprejudiced Jurist, constituted a clear denial of constitutional rights guaranteed by the U. S. Constitution, to which even AROD is clearly entitled. See infra.

(3) For the disqualification and recusal of Judge Barbier from presiding over this action on grounds of actual bias and prejudice.

(4) For the appointment of an unbiased and unprejudiced Judge to preside over this case, one who is not associated in any way with the legal, judicial and political systems of the State of Louisiana, and with the Louisiana Plaintiffs' Bar, who were AROD's political enemies in the "Victims of KATRINA" litigation, and who remain so to this day, and who are closely aligned with Judge Barbier, who is a past-President of the Louisiana Trial Lawyers' Association (now the Louisiana Association for Justice). AROD avers that it is no coincidence that the State of Louisiana is currently the subject of "a pattern or practice" investigation by the United States Department of Justice, the

first such statewide investigation in over 20 years.

(5) To set aside Judge Barbier's Order of September 1, 2022, which "...ORDERED that this case is DISMISSED without prejudice, subject to Mr. O'Dwyer's payment of all outstanding sanctions imposed by this Court within 21 days of this Order."

(6) For Leave of Court (in the person of an unbiased and unprejudiced Judge) to file Civil Action No. 22-2813 nunc pro tunc.

(7) For the scheduling of a hearing and oral argument on the relief sought herein, which AROD requests that he be permitted to participate in via ZOOM, since (1) he now is a citizen of and resides in the State of Texas, (2) subsists on a meager monthly Social Security check, and (3) traveling to New Orleans would work a financial and logistical hardship on him.

And although AROD does by these presents CONTEST the legal efficacy and enforceability of the alleged "all outstanding sanctions" referenced by Judge Barbier in his Order (See infra), AROD does hereby TENDER TO THE REGISTRY OF THE COURT whatever sums of money may be necessary to satisfy the "outstanding monetary sanctions" that may remain imposed against him following the exhaustion of all legal remedies, including all appeal rights and the right to apply for writs, and the entry of a Final, Non-Appealable Judgment against AROD for "monetary sanctions," if any. In addition, AROD herewith

DELIVERS a United States Postal Service Postal Money Order in the amount of $500.00 payable to: "Clerk, Eastern District of Louisiana" in full payment of the $500.00 monetary sanction levied against him by Magistrate Chasez, which AROD avers is the ONLY monetary sanction mentioned by Judge Barbier in his Order that remains arguably legally "collectable." And if "the bought and paid for" Louisiana Supreme Court wants its $500.00 then MOLON LABE (with apologies to King Leonidas I of Sparta to the Persian horde in the Mountain Pass at Thermopylae).

PREAMBLE

The Honorable Carl J. Barbier has been a Federal Judge for almost 25 years, all of which (to AROD's knowledge) being characterized as "during good Behavior" (to coin a phrase from Article III of the U. S. Constitution). Nothing contained herein is intended in any way to besmirch Judge Barbier's reputation as a hard-working and extremely able jurist. Witness Judge Barbier's presiding over the Oil Rig DEEPWATER HORIZON case a/k/a "the BP case," which most accounts suggest was expertly handled.

But it was Judge Barbier who has voluntarily chosen to clothe himself in the mantle of "bill collector" for "outstanding monetary sanctions" levied against AROD 10 to 15 years ago in some very contentious civil litigation that AROD avers involved CRIMINAL BEHAVIOR by SCOUNDRELS who still wear black robes and hold licenses to practice law. Since the role of "bill collector" appears to be a new one for Judge Barbier, AROD wonders: Is Society really served by a seasoned Federal Judge self-proclaiming himself "the Protector of the Public from Ashton O'Dwyer" and to

shift from other important duties to collect 10 to 15 year old sanctions levied against AROD by his "Brother and Sister Eastern District Judges" whose motives were "suspicious," at best, so much so that AROD has proudly worn the sanctions as "a badge of courage?"

And whose interests are served by the summary dismissal on a sua sponte basis of civil litigation containing allegations made in good faith, a dismissal which occurred without Notice, much less a hearing of any type? Without a hearing, how was Judge Barbier to know anything about AROD's financial situation and his ability to pay any "outstanding monetary sanctions," when AROD presents to the Eastern District Bench as a man stripped of his professional livelihood and bankrupt? Such a "due process-101" inquiry has become "the law of the land" even for criminal defendants facing incarceration in cases where criminal fines issue under threat of deprivation of freedom and liberty. American Bar Association Committee on Ethics and Professional Responsibility, Formal Opinion No. 490, March 24, 2020.

In 1789, Benjamin Franklin is reported to have said: "...but in this world nothing can be said to be certain, except death and taxes." AROD would add to that famous quote from a famous man: "Nothing can be said to be certain, except death and taxes, and 10 to 15 year old outstanding monetary sanctions against AROD."

THE GROUNDS FOR THE GRANTING OF THIS MOTION

(A) Before issuing his summarily-issued Order of September 1, 2022 on a sua sponte basis, without Notice to AROD, much less a hearing of any type, Judge Barbier should have disqualified himself

and self-recused from this case. More particularly, AROD avers that Judge Barbier cannot render fair and impartial adjudication of this case because Judge Barbier actually voted first to SUSPEND AROD from the practice of law in the Eastern District (again on a summary basis, without a hearing) and later voted to DISBAR AROD from the Eastern District (again summarily, with no hearing). AROD further avers, upon information and belief, that Judge Barbier, did not even read AROD's written submissions in his Eastern District disciplinary cases, because had he done so, then Judge Barbier, who has presided over some very complex litigation, involving thorny issues of fact and law, would never have voted to suspend or to disbar AROD. No oral argument was ever granted before Judge Barbier or any other Eastern District Judge, save for Ivan L. R. Lemelle, who did most of the talking.

AROD respectfully submits that it is "Hornbook Law" that "...a judge should be disqualified in a case involving an attorney if he previously attempted to have the attorney disbarred, since the judge's protracted prosecutorial pursuit of the attorney may so entangle him in matters involving the attorney as to indicate that he may be biased." Federal Procedure, Lawyers Edition (1982), Section 20:98 and authorities cited therein. Here, there wasn't merely an "attempt" at suspension and disbarment; Judge Barbier actually actively participated in and voted in favor of AROD's suspension from the practice of law in Federal Court and his later disbarment, all done summarily.

AROD will not deign to lecture Judge Barbier about the interpretation and application of the Federal Disqualification Statute, 28 United States Code, Section 455, or about the contents of the Code of

Conduct for United States Judges, particularly Canons 2 and 3 and the "Commentary" thereafter. Suffice it to say that AROD believes that Judge Barbier should be disqualified and recused in this case, not only because this case is one in which Judge Barbier's impartiality might reasonably be questioned, but because Judge Barbier harbors actual bias and prejudice against AROD and in favor of AROD's political enemies, particularly the Louisiana Plaintiffs' Bar, of which Judge Barbier was once a prominent member. See AROD Exhibit No. 5, pages 2-8, 25-26 and 28-35, as well as relevant portions of the Appendix to the Petition, all made part hereof by reference thereto.

(B) Judge Barbier actually did recuse himself in the case involving the spurious Federal criminal charges which were brought against AROD in January 2010, charges which AROD "beat" after successfully persuading a District Court Judge from the Western District of Louisiana, who was brought in to preside after all of the Eastern District Judges, including Judge Barbier, recused themselves from the case. [There was one exception: a man named "Brown"]. See Chief Judge Sarah Vance's Recusal Order of February 12, 2010 (Record Document No. 16) in Criminal Case No. 10-34 on the Eastern District docket. However, beating the spurious Federal criminal charges, which never should have been brought against AROD in the first place, cost AROD 34 days in solitary confinement at "the Windsor Court St Bernard," and two full years of litigating in the Eastern District and in the Fifth Circuit against the USDOJ and the Eastern District U. S. Attorney's Office. AROD avers that the very same reasons for Judge Barbier recusing himself in Criminal Case No. 10-34 exist in this case. AROD further avers that Judge Barbier's recusal in Criminal Case No. 10-34

constituted a judicial admission by him (indeed, by the entire Eastern District Bench, as it existed at that time) of his inability to be fair and impartial in any matter involving AROD.

More particularly, AROD avers that Judge Barbier's bias and prejudice against AROD in Criminal Case No. 10-034, which stemmed, at least in part from his bias and prejudice in favor of the Louisiana Plaintiffs' Bar, was so strong and pronounced that Judge Barbier recused himself without performing any investigation whatsoever into AROD's guilt or innocence to the criminal charges.

(C) See also the additional clear and unequivocal indicia of Judge Barbier's actual bias and prejudice against AROD in AROD Exhibit No. 4, and more particularly in "Watershed Moments Nos. 3, 4 and 5," which include, inter alia

(1) The fact that the disciplinary proceedings that were filed against AROD were filed in RETALIATION and RETRIBUTION for AROD having pointed the accusatory finger of CORRUPTION at a Brother Judge, Stanwood Duval, who was biased and prejudiced in favor of his "close personal friend of long-standing, Calvin Fayard, who led the Louisiana Plaintiffs' Bar cabal to whom Duval had handed "control and management" of the "Victims of KATRINA" litigation, and therefore was biased and prejudiced against AROD. And the bias and prejudice in favor of a Brother Judge infected the entire Eastern District Bench, including Judge Barbier.

(2) In addition to accusing Duval of PUBLIC

CORRUPTION, which resulted in bias and prejudice against AROD from all of the Eastern District Judges, including Judge Barbier, AROD also accused certain members of the Louisiana Plaintiffs' Bar of CORRUPTION, which also resulted in bias and prejudice against AROD from Judge Barbier, since he has very strong historic and judicial and nonjudicial ties with many of these very same plaintiff's lawyers, ties that have nothing to do with this case, except for AROD's involvement. See AROD's allegations in Civil Action No. 08-4728 on the Eastern District docket and AROD Exhibit No. 4, "Watershed Moment No. 7." AROD has categorized Civil Action No. 08-4728 as "the largest legal malpractice Class Action lawsuit in the annals of American jurisprudence."

(3) The entire Eastern District Bench, sitting *En Banc*, including Judge Barbier, summarily suspended and later disbarred AROD, without any hearing, while permitting their names to be used in written Orders which falsely reflected: "Indeed, O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him," which was a LIE. In other words, Judge Barbier did not even bother to READ AROD's written submissions or the very Orders which Judge Barbier signed (presumably, because they issued from the Court *En Banc*), and which AROD

avers literally "dripped' with animus, hatred and venom towards AROD.

(4) As if summarily disbarring AROD is not enough to prove bias and prejudice, Judge Barbier also was one of the named defendants in Civil Action No. 08-3170, which AROD filed, in part, to require the Eastern District Bench, Judge Barbier included, to follow their own Rules regarding attorney discipline. Civil Action No. 08-3170 also perfected claims against the Eastern District Judges for civil rights violations. As if to conclusively demonstrate his actual bias and prejudice towards AROD, Judge Barbier had the temerity to sign the very Orders which resulted in the summary DISMISSAL, with prejudice, of Civil Action No. 08-3170 notwithstanding the fact that he was named as a party defendant. See Record Document Nos. 28 and 31 in Civil Action No. 08-3170, which are made part hereof by reference thereto. AROD avers that Judge Barbier's summarily dismissing a case in which he was a named defendant was totally inappropriate.

In short, AROD avers that Judge Barbier is biased and prejudiced against AROD and in favor of his Brother Judges and the Louisiana Plaintiffs' Bar, AROD's political enemies, and that Judge Barbier should be disqualified and recused in favor of an unbiased and unprejudiced Judge, one who is "as pure as the driven snow."

(D) In addition to the patently obvious denial

of procedural and substantive due process of law guaranteed to AROD by the 14th Amendment to the U. S. Constitution, which was violated by Judge Barbier in his summarily-issued sua sponte Order of September 1, 2022, which was promulgated without any Notice to AROD, much less a hearing of any type, AROD also claims that Judge Barbier violated AROD's 1st Amendment constitutional rights by denying him court access, as well as any judicial review the Order (resulting in "preclusion of judicial review"). See also: Article IV, Section 2, paragraph 1, of the Constitution, and Chambers v. Baltimore & Ohio R. Co., 207 U. S. 142 (1907), and cases cited therein and its progeny, where the Court stated:

> "The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government It is one of the highest and most essential privileges of citizenship ..." 207 U. S. at 149.

Furthermore, Judge Barbier's Order violated AROD's 1st Amendment rights which specifically prohibit any "...law ...abridging... the right of the people... to petition the government for a redress of grievances." U. S. Constitution, Amendment 1. According to the Congressional Research Service, "The right of access to the courts is indeed but one aspect of the right to petition." Congressional Research Service, "U. S. Constitution Annotated: Amendment 1, Rights of Assembly and Petition," Legal Information Institute, Cornell Law School, Retrieved 17 June 2020.

Judge Barbier's Order also violated AROD's 1st Amendment right to freedom of speech. More

particularly, the summary dismissal of Civil Action No. 22-2813 violated AROD's right to make good faith allegations seeking legal redress against defendants in civil litigation, which is a form of speech guaranteed by the Constitution.

And since Judge Barbier's Order deprived AROD of valuable property rights without affording AROD due process of law, in violation of the rights afforded AROD under the 5th Amendment to the U. S. Constitution, AROD avers that the celebrated case of Bivens v. Six Unknown Narcotics Agents, 403 U. S. 388 (1971) and its progeny, is applicable to Judge Barbier's wrongful conduct in this case (no "disrespect" to Judge Barbier is intended by AROD, of course).

Lastly, since Judge Barbier's Order is "self-executing." precluding judicial review, the Order violates AROD's entitlement to 5th Amendment due process in that respect. Why even the Eastern District's *En Banc* Order of Disbarment in "Miscellaneous Action No. 08-5170" of March 4, 2009, over 12 years ago, contained a provision preserving AROD's appellate rights (to the best of AROD's recollection, since he cannot afford PACER to verify his recollection, and since only a "snippet" from the *En Banc* Order was quoted by Judge Barbier in his September 1, 2022 Order).

(E) AROD avers that any and all claims by "whomever" Judges Berrigan and Duval may have had in mind as "beneficiaries" when they ordered AROD to pay the money that Judge Barbier now seeks to collect from AROD (approximately $17,500 from 10 to 15 years ago) have now PRESCRIBED under Louisiana law or otherwise have become uncollectable and legally unenforceable against AROD.

In order to put things in proper perspective,

AROD's civil rights case for damages for the physical injuries that were inflicted on him (and which left him "crippled") by State actors on September 20, 2005, over which Judge Berrigan presided at the District Court level, was "tossed in the gutter" by the Fifth Circuit on March 24, 2009, when the Circuit Court denied AROD's Petition for Rehearing *En Banc*. See the record in Fifth Circuit Case No. 08-30052. Accordingly, Judge Berrigan's Order "...to pay $10,000.00 to the Attorney Disciplinary Fund" (which incidentally is a non-existent "entity") must be over 13 years old. AROD does not have access to Judge Berrigan's Order, since he cannot afford PACER, and Judge Barbier did not attach it.

Duval's Order "...to pay $7,058.50 to the State of Louisiana" is over 15 years old. AROD distinctly recalls that Duval's Order was signed just prior to the second anniversary of Hurricane KATRINA, August 29, 2007, just before AROD learned that the Louisiana Plaintiffs' Bar, "the cabal" to whom Duval had handed "control and management" of the "Victims of KATRINA" litigation, had been representing the State IN SECRET, which was why the cabal had not sued the State, to the ultimate detriment of "the Class," once the United States was determined to be absolutely immune, years later.

The time periods specified in the Louisiana Civil Code Articles addressing liberative prescription for the following causes of action are:

3-years:	Collection of Debts (Civil Code Article 3494)
	Collection of Rents (Civil Code Article 3494)
5 years:	Collection on negotiable and non-negotiable instruments (Civil Code

Article 3498)
10 years: Contract enforcement (Civil Code Article 3499)
Monetary judgments (Civil Code Article 3501)

AROD avers that under any theory of recovery, any and all claims for the $17,500 in "outstanding monetary sanctions" allegedly owed by AROD have already prescribed under Louisiana law.

In addition, AROD avers that until Judge Barbier anointed himself "bill collector" by virtue of his sua sponte Order of September 1, 2022, no effort has been made in the past 10 to 15 years by anyone to collect any money from AROD. Furthermore, no Judgment on any of the "outstanding monetary sanctions" has ever been entered against AROD. Even the Internal Revenue Service of the Almighty Federal Government imposes on itself a 10-year "expiration date" for collecting amounts owed in unpaid taxes (other than through fraud). More particularly, 26 United States Code, Section 6502 establishes a 10-year life on collections for unpaid taxes "by levy or by a proceeding in court," conditioning same "only if... made ...within 10 years after the assessment of the tax." This 10-year period for collection by the IRS is known as "Assessment Statute Expiration Date" and "Collection Statute Expiration Date." Is AROD entitled to less "courtesy" than he would have received from the IRS if he owed back taxes from over 10 years ago?

(F) And to keep things in perspective, AROD avers that if, sometime prior to 2010, almost 12 years ago, he had picked up a gun and committed an armed robbery of an innocent victim he encountered on the sidewalk, and stolen $17,500 in cash from the victim in

the armed robbery, Federal and State prosecutors would be "barred by prescription" from charging AROD criminally for the crime of armed robbery, since any criminal charges for armed robbery prescribed after 6 years! Yet, Judge Barbier is seeking to collect a $17,500 "debt" from AROD, that no one has ever attempted to collect for the past 10 to 15 years, and which has prescribed and, therefore, is now time-barred under Louisiana law.

(G) In the alternative, even if the 10 to 15 year old "outstanding monetary sanctions" against AROD are not barred by prescription under Louisiana law, they were discharged in AROD's Federal Bankruptcy proceedings, Bankruptcy Case No. 09-12627 on the Eastern District docket. The contents of the case record in those proceedings are pleaded herein as if copied in extenso (AROD being without sufficient income to afford access to for identification of specific pleadings via PACER). AROD concedes that the Federal Bankruptcy Statute, more particularly 11 United States Code, Section 523(a)(7) excludes from dischargeability certain "fines, penalties or forfeitures." However, nondischargeability under Section 523(a)(7) requires proof of three elements: (1) a debt owed to "a governmental unit;" (2) the debt must be in "a fine, penalty or forfeiture;" and (3) the debt must not be "compensation for actual pecuniary loss." *Schaffer v. Louisiana State Board of Dentistry*, 515 F. 3d 424 (5th Cir. 2008) and cases cited therein and their progeny. Under those Rules as interpreted and applied by the Fifth Circuit, the "outstanding monetary sanctions" identified by Judge Barbier in his Order as being owed to "the Attorney Disciplinary Fund" ($10,000.00) and to "the State of Louisiana" ($7,058.50) were discharged in AROD's bankruptcy proceedings and are, therefore,

uncollectable. More particularly, "the Attorney Disciplinary Fund" is a non-existent figment of Judge Berrigan's overactive imagination. And the $7,058.50 that AROD was assessed by Duval to pay the State of Louisiana for AROD's alleged "harassment of the State" (imagine that!) was for "compensation for actual pecuniary loss," more particularly attorney's fees allegedly incurred by State lawyers defending the State from AROD's "harassment." See AROD Exhibit No. 4, "Watershed Moment No. 1."

NOT A BENE: AROD does not completely "trust" the Bankruptcy Court record, since the man who presided, named "Brown," was the subject of several unsuccessful attempts at disqualification and recusal. Brown was the ONLY Eastern District "jurist" who steadfastly refused to disqualify himself from any AROD case notwithstanding his obvious bias, prejudice, and outright hatred of AROD, even to the point of repeatedly STRIKING AROD's pleadings without Notice or hearing. Accordingly, AROD does not "know" what may be contained in the Bankruptcy Court record and what may be "missing" from the record. In addition to missing "Schedules" and other documents, AROD also avers that the transcript and other records of a meeting with Creditors in the Federal Building on Maestri Place may be missing from the record. Missing documents may be relevant to the waiver of certain claims against AROD by certain Creditors. AROD also avers that the pendency of AROD's Bankruptcy Proceedings in the Eastern District Bankruptcy Court was NOTORIOUS in and around 500 Poydras Street, NOLA 70130, due in no small part to the infiltration of the Court building complex by James O'Keefe, the simultaneous filing of the spurious Federal criminal charges against AROD,

his incarceration in solitary confinement for 34 days in "the Windsor Court St Bernard," and multiple Court appearances during AROD's two-year battle with the USDOJ and Jim Letten and his minions before the spurious criminal charges were finally dismissed by the Fifth Circuit Those multiple Court appearances following AROD's release from incarceration each required Leave of Court and the accompaniment of an armed escort.

(H) AROD would be remiss if he did not point out that Judge Barbier certainly appears to have "a bone in his mouth" for AROD and that his pursuit to collect some $17,500 from AROD might be charitably described as "dogged," which strikes AROD as a bit unusual. AROD has a distinct recollection of the sanction (you WILL pay the State attorney's fees, the precise amount came later) awarded against him by Duval in favor of the State, probably because AROD later learned that Attorney General Foti delivered a Form-95 to the United States of America (through the U. S. Army Corps of Engineers) in the amount of $400 billion at the same time that AROD was appearing in Court and being sanctioned by Duval! AROD has no clear recollection of the $10,000.00 sanction imposed by Judge Berrigan or why it was imposed. Even hardened criminals don't routinely get fined $10,000.00 and AROD is not a criminal. AROD does know that all of the "outstanding monetary sanctions" were totally unwarranted and that AROD has been the only person "punished" for anything, post-KATRINA, notwithstanding OUTRAGEOUS CRIMINAL CONDUCT that was directed specifically at AROD, which left him physically crippled. No one has been punished, or sanctioned, in any way, because of that criminal conduct. Similarly, although AROD exposed

PUBLIC CORRUPTION on the Bench and at the Bar, only AROD has been disbarred, which appears to be the price to be paid for being a whistleblower in Louisiana.

(I) And while Judge Barbier specifically referenced AROD's being "disbarred from the practice of law before this court" before he summarily dismissed AROD's civil litigation arising out of "the TRAIN WRECK" at 401 Metairie Road, where AROD had planned to live out the remainder of his days on earth (prior to being brought back to reality by Hurricane IDA), some of the same cabal members who were responsible, at least in part, for CORRUPTING the "Victims of KATRINA" litigation, were "rewarded" by Judge Barbier with tens of millions of dollars in attorney's fees in the BP case. The $17,500 awarded against AROD in "sanctions" (if that's what they really were) could easily represent "accrued interest" FOR JUST A FEW MINUTES on the plaintiffs' lawyers' attorney's fee awards in the BP case, all courtesy of Judge Barbier.

(J) AROD further respectfully submits that the interests of Society would have been better served if Judge Barbier had not focused on "the outstanding monetary sanctions" against AROD, but rather "introspectively" at (1) the Eastern District of Louisiana Bench (two Judges impeached during AROD's lifetime), at (2) "the bought and paid for" Louisiana Supreme Court (the recipient of one of the monetary sanctions against AROD), and at (3) the United States Court of Appeals for the Fifth Circuit, which has gotten every one of AROD's cases litigated during the past 17 years entirely WRONG (the only exception being the spurious Federal criminal case, which should never have been filed in the first place).

See the following Exhibits which are appended hereto and made part hereof by reference thereto and which document the outrageous conduct towards AROD during the past 17 years, much of it CRIMINAL, most of it committed by Judges:

AROD Exhibit No. 2 — AROD's E-mail of June 18, 2020 addressed to: "TO WHOM IT MAY CONCERN," entitled: "Ashton O'Dwyer, the WOKE conservative," which details AROD's abduction, brutalization, torture and false imprisonment on September 20, 2005, for which no one has ever been punished.

AROD Exhibit No. 3 — AROD's E-mails to Journalists James Gill and Jeff Crouere in anticipation of an interview by Mr. Crouere on WGSO Radio for the 15th Anniversary of Hurricane KATRINA. This Exhibit is entitled; "JUDICIAL CORRUPTION and the Victims of KATRINA litigation."

AROD Exhibit No. 4 — AROD's E-mail of November 11, 2018 addressed to: "TO WHOM IT MAY CONCERN," entitled: "The Watershed Moments Summary (corrected as of November 11, 2018). This Exhibit identifies PUBLIC CORRUPTION on the Eastern District Bench and elsewhere, including among members of the Louisiana Plaintiffs' Bar, who are AROD's political enemies, but who are aligned with Judge Barbier, a former member.

AROD Exhibit No. 5 — AROD's Petition for a Writ of Certiorari, which was filed in the

> Supreme Court of the United States on February 5, 2021, and which bears Case No. 20-1666 in that Court This Exhibit identifies JUDICIAL CORRUPTION on the Louisiana Supreme Court, on the Eastern District Bench, and on the Fifth Circuit for which no Jurist has ever been punished. It also identifies professional misconduct by lawyers, for which no one has been punished.

And to keep things in proper perspective, AROD avers that Judge Barbier's dogged pursuit of AROD to collect $17,500.00 in 10 to 15 year old outstanding monetary sanctions should be contrasted with the criminal conduct, judicial misconduct, and professional misconduct that is identified in the above and foregoing Exhibits, with none of the wrongdoers having suffered monetary sanctions, disbarment, or incarceration, except for AROD.

CONCLUSION

AROD certainly intends no disrespect to Judge Barbier, whose judicial accomplishments are "stellar," even though AROD does not necessarily agree with all of them. But AROD avers that Judge Barbier got it WRONG when he summarily dismissed, on a sua sponte basis, without Notice, and without a hearing of any type, Civil Action No. 22-2813, and focused on collecting 10 to 15 year old "outstanding monetary sanctions" from AROD. AROD also believes that someone should suggest to Judge Barbier that what he has done is akin to "hitting a man when he is already down," and that now is the time for Judge Barbier to exit the ring by disqualifying and recusing himself from

these proceedings.

Respectfully submitted

Ashton R. O'Dwyer, Jr.
(in propria persona)
2829 Timmons Lane, Unit 143
Houston, Texas 77027
Telephone No. (504) 812-9185
e-mail address: arodjrlaw@aol.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he transmitted a copy of the above and foregoing Motion and Incorporated Memorandum in Support, plus Exhibits, to the Honorable Carl J. Barbier, 500 Poydras Street, Room C-256, New Orleans, Louisiana, 70130, via Federal Express for overnight delivery, this ____ day of September, 2022.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ASHTON R. O'DWYER, JR.	CIVIL ACTION
VERSUS	NO. 22-2813
RON CARTER, ET AL.	SECTION "J"(4)

ORDER

Before the Court is a *Motion to Reopen Case and to Set Aside Summarily-Issued Sua Sponte Order.* (Rec. Doc. 4). This lawsuit was filed *prose* by Ashton R. O'Dwyer, Jr, a former Louisiana attorney disbarred from the practice of law before this court and by the Louisiana Supreme Court. *See In the Matter of Ashton R. O'Dwyer, Jr.*, No 08-mc-5170, Rec. Doc. 5 (E.D. La. Mar. 4, 2009). Because Mr. O'Dwyer failed to pay any of the outstanding monetary sanctions issued against him and did not receive authorization to file the Complaint,[1] the previous disbarment order prohibits him from filing any pleadings in this Court, whether as an attorney or as a pro-se litigant, *Id.* at 11. Thus, we dismissed this case, subject to his fully complying with the conditions of his disbarment order. (Rec. Doc. 3). After review, the

[1] The following sanctions, totaling $17,558.50, remained outstanding when the court dismissed this case; Civil Action 06-7280. Order of Judge Chasez (sanctioning O'Dwyer $500 pursuant to Rule 11 and 28 U.S.C. § 1927 for filing repetitive pleadings despite the court's prior admonition); Civil Action 06-7280. Order of Judge Berrigan (sanctioning O'Dwyer $10,000.00 for bad faith abusive conduct, payable to the Court's Attorney Disciplinary Fund); and Civil Action 05-4182. Order of Judge Duval ($7,058 sanction under Rule 11 and 28 U.S.C. § 1927 for filing multiple, duplicative lawsuits, attempting to circumvent previous orders of the Court).

Court finds no basis to reopen the case.

In his current attempted pleading, Mr. O'Dwyer seeks to "reopen", "stay" and "set aside" the Court's Order dismissing this case. Among other arguments, he now claims that the sanctions imposed by this court were discharged in his bankruptcy proceeding. (Rec. Doc. 4, at 11-13); *see In re: Ashton Robert O'Dwyer Jr.*, No. 09-12627 (Bankr. E.D. La. June 2. 2015). Contrary to what Mr. O'Dwyer alleges, the unpaid sanctions[2] were not discharged by his previous bankruptcy. The Court has reviewed the record in Mr. O'Dwyer's bankruptcy case, and it does not appear these debts were listed or scheduled for discharge. This is unsurprising because such debts are not dischargeable in bankruptcy because the sanctions are a "fine, penalty, or forfeiture" owed to a governmental unit. 11 U.S.C. § 523(a)(7); *see also In re Schaffer*, 515 F.3d 424, 430 (5th Cir. 2008) (taking note of bankruptcy courts declining to discharge attorney sanctions because the "ultimate goal" of attorney disciplinary proceedings is to protect the public).

Accordingly,

IT IS HEREBY ORDERED that the *Motion to Reopen Case and to Set Aside Summarily-Issued Sua Sponte Order* is **DENIED.** The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer. Nothing in this order precludes Mr. O'Dwyer from exercising any appellate rights he may have.

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[2] On September 16, 2022. Mr. O'Dwyer tendered a money order payable to the Clerk of Court in the amount of $500.00 and stated that he intended this to pay for the sanction imposed in 06-7280. The balance of $17,058.55 in monetary sanctions remains outstanding.

New Orleans, Louisiana, this 21st day of September, 2022.

CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 22-30614
(Civil Action No. 22-2813 in the Eastern District of Louisiana)

ASHTON R. O'DWYER, JR.

Plaintiff – Appellant

VERSUS

RON CARTER, METAIRIE TOWERS CONDOMINIUM ASSOCIATION BOARD PRESIDENT, INDIVIDUALLY; JENNIFER FAGAN, BOARD MEMBER, INDIVIDUALLY; ADVANCED PROPERTY RESTORATION SERVICES, L.L.C.; JASON HOUP, OWNER, ADVANCED PROPERTY RESTORATION SERVICES, L.L.C., INDIVIDUALLY; STRATEGIC CLAIM CONSULTANTS, L.L.C.; BRANDON LEWIS, OWNER OF STRATEGIC CLAIM CONSULTANTS, L.L.C., INDIVIDUALLY; GNO PROPERTY MANAGEMENT, L.L.C; ROBERT KIRK PHILLIPS, PRESIDENT, GNO PROPERTY MANAGEMENT, L.L.C.; CYNTHIA BOLOGNA, LAWYER, INDIVIDUALLY; LOEB LAW FIRM, L.L.C.; JACK K. WHITEHEAD, JR., INDIVIDUALLY AND AS A PROFESSIONAL LAW CORPORATION

Defendants

ORIGINAL BRIEF BY
PLAINTIFF/APPELLANT
ASHTON R. O'DWYER, JR.
(To be considered *in pari materia* with Appellant's "Motion to Supplement the Record," which is filed simultaneously herewith)

Ashton R. O'Dwyer, Jr.
(in propria persona)
2829 Timmons Lane, Unit 143
Houston, Texas 77027
Telephone No. (504) 812-9185
e-mail address: arodjrlaw@aol.com

CERTIFICATE OF INTERESTED PERSONS AND ENTITIES

The undersigned, Ashton R. O'Dwyer, Jr. ("AROD"), appearing in propria persona, certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

FEDERAL JUDGES:

Members of the Fifth Circuit Bench, including Judges Barksdale, retired Judge Costa, Davis, Dennis, Duncan, Engelhardt, retired Judge Emilio Garza, Higginson, Higginbotham, Smith, Southwick, and Willett.

Virtually the entire Eastern District of Louisiana Bench, but including particularly Judges Duval, Lemelle, Africk, Vance, Berrigan, Guidry, and Barbier, and all of those Judges who summarily suspended, and later summarily disbarred, AROD from the practice of law in Federal Court (including former District Judge Engelhardt, who now sits on this Court), not only without any hearing, but without Notice, by signing off on summarily-issued *En Banc Order*s in Miscellaneous Case Nos. 08-1492 and 08-1570, including *En Banc Order*s which contained statements to the effect of: "Indeed, O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him," which was simply not true.

MEMBERS OF THE LOUISIANA PLAINTIFFS' BAR:

Many prominent members of the Louisiana Plaintiffs' Bar, to whom presiding Judge Duval handed "control and management" of the "Victims of KATRINA" litigation, but including particularly Joseph Bruno, Calvin Fayard, Jim Roy, Danny Becnel (deceased), and their law partners and law firms, and also the named lawyer defendants in Civil Action No. 08-4728 on the Eastern District docket, namely:

James P. Roy
The Law Firm of Domengeaux, Wright, Roy & Edwards

Calvin Clifford Fayard
B. Blayne Honeycutt
The Law Firm of Fayard & Honeycutt

Daniel E, Becnel, Jr. (deceased)
The Law Firm of Daniel E, Becnel, Jr.

Drew A. Ranier
The Law Firm of Ranier, Gayle & Elliot, LLC

J. J. Jerry McKernan (deceased)
The McKernan Law Firm

Jonathan Beauregard Andry
The Andry Law Firm

Joseph R. Bruno
The Law Firm of Bruno & Bruno

Walter Dumas
The Dumas and Associates Law Firm

STATE ENTITIES AND INDIVIDUALS (includes civil rights claims and disbarment):

The State of Louisiana

The Executive Branch of the State of Louisiana

The Judicial Branch of the State of Louisiana

The Justices of the Louisiana Supreme Court

Former Louisiana Supreme Court Chief Justice Catherine Dick Kimball

The Louisiana Attorney Disciplinary Board

The Louisiana Office of Disciplinary Counsel

Louisiana Chief Disciplinary Counsel Charles B. Plattsmier, Jr.

Disciplinary Counsel Ad Hoc Mark Dumaine, Assistant District Attorney for East Baton Rouge Parish

Disciplinary Counsel Ad Hoc Fred McGaha, former Assistant District Attorney for Ouachita Parish

Kathleen Simon, former Louisiana Attorney Disciplinary Board Hearing Committee Chairperson

Brian Landry, formerly of the Weems law firm in Shreveport, and "Special Counsel" for the Disciplinary Board

Kim Boyle, former President of the La. State Bar Association, and a Phelps Dunbar partner

Stephen Tew, formerly of the Louisiana Disciplinary Board

The Office of the Attorney General, State of Louisiana
The Louisiana Department of Justice

Former Louisiana Attorney General Charles C. Foti, Jr.

Burton Guidry, former Chief, Criminal Division, Louisiana Department of Justice

The Appellate Division of the Louisiana Department of Justice

The Civil Division of the Louisiana Department of Justice

Louisiana Assistant Attorney General Paul B. Deal (Chief, Civil Division, LDOJ)

Louisiana Assistant Attorney General Michael Keller

Louisiana Assistant Attorney General Phyllis Glazer

Louisiana Assistant Attorney General David Sanders

Louisiana Assistant Attorney General Patricia Wilton

Louisiana Assistant Attorney General Jason Bonaventure

The Louisiana Division of Administration

The Louisiana Office of Risk Management

STATE POLICE, ET AL.:

The Louisiana State Police

The Louisiana Department of Public Safety and Corrections (Office of State Police)

Former State Police Superintendent Henry Whitehorn

Former State Police Superintendent Mike Edmonson

Former State Police Superintendent Kevin Reeves

Former State Police Lt. Col. Charles Dupuy

Former State Police Lt. Col. Mike Noel

Former State Police Lt. Col. Doug Cain

Current State Police Superintendent Lamar Davis

Current State Police Public Information Officer Captain Nick Manale

State Police Major Cathy Flinchum

Former State Police Legal Affairs Attorney Faye Morrison

Former State Trooper John Nelson of "F Troop" (now Sergeant John Nelson of the State Police)

Former State Police Sergeant Christopher Ivey (now Chief Deputy Sheriff of the Jefferson Davis Parish Sheriff's Office)

The Louisiana State Police Commission

Cathy Derbonne, former Executive Director of the Louisiana State Police Commission

The Louisiana Department of Public Safety and Corrections

Former Louisiana State Penitentiary Warden Burl Cain

FEDERAL MISCREANTS AT CAMP AMTRAK:

The U. S. Department of Justice

The Eastern District of Louisiana U. S. Attorney's Office

The Middle District of Louisiana U. S. Attorney's Office

The Federal Bureau of Investigation

The Federal Emergency Management Agency

The Department of Homeland Security

U. S. Immigration and Customs Enforcement

U. S. Customs and Border Protection

U. S. Marshals Service

U. S. Bureau of Alcohol, Tobacco, Firearms, and Explosives Enforcement

U. S. Drug Enforcement Agency

Former Assistant U. S. Attorney Michael Magner

Former Assistant U. S. Attorney Stephen Higginson (now a Federal Appeals Court Judge)

Former Assistant U. S. Attorney Brian Marcell

Former Eastern District U. S. Attorney Jim Letten

Former Assistant U. S. Attorney Jan Maselli-Mann

Assistant U. S. Attorney Greg Kennedy

Assistant U. S. Attorney Ed Rivera

FBI Special Agent Kenneth Kaiser

FBI Special Agent Michael Wolf

FBI Special Agent Chris Demenna

Immigration and Customs Enforcement Director Michael Venacore

THE "LEVEE" PARTIES:

The United States of America

The U. S. Army Corps of Engineers

The U. S. Department of Justice

U. S. Department of Justice Attorney Robin Smith

The State of Louisiana

The Board of Commissioners for the Orleans Levee District

The Board of Commissioners for the East Jefferson Levee District

The Board of Commissioners for the St. Bernard Levee District

The New Orleans Sewerage & Water Board

The Board of Commissioners for the Port of New Orleans

The Louisiana Governor's Office of Homeland Security and Emergency Management

The Louisiana Department of Transportation and Development
Former Jefferson Parish President Aaron Broussard

The Parish of Jefferson, State of Louisiana
All parties and attorneys in Civil Action No. 05-4182 on the Eastern District docket

MISCELLANEOUS:

Janet Daley-Duval, spouse of Judge Duval and his former Law Clerk

Cathryn "Caroline" Fayard, daughter of plaintiffs' lawyer Calvin Fayard, and former Law Clerk to Judge Duval

Former Partners of the Law Firm of Lemle & Kelleher, LLC (now disbanded), including particularly Ernest Edwards, Charles Talley, Joseph "Larry" Shea, and Alan Goodman

Rachelle "Shelly" Dick, former Chief Justice Kimball's sister-in-law (now a Federal District Judge)

Amanda Clark

Forrester & Dick, L.L.C.

The named defendants in this case, namely:

Ron Carter, Metairie Towers Condominium Association Board President
Jennifer Fagan, MTCA Board Member
Advanced Property Restoration Services, L.L.C.
Jason Houp, Owner, Advanced Property Restoration Services, L.L.C.
Strategic Claim Consultants, L.L.C.
Brandon Lewis, Owner of Strategic Claim Consultants, L.L.C.
GNO Property Management, L.L.C.
Robert Kirk Phillips, President, GNO Property Management, L.L.C.
Cynthia Bologna, lawyer
Loeb Law Firm, L.L.C.
Jack K. Whitehead, Jr., lawyer

ASHTON R. O'DWYER, JR.
In propria persona

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STATEMENT REGARDING ORAL ARGUMENT

Ashton R. O'Dwyer, Jr. ("AROD"), respectfully submits that the decisional process would be significantly aided by oral argument and, accordingly, specifically requests same. Oral argument would be beneficial so that the Panel can see that AROD is not colored red, that his head does not sprout horns, and that he does not have cloven hooves or carry a pitchfork.

AROD avers that he was disbarred by the corrupt legal and judicial systems of this State in retaliation and retribution for his having exposed corruption in the "Victims of KATRINA" litigation, which should have "dwarfed" the BP litigation over which Judge Barbier (the "jurist" whose misconduct is the subject of this appeal) presided. What Barbier has done to AROD in this case is directly related to the corruption of the KATRINA litigation and to AROD's disbarment, because AROD "blew the whistle" on public corruption, which AROD's political enemies, including Barbier, his Brother Judges, and Barbier's cronies in the Louisiana Plaintiffs' Bar want to remain dead, buried and covered up.

Oral argument will facilitate AROD's describing how people like Barbier have made AROD's life "a living hell" for the past 17 years, and how they unleashed "a Reign of Terror" on him, which continues to this very day. And the Panel need only look at Barbier's summarily issued sua sponte Order of September 21, 2022 (Rec. Doc. 5), which instructed the Eastern District Clerk to violate Rules 5 and 77, Federal Rules of Civil Procedure, and to make a mockery of 28 United States Code, Sections 452 and 457 by instructing the

Clerk to file only AROD's Motion and to return the Exhibits (which accompanied the Motion) to AROD, presumably "unfiled." This improvident action by Barbier, which was ordered "by design" and "with malice aforethought," not only has necessitated AROD's filing of a separate Motion to Supplement the Record; it also constituted judicial misconduct of the highest order, which needs to be addressed at oral argument.

CITATION OF AUTHORITIES

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Cases

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STATEMENT OF JURISDICTION

This Court has jurisdiction by virtue of 28 United States Code, Section 1291, since this is an Appeal from a final decision of the U. S. District Court for the Eastern District of Louisiana, which was "self-executing," unless allegedly "outstanding monetary sanctions" were paid.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

(1) WHETHER A NEW JUDGE, WHO IS NON-BIASED AND NON-PREJUDICED, SHOULD BE APPOINTED TO PRESIDE OVER THIS CASE?

(2) WHETHER BARBIER'S SUMMARY DISMISSAL, ON A SUA SPONTE BASIS, OF AROD'S CIVIL LITIGATION SHOULD BE REVERSED, FOR ALL OR ANY OF THE FOLLOWING REASONS:

(A) BECAUSE BARBIER SHOULD HAVE DISQUALIFIED HIMSELF DUE TO HIS "ACTUAL BIAS AND PREJUDICE CONCERNING A PARTY?"

(B) BECAUSE, GIVEN ALL OF THE FACTS AND CIRCUMSTANCES, BARBIER SHOULD HAVE DISQUALIFIED HIMSELF BECAUSE THE PROBABILITY OF ACTUAL BIAS AND PREJUDICE ON HIS PART WAS "TOO HIGH TO BE CONSTITUTIONALLY TOLERABLE?"

(C) BECAUSE BARBIER SHOULD HAVE DISQUALIFIED HIMSELF BECAUSE THIS IS A PROCEEDING IN WHICH HIS IMPARTIALITY MIGHT REASONABLY BE QUESTIONED?

(3) WHETHER IT WOULD BE INAPPROPRIATE FOR THIS COURT TO ADDRESS, ON A SUMMARY BASIS, THE ENFORCEABILITY OF THE MONETARY SANCTIONS THAT WERE WRONGFULLY IMPOSED AGAINST AROD, BECAUSE THEY WERE PROCURED THROUGH FRAUD AND CORRUPTLY MOTIVATED? SEE *TURNER V. PLEASANT*, 663 F. 3d 770 (5th Cir. 2011).

(4) WHETHER BARBIER'S SUA SPONTE SUMMARY DISMISSAL VIOLATED ANY OF AROD'S CONSTITUTIONAL RIGHTS, THEREFORE WARRANTING REVERSAL?

(5) WHETHER THE SANCTIONS ARE PRESCRIBED AND, IF NOT, WHETHER THEY WERE DISCHARGED IN AROD'S BANKRUPTCY PROCEEDINGS?

STATEMENT OF THE CASE

(a) Course of proceedings and disposition in Court below.

The procedural posture of this case is uncomplicated. The record contains only 8 documents, the "long and the short" of which is that District Judge Barbier summarily dismissed, on a sua sponte basis, AROD's Complaint in a civil diversity action until AROD pays approximately $17,000 in allegedly "outstanding

monetary sanctions" that were wrongfully imposed about 15 years old and have prescribed. But it is not only WHAT Barbier did, which is virtually unprecedented, but also HOW and WHY he did it, even having 5 Exhibits returned to AROD by the Clerk, presumably unfiled, so that the Exhibits are no longer in the record, in violation of applicable Rules. See infra.

AROD is a disbarred, embarrassed, humiliated and disgraced "lawyer-by-education," whose life has been "destroyed" by corrupt Federal and State legal and judicial systems. For the past 17 years since Hurricane KATRINA, his life has been made "a living hell" by the individuals and entities identified in his "Certificate of Interested Individuals and Entities" (including Members of this Court, most recently in Case No. 18-98009), who have subjected AROD to a "Reign of Terror." AROD submits that he is living proof that it simply does not "pay" to be "a whistleblower" in Louisiana, particularly when the people on whom the whistle is being blown are Federal Judges and their rich and powerful friends in the Louisiana Plaintiffs' Bar.

Although AROD's story is multi-faceted, he will resist the urge to retell the entire story here. Suffice it to say that AROD's professional, financial, and social "destruction" has been in retaliation and retribution for his having exposed corruption in the "Victims of KATRINA" litigation, corruption that was enabled by Barbier's Brother Judges on the Eastern District Bench and by many very prominent Members of the Plaintiffs' Bar, who have been AROD's political enemies for the past 17 years. But Barbier is so closely aligned with some of these very same plaintiffs' lawyers that they recently shared more than $3 billion in

attorney's fees in the BP case, over which Barbier presided.

The corruption which AROD exposed in the KATRINA litigation involved the presiding District Judge, Stanwood Duval, and Members of Plaintiffs' Steering Committee, who secretly represented the State to prosecute the State's claim against the United States for $400 billion in damages. Because they secretly represented the State, about which Duval had full knowledge, these Committee Member plaintiffs' lawyers did not sue the State (or any State agencies, instrumentalities and political subdivisions), because to have done so would have exposed their "conflict of interest" by virtue of their representing the State in secret, while simultaneously representing "the Class" of KATRINA's innocent victims. But when the United States was judicially determined to be immune from suit and legal liability, KATRINA's victims were left holding "an empty bag," because certain State interests had not been sued by the Committee.

This sordid story was described in detail in Exhibits that AROD attached to and made part of Rec. Doc. 4 for filing by the Clerk. However, Barbier ordered the Clerk to return the Exhibits to AROD, presumably unfiled, as if the Exhibits had never even existed. See "Argument," infra, and AROD's "Motion to Supplement the Record," which is filed simultaneously herewith and which was made necessary by Barbier's improvident instructions to the Clerk in Rec. Doc. 5.

This sets the stage for why Barbier's unprecedented action in this case should be reversed, why Civil Action No. 22-2813 should be reinstated, and why a new Judge should be appointed.

(b) Statement of the facts.

AROD recently turned age 75. He has been unable to practice his chosen profession for almost 15 years, courtesy of the Eastern District Bench, including Barbier, who voted to summarily disbar AROD without Notice, much less any hearing. After being disbarred in Federal Court, AROD was forced into bankruptcy by the same Judge (Lemelle) who had recommended AROD's disbarment to his Eastern District Brothers and Sisters. AROD subsists on a meager monthly Social Security check; for the past 15 years or so he has been without any means of earning a living.

AROD's Mother died in January 2021 at age 94. Following her death, certain of his Mother's immovable property was listed for sale by his Mother's Succession. In July 2021, needing a place in which to live his remaining days on this earth, AROD's siblings and children arranged for him to acquire Unit 330 in the Metairie Towers Condominium building complex, which his Mother had owned. Although he planned to move into his unit in October 2021, Hurricane IDA intervened on August 29, 2021, resulting in major damage to the MTC building complex. AROD was unfamiliar with "condominium living," but his siblings also owned units in the complex, and appeared to be satisfied with the job that the condominium Association Board of Directors and its President, a man named "Carter," had been doing. From AROD's limited vantage point, the hurricane damage repair project seemed to be "in good hands" with Carter and the MTCA Board at the helm. Nothing could have been further from the truth.

In late July 2022, information was revealed to AROD and the Owners of other units (over 200 in number) that caused AROD to conclude that the repair project was "a TRAIN WRECK" and, perhaps, "unsalvageable."

From the very limited information that has been made available to date, it appears that "the root cause" for the project having run off the rails, indeed "the overarching issue," has been the lack of proper management of the project, including a lack of proper planning, supervision and oversight by all concerned, including Carter, the MTCA Board, and others. None of the entities and individuals who have been working on the project have been subjected to any "checks and balances" by anyone whomsoever, with entirely predictable results.

Since he was getting no real "satisfaction" from any of the concerned parties, on August 23, 2022, AROD filed a Pro Se "Verified Complaint for Compensatory and Exemplary Damages" against certain MTCA Board Members, the Property Manager, certain Contractors, and the lawyers involved. The case was assigned No. 22-2813 and allotted to Judge Barbier. Then, on September 6, 2022, AROD was contacted by telephone by a friend who has PACER access (AROD cannot afford PACER), advising that "Judge Barbier has dismissed your case." The friend then sent AROD a copy of Barbier's September 1, 2022 Order (Rec. Doc. 3), which had been summarily issued on a sua sponte basis, not only without any hearing, but without Notice to AROD. That Order concluded: "IT IS HEREBY ORDERED that this case is DISMISSED without prejudice, subject to Mr. O'Dwyer's payment of all outstanding monetary sanctions imposed by this Court within 21 days of this Order."

AROD was aghast. On September 15, 2022, he transmitted to the Pro Se Unit of the Eastern District Clerk's Office, via FedEx for Priority Overnight Delivery, a pleading styled: "Motion to Reopen Case"

(Rec. Doc. 4), together with incorporated Memorandum in Support," seeking the following relief:

(1) For an IMMEDIATE STAY of the provisions of Judge Barbier's Order of September 1, 2022 ... until such time as AROD's legal rights can be fully adjudicated by an unbiased and unprejudiced Judge.
(2) For Leave of Court to re-open the above-styled and numbered cause for the limited purpose of (a) permitting the filing of and (b) granting oral argument on this Motion, because Judge Barbier's improvident sua sponte Order of September 1, 2022, which summarily dismissed the entire case, placed AROD in "a Catch-22 position," since dismissing the case and imposing conditions that preclude any judicial review by an unbiased and unprejudiced Jurist, constituted a clear denial of constitutional rights guaranteed by the U. S. Constitution, to which even AROD is clearly entitled. See infra.
(3) For the disqualification and recusal of Judge Barbier from presiding over this action on grounds of actual bias and prejudice.
(4) For the appointment of an unbiased and unprejudiced Judge to preside over this case, one who is not associated in any way with the legal, judicial and political systems of the State of Louisiana, and with the Louisiana Plaintiffs' Bar, who were AROD's political enemies in the "Victims of KATRINA" litigation, and who remain so to this day, and who are closely aligned with Judge Barbier, who is a past-President of the Louisiana Trial Lawyers' Association (now the Louisiana Association for Justice). AROD avers that it is no coincidence that the State of Louisiana is currently the subject of "a pattern or practice" investigation by the United States Department of

Justice, the first such statewide investigation in over 20 years.

(5) To set aside Judge Barbier's Order of September 1, 2022, which "...ORDERED that this case is DISMISSED without prejudice, subject to Mr. O'Dwyer's payment of all outstanding sanctions imposed by this Court within 21 days of this Order."

(6) For Leave of Court (in the person of an unbiased and unprejudiced Judge) to file Civil Action No. 22-2813 nunc pro tunc.

(7) For the scheduling of a hearing and oral argument on the relief sought herein, which AROD requests that he be permitted to participate in via ZOOM, since (1) he now is a citizen of and resides in the State of Texas, (2) subsists on a meager monthly Social Security check, and (3) traveling to New Orleans would work a financial and logistical hardship on him.

To support his request for disqualification and recusal of Barbier on grounds of actual bias and prejudice, AROD attached to and made part of his Motion (Rec. Doc. 4) certain Exhibits, including particularly "AROD Exhibit Nos. 3, 4 and 5," which described in detail the corruption of the "Victims of KATRINA" litigation and the retaliation and retribution that AROD suffered, including his wrongful disbarment as a consequence of exposing corruption.

Instead of recusing himself, and sending AROD's Motion to an unbiased and unprejudiced Judge for hearing, Barbier "doubled down" by issuing yet another summarily issued sua sponte Order on September 21, 2022 (Rec. Doc. 5), in which he referenced the Eastern District's March 4, 2009 *en banc* Order of Disbarment, which he said "prohibits him [AROD] from filing any pleadings in this Court, whether as an attorney or as a pro se litigant."

The fact that the "*en banc* Order of Disbarment" was promulgated while the "Victims of KATRINA" litigation was pending, and still very much "alive," is a detail of some significance. More particularly, AROD avers that certain malevolently motivated "powers that be" summarily disbarred him and ordered that AROD "shall not file pleadings or documents in any proceeding before this Court, whether existing or sought to be initiated, including as a *pro se* litigant, without first paying all outstanding monetary sanctions issued against him and without first obtaining an Order from a member of this court," NOT because AROD had done anything WRONG, but in order TO SHUT AROD DOWN, and to silence him, and prevent him from exposing the corruption of the KATRINA litigation by the very same people who had orchestrated his disbarment.

And Barbier's actual bias and prejudice become crystal clear to AROD from the "kicker" contained in the last full paragraph of Barbier's Order of September 21, 2022 (Rec. Doc. 5), in which he said: "The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer." Barbier gave no reasons (other than to refer to "the voluminous documents") for instructing the Clerk "to file only the Motion itself as Rec. Doc. 4" or for ordering the Clerk that "The exhibits should be returned to Mr. O'Dwyer." But AROD avers that Barbier's reason for so doing is obvious: He wanted to conceal from "the public record" the wrongdoing of his Brother Judges and of his friends in the Louisiana Plaintiffs' Bar who had corrupted the KATRINA litigation.

Only "AROD Exhibit No. 5," viz. his Petition for a Writ of Certiorari to the Supreme Court of the United

States, was "voluminous." For that reason, AROD's Writ Petition is not attached to AROD's "Motion to Supplement the Record," which is filed simultaneously with this Original Brief and which should be considered *in pari materia* with this Brief. However, AROD's Petition in the SCOTUS is Case No. 20-1666, and is "a public record" available for viewing and printing by any member of the Public from the SCOTUS docket.

This timely appeal followed by the filing of a Notice of Appeal (Rec. Doc. 6).

SUMMARY OF THE ARGUMENT

A malevolently motivated Eastern District Judge, Carl Barbier, who should have recused himself from this case because of actual bias and prejudice, wrongfully dismissed a legitimate civil litigation in violation of AROD's constitutional rights, invoking 10- to 15-year-old "outstanding monetary sanctions" against AROD, which have prescribed or are otherwise legally unenforceable.

However, when one examines "the entire record," which Barbier ignored or "dressed up," with "sophistry," a record which is uncontradicted, it will be obvious to any objective observer that Barbier's sua sponte summary dismissal of AROD's civil litigation and ordering the return of AROD's Exhibits to him, presumably "unfiled," was motivated by the following:

(1) Barbier's actual bias and prejudice against AROD.

(2) Barbier's actual bias and prejudice in favor of his Brother Eastern District Judges, including particularly Stanwood Duval, who AROD accused of criminal judicial misconduct, which adversely impacted 400,000

to 500,000 members of "the Class" of KATRINA'S innocent victims, including AROD's 2,000 or so KATRINA clients.

(3) Barbier's actual bias and prejudice in favor of his many rich and powerful friends within the Louisiana Plaintiffs' Bar, who AROD accused of criminal professional misconduct while serving as Plaintiffs' Steering Committee lawyers in the KATRINA litigation, but who recently shared in over $3 billion in attorney's fees in the BP case. These plaintiffs' lawyer "friends of Barbier" have been AROD's political enemies for the past 17 years, and played a very prominent role in having AROD disbarred, and keeping their corruption, which AROD exposed, "covered up" and buried.

In addition, the sanctions were "procured through fraud" and were "corruptly motivated" and, therefore, should not be enforced. *Turner v. Pleasant*, 663 F. 3d 770 (5th Cir. 20110). Under the circumstances, Barbier's wrongful summary dismissal of AROD's civil litigation, on a sua sponte basis, without Notice, much less a hearing of any type, cannot stand.

ARGUMENT
(Standard of Review)

AROD avers that an unbiased and unprejudiced Panel should review de novo Barbier's dismissal of the Complaint in this admittedly "hybrid" case, with an almost bare record (a scant total of only 8 Record Documents), including Orders which Barbier issued summarily, without Notice to AROD, much less hearings of any type. AROD also avers that his Panel is not only empowered to reverse Barbier's improvident

and unconstitutional sua sponte action, but also to order another Judge to sit. See: Stephen Alan Childress, "A Standard of Review Primer: Federal Civil Appeals," 125 F. R. D. 319, 321 (1989), and George C. Pratt, "Standard of Review," 19
James Wm. Moore, et al., Moore's Federal Practice, Section 206.04[1], at 206-23.

I. BARBIER SHOULD HAVE IMMEDIATELY DISQUALIFIED HIMSELF, BECAUSE THE UNDISPUTED FACTS SHOW THAT HIS PARTICIPATION IN "PROTRACTED PROSECUTORIAL PURSUIT" OF AROD, OVER THE COURSE OF MANY YEARS, SO ENMESHED AND ENTANGLED HIM IN MATTERS INVOLVING AROD AS TO DEMONSTRATE BARBIER'S ACTUAL BIAS AND PREJUDICE AGAINST AROD AS A MATTER OF LAW.

In his Motion to Reopen Case (Rec.Doc. 4, page 4), AROD asserted that "...a judge should be disqualified in a case involving an attorney if he previously attempted to have the attorney disbarred, since the judge's protracted prosecutorial pursuit of the attorney may so entangle him in matters involving the attorney as to indicate that he may be biased." The legal "authority" cited for that proposition was admittedly "weak," namely "Federal Procedure, Lawyers Edition (1982), Section 20:98 and authorities cited therein." AROD rationalized the citation to "Federal Procedure" as simply establishing a "truism," such as "knives are sharp," or "guns are dangerous," in a duty to warn/products liability context. But since this is an Original Brief to the venerable Fifth Circuit, he researched the origin of the truism in Federal Practice,

so that he could argue persuasively that: "A Judge who actually voted to disbar a lawyer should be disqualified from adjudicating any case involving that lawyer." AROD has determined that the truism originated in a Supreme Court case, *Johnson v. Mississippi*, 403 U. S. 212 (1971) and its progeny, which includes an erudite analysis from the Court of Appeals for the District of Columbia in *In re Evans*, 411 A.2d 984 (App. D. C. 1980). Both *Johnson* and *Evans* involved complex "twists and turns," which are not significant to "*Barbier v. AROD.*" However, the critical holdings are significant:

Johnson v. Mississippi, 403 U.S. 212 (1971)

"It would, therefore, seem that a fair hearing would entail the opportunity to show that the version of the event related to the judge was inaccurate, misleading, or incomplete.

We mention this latter point because our remand will entail a hearing before another judge. In concluding that Judge Perry should have recused himself, we do not rely solely on the affidavits filed by the lawyers reciting intemperate remarks of Judge Perry concerning civil rights litigants. Beyond all that was the fact that Judge Perry immediately prior to the adjudication of contempt was a defendant in one of petitioner's civil rights suits and a losing party at that. From that it is plain that he was so enmeshed in matters involving petitioner as to make it most appropriate for another judge to sit. Trial before "an unbiased judge" is essential to due process. (Citations to Supreme Court cases omitted)." 403 U.S. at 215-216.

In re Evans, 411A.2d 984 (App. D.C. 1980)

"It is settled that: 'Merely because a trial judge is familiar with a party and his legal difficulties through prior judicial hearings, or has found it necessary to cite a party for contempt, does not automatically or inferentially raise the issue of bias.' (Citations omitted). Each case, however, must be judged on its particular facts (Citation omitted). In this case, we are confronted with a situation in which appellant was to be tried for contempt of court by a judge who had previously accused him of professional misconduct, participated in the marshalling of evidence to form the basis of a criminal charge against him, sought to initiate criminal proceedings through the Corporation Counsel's office and, being unsuccessful there, sought unsuccessfully to initiate disciplinary action against him. A trial judge's concern with an attorney's professional misconduct in his courtroom is certainly proper and to be expected. Under these circumstances, however, the judge should decline to sit in a contempt proceeding involving that attorney, if the judge's protracted prosecutorial pursuit of the alleged misconduct has caused him to become 'so enmeshed in matters involving petitioner as to make it most appropriate for another judge to sit.' [citing *Johnson v. Mississippi*]. We emphasize that here it is the extensive and protracted nature of the action taken by the trial judge which causes it to rise to the level of impermissible personal bias. This history of personal involvement with appellant's alleged misconduct is such that it must be said of the trial judge's participation in the contempt case that 'his impartiality might reasonably be questioned.' ABA Commission on Standards of Judicial Conduct Code of Judicial Conduct Canon No. 3(c)(1) (1972), adopted for the District of

Columbia Courts by the Joint Committee on Judicial Administration on February 16, 2973. We must reverse and remand appellant's second conviction for a new trial before a different judge." 411 A.2d at 996.

In his Motion to Reopen Case (Rec. Doc. 4), AROD specifically moved, in Item 3: "For the disqualification and recusal of Judge Barbier from presiding over this action on grounds of actual bias and prejudice." AROD also moved, in Item 4: "For the appointment of an unbiased and unprejudiced Judge to preside over this case, one who is not associated in any way with the legal, judicial and political systems of the State of Louisiana, and with the Louisiana Plaintiffs' Bar ...." However, so strong was Barbier's actual bias and prejudice against AROD that he chose to ignore that specifically requested relief in his second summarily issued sua sponte Order (Rec. Doc. 5).

AROD does not make his allegations of actual bias and prejudice lightly.

The uncontradicted (and uncontradictable) record reveals quite plainly that, for a period of as many years as the outstanding monetary sanctions are old, Barbier has been "so enmeshed in matters involving [AROD] as to make it most appropriate for another judge to sit," just as the Supreme Court held in *Johnson v. Mississippi*. Indeed, the record reveals the following:

(1) Barbier voted in favor of suspending AROD from the practice of law in Miscellaneous Case No. 08-1492, and later to permanently disbar him in Miscellaneous Case No. 08-5170. Both the suspension and disbarment were summary proceedings, with the only "hearing" being "Kangaroo Court" hearings before Lemelle in 08-1492. No hearing or opportunity for oral

argument whatsoever was held in the disbarment case, 08-5170, and AROD was summarily disbarred by the *en banc* Court, Barbier included, without AROD ever being allowed to address the Court. And all of AROD's written Motions, Objections, and arguments were summarily denied, without any mention of Duval's and his plaintiffs' lawyer cronies' corruption of the KATRINA litigation. However, the case records in both the suspension and disbarment cases included Orders containing outrageous and false statements to the effect that: "Indeed, O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him." (Eg. Rec. Docs. 22 and 31 in 08-1492). That Barbier participated *En Banc* Orders containing those false statements speaks volumes about his and his Brethren's actual bias and prejudice.

(2) The March 4, 2009 *En Banc* Order of Disbarment, in which Barbier participated, and which he referenced in Rec. Doc. 3, is quite onerous. AROD avers that the Order was calculated to "cut his legs off at the knees" and to ensure that AROD could no longer continue to fight for justice for KATRINA's innocent victims in the KATRINA litigation, the corruption of which AROD had exposed, thus "ruffling the feathers" of many rich and powerful people, who continue to wear black robes and hold licenses to practice law. These very same people are all friends of Barbier, but have been AROD's sworn enemies for the past 17 years. AROD challenges the Panel to identify a more onerous disbarment Order, which contained provisions that were clearly intended "to silence AROD, forever."

(3) Subsequently, on September 4, 2009, Barbier personally participated in the issuance of yet another summarily-issued sua sponte *en banc Order* in

Miscellaneous Case No. 08-5170, entitled: "Order Barring Access to Federal Court Building," which not only was unprecedented, but literally "dripped" with bias, prejudice, animus, venom and hatred for AROD.

(4) And in the referenced Order Barring Access, with Barbier's participation, AROD's allegations of judicial misconduct and corruption against Lemelle were summarily dismissed as "baseless," which was a LIE. Duval's name and his corruption of the KATRINA litigation were not even mentioned.

(5) On October 8, 2010, Barbier had the temerity to summarily dismiss, on a sua sponte basis, Civil Action No. 08-3170, being an action filed by AROD against the Eastern District Judges, including Barbier, to require them to follow their own Rules for Attorney Disciplinary Enforcement, which they had ignored. AROD also attempted to perfect civil rights claims against the Judges under *Bivens*. And it was Barbier who sua sponte summarily dismissed Civil Action No. 08-3170, a case in which he was a named defendant, without Notice to AROD, much less any hearing, again showing his bias and prejudice towards AROD (Rec. Doc. 31 in 08-3170).

(6) And in this case, Barbier has engaged in judicial misconduct, motivated by his bias and prejudice against AROD and in favor of his Brother Judges and Plaintiffs' Bar cronies, by having members of his Staff intercept AROD's "proper papers," including 5 Exhibits which accompanied AROD's Motion to Reopen Case (Rec. Doc. 4). AROD avers, upon information and belief, that after AROD's papers were delivered to Deputy Clerks for filing on September 16, 2022, Barbier's Staff removed AROD's Exhibits from the case record and then "doctored" the docket sheet to make it appear that AROD's Exhibits had not been "filed" on the 16th, so

that on the 21st Barbier could issue a post hoc Order reflecting: "The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer."

(7) Alternatively, AROD avers, upon information and belief, that on the 16th, Barbier (perhaps through his Staff) verbally instructed Deputy Clerks not to show the filing of AROD's Exhibits upon their delivery to the Clerks, in clear violation of Rules 5 ["A paper not filed electronically is filed by delivering it: (A) to the clerk."] and 77 ["Every district court is considered always open for the filing of any paper ... (and) ... making a motion"], FRCP, as well as 28 United States Code, Sections 452 ("All courts of the United States shall be deemed always open for the purpose of filing proper papers...") and 457 ("The records of district courts and of courts of appeals shall be kept at one or more places where court is held."). Even the Rule applicable to this Court for "Nonelectronic Filing" provides that filing is "accomplished" when "the clerk receives the papers" and that the clerk "must not refuse to accept for filing any paper ... solely because it is not presented in proper form." Rule 25(a)(2)(i) and (a)(4), FRAP.

AROD avers that the foregoing undisputed facts demonstrate that Barbier has been so "enmeshed" and "entangled" in matters involving AROD for the past 15 years "as to make it most appropriate for another judge to sit" (*Johnson v. Mississippi, supra*), requiring that Barbier's actions in the case should be reversed. See also *Williams v. Pennsylvania*, 579 U. S. ___ (2016), 136 S. Ct. 1899 (2016), which held that: "Where a judge had an earlier significant, personal involvement as a

prosecutor in a critical decision in the defendant's case, the risk of actual bias in the judicial proceeding rises to an unconstitutional level." 136 S. Ct. at 1910.

II. REGARDLESS OF THE RULES ENUNCIATED BY THE SUPREME COURT IN JOHNSON AND WILLIAMS, DUE PROCESS AND THE RULES GOVERNING DISQUALIFICATION DICTATE THAT BARBIER SHOULD HAVE RECUSED HIMSELF.

Regardless of the rules enunciated by the Supreme Court in Johnson v. Mississippi (and how the rule was applied by the District of Columbia Court of Appeals in *In re Evans*) and Williams v. Pennsylvania, due process and the laws governing disqualification dictate that Barbier should have recused himself. Since tomes have been written about the interpretation and application of the Federal Disqualification Statute, 28 United States Code, Section 455, and the Code of Conduct for United States Judges, more particularly Canons 2 and 3, and the "Commentary" following the Canons, AROD will not patronize the Panel with a recitation of the well-established general rules. Only a brief "refresher" is necessary to permit AROD to avoid any charge that he may have waived legal arguments by not briefing them.
AROD is arguing that, because Barbier harbored actual personal bias and prejudice, recusal was required by 28 U. S. Code, Section 455(b)(1) ("personal bias or prejudice concerning a party").
Alternatively, AROD is arguing that, even if actual bias and prejudice cannot be proven, when (1) an objective fact-finder considers all of the facts and circumstances, "the probability of actual bias and on the part of the judge or decision maker [Barbier] is simply too high to

be constitutionally tolerable," particularly here, where (2) Barbier actually had "earlier significant, personal involvement" in AROD's suspension and disbarment, in which he actively participated in multiple capacities as "accuser, investigator, prosecutor, judge, jury, and executioner," thus giving rise to "an unacceptable risk of actual bias" on Barbier's part. Caperton v. A. T. Massey Coal Co., 556 U. S. 868, 872 (2009); Williams v. Pennsylvania, 579 U. S. ___ (2016), 136 S. Ct. 1899, 1910 (2016) and cases cited therein in both cases.

Further in the alternative, AROD is arguing that Barbier should have recused himself pursuant to 28 U. S. Code, Section 455(a) and Canon 3(C)(1), which mirror each other, and require disqualification of "[a]ny ... judge ... of the United States ... in any proceeding in which his impartiality might reasonably be questioned," such as this one involving Barbier and AROD.

And because it is not only Barbier's bias and prejudice against AROD that warrants his recusal, but also Barbier's bias and prejudice in favor of AROD's political enemies on the Federal Bench and in the Louisiana Plaintiffs' Bar, Canon 2 also is implicated. Canon 2 and the Commentary which follows Canon 2 require respect for and compliance with law so as to promote public confidence in the integrity and impartiality of the judiciary, and disallow financial "or other relationships" to influence judicial conduct or judgment, and thus proscribe impropriety and the appearance of impropriety in all activities. Accordingly, at the very least, AROD avers that even if the Panel were to conclude that actual bias and prejudice has not been proven, the likelihood or appearance of bias rose to an unconstitutional level in this case. See *Peters v. Kiff*, 407 U. S. 493, 503 (1972) wherein the Court stated: "Moreover, even if there is no showing of actual bias in

the tribunal, this Court has held that due process is denied by circumstances that create the likelihood or appearance of bias." And (1) because Barbier's relationships with members the Louisiana Plaintiffs' Bar began when he was a plaintiffs' lawyer, even serving as President of the Louisiana Trial Lawyers Association, (2) because Barbier was not involved in the KATRINA litigation, and (3) because AROD was not involved in the BP litigation, Barbier's bias and prejudice, actual or likely (but reasonably "plausible," given the extensive and protracted nature of his involvement in AROD's affairs), was "extra-judicial." *Liteky v. United States*, 510 U. S. 540 (1994).

III. BARBIER HAS ALREADY JUDICIALLY ADMITTED HIS BIAS AND PREJUDICE AGAINST AROD BY RECUSING HIMSELF IN THE SPURIOUS FEDERAL CRIMINAL CASE.

On February 12, 2010, while AROD was languishing in solitary confinement (for 34 miserable days) at "the Windsor Court St. Bernard," the entire Eastern District Bench, Barbier included, recused themselves (one exception: a Bankruptcy Judge named "Brown") and reassigned the case to the Senior Judge of the Western District (Rec. Doc. 16 in Criminal Case No. 10-34). And although AROD ultimately "beat" the spurious criminal charges following a 2-year struggle with Federal Prosecutors in the Eastern District (including one who is now a Fifth Circuit Judge), and in this Court (Case No. 10-30701), he avers that Barbier's recusal in that case constituted a binding judicial admission of his bias and prejudice against AROD and his inability to be fair and impartial in any matters involving AROD. Barbier's bias and prejudice against

AROD was fueled by his bias and prejudice in favor of his Brother Judges and his Louisiana Plaintiffs' Bar cronies, who recently shared billions of dollars in attorney's fees in the BP case, but who AROD has accused of corruption and misconduct. And the reasons for Barbier's recusing himself in Criminal Case No. 10-34 still exist in this case.

IV. BARBIER'S SUMMARY DISMISSAL OF AROD'S COMPLAINT ALSO VIOLATED A VARIETY OF AROD'S CONSTITUTIONAL RIGHTS, REQUIRING REVERSAL.

In addition to the patently obvious denial of procedural and substantive due process of law guaranteed to AROD by the 5th Amendment to the U. S. Constitution, which Barbier violated by his summarily issued sua sponte Orders of September 1 and 21, 2022 (Rec. Docs. 3 and 5), which were promulgated without Notice to AROD, much less hearings of any type, AROD also claims that Barbier violated AROD's 1st Amendment rights by denying him court access, as well as any judicial review of the Orders (resulting in "preclusion of judicial review"). See also: Article IV, Section 2, paragraph 1, of the Constitution, and *Chambers v. Baltimore & Ohio R. Co.*, 207 U. S. 142 (1907), and cases cited therein, where the Court stated:

"The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship ..." 207 U. S. at 149.

Furthermore, Barbier's Orders violated AROD's 1st Amendment rights which specifically prohibit any "...law ...abridging ...the right of the people ...to petition the government for a redress of grievances." According to the Congressional Research Service, "The right of access to the courts is indeed but one aspect of the right to petition." Congressional Research Service, "U.S. Constitution Annotated: Amendment 1, Rights of Assembly and Petition," Legal Information Institute, Cornell Law School, Retrieved 17 June 2020.

Judge Barbier's Orders also violated AROD's 1st Amendment right to freedom of speech, because the summary dismissal of Civil Action No. 22-2813 violated AROD's right to make good faith allegations seeking legal redress against defendants joined in civil litigation, which is a form of speech guaranteed by the Constitution. In *Thomas v. Collins*, 323 U. S. 516, 530 (1945), the Court explained that: "It was not by accident that the rights to freedom in speech and press were compiled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances," labeling them "cognate rights." See also *Borough of Duryea v. Guarnieri*, 564 U. S. 379 (2011). Barbier violated AROD's cognate rights.

And since Barbier's Orders deprived AROD of valuable property rights without affording AROD due process of law, in violation of the rights afforded AROD under the 5th Amendment, AROD avers that the celebrated case of *Bivens v. Six Unknown Narcotics Agents*, 403 U. S. 388 (1971) and its progeny, also is applicable to Barbier's wrongful conduct.

Lastly, since Barbier's Orders were "self-executing." precluding judicial review, the Orders violated AROD's 5th Amendment due process rights, as well.

V. THE SANCTIONS WERE "PROCURED THROUGH FRAUD" BY STATE COUNSEL AND "CORRUPTLY MOTIVATED" BY DUVAL (AND BY COUNSEL) AND, ACCORDINGLY, SHOULD BE DEEMED UNENFORCEABLE PURSUANT TO *TURNER V. PLEASANT*, 663 F. 3d 770 (5th Cir. 2011).

Barbier did not attach copies of Berrigan's and Duval's Orders imposing sanctions some 15 years ago. And because AROD cannot afford PACER, he does not have access to the Motions underlying the imposition of sanctions, the Briefs and Memoranda in support and in opposition, or the transcripts of the hearings, thus putting AROD at a distinct disadvantage, particularly if "the enforceability" of the sanctions will be addressed by the Panel, like Barbier addressed them, on "a summary basis," without evidence and without any hearing.

AROD also avers that the sanctions were corruptly motivated and obtained as a result of professional misconduct committed by Assistant Attorneys General working in the Louisiana Department of Justice, who lied on the record and were guilty of "fraud upon the Court." The primary LDOJ miscreants were Michael Keller and Phyllis Glazer, who had "an axe to grind" because they were defending their "Boss," Attorney General Charles Foti, in AROD's civil rights litigation, over which Berrigan presided. AROD maintains that "General Foti" was instrumental (along with former Justice Kimball and her Chief Disciplinary Counsel) in ordering "the HIT" on AROD by State "law enforcement" at 5 minutes past midnight on September 20, 2005, within 12 hours of his having filed the first "Victims of KATRINA" lawsuit, which named the State and various State agencies, instrumentalities and

political subdivisions as parties defendant. And because he knew that his "close personal friend of long-standing," KATRINA Plaintiffs' Steering Committee lawyer Calvin Fayard, was representing the State "in secret" (but with Duval's full knowledge), Duval and Fayard (and others) had their own corrupt reasons for wanting State entities dismissed from the KATRINA litigation and AROD "silenced," discredited and marginalized.

Accordingly, AROD maintains that unresolved issues of fact continue to swirl around the imposition of sanctions on him by both Judges, because the sanctions were "procured through fraud" and "corruptly motivated." More particularly, *Turner v. Pleasant*, 663 F.3d 770 (5th Cir. 2011) is implicated and renders the sanctions unenforceable. Barbier did not address this subject in his summarily issued sua sponte Orders, which were issued without Notice to AROD, much less hearings of any type, and with good reason: Barbier did not want to give AROD a forum in which the corruption of his Brother Judge and plaintiffs' lawyer cronies could be addressed in open Court by AROD "on the record." Documents to which AROD has no access (Motions, Briefs, Memoranda, transcripts, etc.) are necessary to allow AROD and the Panel to crystallize the misconduct and corrupt motives of the LDOJ lawyers, Keller and Glazer, and of Duval (who was protecting himself and Fayard), involving events of 15 years ago. But in the meantime, AROD can refer the Panel to his Original Brief in his civil rights case, No. 08-30052, filed on May 14, 2008, pages 25-29, which documented the sins of commission (by lying "on the record") and of omission (by remaining silent while others lied "on the record") committed by Keller, Glazer, and others. And no one was ever "sanctioned" for this documented

"fraud upon the Court" in Case No. 08-30052 or for the many lies told to Berrigan and to AROD in his civil rights litigation by Keller and Glazer, in which they fraudulently persuaded Berrigan to sanction AROD.

The Berrigan sanction is particularly "irksome" to AROD because she presided over the civil rights case seeking damages for the crippling physical injuries that were criminally inflicted on AROD at Camp Amtrak on September 20, 2005 by criminals within State "law enforcement." In short, AROD was abducted from his St. Charles Avenue home at 5 minutes past midnight by State Police from "F Troop," the same Troop that was involved in the more recent "death of Ronald Greene case." Once at Camp Amtrak, AROD was brutalized and tortured by being pepper-sprayed 30 to 40 times in the face, and shot 12 times in both lower extremities at point-blank range with a 12-gauge shotgun loaded with bean bag rounds, causing permanent crippling injuries to AROD's right leg, requiring that he now must walk with the aid of a cane. AROD's abduction, brutalization, torture and false imprisonment are described in detail at the end of "AROD Exhibit No. 2," which Barbier ordered the Clerk to return to AROD, but which is attached to his "Motion to Supplement the Record," filed simultaneously (and *in pari materia*) herewith.

AROD's civil rights were trampled again on March 24, 2009, when his civil rights case was "tossed in the gutter" by a Panel of this Court (Reavley, Barksdale and Emilio Garza), who denied AROD's Petition for Rehearing in Case No. 08-30052. And AROD must observe that the Rehearing denial came on the heels of his being summarily disbarred by the *en banc* Eastern District Bench on March 4, 2009, without any hearing whatsoever. And on the heels of his Rehearing denial came an "Interim Suspension for Threat of Harm" from

"the bought and paid for" Louisiana Supreme Court on March 30, 2009, also issued summarily, without any hearing.

Might it reasonably be said that someone was "out to get" AROD during March 2009?

Berrigan's sanction also was a particularly "cruel irony" because AROD was sanctioned for allegedly offensive language, whereas none of the miscreants who abducted AROD from his home, and brutalized and tortured him at Camp Amtrak, leaving him maimed and permanently crippled, were ever sanctioned or punished for the violent crimes they committed against AROD.

Duval's sanction against AROD "...to pay $7,058.50 to the State of Louisiana" must still be "validated, verified and tested" for accuracy with the production of copies of the Motions, Briefs, Memoranda, hearings transcripts, and signed Orders from 15 years ago, to which AROD has no access. He does recall Duval accusing him of "harassment of the State" (imagine that!) and of the Duval "sanction" representing reimbursement for "out of pocket attorney's fees incurred." What does "the paper trail" of supporting documentation from 15 years ago actually demonstrate? AROD recalls Duval's sanction being "monetized" shortly before August 29, 2007, KATRINA's two-year anniversary, which was a critical date for the Plaintiff's Steering Committee and for "the Class" of KATRINA's victims for Federal Tort Claims Act purposes. However, there had been a prior hearing before Duval on the issue of sanctions exactly 6 months prior to KATRINA's "birthday" (another critical date for FTCA purposes), viz. on February 28, 2007, the transcript for which is not available to AROD. Nonetheless, AROD avers that the transcript (and the

other relevant documents) will clearly show Keller's and Glazers "fraud upon the Court," as well as Duval's active participation in the corruption of the KATRINA litigation through his issuance of corruptly motivated Court rulings, including the AROD sanctions. Only much later did AROD learn that, while Keller and Glazer were standing at the podium in open Court, orally arguing that Duval should impose sanctions against AROD, their "Boss," Attorney General Foti, was presenting a Federal Form-95 to the United States Army Corps of Engineers on behalf of the State, staking out the State's $400 billion claim for damages against the United States. Neither Keller nor Glazer, nor Duval, mentioned this fact during oral argument on the issue of sanctions against AROD on February 28, 2007.

The "veil was well and truly lifted" for AROD on August 29, 2007, when Duval's "close personal friend of long standing," plaintiffs' lawyer Calvin Fayard, and "a bunch" of Fayard's "friends" and co-conspirators in the Louisiana Plaintiffs' Bar, filed a number of Civil Actions on behalf of State interests against the United States, which revealed to AROD, for the first time, the cabal's prior SECRET representation of the State! See "AROD Exhibit Nos. 3 and 4," including particularly the Preamble to and "Watershed Moment No. 1" of "AROD Exhibit No. 4," which is attached to AROD's "Motion to Supplement the Record," filed simultaneously herewith.

The "revelation" about the previously "secret" representation of the State by the plaintiffs' lawyer cabal to whom Duval had handed "control and management of the KATRINA litigation, and the cabal's patently obvious conflict of interest, told AROD a number of things: (1) Why Duval had summarily

dismissed "on the papers" every litigation and every claim that AROD had filed against State interests: Duval didn't want Fayard's (and others') conflict of interest (and Duval's own corrupt knowledge of the conflict) revealed and "spotlighted" and (2) Why Duval was sanctioning him: Duval believed he could use his Article III power to force AROD to betray the interests of his 2,000 or so KATRINA clients and to coerce AROD into silence.

This same type of Louisiana Plaintiffs' Bar cabal had once included Barbier, a former plaintiffs' lawyer, as a member, and Barbier remains very closely aligned with the Plaintiffs' Bar. The profuse relationships between and among Barbier and the Plaintiffs' Bar, and even with Duval and his family, and with their mutual friends, have been chronicled in The New York Times and in The Washington Post in the following articles by award-winning Journalists: (a) Joe Nocera, "Getting Skewered in New Orleans," The New York Times, July 19, 2013; and (b) Steven Mufson, "In New Orleans courts, the legal gusher BP cannot contain," The Washington Post, March 1, 2014. Some of the plaintiffs' lawyers identified in those articles recently shared attorney's fees in the BP case totaling over $3 billion. But on October 23, 2008, AROD sued some of those very same lawyers (whom Barbier counts among his friends, and vice versa) in Civil Action No. 08-4728 on the Eastern District docket, which also named Duval as a defendant, and which AROD has dubbed: "The largest legal malpractice Class Action lawsuit in the annals of American jurisprudence." And AROD avers that it was in retaliation and retribution for his having exposed corruption in the KATRINA litigation, and for his filing of Civil Action No. 08-4728 against Duval and his plaintiffs' lawyer cronies, that AROD was

disbarred. Indeed, just two weeks after filing that lawsuit, more particularly on November 7, 2008, then Chief Judge Vance summarily issued an Eastern District, *En Banc* Order which "cut AROD's legs off at the knees" and suspended him from the practice of law in Federal Court and precluded him from all Court access. AROD was later taken out of the fight entirely by his summary disbarment by the *en banc* Eastern District Court on March 4, 2009, again without ever being given any opportunity to address the members of the Court "on the record."

AROD respectfully submits that the foregoing recitation of facts demonstrates that the sanctions imposed against him by Berrigan and Duval, at the urging of lawyers for the State, viz. Keller and Glazer, were procured through fraud and that they were corruptly motivated, and that they, therefore, should be deemed unenforceable.

VI. ANY LEGAL RIGHTS OF THE "BENEFICIARIES" (WHICH DO NOT INCLUDE CARL BARBIER) TO THE 15-YEAR-OLD SANCTIONS, TO ACTUALLY COLLECT THE SANCTIONS, HAVE PRESCRIBED OR HAVE OTHERWISE BECOME LEGALLY UNENFORCEABLE.

AROD avers that any legal rights of the beneficiaries (Barbier is NOT "a beneficiary") to the sanctions imposed against him 15 years ago by Berrigan and Duval to actually collect the sanctions have now prescribed under applicable law or have otherwise become legally unenforceable. And they were corruptly and wrongfully imposed on AROD through fraud.

Berrigan's $10,000 sanction is almost 15 years old. Duval's $7,058.50 sanction is over 15 years old. The time periods specified in the Louisiana Civil Code Articles addressing liberative prescription for the following causes of action are:

3-years: Collection of Debts (Civil Code Article 3494)

Collection of Rents (Civil Code Article 3494)

5 years: Collection on negotiable and non-negotiable instruments (Civil Code Article 3498)

10 years: Contract enforcement (Civil Code Article 3499)

Monetary judgments (Civil Code Article 3501)

In addition, AROD avers that until Barbier self-anointed himself "bill collector," which did not bestow upon him any right of action to actually collect money from AROD, no effort was made during the past 15 years by anyone to collect the sanctions from AROD. Even the Internal Revenue Service of "the Almighty Federal Government" imposes on itself a 10-year "expiration date" for collecting amounts owed in unpaid taxes (other than through fraud). More particularly, 26 United States Code, Section 6502 establishes a 10-year life on collections for unpaid taxes "by levy or by a proceeding in court," conditioning same "only if ... made ... within 10 years after the assessment of the tax." This 10-year period for collection by the IRS is known as "Assessment Statute Expiration Date" and "Collection Statute Expiration Date." Is the power of a Federal Judge so great that he can force the collection of debts that even the IRS would be unable to legally collect?

And in order to keep things in proper perspective, AROD avers that if, at the time that the sanctions were

imposed some 15 years ago, AROD had picked up a gun and committed an armed robbery of his main protagonist for the imposition of monetary sanctions against him, namely Assistant Attorney General Michael Keller of the Louisiana Department of Justice, stealing $17,000 in cash from Keller at gunpoint, Federal prosecutors would have been barred from prosecuting, trying or punishing AROD for the crime of armed robbery after the expiry of only 5 years. See 18 United States Code, Section 3282. State prosecutors would have been barred from prosecuting or punishing AROD for the felony of armed robbery after 6 years. See Article 572 of the Louisiana Code of Criminal Procedure, which also provides that: "Upon expiration of the time period in which a prosecution may be instituted, any bail bond applicable to that prosecution which bond has not been forfeited shall also expire, and all obligations of that bail undertaking shall be extinguished as a matter of law." Article 572(C), Louisiana Code of Criminal Procedure.

In the further alternative, even if the 15-year-old sanctions should not be set aside, because the Panel concludes that they were not procured through fraud and corrupt influence, and even if they are not barred by prescription, they were discharged in AROD's Federal bankruptcy proceedings, Bankruptcy Case No. 09-12627 on the Eastern District docket. The contents of the record in that case are pleaded herein as if copied in extenso, because AROD does not have PACER access and is, therefore, unable to carefully investigate and research the contents of the bankruptcy case record, which is admittedly voluminous: a 25-page Docket Sheet containing 259 Record Document entries. However, contrary to Barbier's assertion in Rec. Doc. 5, both "creditors" for the Berrigan and Duval sanctions

were listed, or "scheduled," by AROD via inclusion in a "Creditors' Mailing Matrix" for Notice and due process purposes in his "Schedule F – Creditors Holding Unsecured Nonpriority Claims" Forms. See Rec. Doc. 38, pages 13-15, and Rec. Doc. 57, pages 60-62, which were filed in Bankruptcy Case No. 09-12627 on September 30, 2009 and on November 10, 2009, respectively. More particularly, AROD scrupulously listed "United States District Court, Eastern District of Louisiana" and "State of Louisiana" as Creditors, also providing their addresses, and noting that "the claims are matters of public record." The 2 referenced documents (Rec. Docs. 38 and 57) were recently sent to AROD by former Counsel for the Chapter Trustee, who also advised AROD that "the official court record on creditors that is now available on Pacer" is "a document that the Court keeps under a 'List of Creditors' tab on Pacer." That Creditors' Mailing Matrix also contained the Eastern District Court, the State, and the "LA Department of Revenue," and their addresses, "for notice purposes" from "the Bankruptcy Noticing Center" (BNC) during the pendency of the bankruptcy case.

Accordingly, AROD pleads "actual notice" to the "beneficiaries" of the Berrigan and Duval sanctions of anything and everything material and relevant to AROD's bankruptcy case, who routinely received Formal Notices from the Bankruptcy Court and from the Bankruptcy Noticing Center, and who had actual notice of the proceedings.

In addition, AROD avers that Barbier's bias, prejudice, and inappropriate advocacy against AROD is revealed by his distortion of the bankruptcy case record and what this Court held in *In re Schaffer*, 515 F. 3d 424 (5the Cir. 2008), discussed infra. There would have been

"no sinister reason" (such as "intentional design, fraud or improper motive") for AROD not to have identified all of his creditors (or for the U. S. Trustee, or for the Chapter 7 Trustee, or for the lawyer for the Trustee, not to have done so). After all, AROD instituted the Chapter 11 proceedings to "reorganize" his affairs and to try to salvage what was left of his life after having been forced into mortal combat with the Federal and State Governments, with the Courts, and with the Louisiana Plaintiffs Bar, all in an attempt to achieve justice for himself and for his 2,000 or so KATRINA clients. Moreover, the wrongfully imposed and fraudulently procured sanctions had been very well-publicized. In short, AROD's bankruptcy case, and his later arrest and incarceration on spurious Federal criminal charges on January 29, 2010, were all NOTORIOUS at 500 Poydras Street, and occurred simultaneously with the institution of disbarment proceedings against AROD, including separate disbarment proceedings instituted by the State. The Eastern District Court Bench (in whose Court House the bankruptcy case was pending) even colluded and conspired with the Bankruptcy Judge to deny AROD access to the Court House without his first having to obtain a Court Order, and even then conditioned by "under armed escort" by U. S. Marshals, which the entire Federal and State Governments "knew all about." Additionally, AROD's Chapter 11 proceeding was converted by the Bankruptcy Judge to a Chapter 7, which removed "control" of the case from the Debtor and gave it to the Trustee and the Trustee's lawyer. If any "Claim" or "Proof of Claim" Forms were not filed in the bankruptcy case by AROD's Creditors, or if the Creditors did not object to AROD's discharge as proposed by the Chapter 7 Trustee, then ask the

Creditors and their lawyers, and the Trustee and his lawyer: "Why not?" Please don't ask AROD, who made "full disclosure of everything in his life" in his bankruptcy case.

All of the foregoing factors were considered by the same Bankruptcy Court Judge who presided over AROD's bankruptcy case in *In re Picou*, Bankruptcy Case No. 04-12494 (Rec. Doc. 7, E. D. La. August 10, 2005), which is a case in which Bankruptcy Judge Brown declined to rule that an unscheduled debt had NOT been discharged, pending the results of an investigation of the Debtor's motives, even when the Debtor had used "an incorrect name and address" for "the largest unsecured creditor of the debtor!" In the case at Bar, AROD identified by name and addresses "the Berrigan and Duval Creditors" to the best of his ability. And both "Creditors" had actual notice of AROD's bankruptcy case but apparently never did anything to pursue their claims against AROD.

Accordingly, AROD avers that it would be unfair for the Panel to blindly rely on the accuracy of Barbier's bold, and erroneous, assertion in his September 21, 2022 Order (Rec. Doc. 5) that: "The Court has reviewed the record in Mr. O'Dwyer's bankruptcy case, and it does not appear these debts were listed or scheduled for discharge," which AROD avers is a LIE.

While AROD concedes that the Federal Bankruptcy Statute, 11 United States Code, Section 523(a)(7), excludes from dischargeability certain fines, penalties and forfeitures, nondischargeability under Section 523(a)(7) requires proof of three elements: (1) a debt owed to "a governmental unit," (2) the debt must be "a fine, penalty, or forfeiture," and (3) the debt must not be "compensation for actual pecuniary loss." *In re Schaffer*, 515 F. 3d 424 (5th Cir. 2008). Although

Berrigan's sanction (fraudulently procured and corruptly motivated by Keller and Glazer) was "a fine, penalty, or forfeiture," she did not order that the money be paid to "a governmental unit." Rather, according to Barbier, the Berrigan sanction was to be payable to "the Attorney Disciplinary Fund" (Rec. Doc. 3, fn. 1) or to "the Court's Attorney Disciplinary Fund" (Rec. Doc. 5, fn. 1), neither of which actually exists, much less as "a governmental unit," which is one of the requirements of 523(a)(7) for nondischargeability. Duval's $7,058.50 was not "a fine, penalty, or forfeiture," but rather for "actual compensation for pecuniary loss," more particularly "out of pocket attorney's fees incurred" (allegedly for Keller's and Glazer's "services") and, therefore, dischargeable pursuant to 523(a)(7) and *In re Schaffer*. And while AROD does not have PACER access to identify to whom Duval's $7,058.50 was to be made payable (the Motions, Briefs, Memoranda, and transcripts would show that information), in the "Matrix" to his Schedule F Forms, AROD listed as a Creditor: "State of Louisiana, Department of Revenue & Taxation," which is "the collection agency" for debts owed the State. See LSA-R. S. 47:1676. Accordingly, AROD avers that both sanctions were discharged in his bankruptcy case and that they are now legally unenforceable.

CONCLUSION

For the foregoing reasons, Ashton R. O'Dwyer, Jr., respectfully submits that Judge Barbier should be disqualified from presiding over these proceedings and that another Judge should be appointed to sit. AROD also submits that Barbier's improvident actions should

be reversed and the case reinstated and remanded for trial by jury, with a fair and impartial Judge presiding.
Respectfully submitted,

Ashton R. O'Dwyer, Jr.
(in propria persona)
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Houston, Texas 77027
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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7) because, excluding the parts empted by Rule 32(f), it contains 9,634 words.

Ashton R. O'Dwyer, Jr.
(in propria persona)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 22-30614
(Civil Action No. 22-2813 in the Eastern District of Louisiana)

ASHTON R. O'DWYER, JR., Plaintiff-Appellant-Mover

VERSUS

RON CARTER, METAIRIE TOWERS CONDOMINIUM ASSOCIATION BOARD PRESIDENT, INDIVIDUALLY; JENNIFER FAGAN, BOARD MEMBER, INDIVIDUALLY; ADVANCED PROPERTY RESTORATION SERVICES, L.L.C.; JASON HOUP, OWNER, ADVANCED PROPERTY RESTORATION SERVICES, L.L.C., INDIVIDUALLY; STRATEGIC CLAIM CONSULTANTS, L.L.C.; BRANDON LEWIS, OWNER OF STRATEGIC CLAIM CONSULTANTS, L.L.C., INDIVIDUALLY; GNO PROPERTY MANAGEMENT, L.L.C; ROBERT KIRK PHILLIPS, PRESIDENT, GNO PROPERTY MANAGEMENT, L.L.C.; CYNTHIA BOLOGNA, LAWYER, INDIVIDUALLY; LOEB LAW FIRM, L.L.C.; JACK K. WHITEHEAD, JR., INDIVIDUALLY AND AS A PROFESSIONAL LAW CORPORATION

Defendants

MOTION TO SUPPLEMENT THE RECORD
(Which is to be considered in pari materia with Appellant's Original Brief, which is filed simultaneously herewith)

Ashton R. O'Dwyer, Jr.
(in propria persona)
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Houston, Texas 77027
Telephone No. (504) 812-9185
e-mail address: arodjrlaw@aol.com

CERTIFICATE OF INTERESTED PERSONS AND ENTITIES

The undersigned, Ashton R. O'Dwyer, Jr. ("AROD"), appearing in propria persona, certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

FEDERAL JUDGES:

Members of the Fifth Circuit Bench, including Judges Barksdale, retired Judge Costa, Davis, Dennis, Duncan, Engelhardt, retired Judge Emilio Garza, Higginson, Higginbotham, Smith, Southwick, and Willett.

Virtually the entire Eastern District of Louisiana Bench, but including particularly Judges Duval, Lemelle, Africk, Vance, Berrigan, Guidry, and Barbier, and all of those Judges who summarily suspended, and later summarily disbarred, AROD from the practice of law in Federal Court (including former District Judge Engelhardt, who now sits on this Court), not only without any hearing, but without Notice, by signing off on summarily-issued *En Banc Order*s in Miscellaneous Case Nos. 08-1492 and 08-1570, including *En Banc Order*s which contained statements to the effect of: "Indeed, O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him," which was simply not true.

MEMBERS OF THE LOUISIANA PLAINTIFFS' BAR:

Many prominent members of the Louisiana Plaintiffs' Bar, to whom presiding Judge Duval handed "control and management" of the "Victims of KATRINA" litigation, but including particularly Joseph Bruno, Calvin Fayard, Jim Roy, Danny Becnel (deceased), and their law partners and law firms, and also the named lawyer defendants in Civil Action No. 08-4728 on the Eastern District docket, namely:

James P. Roy
The Law Firm of Domengeaux, Wright, Roy & Edwards

Calvin Clifford Fayard
B. Blayne Honeycutt
The Law Firm of Fayard & Honeycutt

Daniel E, Becnel, Jr. (deceased)
The Law Firm of Daniel E, Becnel, Jr.

Drew A. Ranier
The Law Firm of Ranier, Gayle & Elliot, LLC

J. J. Jerry McKernan (deceased)
The McKernan Law Firm

Jonathan Beauregard Andry
The Andry Law Firm

Joseph R. Bruno
The Law Firm of Bruno & Bruno

Walter Dumas
The Dumas and Associates Law Firm

STATE ENTITIES AND INDIVIDUALS (includes civil rights claims and disbarment):

The State of Louisiana

The Executive Branch of the State of Louisiana

The Judicial Branch of the State of Louisiana

The Justices of the Louisiana Supreme Court

Former Louisiana Supreme Court Chief Justice Catherine Dick Kimball

The Louisiana Attorney Disciplinary Board

The Louisiana Office of Disciplinary Counsel

Louisiana Chief Disciplinary Counsel Charles B. Plattsmier, Jr.

Disciplinary Counsel Ad Hoc Mark Dumaine, Assistant District Attorney for East Baton Rouge Parish

Disciplinary Counsel Ad Hoc Fred McGaha, former Assistant District Attorney for Ouachita Parish

Kathleen Simon, former Louisiana Attorney Disciplinary Board Hearing Committee Chairperson

Brian Landry, formerly of the Weems law firm in Shreveport, and "Special Counsel" for the Disciplinary Board

Kim Boyle, former President of the La. State Bar Association, and a Phelps Dunbar partner

Stephen Tew, formerly of the Louisiana Disciplinary Board

The Office of the Attorney General, State of Louisiana
The Louisiana Department of Justice

Former Louisiana Attorney General Charles C. Foti, Jr.

Burton Guidry, former Chief, Criminal Division, Louisiana Department of Justice

The Appellate Division of the Louisiana Department of Justice

The Civil Division of the Louisiana Department of Justice

Louisiana Assistant Attorney General Paul B. Deal (Chief, Civil Division, LDOJ)

Louisiana Assistant Attorney General Michael Keller

Louisiana Assistant Attorney General Phyllis Glazer

Louisiana Assistant Attorney General David Sanders

Louisiana Assistant Attorney General Patricia Wilton

Louisiana Assistant Attorney General Jason Bonaventure

The Louisiana Division of Administration

The Louisiana Office of Risk Management

STATE POLICE, ET AL.:

The Louisiana State Police

The Louisiana Department of Public Safety and Corrections (Office of State Police)

Former State Police Superintendent Henry Whitehorn

Former State Police Superintendent Mike Edmonson

Former State Police Superintendent Kevin Reeves

Former State Police Lt. Col. Charles Dupuy

Former State Police Lt. Col. Mike Noel

Former State Police Lt. Col. Doug Cain

Current State Police Superintendent Lamar Davis

Current State Police Public Information Officer Captain Nick Manale

State Police Major Cathy Flinchum

Former State Police Legal Affairs Attorney Faye Morrison

Former State Trooper John Nelson of "F Troop" (now Sergeant John Nelson of the State Police)

Former State Police Sergeant Christopher Ivey (now Chief Deputy Sheriff of the Jefferson Davis Parish Sheriff's Office)

The Louisiana State Police Commission

Cathy Derbonne, former Executive Director of the Louisiana State Police Commission

The Louisiana Department of Public Safety and Corrections

Former Louisiana State Penitentiary Warden Burl Cain

FEDERAL MISCREANTS AT CAMP AMTRAK:

The U. S. Department of Justice

The Eastern District of Louisiana U. S. Attorney's Office

The Middle District of Louisiana U. S. Attorney's Office

The Federal Bureau of Investigation

The Federal Emergency Management Agency

The Department of Homeland Security

U. S. Immigration and Customs Enforcement

U. S. Customs and Border Protection

U. S. Marshals Service

U. S. Bureau of Alcohol, Tobacco, Firearms, and Explosives Enforcement

U. S. Drug Enforcement Agency

Former Assistant U. S. Attorney Michael Magner

Former Assistant U. S. Attorney Stephen Higginson (now a Federal Appeals Court Judge)
Former Assistant U. S. Attorney Brian Marcell

Former Eastern District U. S. Attorney Jim Letten

Former Assistant U. S. Attorney Jan Maselli-Mann

Assistant U. S. Attorney Greg Kennedy

Assistant U. S. Attorney Ed Rivera

FBI Special Agent Kenneth Kaiser

FBI Special Agent Michael Wolf

FBI Special Agent Chris Demenna

Immigration and Customs Enforcement Director Michael Venacore

THE "LEVEE" PARTIES:

The United States of America

The U. S. Army Corps of Engineers

The U. S. Department of Justice

U. S. Department of Justice Attorney Robin Smith

The State of Louisiana

The Board of Commissioners for the Orleans Levee District

The Board of Commissioners for the East Jefferson Levee District

The Board of Commissioners for the St. Bernard Levee District

The New Orleans Sewerage & Water Board

The Board of Commissioners for the Port of New Orleans

The Louisiana Governor's Office of Homeland Security and Emergency Management

The Louisiana Department of Transportation and Development
Former Jefferson Parish President Aaron Broussard

The Parish of Jefferson, State of Louisiana
All parties and attorneys in Civil Action No. 05-4182 on the Eastern District docket

MISCELLANEOUS:

Janet Daley-Duval, spouse of Judge Duval and his former Law Clerk

Cathryn "Caroline" Fayard, daughter of plaintiffs' lawyer Calvin Fayard, and former Law Clerk to Judge Duval

Former Partners of the Law Firm of Lemle & Kelleher, LLC (now disbanded), including particularly Ernest Edwards, Charles Talley, Joseph "Larry" Shea, and Alan Goodman

Rachelle "Shelly" Dick, former Chief Justice Kimball's sister-in-law (now a Federal District Judge)

Amanda Clark

Forrester & Dick, L.L.C.

The named defendants in this case, namely:

Ron Carter, Metairie Towers Condominium Association Board President
Jennifer Fagan, MTCA Board Member
Advanced Property Restoration Services, L.L.C.
Jason Houp, Owner, Advanced Property Restoration Services, L.L.C.
Strategic Claim Consultants, L.L.C.
Brandon Lewis, Owner of Strategic Claim Consultants, L.L.C.
GNO Property Management, L.L.C.
Robert Kirk Phillips, President, GNO Property Management, L.L.C.
Cynthia Bologna, lawyer
Loeb Law Firm, L.L.C.

Jack K. Whitehead, Jr., lawyer

ASHTON R. O'DWYER, JR.
In propria persona

MOTION TO SUPPLEMENT THE RECORD[1]

[1]The filing of this Motion has been necessitated by an overbearing Federal District Judge, who took the unprecedented (and unconstitutional) step of interfering with the filing of "proper papers" by Deputy Clerks of the U.S. District Court for the Eastern District of Louisiana, in a post-hoc summarily-issued Order dated September 21, 2022 (Rec. Doc. 5), after Mover's papers had been delivered to the Clerk on September 16, 2022. On the 21st, the Judge ordered as follows: "The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer." Appellant avers that the District Judge, who is biased and prejudiced, and who should have disqualified himself from presiding, was malevolently motivated (See infra), and that he violated Rules 5 and 77, Federal Rules of Civil Procedure, as well as 28 United States Code, Section 452 and 457 in so ordering.

MAY IT PLEASE THE COURT,
COMES NOW Appellant, Ashton R. O'Dwyer, Jr. ("AROD"), appearing in propria persona, and moves the Court as follows:

(1) To supplement the record with three (3) Exhibits ("AROD Exhibit Nos. 2, 3 and 4"), which were originally attached to and made part of his "Motion to Reopen Case" (Rec. Doc. 4), and which were transmitted to the District Court's Pro Se Unit on September 15, 2022 via Federal Express for "Overnight Delivery." The Motion and attached Exhibits were actually delivered an Eastern District Deputy Clerk on

September 16, 2022. Accordingly, AROD avers that his Motion and Exhibits were "filed" on the 16th pursuant to the provisions of Rules 5 ["A paper not filed electronically is filed by delivering it: (A) to the clerk;"] and 77 ["Every district court is considered always open for filing any paper...(and)...making a motion..."], Federal Rules of Civil Procedure. See also Docket Sheet entry for September 16, 2022 in Civil Action No. 22-2813. However, several days after the 16th, Judge Barbier, in a post hoc Order dated September 21, 2022 (Rec. Doc 5), improvidently instructed the Clerk as follows: "The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer."

(2) The three (3) Exhibits, "AROD Exhibit Nos. 2, 3 and 4," are attached for ready reference.

(3) AROD also moves for his being granted the ability to refer the Court to the contents of a fourth Exhibit ("AROD Exhibit No. 5"), namely his "Petition for a Writ of Certiorari," which was filed in the Supreme Court of the United States in Case No. 20-1666 on the SCOTUS docket. The Writ Petition is "a public record" and available for viewing in its entirety on the SCOTUS web-site. Because AROD Exhibit No. 5 (the Writ Petition and attached Appendix) is admittedly "voluminous," it is not attached. However, a "hard copy" (i.e., a "paper not filed electronically") of AROD Exhibit No. 5 also was delivered to at least one Deputy Clerk on September 16, 2022, along with AROD's Motion (Rec. Doc. 4) and all 5 of the Exhibits to his Motion. Accordingly, AROD maintains that AROD Exhibit No. 5 also was "filed" on the 16th upon delivery to a Deputy Clerk.

(4) This Motion to Supplement the Record is "in pari materia" with AROD's Original Brief, which is being filed simultaneously herewith, the contents of which should be considered with this Motion to Supplement the Record.

(5) Because Barbier's improvident sua sponte summary dismissal of AROD's Complaint, which occurred without Notice to AROD, much less a hearing of any type, and because the dismissal occurred before issue was joined, none of the defendants named in the Complaint is represented by Counsel as of yet. Indeed, the parties defendant had not been served when Barbier dismissed the case. Accordingly, AROD avers that since he is the only party to this Motion, it is "technically unopposed." In addition, while the subject Exhibits are relevant to Barbier's improvident and unconstitutional dismissal, the Exhibits are not directly relevant to AROD's claims against the defendants. However, AROD does not know if Barbier would agree, since Barbier has assumed an adversarial role against AROD and clothed himself in the mantle of "advocate against and prosecutor of" AROD, which is a role 180 degrees opposite to his being "a fair and impartial arbiter of the facts and the law" that is the sworn duty of Article III Judges, like Barbier. And AROD avers that Barbier's assuming the adversarial roles of advocate against and prosecutor of AROD confirm Barbier's personal bias and prejudice, which is the subject of AROD's appeal.

(6) AROD represents that, since the dates on which they were authored, his Exhibits have been widely disseminated to his family, friends, and supporters, and to former colleagues in the Admiralty and Maritime Bar, that their contents have been publicized in the Press, and publicly discussed during multiple radio and

TV interviews. Accordingly, the subject Exhibits are, indeed, "public records."

(7) In addition, the matters that are addressed in AROD Exhibit Nos. 2 through 5 were also addressed at oral argument before a Panel of this Court (Costa, Willet and Duncan) in Case No. 18-98009 on December 4, 2018, the oral recording of which is public record and available for being listened to by the Public on this Court's web-site. Further, the subjects of the Exhibits are matters of "public record" in the Supreme Court of the United States. Any member of the Public can access and view AROD's Writ Petition and attached Appendix simply by entering "Case No. 20-1666" on the SCOTUS docket.

(8) AROD avers that "nothing in this case is as it seems to be." More particularly, while AROD cannot dispute Barbier's characterization that he is "a former Louisiana attorney disbarred from the practice of law before this court," who has "failed to pay any of the outstanding monetary sanctions issued against him" (Rec. Doc. 5), AROD maintains that he was in fact wrongfully disbarred. AROD's only "crime" was "blowing the whistle" on the corruption of the "Victims of KATRINA" litigation, with his disbarment being retaliation and retribution exacted against him by some very powerful people in "payback" for his having exposed their corruption. Indeed, the corruption that AROD exposed runs deep, even involving Barbier's Brother Judges and many of his rich and powerful friends in the Louisiana Plaintiffs' Bar. And rather than standing as "a stalwart bulwark," who is courageously protecting the Public from "the imminent danger of harm" posed by the disbarred, disgraced, humiliated and embarrassed AROD, Barbier really is just "an overbearing bully" and "cover-up artist," who has

"weaponized" the legal and judicial system against AROD and inappropriately used his Article III powers in order to keep criminal wrongdoing by his Eastern District Brethren, and his plaintiffs' lawyer buddies, concealed, dead and buried.

(9) AROD avers that concealment of the corruption of the KATRINA litigation and of the wrongdoing committed by his judicial Brethren and plaintiffs' lawyer friends was the reason Barbier, in his post hoc Order of September 21, 2022, after AROD's "proper papers" had been delivered to a Deputy Clerk on the 16th, ordered that: "The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer."

(10) And Barbier has now dismissed a civil litigation arising out of the project to repair Hurricane IDA damage to AROD's home in a condominium building complex in Metairie, having no connection at all to the KATRINA litigation. Further, Barbier has resurrected 15-year-old monetary sanctions against AROD, which have prescribed or are otherwise legally unenforceable (and which were wrongfully imposed to begin with), not only because Barbier is biased and prejudiced against AROD, but also because he is biased and prejudiced in favor of people who have been AROD's political enemies for the past 17 years, whose corruption AROD exposed, which resulted in AROD suffering disbarment and professional, financial and social ruin as a consequence.

(11) Accordingly, AROD invokes the case of *Turner v. Pleasant*, 663 F. 3d 770 (5th Cir. 2011), and avers that the sanctions imposed by Berrigan and Duval were procured through fraud, including fraud upon the Court by Louisiana Assistant Attorneys General Michael

Keller and Phyllis Glazer, and that they were corruptly motivated by Duval, Keller, and Glazer, and by others, who wanted AROD "discredited, marginalized and silenced," because State interests were the targets of AROD's post-KATRINA litigation, the United States being immune. They also wanted the claims of AROD's 2,000 or so KATRINA clients against State interests to be dismissed: Keller and Glazer because they represented those interests, and Duval because he wanted his corruption (and his cronies' corruption) concealed and out of "the spotlight." Sanctions against AROD were a means for the wrongdoers to achieve several ends, which included silencing, discrediting, and marginalizing AROD.

(12) The attached Exhibits ("AROD Exhibit Nos. 2 through 4"), plus AROD Exhibit No. 5 (AROD's Writ Petition in Case No. 20-1666 on the SCOTUS docket), which is not attached, are the best evidence of their contents, discussed infra, and are an integral part of AROD's appeal of Barbier's improvident, inappropriate, wrongful, and unconstitutional dismissal of Civil Action No. 22-2813. AROD also avers that the contents of his Exhibits speak volumes about Barbier's real motives for doing what he has done.

(13) The attached 3 Exhibits, AROD Exhibit Nos. 2 through 4, plus AROD Exhibit No. 5, are:

AROD Exhibit No. 2 – AROD's E-mail of June 18, 2020, addressed to: "TO WHOM IT MAY CONCERN," entitled: "Ashton O'Dwyer, the WOKE conservative," details the events leading up to AROD's abduction, brutalization, torture and false imprisonment on September 20, 2005 by State "law enforcement," all of which occurred within 12 hours of AROD's filing of the first "Victims of KATRINA" lawsuit (Civil Action No.

05-4181), which named the State (as well as agencies, instrumentalities and political subdivisions of the State) as parties defendant. AROD's filing of a lawsuit against the State, and what State GOONS did to AROD only 12 hours later, were not "coincidental" events. Yet, Barbier is pursuing AROD for wrongfully imposed "sanctions," which were procured through fraud and corruptly motivated, both involving the same 2 lawyers for State interests, namely Assistant Attorneys General Michael Keller and Phyllis Glazer of the Louisiana Department of Justice, who repeatedly lied "on the record" and committed "fraud upon the Court," while representing State interests, including State employees who brutalized and tortured AROD at Camp Amtrak. Yet, none of them, not Keller, not Glazer, not "the GOONS," have ever been "sanctioned" or punished in any way. And notwithstanding the fact that AROD's brutalization and torture at Camp Amtrak included his being pepper-sprayed 30 to 40 times in the face, and his being shot 12 times, at point blank range, in both lower extremities, with a 12-gauge shotgun loaded with bean bag rounds, which permanently crippled AROD's right leg, requiring that he now must walk with the aid of a cane, a Panel of this Court (Reavley, Barksdale and Emilio Garza) threw AROD's civil rights case "in the gutter" on March 24, 2009 in Case No. 08-30052. The stated reason for that absurd result was "qualified immunity," in a written decision reached without the benefit of oral argument, because certain "powers that be" saw to it that AROD was not provided with a forum at which he could say anything on the Court record about who had ordered the criminal gangland-style "hit," or demand to know why Keller, Glazer and others had not been sanctioned, and why the perpetrators of

the crimes of violence committed against AROD had not been brought to justice.

AROD Exhibit No. 3 – AROD's E-mails to Journalists James Gill and Jeff Crouere in anticipation of an interview by Mr. Crouere on WGSO Radio for the 15th Anniversary of Hurricane KATRINA. This Exhibit is entitled; "JUDICIAL CORRUPTION and the Victims of KATRINA litigation," and constitutes "the short (or "abbreviated") version" of the corruption of the KATRINA litigation by Barbier's Brother Judges on the Eastern District Bench, including particularly the presiding Judge, Stanwood Duval, and by the Louisiana Plaintiffs' Bar, who really controlled, managed, and corrupted the KATRINA litigation, aided and abetted by Duval. And the profuse relationships between and among Barbier and the Plaintiffs' Bar, which still include relationships with Duval and his family, and their mutual friends, have been chronicled in The New York Times and in The Washington Post in the following articles by award-winning Journalists: (1) Joe Nocera, The New York Times, "Getting Skewered in New Orleans," July 19, 2013; and (2) Steven Mufson, The Washington Post, "In New Orleans courts, the legal gusher BP cannot contain," March 1, 2014, the contents of which are made part hereof by reference thereto.

AROD Exhibit No. 4 – AROD's E-mail of November 11, 2018 addressed to: "TO WHOM IT MAY CONCERN," entitled: "The Watershed Moments Summary (corrected as of November 11, 2018)." This "truly historical document," because it represents "a primary source" for what actually transpired, is also "the long version" of the corruption of the KATRINA

litigation by Federal District Judges and plaintiffs' lawyers whose wrongdoing Barbier is trying to conceal. Although AROD Exhibit No. 4 is 12 pages long, it can hardly be characterized as "voluminous." The Exhibit details why AROD maintains that his disbarment was wrongful and in retaliation and retribution for having pointed the accusatory finger of corruption at the presiding Judge in the KATRINA litigation, Stanwood Duval, and at Duval's "close personal friend of long-standing," plaintiffs' lawyer Calvin Fayard. It was Fayard who led the Louisiana Plaintiffs' Bar cabal to whom Duval handed "control and management" of the KATRINA litigation, all in an effort to benefit Fayard and Fayard's "secret client," the State. The bias, prejudice, animus, hatred and venom for AROD that infected the entire Eastern District Bench after AROD accused "a Brother Judge" (and his rich plaintiffs' lawyer friend) of wrongdoing is readily apparent from the *en banc* disqualification and recusal of the entire Eastern District Bench, including Barbier, in the spurious Federal criminal case that was brought against AROD (Rec. Doc. 16 in Criminal Case No. 10-34), and from the voluntary disqualifications and recusals by the following Judges in the following cases: Judges Berrigan, Fallon and Lemelle (See Rec. Docs. 2, 4 and 5 in Civil Action No. 08-3170), and Fallon, McNamara, and Feldman (See Rec. Doc. 23-1, pages 10 and 11 in Miscellaneous Case No. 08-1492). AROD Exhibit No. 4, Watershed Moment No. 4, bottom of page 4. AROD avers that these "self-recusals," including particularly Barbier's recusal in the spurious criminal case, constituted judicial admissions that all of the Eastern District Judges were biased and prejudiced against AROD and in favor of their Brother, Duval.

AROD Exhibit No. 5 – AROD's Petition for a Writ of Certiorari, a public record on the docket of the Supreme Court of the United States in SCOTUS Case No. 20-1666. This Exhibit identifies in great detail judicial corruption and misconduct on the Louisiana Supreme Court, on the Eastern District Bench, and in the Fifth Circuit, for which no Jurist has ever been punished. It also identifies professional misconduct by members of the Louisiana Plaintiffs' Bar for which no one has ever been punished.

(14) To bolster his argument that he was wrongfully disbarred in retaliation and retribution for pointing the accusatory finger of corruption at Duval and Fayard (and at many others), AROD also directs attention to his filing of Civil Action No. 08-4728 on October 23, 2008, which AROD has called "the largest legal malpractice Class Action lawsuit in the annals of American jurisprudence." Exactly two weeks later, on November 7, 2008, in an "*En Banc* Order" from the Eastern District Bench, AROD was suspended from the practice of law in Federal Court. See AROD Exhibit No. 4, Watershed Moment No. 7, page 5. Bear in mind that this occurred only two weeks after the filing of Civil Action No. 08-4728, which had exposed "to the entire world" the corruption of the KATRINA litigation as a result of judicial misconduct and professional misconduct for which no one has ever been punished, but which Barbier tried to conceal and cover up by interfering with the filing of AROD's "proper papers" in the case at bar.

(15) And both the *En Banc* Order of November 7, 2008 and the later *En Banc* Order of Disbarment of March 4, 2009 (as well as separate Orders signed by Lemelle) falsely stated: "Indeed, O'Dwyer

acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him," which was a LIE. See Rec. Docs. 22 and 31 in Miscellaneous Case No. 081492 on the Eastern District docket, inter alia. This totally false statement (and others to the same effect) was never corrected by Lemelle, by Judge Vance (who actually repeated it several times, in writing), or by the *en banc* Court. AROD Exhibit No. 4, Watershed Moment No. 4, middle of page 4.

(16) And every recusal Motion filed by AROD in his suspension and disbarment proceedings was summarily denied without any Judge ever addressing the focal issue, namely whether ANY Eastern District Judge could be fair and impartial, when AROD had accused "a Brother Judge" of corruption and misconduct, because their Brother was biased and prejudiced in favor of his Plaintiffs' Lawyer friends and their erstwhile "secret" client, the State of Louisiana.

(17) And in an effort to try to keep things in proper perspective, AROD avers that Barbier's dogged determination to collect allegedly outstanding monetary sanctions from him should be contrasted with the criminal conduct, judicial misconduct, and professional misconduct that is identified in the subject Exhibits, which Barbier has successfully "deep sixed" to date, with none of the wrongdoers having suffered any type of "punishment" - not impeachment, monetary sanctions, disbarment, or incarceration - except for AROD, who has been made to pay a very heavy price for his being a whistleblower in the Louisiana legal and judicial systems.

(18) Lastly, for the sake of good order and a complete record, AROD attaches to and makes part hereof as "AROD Exhibits A and B" his E-mails exchanged with

the Eastern District Pro Se Unit and Clerk of Court Carol Michel between Thursday, September 15, 2022 and Thursday, September 22, 2022. Exhibit "A" is the complete set of E-mails as printed from AROD's computer, in reverse chronological order. Exhibit "B" is the complete set of the same E-mails arranged in chronological order, with brief non-substantive, introductory comments for ease of reference. AROD avers that these E-mails also speak for themselves and that they document Barbier's wrongful, unconstitutional "interference" with the filing of AROD's proper papers, which commenced on or about September 16, 2022, following the delivery of AROD's papers to Deputy Clerk "S. Castin" @ 9:57 AM on the 16th.

CONCLUSION

For the foregoing reasons, Ashton R. O'Dwyer, Jr. respectfully submits that the record in Civil Action No. 22-2813 should be supplemented with his Exhibits, AROD Exhibit Nos. 2 through 5, and that this Motion and attached Exhibits should be considered in pari materia with his Original Brief, which is filed simultaneously herewith.

Ashton R. O'Dwyer, Jr.
(in propria persona)
2829 Timmons Lane, Unit 143
Houston, Texas 77027
Telephone No. (504) 812-9185
e-mail address: arodjrlaw@aol.com

CERTIFICATE OF COMPLIANCE

COMES NOW Plaintiff-Appellant-Mover, Ashton R. O'Dwyer, Jr., appearing in propria persona pursuant to the provisions of Rule 32(g)(1) of the Federal Rules of Appellate Procedure, and certifies that his Motion to Supplement the Record, excluding the contents of the Certificate of Interested Parties and Entities, which is exempt, complies with the type-volume limit of Rule 27(d)(2)(A), because the said Motion contains 3,304 words.

Ashton R. O'Dwyer, Jr.
(in propria persona)

United States Court of Appeals
for the Fifth Circuit

No. 22-30614

Ashton R. O'Dwyer, Jr.,

Plaintiff— Appellant,

versus

Ron Carter, *Metairie Towers Condominium Association Board President, Individually;* Jennifer Fagan, *Board Member, Individually;* Advanced Property Restoration Services, L.L.C.; Jason Houp, Owner Advanced Property Restoration Services, L.L.C., *Individually;* Strategic Claim Consultants, L.L.C.; Brandon Lewis, Owner of Strategic Claim Consultants, L.L.C., *Individually;* GNO Property Management, L.L.C.; Robert Kirk Phillips, *President, GNO Property Management, L.L.C.;* Cynthia Bologna, Lawyer, *Individually;* Loeb Law Firm, L.L.C.; Jack K. Whitehead, Jr., *Individually and* as *A Professional Law Corporation,*

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-2813

ORDER:

IT IS ORDERED that the Appellant's motion to supplement the record on appeal with three exhibits attached to the motion and which Appellant contends were originally attached to the motion to reopen the case filed in the district court, is GRANTED for the limited purpose of being considered, as appropriate, in the court's review of the appeal of the order denying the motion to reopen the case.

/s/ Catharina Haynes
Catharina Haynes
United States Circuit Judge

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

December 13, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-30614 O'Dwyer v. Carter
USDC No. 2:22-CV-2813

The court has granted the motion to supplement the record in this case. The originating court is requested to add the attached motion and documents to their court's docket and to provide us with a supplemental electronic record within 15 days. Pro-se is reminded that any citations to these documents must cite to the supplemental electronic record.

Sincerely,

LYLE W. CAYCE, Clerk
By: _____
Shea E. Pertuit, Deputy Clerk
504-310-7666

Ms. Carol L. Michel
Mr. Ashton R. O'Dwyer Jr.

United States Court of Appeals

for the Fifth Circuit

No. 22-30614

Ashton R. O'Dwyer, Jr.,

Plaintiff—Appellant,

versus

Ron Carter, *Metairie Towers Condominium Association Board President, Individually*; Jennifer Fagan, *Board Member, Individually;* Advanced Property Restoration Services, L.L.C.; Jason Houp, Owner Advanced Property Restoration Services, L.L.C., *Individually;* Strategic Claim Consultants, L.L.C.; Brandon Lewis, Owner of Strategic Claim Consultants, L.L.C., *Individually;* GNO Property Management, L.L.C.; Robert Kirk Phillips, *President, GNO Property Management, L.L.C.*; Cynthia Bologna, Lawyer, *Individually;* Loeb Law Firm, L.L.C.; Jack K. Whitehead, Jr., *Individually and as A Professional Law Corporation,*

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-2813

ORDER:

IT IS ORDERED that the Appellant's motion to supplement the record on appeal with three exhibits attached to the motion and which Appellant contends were originally attached to the motion to reopen the case filed in the district court, is GRANTED for the limited purpose of being considered, as appropriate, in the court's review of the appeal of the order denying the motion to reopen the case.

/s/ Catharina Haynes
Catharina Haynes
United States Circuit Judge

AROD EXHIBIT NO. 2

From: arodjrlaw@aol.com,
To: arodjrlaw@aol.com,
Subject: Ashton O'Dwyer, "the WOKE conservative".
Date: Thu, Jun 18, 2020 12:27 pm

TO WHOM 1T MAY CONCERN: The recent founding of "the new Nation of CHAZ (or is it CHOP?)" by leftist anarchists in a geographic area that was formerly part of the West Coast City of Seattle, Washington, including both (formerly) private and public property, some of which has been "burned, looted and vandalized, brings to mind a somewhat similar situation in New Orleans following Hurricane KATRINA, almost 15 years ago.

At the time of KATRINA, on August 29, 2005, local admiralty and maritime lawyer Ashton O'Dwyer ("AROD") lived on "the sliver by the river" at 6034 St. Charles Avenue in uptown New Orleans, between State and Webster Streets, directly across the neutral ground and streetcar tracks from a palatial Estate which was then owned by James "Jim Bob" Moffett.

AROD had decided to remain on his property for the storm in order to be able to protect what belonged to him, because he knew that "government" was incapable of of doing so.

Although about 80% of the homes and businesses in New Orleans flooded after the storm, due to gross negligence by the U.S. Army "Corpse" of Engineers and the State of Louisiana, through various agencies and instrumentalities and political subdivisions, including the Orleans Levee Board, the Louisiana Department of Transportation and Development (which

served as "the engineering arm" of the Levee Board), and the Sewerage & Water Board (which owned the outfall canal bottoms), among others.

Since St. Charles Avenue did not flood, and since it provided access to Highway 90 and Interstate 10, AROD's home was located on what became one of the main thoroughfares in and out of the City. Journalists from all over the world flocked to New Orleans, "like moths to a flame", eager to file reports about the incredible death, property damage and human misery wrought by KATRINA and by the ineptitude of "government" at all levels, "from the White House to the outhouse". Many of these Journalists passed AROD's home, and when they would see AROD working "like a dog" to clean up his property, his neighbors' property, or the neutral ground, they would stop their vehicles, pile out, and stick a microphone in AROD's face to inquire; "What are you doing here?" (As if it was any of their business, anyway).

But as the long days became a week, and as unforgettable images were broadcast of "the sea of black faces" remaining stranded at the Superdome, at the Convention Center, on elevated expressways, on roof tops, and at other places of refuge, PLEADING IN VAIN for "government help," the mood of the inquisitive Journalists became more and more "accusatory", and seemed to AROD to be designed to cause a "divide" between and among people, along racial lines.

More particularly, as government "finally" got off its ASS and began evacuation of the helpless masses, the "theme" of the Journalists who encountered AROD "morphed" from: "What are you doing here?" into: "What are you STILL doing here? If THEY have to GO, WHY should YOU be allowed to STAY?",

implying that the black citizenry, who had been unable to help themselves, were being discriminated against because they were finally being evacuated, and that a "privileged white man" should be treated by "government" in the very same way and forcibly removed from his property.

AROD responded to the relentless Journalists and their "If THEY have to GO, WHY should YOU be allowed to STAY?" question with the following: "Because my property is high and dry, undamaged, and I have a generator and sufficient food and water to provision a small army", adding (and this REALLY drove the Journalists CRAZY): "Why should I be forced to leave, and YOU be allowed to stay? Are YOU a property owner in my City? Do YOU pay property taxes in my City? Do you feel 'unsafe' here in the 6000 block of St. Charles Avenue? Because if you do, let me show you my arsenal. If its disease, pestilence or plague worrying you, then why should I have to go, and YOU stay? Are YOU any less susceptible to disease than I am? Indeed, I'm more 'immune' than YOU are, having grown up in a swamp!"

Unlike the armed leftists who currently occupy the new Nation of CHOP, who are dependent on the beneficence of the Mayor of Seattle and of as-yet unidentified Non-Governmental Organizations for their sustenance, AROD was entirely "self-sufficient", and affirmed to the Journalists that he had not "asked" for any "government help" and that he didn't "want" any government help. Also, there was nothing illegal transpiring on AROD's property.

In the meantime, and in order to deflect attention from its own INCOMPETENCE, "government" began flexing its previously unused muscles. The question: "What can we do to help you?"

became: "No one will be able to be armed; we're going to take all weapons." NOTA BENE: This new "rule" DID NOT APPLY to the roving bands of armed looters, who the Superintendent of Police, Eddie "Non-Compos Mentis" Compass, allowed to "run rampant" throughout the City, some for weeks after the storm.

And "Oh, your house flooded?" became "forced mandatory evacuation under exigent circumstances", LIKE IT OR NOT, which is NOT a concept recognized by the U.S. Constitution, which has always permitted a property owner to remain on his properly at his own risk to protect what belongs to him.

In addition to the U.S. Military, Police, State Troopers and Highway Patrolmen from other states eventually started pouring into New Orleans, many of them with "itchy trigger fingers" and making no secret of the fact that their primary goals in life were "to shoot a looter" and to make other peoples' lives as miserable as possible. Recall what happened to that elderly lady on Magazine Street, Patricial Konie, who was body-slammed and her shoulder broken by California Highway Patrolmen, while they were engaged in forcibly removing her from her home against her will, and notwithstanding the fact that she was well-provisioned, and being looked after by neighbors.

AROD became so fearful of a RAID, like the U.S. Department of "InJustice" raid on Elian Gonzalez, which was executed shortly before dawn, that he contacted a law partner to request that he arrange for a videographer to take up residence at AROD's home, so that any "government overreach" directed against AROD could be preserved for posterity on videotape. Unfortunately, AROD's law partner "dropped the ball", intentionally so. See infra.

In frustration, and in an effort to keep his sanity

during truly insane times, AROD devised a spoof based on the 1950s Peter Seller's movie, "The Mouse that Roared", announcing the following:

(1) AROD had seceded from the USA, the State of Louisiana, and the City;
(2) His property at 6034 St. Charles Avenue was "sovereign territory", more particularly "The Duchy of Kilnamanagh", which is the geographic area within County Tipperary in the Province of Munster on the Emerald Isle from whence the O'Dwyer Sept sprung;
(3) AROD was not only the Sovereign of the Duchy, but also the Commander-in-Chief of its military forces;
(4) Although his usual terms were "unconditional surrender", because the USA was, generally, such a benevolent nation, AROD was perfectly willing to discuss the terms of the USA's surrender, TO HIM;
(5) However, AROD demanded that the USA negotiate with him only through a General Officer of equal rank, pointing to the 5 stars on his fatigue cap.

And at the time, the USA did not have (and does not now have) any 5 star Generals!

The seceding from the Union and establishing the Duchy of Kilnamanagh as sovereign territory was "tongue-in-cheek" FUN, but was "seriously" reported by The Associated "Depressed" (and by other "Lame Stream Media" outlets) as; "New Orleans Lawyer Renounces His U.S. Citizenship".

And the unconstitutional gun confiscations and forced mandatory evacuations by "GOONS with guns

and badges" continued.

No one can predict how the takeover of private and public property by the new Nation of CHOP in Seattle might end. But the analogous Duchy of Kilnamanagh ended badly in "the dark of night" at 5 minutes past midnight on Tuesday, September 20, 2005, when AROD was made the target of a "criminal gangland-style hit".

Just 12 hours earlier, AROD had driven to Baton Rouge, where the Eastern District Federal Court had been headquartered temporarily, to file the very first "Victims of KATRINA" lawsuit against the United States of America, the State of Louisiana, the Governor, the City, the Mayor, the Orleans Levee Board, the Sewerage & Water Board, and others. That lawsuit was handwritten by AROD during the prior weekend. One of the claims asserted by AROD in his lawsuit was a claim for damages arising out an entirely new "tort" that AROD had invented and labelled: "government-sponsored urban terrorism". This new cause of action in tort arose out of the fact that armed bands of "wilding youths" had been allowed by "the authorities" to roam free throughout the City, causing mischief and mayhem (and "worse"), unabated, for a prolonged period after the storm. And of course, AROD's lawsuit, which was designated Civil Action No. 05-4181 on the Eastern District docket, also included more conventional claims for damages arising out of the flooding of the Greater New Orleans Metropolitan Area.

Anyway, at 5 minutes past midnight on 9/20/05, while AROD was sitting at a table in his driveway, watching the News on TV, a GOON SQUAD of Louisiana State Troopers suddenly invaded AROD's properly, abducted him, and transported him to a

temporary jail facility that became known as Camp Amtrak. There, AROD was brutalized and tortured by Louisiana Department of Public Safety and Corrections prison guards - GOONS FROM ANGOLA - who kept AROD in custody under the most spartan conditions for the next 16 1/2 hours.

AROD's abduction, etc. by State "law enforcement", which was completely unwarranted and unjustified, had been conceived and ordered by the following DEGENERATE CRIMINAL VERMIN SCUM, who held positions of authority in State government:

(A) Former Chief Justice of the Louisiana Supreme Court, Catherine Dick Kimball, who was "drunk with power" that she did not possess;

(B) Kimball's Chief Disciplinary Counsel, Charles B. Plattsmier, Jr., whose office later disbarred AROD in order to deflect attention away from Plattsmier's personal participation in the CRIMES that he and others committed against AROD and his KATRINA clients; and

(C) A sociopath named Charles C. Foti, Jr., who was at the time the "Louisiana Attorney General" and Chief Law Enforcement Officer of the State.

Others were also complicit in order to successfully pull off the criminal gangland-style "hit" on AROD, including his law firm and the partner who willfully Tailed to arrange for the videographer to stay at AROD's home. And if the GOONS had body cams or dash cams, no video footage has ever been produced.

Details of AROD's abduction, brutalization, torture and false imprisonment are the subject of a short video (14 minutes, 24 seconds), which is available

at:

www.youtube,com/watch?v=tt1lgUNKBMQ

See also an Essay entitled: "Police State Comes to New Orleans", which is available at:

http://www.tulanelink.com/stories/o'dwyer_10a.htm

AROD's separate lawsuit for the violation of his civil rights was "tossed in the gutter" by a 3-Judge Panel of the U.S. Court of Appeals for the Fifth "Circus", which ruled that the GOONS who abducted, brutalized and tortured AROD, and who held him for 16 1/2 hours, enjoyed "qualified immunity".

Further deponent sayeth not (at this time). Ashton R. O'Dwyer, Jr., 1116 Monticello Avenue, Jefferson, La. 70121, telephone: (504) 812-9185.

AROD EXHIBIT NO. 3

From: arodjrlaw@aol.com,
To: gill1407@bellsouth.net,
Subject: Fwd: JUDICAL CORRUPTION and the "Victims of KATRINA" litigation ("Talking Points" for Jeff Crouere)
Date: Sat, Aug 22, 2020 9:10 am

Mr. Gill: Next week, unless I get usurped by hurricanes, the Republican National Convention, or new "SpyGate" revelations, I maybe interviewed by Jeff Crouere on his WGSO Radio Program. The "topic" will be "judicial corruption".The "talking points" that I sent Mr. Crouere follow. I hope all is well. Ashton O'Dwyer.

—Original Message—
From: arodjrlaw@aol.com
To: arodjrlaw@aol.com
Sent: Fri, Aug 21, 2020 4:25 pm
Subject: Fwd: JUDICIAL CORRUPTION and the "Victims of KATRINA" litigation ("Talking Points" for Jeff Crouere)

—Original Message—
From: arodjrlaw <arodjrlaw@aol.com>
To: arodjrlaw <arodjrlaw@aol.com>
Sent: Fri., Aug 21, 2020
Subject: JUDICIAL CORRUPTION and the "Victims of KATRINA" litigation ("Talking Points" for Jeff Crouere)

TO WHOM IT MAY CONCERN (and to Jeff Crouere, in particular):

(1) Next weekend, which will be the 15th anniversary of Hurricane KATRINA, I want to re-visit a story of great injustice that a corrupt legal and judicial system foisted on someone whose only "crime" was fighting for justice for his 2,000 or so KATRINA clients, and for exposing the PUBLIC CORRUPTION that resulted in "the Class" of KATRINA'S innocent victims recovering exactly ZERO in "tort damages" in the KATRINA litigation.

(2) I am speaking about former maritime lawyer with Lemle & Kelleher, Ashton O'Dwyer, who was admitted to the Louisiana Bar almost 50 years ago, in 1971, after graduation from Loyola Law School, on the same date that he reported to Active Duty as an Officer in the United States Army.

(3) Because Ashton became a "crusader for justice" following KATRINA, and after he exposed CORRUPTION in the KATRINA litigation, rich and powerful forces were arrayed against him, and he was "marked for death", figuratively, if not literally. As a result of his becoming "a marked man", Ashton lost everything:

His partnership with Lemle & Kelleher, where he had practiced law for over 35 years, pre-KATRINA.

His marriage.

His ability to practice law due to his disbarment and loss of his law license "for nothing", which we will talk more about today, in some detail.

His magnificent home on St. Charles Avenue.

All of his money and worldly possessions due to a wrongful Default Judgment being entered against him by the same "lazy, stupid and corrupt" Federal Judge who had recommended his disbarment, and who forced Ashton into bankruptcy.

His freedom and liberty for almost 2 years due to being prosecuted criminally on spurious Federal criminal charges, which Ashton ultimately BEAT, but only after a two year struggle with Jim Letten's office, which also cost Ashton 34 days in solitary confinement in "The Windsor Court St. Bernard" and a prolonged period of home confinement, while wearing an ankle bracelet, and which "sounded the alarm", even when he walked to the curb to take-out the garbage.

These matters caused Ashton untold embarrassment, humiliation and disgrace, ALL FOR TRYING TO ACHIEVE JUSTICE. for his KATRINA clients and to EXPOSE CORRUPTION in the State and Federal legal and judicial systems.

(4) If one assumes that the purpose of litigation is WINNING, which means putting money in peoples' pockets, how did KATRINA'S innocent victims wind up with ZERO in "tort damages", particularly when the lawyers who were "anointed" to control and manage the litigation by the corrupt Federal Judge who presided were "supposedly" modern-day "Clarence Darrows", like Joe Bruno, Calvin Fayard and Danny

Becnel?

ASHTON SPEAKS IN HIS OWN WORDS:

(5) My approach to the KATRINA litigation was quite simple. I believed that the case would hinge on a single issue, namely: DID THE USA HAVE IMMUNITY OR NOT? If the USA was not immune, then the Federal Tort Claims Act, coupled with the depth, breadth and scope of the Federal purse, was fully able to compensate everyone, including the lawyers, very handsomely.

But WHAT IF the USA was determined to be IMMUNE, because of the provisions of the Flood Control Act of 1928 or otherwise? What then?

Who was the "next deepest pocket"? ANSWER: The State of Louisiana, of course (and its various agencies and instrumentalities and political subdivisions).

(6) But what I did not know, and did not learn until the second anniversary of KATRINA, was that the Plaintiffs' Lawyer Cabal, to whom the crooked presiding Federal Judge, Stanwood R. Dulval, Jr., had handed control and management of the litigation, had cut a deal with then-Attorney General of the State, Charles Foti, to represent the State, and to present a $400 BILLION claim on behalf of the State to the United States! The representation of the State against the United States was where the Brunos, Fayards and Becnels though the BIG MONEY WAS. Can you imagine the legal fees to be earned on a claim totaling $400 BILLION?

(7) But how could ANY LAWYER represent the interests of "the Class" of KATRINA'S victims and simultaneously represent the interests of the State, in "secret"? ANSWER: HE COULD NOT DO SO, ETHICALLY OR LEGALLY. SUCH DUAL REPRESENTATION PRESENTED THE PLAINTIFF LAWYER CABAL WITH AN IRRECONCILABLE CONFLICT OF INTERESTS, and should have DISQUALIFIED them from representing ANYONE in the KATRINA litigation.

And I started "saying so" as soon as I learned about the conflict of interests, which brought "a ton of bricks down on my head".

(8) My strategy for the litigation not only put me at odds with the USA, which was the prime defendant; it also put me at odds with the Brunos, Fayards and Becnels of the world, as well as their cronies, who did NOT want their secret representation of the State exposed. In this they were "helped" by the crooked presiding Judge Duval, who summarily dismissed every claim that I had asserted against every State entity on behalf of my KATRINA clients. Duval did this to try to make the patently obvious conflict of interests "go away". But the conflict of interests wouldn't go away, because it COULDN'T go away, not legally, not ethically. But my pleadings against the State and State entities on behalf of my clients, and exposing the conflict of interests by the cabal of plaintiffs' lawyers, put a BULLSEYE on my forehead.

(9) The enemies arrayed against me after I had exposed the corrupt conflict of interests included:

The United State of America.

The United States Army Corps of Engineers (and the Department of Defense and the U.S. Amy).

The United States Department of Justice.

The presiding Federal Judge, Duval who, although now retired, is "as crooked as a snake".

The entire Louisiana Plaintiffs' Bar (and all of the politicians and judges that they "own", including the Louisiana Supreme Court, which regulates attorney discipline).

The State of Louisiana and all of its agencies and instrumentalities and political subdivisions.

The Louisiana Department of Justice, which is headed by the Attorney General of the State who, during much of the relevant time period, was Charles C. Foti, Jr.

(10) Some people might ask (with some "justification"):" If the USA was immune, as was ultimately determined, HOW was a Judgment against the State going to be COLLECTED?" The ANSWER is: "The USA would NOT ALLOW the State of Louisiana to go BANKRUPT, and could be counted on to BAIL OUT the State if an adverse Judgment was entered against the State." This very thing, ie, "a Federal BAIL-OUT", had been done by the USA, many times, in the past. EXAMPLES:

The Airline Industry following 911.

The Savings and Loan Industry.

Bear Steams.

AIG Insurance Group.

The Automobile Industry.

Wall Street.

Bank of America.

Citigroup.

And have you heard "talk" about a possible Federal bail-out of California, Puerto Rico and the City of New York?

Just as the United State of America is doing today in connection with Covid-1984, involving TRILLIONS of Federal Dollars, which our Government is "printing".

And I believe that a Federal bail-out of the State of Louisiana could have been accomplished quite inexpensively, in the big scheme of things.

(11) To keep things in perspective, the Road Home Program paid out about $10 BILLION to certain property owners in Louisiana. But the immunity of the USA and the failure of the plaintiff lawyer cabal that controlled the KATRINA litigation to sue the State (they couldn't sue their own "secret" client) left the following "Victims of KATRINA" entirely UNCOMPENSATED:

Survivors of people who died.

Personal injury claimants who suffered bodily injuries due to the flooding.

Property owners who were not fully compensated by Road Home, which had certain limits.

People who lost their possessions and personal property, like automobiles, furniture, household effects, artwork, etc. People who lost income and wages.

People and businesses that suffered business losses.

People who incurred additional expenses due to relocation, rental of temporary

accommodations, etc, while their places of abode were being repaired.

People who suffered pollution damage.

Coincidentally, ALL OF THESE "tort damages" were what BP recently paid out only $20 BILLION for, in order to to end the BP litigation and get a Release!

(12) WHAT should "the number" have been? I don't know. But the plaintiff lawyer cabal put a $400 BILLION price tag on the State's damages, that the cabal was trying to collect form the USA before the USA was determined to be immune. The Advocate reported that a recent report from "Swiss Re", the second largest insurance company in the world, reflected that "Adjusted for inflation, the total economic damage from Katrina in 2005 was more than $160 billion". That $160 BILLION number for "total economic damage" is afar cry from the $400 BILLION that the cabal was trying to collect from the USA for the State alone. Still, "the number" would have been "a mere drop in the bucket" 15 years ago, when contrasted with what the USA is now spending as a result Covid-1984 (and on an almost daily basis in Afganistan, Iraq and Syria, AND FOR WHAT?).

(13) Duval's and Fayard's corruption of the "Victims of KATRINA" litigation began in November 2005, when Fayard's daughter, Caroline, who was serving as Duval's law clerk (Duval's "other" law clerk was his own wife, Janet Daley, who also was good friends with the entire Fayard Family), organized a trip for the Duvals and the Fayards to Tuscaloosa, Alabama for the Alabama-LSU football game. It was during this

trip that Fayard disclosed to his "close personal friend of long-standing", Duval, Fayard's "plan" for the KATRINA litigation, including Fayard's plan to secretly represent the State. Duval corruptly agreed to play along and lend his support to his friend's secret client, the State. Duval did this NOTWITHSTANDING THE CLEAR CONFLICT OF INTERESTS. Duval turned a blind eye to the conflict of interests, and did all that he could to make the conflict "disappear" (albeit in his and Fayard's criminally-warped minds) through calculated judicial intervention, because Duval believed that his "close personal friend of long-standing", Fayard, and Fayard's "secret" client, the State, would benefit.

And during the course of the litigation, before the USA was determined to be immune, Duval summarily dismissed "on the papers" each and every claim that I had asserted on behalf of my clients against the State or any State entity.

THIS CONSTITUTED JUDICIAL MISCONDUCT AND CORRUPTION OF THE WORSE KIND: Duval exercised judicial discretion, NOT because the facts and the law required it, but to attempt to BENEFIT his "close personal friend of longstanding, Fayard, and Fayard's secret client, the State.

(14) Later in the litigation, once it became obvious to all that I had been "right" all along, and that Bruno, Fayard and Becnel and their cronies had bet "wrong", because the USA had been determined to be immune, leaving KATRINA's innocent victims holding "an empty bag", because the State had not been sued by the

cabal, Duval STILL TRIED TO BENEFIT FAYARD by giving "Court Approval" to the corrupt and fraudulent "Levee Board settlement", which an Appellate Court later set aside, because Duval had approved something that allowed Fayard and his cronies to to CANNABILIZE the entire "settlement amount" and put it in their pockets!

Then, when Duval stepped aside to avoid getting in any more "trouble", the "lazy, stupid and corrupt" Ivan L/R. Lemelle stepped up to the plate, and after some "tweaking" of what Duval had previously approved, ostensibly to address some of the Appellate Court's concerns, gave HIS COURT APPROVAL of virtually the same "settlement". This corrupt action by Lemelle resulted in some KATRINA claimants receiving as little as $2.50. The complete "payout" remains SECRET.

(15) While Lemelle was approving the issuance of settlement checks to claimants for as little as $2.50 he was DISBARRING me, in part by telling one of the BIGGEST LIES ever to come out the the U/S District Court for the Eastern District of Louisiana. In denying my multiple attempts to get him to recuse himself from my disciplinary case for bias, prejudice and judicial misconduct, Lemelle said, in writing, that I had stated the following "on the record": "...O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him."

This BALD-FACED LIE was repeated several times by Lemelle in Court filings.

Then, Lemelle allowed the Chief Judge of

the Eastern District Bench to repeat the LIE, in writing, without correcting her. More particularly, when Chief Judge Sarah Vance wrote in an En Banc Order that: "Indeed, O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him" (Vance obviously failed to review the Court record, and chose to blindly rely on the accuracy of Lemelle's blatantly false statement), Lemelle failed to correct her and allowed Vance's (and his own) clearly erroneous statements to be repeated, in writing by the Chief Judge.

What I actually had told Lemelle was that I wanted him recused from my case for bias, prejudice and partiality, and that I couldn't take any chance of his deciding the disbarment case against me - exactly 100% the OPPOSITE of what Lemelle (and Vance) said that I had said!

I submit that there are few things worse than a Federal Judge LYING ON THE RECORD, multiple times, in writing, particularly when a lawyer's livelihood hangs in the balance, and the lawyer has done nothing warranting his disbarment.

The lazy, stupid and corrupt Lemelle also engaged in "more" judicial misconduct when he failed to disclose to me in my disciplinary proceedings his own prior misconduct and partiality towards crooked members of the Plaintiffs' Bar who represented the State, in secret, in the KATRINA litigation, and who were thus adverse to me and to my clients' interests. The case that Lemelle failed to disclose was "In Re: High Sulfur Content Gasoline

Products Liability Litigation", 517 F. 3d 220 (5th Cir. 2008), for which Lemelle has NEVER BEEN DISCIPLINED and which should have resulted in his impeachment and removal from the Bench.

(16) Duval's judicial misconduct, and his active participation in the State's and Calvin Fayard's CORRUPTION of the "Victims of KATRINA" litigation, is "qualitatively" more egregious than Lemelle's. But Duval retired from the Bench shortly after the Federal Fifth Circuit SHOT DOWN his "Court Approval" of the corrupt and fraudulent Levee Board settlement in December 2010, whereas Lemelle still sits on the Eastern District Bench, causing mischief and mayhem, without any repercussions for his JUDICIAL CORRUPTION. Lemelle's corruption towards me, personally, has been more "visible" and quantitative than Duval's, and has included:

Lemelle's bias and prejudice against me.

Lemelle's wrongfully recommending my suspension from the practice of law and later disbarment, all while IGNORING my defenses to the crooked disbarment proceedings over which he presided, in which he denied me basic due process of law and failed to follow the Court's own Rules for Attorney Disciplinary matters.

Lemelle's entering a wrongful Default Judgment against me, ostensibly as a sanction, which the law does not allow, which forced me to file bankruptcy proceedings.

Lemelle's wrongful refusal to recuse himself on multiple occasions in clear violation of the recusal statutes.

Lemelle's LYING on the record and failing to correct his own and Judge Vance's BALD-FACED LIES.

Lemelle's wrongful approval of the corrupt and fraudulent Levee Board settlement; indeed, he failed to DO ANYTHING about the CORRUPTION of the KATRINA litigation and went out of his way to facilitate the CORRUPTION by disbarring me, and to cover up the corruption, including his own judicial misconduct.

The foregoing "laundry list" is neither an exclusive list of Lemelle's judicial transgressions, nor is it exhaustive.

(17) But Duval and Lemelle aren't the only CROOKED "black robes" who have engaged in JUDICIAL CORRUPTION, particularly when it involved me and my clients. Both the Louisiana Supreme Court and the United States Court of Appeals for the Fifth Circuit have committed judicial misconduct that resulted in my disbarment. Both judicial bodies have LIED "on the record" about a serious matter that weighed very heavily in my disbarment proceedings.

The "real reason" I was disbarred was, allegedly, because I was erroneously accused of "practicing law without a license" and that I had "engaged in the unauthorized practice of law" while I was under suspension. These allegations were first made by the Office of Disciplinary Counsel and were also made by the Louisiana Supreme Court, which disbarred me. The purported "linchpin" for the "practicing law without a license" allegation was the allegation

that I had signed a particular pleading while I was suspended. Another allegation to the effect that I had engaged in "the unauthorized practice of law" while suspended was that I had FORGED my cousin's signature (my cousin was a practicing lawyer, who represented me as my attorney in the case at issue) on the very same pleading.

Neither allegation was true. I DID NOT SIGN THE PLEADING AT ISSUE. I DID NOT FORGE MY COUSIN'S SIGNATURE ON THE PLEADING. Rather, the pleading was signed by my cousin, a practicing, licensed lawyer, who was representing me in the case. He signed the pleading, not me, and I "forged" nothing!

These actual FACTS: (1) I DID NOT SIGN THE PLEADING, and (2) I DID NOT FORGE MY COUSIN'S SIGNATURE, were hammered home by me "on the record", in writing, many times, at oral argument, and in Exhibits that were offered in evidence without objection, both before the Louisiana Supreme Court and before the Federal Fifth Circuit. This uncontradicted EVIDENCE, which the Supreme Court and the Fifth Circuit WRONGFULLY and WILLFULLY IGNORED, clearly showed that I had not signed the pleading and that no forgery had been committed.

Nevertheless, the Louisiana Supreme Court wrote: "...he (O'Dwyer) presents no evidence in support of his assertion (that his cousin signed the pleading, not him)." THAT STATEMENT BY THE SUPREME COURT

IS A LIE.

The Federal Fifth Circuit compounded the Supreme Court's willful error by writing: "What evidence supported the conclusion that O'Dwyer wrote the brief and forged his cousin's signature so it could be filed? One of the most powerful types: a confession.", then citing the Louisiana Supreme Court's willfully erroneous conclusion, which doesn't even say what the Fifth Circuit cited it for! MORE LIES FROM PEOPLE WHO WEAR BLACK ROBES.

I "CONFESSED" TO NO SUCH THING.

And neither the Louisiana Supreme Court nor the Federal Fifth Circuit referenced the law that I had cited to both of them to the effect that the "unauthorized practice of law" or "practicing law without a license" does NOT APPLY to a disbarred lawyer who is "attending to and caring for his own business, claims or demands", as I was in a lawsuit against me, personally, by an expert witness claiming fees. See Title 37, Louisiana Revised Statutes, Section 212(B). I also was not holding myself out as a practicing attorney, "representing a client", counseling the client about any point of law, making an appearance on behalf of a client, or earning a legal fee. See Rule 5.5(e)(3) of the Louisiana Rules of Professional Conduct.

Pardon the expression, but neither the "bought and paid for" Supreme Court nor the "deaf, dumb and blind" Fifth Circuit applied any "standard "to support the conclusion that I had "practiced law without a license" or "engaged in the unauthorized practice of law" while under

suspension. Their conclusions are CRAP.

But how does one combat such BALD-FACED LIES and JUDICIAL CORRUPTION, particularly when both the case records in the Supreme Court and in the Fifth Circuit are SEALED, so that the Public cannot see my EVIDENCE, which directly contradicts the Courts' unwarranted conclusions? ANSWER: IT IS IMPOSSIBLE FOR A PERSON TO DO SO, EXCEPT THROUGH PROGRAMS LIKE YOURS, JEFF, where I can exercise my Constitutional right to freedom of expression.

(18) Telling LIES "on the record", and ignoring uncontradicted evidence, aren't the only examples of judicial misconduct by the Louisiana Supreme Court. I got my first taste of judicial corruption from that August body shortly after KATRINA, when a Supreme Court Justice, Catherine Dick Kimball, who later became Chief Justice (she is now retired), orchestrated and ordered a criminal, gangland-style "hit" against me by the Louisiana State Police and other State law enforcement entities. More particularly, within 12 hours of my having filed the first "Victims of KATRINA" lawsuit on September 20, 2006, I was abducted from my home at 5 minutes past midnight by the State Police GOONS, and taken to Camp Amtrak, where I was brutalized and tortured for the next 16 1/2 hours by "GOONS from Angola".

Former Chief Justice Kimball did not act atone, however. Her co-conspirators, none of whom have been brought to justice, included the Chief Disciplinary Counsel, whose office initiated the disciplinary proceedings against me, former

Louisiana Attorney General Charles C. Foti, Jr., and a host of other State and Federal actors, all of whom were complicit, none of whom have been punished for the brutalization and torture to which I was subjected. LIES and DISBARMENT are one thing. BUT CRIMINAL INFLICTION OF BODILY INJURIES THROUGH POLICE BRUTALIZATION AND TORTURE OF A U.S. CITIZEN ARE QUITE ANOTHER THING.

(19) As unbelievable as it may seem, the FEDS have even ORDERED that I am NOT PERMITTED TO FILE any further Complaints of Judicial Misconduct, no matter how egregious the conduct complained of may be. This from the same CORRUPT SYSTEM that IGNORED my evidence, LIED on the record, wrongfully DISBARRED me, failed to discipline CROOKED Judges, and SEALED the record in my case from viewing by the Public, not to mention CORRUPTING the KATRINA litigation, so that innocent victims received ZERO in tort damages.

(20) And judicial corruption is still "going strong" in Louisiana, in both the State and in the Federal Systems.

Recently, we were treated to the story of judicial misbehavior by another current Louisiana Supreme Court Justice, Jefferson Hughes. When he was on the District Bench, Hughes had a non-disclosed, secret relationship with one of the lawyers in a case over which he presided.

We also have recently seen, first-hand,

some "corrupt influence" in the sentence - PROBATION, WITH NO JAIL TIME - which Federal Judge Greg Guidry (who formerly sat on the "bought and paid for" Louisiana Supreme Court) meted out to former State Representative Wesley Bishop after Bishop STOLE @ $200,000 in taxpayer funds with fraudulent Road Home Application papers, PLUS monies STOLEN from Southern University through the use of fraudulent payroll documents. In addition, Guidry ruled that Bishop, the THIEF, can pay back the money he stole by paying back only $400 per month!

Both Jefferson Hughes and Greg Guidry still wear black robes!

(21) In closing, let me remind you that, for all of the PUBLIC CORRUPTION that I revealed in the KATRINA litigation and in my disciplinary cases, Ashton O'Dwyer has been the ONLY PERSON PUNISHED. Not one Judge or other lawyer, not one employee of the Corps of Engineers, the Levee Board, the Sewerage & Water Board, the State Department of Transportation and Development (which served as the "engineering arm" of the Levee Board), and not one employee of any other State or Federal agency. ONLY ME!,

Ashton O'Dwyer. Declared to be true and correct under penalty of perjury pursuant to 28 U.S. Code, Section 1746, at New Orleans, La., this 21st day of August, 2020.

AROD EXHIBIT NO. 4

From: arodjrlaw@aol.com,
To: arodjrlaw@aol.com,
Subject: The "Watershed Moments" 'Summary (corrected as of November 11, 2018)
Date: Sun, Nov 11, 2018 10:44 pm

—Original Message—

TO WHOM IT MAY CONCERN: It has occurred to AROD that the multiple "twists and turns" in the underlying "Victims of KATRINA" litigation, and what they meant to the presiding Judge and to his cronies, ie. members of "the cabal", who jointly CORRUPTED the litigation, can be difficult to follow. Accordingly, in this communication, AROD will attempt to identify certain "Watershed Moments" in the litigation, and to explain how the ever-changing landscape caused Duval and the cabal to alter their original "game plan". AROD avers that the original game plan had been formulated by Duval and his "close personal friend of long-standing", plaintiff lawyer Calvin Fayard, during the now infamous "trip to Tuscaloosa" for the LSU-Alabama game in November 2005, a trip that Duval never disclosed to the KATRINA litigants or their lawyers, and which Duval did not report on his Federal Financial Disclosure Form until years later, claiming "inadvertence". The "all expenses paid" trip included wives (Duval's wife was also his law clerk), and Duval's "other" law clerk, Fayard's daughter, Caroline, who organized the trip.

Preliminarily, one must understand that the referenced "cabal" were signatories to a document

entitled: "Levee Breach Litigation Group Co-Counsel Agreement", and to a similar document for the "MRGO litigation Group", by the terms of which the signatories agreed to share legal fees with each other. Signatories included Joseph Bruno (later anointed by Duval as "Plaintiffs' Liaison Counsel" for all KATRINA tort cases), Fayard (who was "lead" for the MRGO Litigation Group and anointed by Duval to head the Insurance Committee), and Danny Becnel, among many others. AROD avers that the cabal members were solely motivated by the five-letter word: "GREED", and that it was their GREED that drove them to enter into a "secret" agreement with former Louisiana Attorney General Charles C. Foti, Jr. to secretly represent the interests of the State of Louisiana, its agencies, instrumentalities and political subdivisions, for the presentation of a tort claim on behalf of the State, et al in the amount of $200 billion (later increased to $400 billion. See infra.) to the United States of America for the State's KATRINA damages. Can one ponder what "attorneys' fees" on a claim for $400 billion might have been worth if the claim was successfully prosecuted, or settled by Executive Order by a "plaintiff-oriented President of the United States" - think: "Hillary Clinton", to whom Fayard was a BIG contributor? AROD reiterates: The cabal's representation of the State, et al was entered into in "secret". The existence of the agreement was not disclosed to the other litigants or to their attorneys, like AROD, until the second anniversary of KATRINA, August 29, 2007, when the provisions of the Federal Tort Claims Act required that the State file pleadings to perfect claims against the United States. And in the meantime, Duval, who had actual knowledge of the secret representation of the State by the cabal, had

summarily dismissed "on-the-papers", without oral argument, much less any discovery on the merits, any and all claims that AROD had asserted on behalf of his 2,000 or so clients against the State, et al. In other words, Duval engaged in a persistent course of conduct in the litigation to attempt to "feather the nest" of his close personal friend of long-standing, Fayard, and was biased and prejudiced in favor of Fayard and in favor of Fayard's secret clients, the State of Louisiana, its agencies and instrumentalities and political subdivisions. SO:

WATERSHED MOMENT NO. 1 occurred on or about August 29, 2007, when the "dirty little secret" of the cabal's previously undisclosed representation of the State, et al could not be kept secret any longer. On that date, the cabal members and their "secret" client voluntarily invoked the jurisdiction of the Federal Court by filing Civil Action No. 07-5040, among others, which clearly showed their representation of the State (and various agencies and instrumentalities and political subdivisions of the State), as well as the PATENTLY OBVIOUS "conflict of interests" position the cabal members were guilty of by virtue of serving on Committees and Sub-Committees in the KATRINA litigation, as appointed by Duval in various "Case Management Orders". The ad damnum in Civil Action No. 07-5040 was $400 billion (Article 144, page 42 of the Complaint), which aggregated the $200 billion listed as the total "Amount of Claim" in two separate U.S. Department of Justice Forms-95 filed with the Federal Government by AG Foti six months previously, on February 28, 2007 (which incidentally was the same date on which Duval had sanctioned AROD for his "harassment of the State of Louisiana", Fayard's secret client at the time). When Civil Action No. 07-5040 (and

the other cases simultaneously filed by the cabal on behalf of the State) was discovered by AROD via PACER, "the veil was lifted" for AROD, who at last understood why Duval had summarily dismissed all of his clients' KATRINA tort claims against the State, et al during the prior two year period: Duval had been "in" on the scam and bad conspired with Fayard and his minions to make the cabal's conflict of interests simply "GO AWAY" (in their twisted, warped criminal minds) by eliminating the State, et al as defendants in the KATRINA litigation. All of them thought, erroneously, that: "Well, if the State is not a party-defendant to the litigation, then there is no conflict of interests, huh?", a position which TOTALLY IGNORED WHAT MIGHT HAPPEN to the innocent "Victims of KATRINA" if the United States of America was ultimately determined to be IMMUNE from legal liability, and the State (the next deepest pocket after the USA)had not teen joined as a party defendant by the very lawyers to whom Duval had handed "control and management" of the KATRINA litigation.

To say that AROD went BALLISTIC upon his discovery of this obvious PUBLIC CORRUPTION is an understatement. AROD immediately began "lashing out" at the cabal, at "the Plaintiffs' Liaison Committee", and at other crooked "Committee and Sub-Committee" members, calling for their resignations. AROD also attempted to persuade certain "journalists" to expose and publicize the corruption of the "Victims of KATRINA" litigation. These efforts were in vain. There were no resignations. No journalists reported the corruption of the litigation. And AROD began to feel more and more "isolated" and "marginalized" by the overwhelming prestige and power of a crooked Federal Judge and his equally crooked rich and powerful crony

friends, who controlled the KATRINA litigation (and Duval).

WATERSHED MOMENT NO. 2 actually occurred over a period of time, namely during the Fall 2007 and during the Winter of 2007-2008. After "getting nowhere fast", AROD finally decided that the "proper" way to deal with the PUBLIC CORRUPTION facing him and his clients was to do so "on the record", not realizing that it would invite RETALIATION and RETRIBUTION from a corrupt legal and judicial system.

The first thing that AROD did was to protect the interests of his 2,000 or so KATRINA clients, which he believed he accomplished on October 29, 2007, when he filed a Motion for Leave to Intervene in Civil Action No. 07-5040 (Record Document No. 8735, et seq.), staking out his clients' claims to the State's $400 billion, if the State made a recovery against the United States. The Intervening Complaint was amended on November 1, 2007 to assert a claim against the State pursuant to Cooper v. Louisiana Department of Public Works, 870 So. 2d 315 (La. App. 3d Cir. 2004), by virtue of the "Acts of Assurances" which the State, its agencies and instrumentalities and political subdivisions, had entered into with the United States (Record Document No. 8789, et seq.).

With AROD's clients' rights protected (or so he "thought"), AROD then began focusing on the "wrongdoers".

On October 31, 2007, he advised Duval "on the record" that "...there is a storm brewing in this case...", disclosing to Duval all that he knew at that time (Record Document No. 9000 in Civil Action No. 05-4182, being a Transcript of a Motion Hearing on October 31, 2008, pages 27, et seq.). As of that date, AROD had not

yet convinced himself of Duval's complicity, but he strongly suspected it.

Thirdly, on January 11, 2008, AROD filed a "Motion for Disqualification and Other Relief", which sought the disqualification of Fayard and Becnel, and "of any lawyers or law firms who maybe similarly situated" from serving on Committees in the KATRINA litigation due to their conflict of interests (Record Document No. 10331, et seq.). AROD's original Memorandum in Support was supplemented on January 21, 2008 (Record Document No. 10646, et seq.). A Memorandum in Opposition to a Motion for a Protective Order, filed on March 31, 2008, as well as a Motion for Leave to File Amicus Curiae Brief in support of certain insurers' Motion to Disqualify Special Assistant Attorneys General, filed on May 5, 2008 (Record Document Nos. 12082, et seq. and 12956, et seq.), also are relevant here.

Fourthly, on February 25, 2008, AROD filed a Complaint for disciplinary sanctions against Becnel. Fayard, Fayard's law partner, and Bruno, and against "all other Lawyers... who are similarly situated to the named Respondents" pursuant to Rule 83.2.10 of the Rules of Disciplinary Enforcement of the United States District Court for the Eastern District of Louisiana. This Complaint was assigned Civil Action No. 08-1127. An Amended Complaint was filed on February 27, 2008. Unfortunately, the disciplinary Complaint was summarily dismissed without notice, much less a hearing of any type, as "FRIVILOUS" by Livaudais on "March 6, 2008. Livaudais is now dead and cannot be asked just what was on his mind when he dismissed the Complaint, as amended, which AROD avers conformed to the provisions of the Local Rule, cited supra.

Fifthly, on January 28, 2008, AROD filed a

"Motion for Disqualification or Recusal of Judge Duval from Victims of KATRINA Litigation for Personal Bias, Prejudice and Partiality", together with a Memorandum in Support (Record Document No. 10910, et seq.). Record Document No. 11317, namely a Memorandum in Opposition to a Motion to Quash, filed by AROD on February 20, 2008, also is relevant here.

AROD supported his activities, motions and legal positions with Affidavits, Declarations Under Penalty of Perjury, etc. See Record Document Nos. 10431, 10646-3, 10969, 11699 and 13401 in Civil Action No. 05-4182.

The above and foregoing pleadings were entered as Exhibits in AROD's disciplinary case before the Hearing Committee of the Louisiana Attorney Disciplinary Board, Docket No. 2010-DB-006, and were marked as AROD Exhibit Nos. 17,18 19(A), 19(B), 21, 21, 22(A), 22(B), 23(A), 23(B), 24, 25, 26, 27(A), 27(B), 28, 29, 30 and 31. N.B. That was in the State DISCIPLINARY CASE BELOW, not this case.

AROD's exposing the CORRUPTION of the "Victims of KATRINA" litigation, Duval's knowledge and participation, and the conflict of interests by the cabal, forced the participants "to change their game plan" in order to avoid Duval's impeachment (or "worse") and experience "consequences" for their own criminal conduct and nefariousness. Accordingly, all of them, Duval included, embarked on a "new" plan which focused on DESTROYING THE WHISTLEBLOWER AROD, and to "get rid of AROD for once and for all", which would also distract everyone's (including the entire Eastern District Judicial Bench) attention away from their own CORRUPTION. The new plan also caused the cabal to put any recovery of attorneys' fees on the State's BILLIONS "on the back burner", and to

transfer all of their eggs to another basket, namely Fayard's Robinson/MRGO case, which bore Civil Action No. 06-2268 on the Eastern District docket.

That this was the new plan was "signaled" to AROD in two separate telephone calls which he received from cabal "insiders" WEEKS before Chief Judge Berrigan filed the Disciplinary Complaint against AROD on April 2, 2008. The first call was from cabal member Danny Becnel, who warned AROD: "If you do not cease and desist, and withdraw your allegations against Judge Duval and 'us', then the Eastern District Judges are going to disbar you." That telephone call from Becnel was truly remarkable, not only because it contained an overt threat, but also because it demonstrated that the "confidentially" of disciplinary proceedings in the Eastern District had been breached through forbidden ex parte communications between one or more Eastern District Judges and cabal members. The second call (it could have been a "visit") was from a German lawyer, Florian Buchler, who was working in the office of Plaintiffs' Liaison Counsel Bruno, and who warned AROD that his disbarment in Federal Court had been "an agenda item" at a meeting of "the MRGO Litigation Group", headed by Fayard, which Buchler had attended earlier in the day. Again, this was WEEKS before Berrigan filed anything against AROD on April 2, 2008.

Although AROD took Becnel's "threat", and the information communicated by Buchler, "seriously", he wasn't about to withdraw his "true and correct" allegations against Duval and the cabal. And AROD wasn't really "worried", because in his mind, "AROD had done nothing 'wrong' that would warrant his disbarment." Little did AROD know about just how "strong" Duval and the cabal really were.

WATERSHED MOMENT NO. 3 occurred on or about January 30, 2008, while AROD's Motion for Disqualification or Recusal of Judge Duval was pending. On that date, Duval ruled that the United States of America (through the U.S. Army Corps of Engineers) was IMMUNE from any and all legal liability arising out of the levee and retaining wall failures during Hurricane KATRINA. In other words, Duval ruled that the Federal Government was ABSOLUTELY IMMUNE in the Outfall Canal/Levee cases. As his authority for denying any legal recourse to some 400,000 to 500,000 innocent Victims of KATRINA, Duval cited The Flood Control Act of 1928, but he failed to mention, even in passing, 33 C.F.R. Section 208.10, which mandated certain action by the Corps of Engineers and by "Local Sponsors" (such as State agencies and instrumentalities and political subdivisions) with respect to levees, pumping stations and other flood protection "works".

Some people might attempt to argue: "Hey, AROD! Duval's ruling for the Federal Government in the Outfall Canal/Levee cases is counter-intuitive to your allegations of corruption against Duval and others. What gives?" AROD's reply to that rhetorical question is that "Duval's decision in the Outfall Canal/Levee cases was FORCED on him by AROD's having exposed CORRUPTION by him and others in connection with the cabal's representation of the State, in order for Duval to avoid impeachment, or worse." Duval and the cabal persuaded themselves that "half a loaf is better than none" OR, as Duval put it during his presentation(s) as speaker at an American Bar Association "Annual Class Action Institute Seminar" in San Francisco (during the pendency of the KATRINA litigation, no less): "Pigs get fat, hogs get slaughtered."

In addition, Duval could deny recovery in the Outfall Canal/Levee cases and still "take care of" his "close personal friend of longstanding", Fayard, and the cabal, in Fayard's Robinson/MRGO case. And then there was the obvious "added benefit" arising out of the fact that insulating the Federal Government from legal liability in the Outfall Canal/Levee cases, in what was touted as "an erudite opinion", elevated Duval to HERO STATUS, warranting the appellation "intellectual genius" in certain Federal circles, while making it "easier" for Duval to rule AGAINST the Government in Fayard's Robinson/MRGO case, when it went to trial at a later date. See infra.

To AROD's knowledge, the issue of whether the immunity conferred on the United States by virtue of the Flood Control Act of 1928 might be vitiated by "statutory violations", such as violation of 33 C. F.R. Section 208.10, which was not cited by Duval, has never been litigated.

WATERSHED MOMENT NO. 4 occurred on April 2, 2008, when the cabal, through Duval and his wife/law clerk, who operated as "the surrogate judge of Section K", saw to it that Chief Judge Berrigan signed a Local Rule 83.2.10 disciplinary Complaint against AROD, which was assigned Miscellaneous No. 08-1492, also making sure that tee matter was allotted to a cabal-friendly Judge, namely Ivan Lemelle, whose favoritism towards cabal members is a matter of public record. See the District Court and Appellate Court records in the "In Re: High Sulfur Content Gasoline Products Liability Litigation", Civil Action No. 04-1632 in the District Court, and Case No. 07-30384 in the Court of Appeals. This was unknown to AROD at the time. However, AROD did discover, while answering the allegations of the disciplinary Complaint which

Berrigan signed, that the Complaint had NOT been typed in Section "C".

AROD's disciplinary case was very "hotly contested", with AROD answering all of the allegations made against him in comprehensive "Answers and Defenses" filed on July 10, 2008, in "Supplemental Answers and Defenses" filed on October 6, 2008, and by appearing at two hearings, one on September 22, 2008, and the other on October 8, 2008, during which Lemelle did most of the talking. Two separate cases, one which resulted in suspension, and the other which resulted in disbarment, generated fairly voluminous records in the cases bearing Miscellaneous Nos. 08-1492 and 08-5170, case records that Deputy Clerk Butler has informed AROD are being made available for the Panel for de novo review. More particularly, Deputy Clerk Butler has advised AROD, in her E-mail to AROD of October 10, 2018 @11:58 AM that: "...the Eastern District of Louisiana proceedings ... will be included in the record of this court's disciplinary proceeding for the panel".

AROD avers that, although Lemelle and "the Court En Banc", speaking through Chief Judge Sarah Vance (AROD was never afforded the opportunity to address the Court En Banc, although that privilege was requested), paid "lip service" to the notion of "due process", the proceedings were in fact "Kangaroo Court proceedings" in which "the fix was in", with AROD being "railroaded". See AROD's "Objections to the Findings and Recommendations of Judge Lemelle of October 8, 2008", Record Document No. 28, filed in Miscellaneous Case No. 08-1492 on October 27, 2008. Bee also ARGO'S EXHIBIT NO. 2 in these proceedings. At the end of the day, AROD was not only wrongfully suspended from the practice of law in the Eastern District of Louisiana, he was wrongfully

DISBARRED, without a hearing of any type, following a "Report and Recommendation" by Lemelle dated February 10, 2009 (Record Document 4 in Miscellaneous No. 08-5170), in which he stated on page 1: "...finding the record abundantly clear to allow resolution of all issues without the need of oral argument or evidentiary hearing, the following report and recommendations are presented to the En Banc Court."

Although AROD filed a "Motion for Recusal of Judge Lemelle on Grounds of Bias, Prejudice and Partiality", and a Memorandum in Support of same, on October 14, 2008, Lemelle steadfastly refused to recuse himself in the proceedings. And in this "Order and Reasons" denying AROD's Motion for Recusal, Lemelle told not one, but two, BOLD-FACED LIES, which AROD avers "speak volumes" about the man and the "justice" meted out to AROD by Lemelle. (1) For the first time, Lemelle told the oft-repeated LIE that "Respondent-Attorney stated he could not think of a fairer judge to hear the complaint against him than the undersigned." Record document No. 22 in Miscellaneous No. 08-1492, filed on October 15, 2008. This LIE was later repeated several times by Lemelle in other Court filings, and was even "picked up on" and cited by Vance, erroneously, of course, in her "En Banc Order", wherein she stated: "Indeed, O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer Judge to bear the complaint against him." Record Document No. 81, page 14 in Miscellaneous No. 08-1492. (2) As to AROD's assertion that Lemelle had failed to disclose his relationship with certain cabal members, particularly with plaintiff lawyer Danny Becnel, and Lemelle's own misconduct in the "In Re: High Sulfur Content Gasoline Products Liability

Litigation", 517 F.3d 220 (5th Cir. 2008). Lemelle disingenuously wrote: "As an attorney, Respondent is presumed to know the law, including published opinions within this circuit. At that first hearing, Respondent was advised by the undersigned of an adverse circuit opinion reversing an attorney fee award in an unrelated matter rendered by this judge." AROD repeats: To the extent that this claimed "disclosure" directed AROD to Lemelle's monetary relationship with cabal members, and to Lemelle's judicial misconduct in the previously cited case, which Lemelle never referenced by name, citation or date, misconduct for which Lemelle has never been punished, AROD avers that Lemelle LIED. Record Document No. 22 in Miscellaneous No. 08-1492, filed on October 15, 2008.

AROD even "doubled down" in his attempts to get Lemelle recused, when he filed "Motion(s) for Consideration by the Court En Banc" on October 20, 2008 in Miscellaneous No. 08-1492 (Record Document No. 25). Among the motion(s) filed by AROD was "another" Motion to Recuse Lemelle. However, Chief Judge Vance (and the En Banc Court, for whom she allegedly spoke) summarily dismissed that motion WITHOUT EVER ADDRESSING THE FOCAL ISSUE, which was applicable not only to Lemelle, but to ALL of the Eastern District judges, namely that it was AROD's contention that NONE of them could be fair and impartial because the disciplinary proceedings filed against AROD were filed in RETALIATION and RETRIBUTION for AROD's having pointed the accusatory finger of criminal CORRUPTION at their "Brother Judge" Stanwood Duval, who also was biased and prejudiced in favor of his "close personal friend of long-standing", cabal member Fayard, and in favor of Fayard's client, the State of Louisiana, and therefore

biased and prejudiced AGAINST AROD and his clients. Nor did Vance (or the En Banc Court) even remotely address AROD's specific allegations against Lemelle for bias, prejudice and partiality stemming from his relationship with cabal members, or Lemelle's own misconduct in, and his failure to disclose his involvement in, the "In Re" High Sulfur Content Gasoline Products Liability Litigation".

And AROD finds it noteworthily ironic that Lemelle and the Court En Banc, speaking through Vance, refused to recuse themselves, never once mentioning the "self recusal" of Judges Berrigan, Fallon and Lemelle himself in Civil Action No. 08-3170 (Record Document Nos. 2, 4 and 5, signed on May 7, 13 and 16, 2008), and the "self-recusal" of Judges Fallon, McNamara and Feldman in other matters involving AROD during this same time frame, namely: Fallon-the Jim Pazos case; McNamara-the batture case; and Feldman-the Patricia Konie case. Record Document No. 23-1, pages 10-11, in Miscellaneous No. 08-1492.

AROD takes this opportunity to reiterate that the suspension and disbarment proceedings conducted by Lemelle, with "assistance" from Vance (and "allegedly" the Court En Banc) in Miscellaneous Nos. 08-1492 and 08-5170, are the "trees" from which the "poisonous fruit" of AROD's permanent disbarment by the "bought and paid for" Louisiana Supreme Court ultimately sprung, some 8 years later.

WATERSHED MOMENT NO. 5 had occurred on May 5, 2008, when AROD filed suit against the "Active Duty Judges of the United "States District Court for the Eastern District of Louisiana", namely, Civil Action No. 08-3170, which was filed initially to attempt to get the judges to follow their own Rules for Attorney Disciplinary Enforcement and, more

particularly, Rule III(B), which required the appointment of counsel to investigate the disciplinary case against AROD, rather than proceeding summarily under Rule III(C), which AROD averred was inapplicable. AROD sought declaratory and/or injunctive relief and, if that was not forthcoming, and if the Judges continued to fail to follow their own Rule, asserted a cause of action for violation of 42 U.S.C. Section 1983. Judges Berrigan, Lemelle and Fallon all issued Orders recusing themselves from that action (Record Document Nos. 2, 4 and 5). Later, in early December 2008, AROD (through his cousin and attorney-in-fact) attempted to amend his lawsuit against the Judges to assert, inter alia, "State Action Claims" to the extent that the Judges were doing the bidding of Duval, an "agent" of Fayard's client, the State, and Bivens claims. However, AROD was not allowed to file his "First Supplemental and Amended Complaint", which is attached to and forms a part of AROD EXHIBIT NO. 2 in this case, and which bears directly on the lack of due process and the fundamental unfairness of the disciplinary cases against AROD in the Eastern District of Louisiana. In her "En Banc Order" in Miscellaneous No. 08-1492, instead of saying why the clear provisions of Rule III(B) were not being followed, or addressing why the application of Rule III(C) would not deprive a lawyer who was being "railroaded" of "due process of law", Vance (or the Court En Banc) wrote, dismissively: "These claims are frivilous". No legal authority has ever been cited for the application of Rule III(C), rather than Rule III(B), not by Lemelle, not by Vance, and not by the En Banc Court.

WATERSHED MOMENT NO. 6 occurred on or about October 9, 2008, when then Louisiana Attorney

General "Buddy" Caldwell (Foti had lost his bid for re-election in the Fall 2007) FIRED the cabal from their representation of the State, et al in Civil Action No. 07-5040 and in the other KATRINA litigations in which the cabal had appeared as counsel for the State on August 29, 2007. AROD avers that these FIRINGS validated AROD's assertion that the cabal had a glaring conflict of interests by virtue of representing the State, et al (in "secret" prior to August 29, 2007), a conflict that could not be "cured" by Duval's summary dismissal of all claims against the State, et al in Federal Court.

WATERSHED MOMENT NO. 7 occurred on October 23, 2008, when AROD, who "sensed" that Lemelle was about to "shut him down", and publicly humiliate, embarrass and disgrace him, and marginalize him into "nothingness", filed AROD EXHIBIT NO. 6 in these proceedings, namely Civil Action No. 08-4728 (AROD Exhibit No. 33 in the State disbarment proceedings) on the Eastern District docket. This Civil Action, No. 08-4728, was styled: "Verified Class Action Civil Rights Complaint for Compensatory and Exemplary Damages, Which Arises for a Common Series of Transactions and Occurrences, Which Also involve Criminal Conduct, Abuse of Power, Legal Malpractice and Intentional Torts, Including Constitutional Torts". The plaintiff was AROD, who sued on his own behalf and on behalf of his 2,000 or so KATRINA clients, who were individually identified. Named as defendants were Duval, Fayard, Becnel and Bruno, and a host of other cabal members, plus their law firms, "and all others who may be similarly situated, against whom plaintiff and his clients reserve all rights". AROD has described AROD EXHIBIT NO. 6 (Civil Action No. 08-4728) as "the largest legal malpractice Class Action lawsuit in the annals of

American jurisprudence".

On October 27, 2008, Judge Feldman (for some strange reason, he did NOT seif-recuse in this one) acting on a purely "sua sponte" basis, summarily issued an Order in Civil Action No. 08-4728, stating: "IT IS ORDERED that the above- captioned matter is administratively closed pending resolution of the disciplinary proceedings in 08-MC-1492".

On November 7, 2008, just two weeks after AROD filed Civil Action No. 08-4728, the En Banc Eastern District Court (speaking through Chief Judge Vance) issued an "En Banc Order", which effectively cut AROD's legs off at the knees, and SHUT HIM DOWN, upon Lemelle's "recommendation", which was simply "rubber-stamped". AROD was later disbarred in a summarily-issued Order of Disbarment, without any hearing, which simply "added insult to injury". With the En Banc Order and the Order of Disbarment, AROD was "permanently taken care of once and for all", and he could no longer light the cabal and their "enabler", Duval.

WATERSHED MOMENT NO. 8 occurred in early 2009, when Fayard's Robinson/MRGO case (Civil Action No. 06-2268, but consolidated within the 05-4182 "umbrella") proceeded to trial (non-jury) before Duval, lasting 19 days.

During the trial of the case, on April 29, 2009, it was disclosed for the very first time that, during the month of July 2007, shortly before the cabal had appeared as counsel of record for the State of Louisiana on the second anniversary of KATRINA in Civil Action No. 07-5040, claiming some $400 billion from the United States on behalf of the State, the U.S.A. had entered into a "Joint Defense and Cost Share Agreement" with the State and with various State entities. In addition to

the United States, the signatories to the Joint Defense and Cost Share Agreement were a veritable "who's who's" of Hurricane KATRINA wrongdoers, namely: the State of Louisiana, the Board of Commissioners for the Orleans Levee District, the Sewerage and Water Board of New Orleans, the Board of Commissioners of the East Jefferson Levee District, the Louisiana Department of Transportation and Development (a State agency which served as "the engineering arm" of the Orleans levee Board), the Parish of Jefferson, and the Board of Commissioners for the Port of New Orleans. All of these entities had been, at one time or another, "Local Sponsors" for flood control activities by the U.S Army Corps of Engineers, covered by 33 C.F.R. Section 208.10.

The stated purpose of the Joint Defense and Cost Share Agreement was "...to allow the defendants to share confidences and secrets and confidential information with other defendants so that we could benefit from each other's knowledge and information in preparing our own defenses in this case and in others [referring to the Outfall Canal/Levee cases]:" See oral representations of U.S. Department of Justice lawyer Robin Smith in Open Court, Record Document No. 18882 in Civil Action No. 06-2268 c/w 05-4182, page "1677" versus "8 of 79". USDOJ lawyer Smith went on to say: "There were numerous strategy sessions held involving counsel for various defendants." Ibid. In plain simple English, the purpose of the agreement was to ensure that the State, et al had the benefit of the Federal Government's knowledge and expertise to DEFEAT the claims of innocent "Victims of KATRINA" against the State, EVEN IF THE USA WAS ULTIMATELY DETERMINED TO BE IMMUNE!

AROD avers that the very existence of the Joint Defense and Cost Share Agreement validates his assertion that the State, et al had "something to fear" from KATRINA claims asserted against them, whether in Federal Court or in State Court, by innocent Victims of KATRINA. See AROD EXHIBIT NO. 13 in these proceedings. Hence the Federal Government's and the State's entering into the agreement, and keeping it "secret" until April 29, 2009, when "the Feds" thought it could be used to their advantage (But it didn't pan out the way they hoped it would, because Fayard and "the cabal" were on the other side, and because Duval was the Judge).

WATERSHED MOMENT NO. 9 occurred on May 14, 2009, when Lemelle found AROD in CONTEMPT in Civil Action No. 07-3129, which was a civil action filed against AROD personally for the fees of an "expert" witness in the KATRINA litigation (Record Document No. 55). On June 4, 2009, Lemelle STRUCK from the record AROD's good and valid "Answers and Defenses" in that case, and invited the plaintiff "expert" witness to seek entry of default Judgment against AROD (Record Document No. 59). lemelle entered Default Judgment against AROD on July 22, 2009 for the principal sum of $90,831.57, plus prejudgment interest in the amount of $24,304.14, plus $150.56 per day from and including June 12, 2009, plus attorney's fees in the amount of 1/3 of the principal and prejudgment interest, and for post-judgment interest on the principal sum and attorney's fees (Record Document Nos. 72 and 73). AROD's efforts to thwart the Default Judgment against him by filing a Memorandum in Opposition to Plaintiff's Motion for Entry of Default (Record Document No. 69), and later by filing a Motion and Memorandum in Support of

Motion for Relief From Illegal Judgment (Record Document No. 75), were summarily DENIED by Lemelle who, on August categorized AROD's latter Motion as "frivolous, repetitive, harassing and barred by prior court orders" (Record Document No. 77). Since AROD could not afford to post a suspensive appeal bond, he was forced to file bankruptcy proceedings in order to avoid immediate enforcement of the Default Judgment through execution against his house on St. Charles Avenue. By refusing to recuse himself in the referenced case, Lemelle IGNORED "Hornbook Law" to the effect that "...a judge should be disqualified from sitting in a case involving an attorney if he previously attempted to have the attorney disbarred, since the judge's protracted prosecutorial pursuit of the attorney may so entangle him in matters involving the attorney as to indicate that he may be biased." Federal Procedure, Lawyers Edition (1982), Section 20:98, and authorities cited therein. In AROD's disciplinary case, Lemelle, in "Kangaroo Court" proceedings, had failed to follow Eastern District Rule III(B), had actually recommended AROD's suspension and disbarment, and failed to make proper disclosures. He was biased and prejudiced against AROD.

WATERSHED MOMENT NO. 10 occurred in late October 2009, when the United States Court of Appeals for the Fifth Circuit AFFIRMED Duval's ruling that the Federal Government was IMMUNE from legal liability in the Outfall Canal/Levee cases, thus validating Duval's January 30, 2008 decision, which had come on the heels of AROD's having EXPOSED Duval's and the cabal's roles in the CORRUPTION of the "Victims of KATRINA" litigation.

WATERSHED MOMENT NO. 11 occurred on November 18, 2009, when Duval ruled in favor of

certain of Fayard's clients in the Robinson/MRGO case. No real "surprise" here! Had this decision been affirmed, it would have cost the Federal Government tens of billions of dollars, and represented a "bonus", or "windfall" (another one), for Fayard and the cabal, who would have collected attorneys' fees on the tens of billions of dollars.

WATERSHED MOMENT NO. 12 actually came in two parts, one occurring on March 2, 2012 in Fifth Circuit Case No. 10- 30249, when this Honorable Court initially AFFIRMED Duval's ruling in favor of some of Fayard's clients in the Robinson/MRGO case, and the other occurring on September 24, 2012, when the same Panel which had previously affirmed Duval, in a stunning reversal, REVERSED themselves, holding that the discretionary function exception to liability under the Federal Tort Claims Act insulated the Federal Government from any and all legal liability with respect to the Mississippi River Gulf Outlet.

On June 24, 2013, the United States Supreme Court denied writs.

The result of the Fifth Circuit's reversal, and the SCOTUS writ denial, left the innocent "Victims of KATRINA" holding "an empty bag", because the cabal had never sued the State, and because AROD was disbarred, with all of his clients' claims against the State, et al having been summarily dismissed by Duval.

WATERSHED MOMENT NO. 13, the "corrupt and fraudulent" Levee Board "settlement".

Since the cabal did not enjoy an immediate infusion of CASH after the trial of the Robinson/MRGO case, and since they held no "guarantee" (other than "death and taxes"), the cabal had been busy "thinking" about nefarious ways for the cabal to recoup some of the litigation "costs" they had incurred during the prior

several years of KATRINA litigation. Accordingly, even while AROD's disciplinary cases were pending, the cabal had embarked on a plan to STEAL in order to get the money they had advanced in costs and expenses "back". This was done under the guise of what was sold to the public as "the levee board settlement", but which was really a corrupt and fraudulent "money grab" by the cabal, aided and abetted by Duval. In this corrupt venture, Duval thought it best to attempt to insulate himself from possible further criminal consequences by enlisting Brother Judge Lance Africk as his all-to-willing "tool" and partner in crime.

This money grab was recognized as such by This Honorable Court on December 16, 2010, in Case No. 09-31156, which REVERSED Duval's (and Africk's) "Court Approval" of the Levee Board settlement by specifically saying: "We hold that the district court erred by approving the settlement without any assurance that attorneys' costs and administrative costs will not cannibalize the entire $21 million."

Imagine that.

And so, it was "back to the drawing board" for the cabal, this time with Duval out of the picture, but being replaced by "none other than" - YOU GUESSED IT! - Lemelle.

This time the cabal and Lemelle sought to address the concerns expressed by the Fifth Circuit by proclaiming to "cap" attorneys' fees at $3.5 million, which still resulted in a Lemelle-approved "fair and reasonable settlement", by the terms of which some KATRINA claimants received settlement checks for as little as $2.50. AROD's repeated efforts to determine from the case record, from the Court web-site, from the Court-Appointed Special Master, and from the Court-Appointed Distribution Accountant, the following

information have been in vain: (1) the actual sum of money that was made available for distribution to Claimants; (2) a "spreadsheet" that identified the sum of money that each claimant received; (3) the actual sum of money that the lawyers actually received, and the amount of money that each lawyer or firm received; (4) how much the Special Master received; (5) how much the "insider" demographer, Gregory Rigamer, or his companies (GCR Inc. or Gregory C. Rigamer & Associates) received; (6) what the "administrative costs" totaled and who received what amounts; (7) the documentation for the assertion that the plaintiffs' lawyers in "levee" cases actually spent $13.5 million in otherwise reimbursable costs; and (8) how much lawyers in "the MRGO Litigation Group" (as opposed to "levee" lawyers) may have received. NONE of AROD's requests for the foregoing information has been responded to, and the information requested remains unavailable to the public.

AROD attempted to file detailed OBJECTIONS to the "corrupt and fraudulent Levee Board settlement" before "Court Approval" by Duval, prior to the Fifth Circuit's setting "the settlement" aside. However, AROD's OBJECTIONS were returned to him marked "REJECTED" and unfiled. On August 2, 2013, AROD filed detailed OBJECTIONS to the settlement prior to the entirely "predictable" Court Approval by Lemelle (Record Document No. 186 in Civil Action No. 05- 4191). However, AROD was precluded from addressing Lemelle in Open Court; indeed, no "objector" orally argued before Lemelle's "approval" of the settlement. NONE of AROD's detailed OBJECTIONS to "the settlement" was substantively addressed, either by Duval or temeite, prior to "Court Approval". AROD avers that the Levee

Board "settlement" was corrupt and fraudulent, and should never have been approved by any "jurist", sworn to uphold the constitution and laws of the United States.

One last point on the subject of the "corrupt and fraudulent" Levee Board settlement: The "one policy limit" of $20 million or so could have been paid into the Court Registry on August 30, 2005. In other words, it did not require "legal geniuses", like Bruno and Fayard, to negotiate this so-called "fair and reasonable settlement", and to require innocent victims to wait 10 to 12 years to "get a check".

CONCLUDING REMARKS: AROD "lost" each and every battle he fought in the Eastern District of Louisiana after Duval took over the "Victims of KATRINA" litigation in early 2006, after Porteous recused himself, just as AROD has "lost" every case he has had in This Court. The only "exceptions" to AROD's string of losses during the past 13 years involved the spurious Federal criminal charges brought against AROD (Criminal Case No. 10-34 in the District Court, Case No. 10- 30701 in This Court), which should never have been brought against him to begin with, and which could have landed AROD in "the Federal slammer" for 5 years. AROD has called his litigation "track record" during the past 13 years "a statistical impossibility", given AROD's documented "successes" as a practicing attorney for over 35 years, pre-KATRINA (See AROD EXHIBIT NO. 3), unless one concludes that something other than "truth, justice and the American way" has been at work in matters involving AROD. He avers that the "something else" was RETALIATION and RETRIBUTION by a bunch of scoundrels, whose PUBLIC CORRUPTION he exposed, but who still wield great power and influence,

and whose wrongdoing has never been punished.

Indeed, for all of the death, destruction and human misery wrought by KATRINA, which included its innocent victims recovering ZERO in tort damages, AROD has been the ONLY person "punished": Not one employee of the U.S. Army Corps of Engineers, not one employee of the State of Louisiana, not one employee of the Orleans Levee Board, not one employee of the Sewerage and Water Board of New Orleans, and not one employee of the Louisiana Department of Transportation and Development (which served as the "engineering arm" of the Orleans Levee Board) has been punished. Only AROD.

The "permanent disbarment order" of the Louisiana Supreme Court of March 16, 2017 played "tail-end Charlie", for AROD already has been "disbarred", in effect, since November 7, 2008, a period of almost 10 years. In short, although AROD's life was made "a living hell" by the likes of Duval, Lemelle and the cabal, as has been described in this submission, AROD has spoken very little here of Kimball, Plattsmier, Foti and others, whose "Reign of Terror" against AROD was unleashed at 5 minutes past midnight on September 20, 2005, continuing unabated until he was permanently disbarred by the "bought and paid for" Louisiana Supreme Court on March 16, 2017.

The issues inherent in "this court's disciplinary proceeding" (to borrow a phrase from Deputy Clerk Butler) bear on the very integrity of the Federal and State legal and judicial systems of the State of Louisiana. AROD avers that, if his case does not present the Fifth Circuit Panel with sufficient justification for the use of the word "UNLESS" by the SCOTUS in the 1917 case of Selling v. Radford, then nothing ever will. Respectfully, Ashton R. O'Dwyer,

Jr., 1116 Monticello Avenue, Jefferson, La. 70121, telephone no. (504) 812-9185.

AROD EXHIBIT "A"

From: arodjrlaw@aol.com,
To: Carol_Michel@laed.uscourts.gov,
Cc: prosedocs@laed.uscourts.gov,
Subject: Re: Papers to be accepted, filed and processed in Civil Action No. 22-2813 (filed in propria personal by the Clerk (Pro Se Unit) in accordance with the provisions of Rule 5, FRCP.
Date: Thu, Sep 22, 2.22 8:15 am
Attachments:
Odwyer_Dismissal_Metairie_Tower_Condos (9).pdf (109K)

Madam Clerk: This acknowledges electronic receipt of your missive of September 21, 2022 @ 4:10PM, to which was attached Judge Barbier's (he did NOT disqualify himself or recuse, as he should have, and as I had requested, due of his obvious bias and prejudice) most recent Order, also dated the 21st. I first learned of His Honor's assuming the mantle of "bill collector" when a friend sent me a copy of the September 1, 2022 Order, which recited: "IT IS HEREBY ORDERED that this case is DISMISSED without prejudice, subject to Mr. O'Dwyer's payment of all outstanding monetary sanctions imposed by this Court within 21 days of this Order."

Today is the 22nd, which is the 21st day since the 1st. For the reasons expressed in my Motion and Exhibits, I will not be paying anything that I have not already paid. I fully expect that His Honor will be issuing another Order within the next 24 to 48 hours, dismissing Civil Action No. 22-2813 with prejudice. Please see to it "as a courtesy" that any such Order is

served on me electronically, since I fully intend to file a timely Notice of Appeal (in propria persona). For your information, the Order of the 21st specifically provides that: "Nothing in this order precludes Mr. O'Dwyer from exercising any appellate rights he may have."

I was disappointed that you did not respond more completely to my "laundry list" of specific, but very straightforward and simple, questions of the 19th. It certainly would be "nice" to have "official" answers from the Clerk of Court in hand, regarding:

(a) Why the Intake Unit didn't transmit my proper papers (Motion and Exhibits) to the Pro Se Unit following receipt by the Intake Unit at 9:57 AM on Friday, the 16th?

(b) Why my proper papers (Motion and Exhibits) were not filed and docketed by the Pro Se Unit following their receipt by the Pro Se Unit (finally!) on Monday morning, the 19th?

(c) Why my proper papers (Motion and Exhibits) were given to Judge Barbier (via actual or constructive delivery) on Monday, the 19th rather than being filed and docketed by the Pro Se Unit upon receipt by the Pro Se Unit on Monday morning, the 19th?

Since you also are a lawyer, can't you see why the answers to those questions, among others, would be directly relevant to my rights on appeal, particularly since Judge Barbier has a penchant to ruling against me summarily and sua sponte, without Notice, much less a hearing of any type (I aver that is due to his bias and prejudice)?

But let's not be "coy" about the answers to these (and other) questions: We both already KNOW the

answers, don't we?

[And by the way, I didn't ask you "how" I was "served" (allegedly) with a copy of the September 1, 2022 Order. I merely observed in my missive to you of the 19th @ 5:29 PM that: "I have not been provided any 'proof of service form' by Judge Barbier, by any member of his Staff, by any Clerk or Deputy Clerk, or by the U.S. Postal Service'." If you possess any written "proof that I actually received, through proper "service of process," a copy of that Order, I'd very much like to see the proof.]

BUT LETS CUT TO THE CHASE (or get to "the meat of the coconut"):

The real test of your character and integrity, and the example that you, Madam Clerk, now have the opportunity to demonstrate to your Deputy Clerks in the Courthouse at 500 Poydras Street, will be whether my proper papers (Motion and Exhibits) will be filed and docketed, as is required by Rules 5 and 77, and by 28 United States Code, Sections 452 and 457. And just to ensure that nothing is "lost in translation," by invoking the terms "proper papers" and "filed" and "docketed;" I am referring to my Motion and five (5) Exhibits, which were the subject of: (1) My "Letter of Transmittal (via Federal Express for Overnight Priority Delivery) to the Pro Se Unit on September 15, 2022, and (2) My missive to you of September 19, 2022 @ 5:29 PM. More particularly, if my five (5) Exhibits, which are directly relevant to, and an integral part of, my Motion, and necessary to an understanding of the relief sought in the Motion, particularly disqualification and recusal of Judge Barbier on grounds of bias and prejudice, are "returned to Mr. O'Dwyer" as is stated in Record Document No. 5, then that would constitute an improper Rule and statutory violation.

And pardon this observation, but it appears that Judge Barbier may be "setting you up for a fall" by his obviously deliberate use of carefully-chosen words: "The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminious documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer."

So what are YOU going to DO, Madam Eastern District Clerk? What kind of example are you going to set for your Deputy Clerks? Will you follow the provisions of the applicable Rules and statutes and file all of my proper papers or will you succumb to Judge Barbier's corrupt influence and break the law, again?

Ashton O'Dwyer, in propria persona, 2829 Timmons Lane, Unit 143, Houston, Texas 77027, telephone no. (504) 812-9185.

—Original Message—
From: Carol Michel <Carol_Michel@laed.uscourts.gov>
To: arodjrlaw@aol.com <arodjrlaw@aol.com>
Cc: prosedocs@laed.uscourts.org
<prosedocs@laed.uscourts.org>
Sent: Wed, Sep 21, 2022 4:10 pm
Subject: RE: Papers to be accepted, filed and processed in Civil Action No. 22-2813 (filed in propria persona) by the Clerk (Pro Se Unit) in accordance with the provisions of Rule 5, FRCP.

Dear Mr. O'Dwyer,

Attached is a copy of an order entered by Judge Barbier today, September 21, 2022, in Civil Action 22-2813, O'Dwyer v. Carter, Section J(4). The order was docketed this afternoon and placed in the mail to you. As a courtesy, I am sending you this order by email

that was entered in the referenced case this afternoon.

As you were advised by the Clerk's Office Pro Se Unit employees, the documents you sent through Priority Overnight Mail through Fed Ex were received in the Clerk's Office. You, yourself, may have sent a copy of all of the documents you sent to the Clerk's Office to the chambers of Judge Barbier.

The Clerk's Office has both an Intake Unit and a Pro Se Unit. Documents that are delivered by U.S. Mail, Fed Ex, or other courier are generally received in the Intake Unit and then transmitted as indicated to the appropriate Clerk's Office or Court Unit. The docket sheet indicates that you were served with the September 1, 2022 order by means other than CM/ECF, generally referring to mail service, i.e., a letter containing the documents issued by the court were addressed to you and placed in the U.S. mail for delivery to your address indicated in the court records.
Respectfully,

Carol Michel

Carol L. Michel
Clerk of Court
United States District Court
Eastern District of Louisiana
500 Poydras Street, Room C-151
New Orleans, LA 70130
Office: (504) 589-7650
Fax: (504) 589-7698
Carol_Michel@laed.uscourts.gov

From: arodjrlaw@aol.com <arodjrlaw@aol.com>
Sent: Monday, September 19, 2022 3:18 PM
To: Carol Michel <Carol_Michel@laed.uscourts.gov>

Cc: prosedocs@laed.uscourts.org
Subject: Papers to be accepted, filed and processed in Civil Action No. 22-2813 (filed in propria persona) by the Clerk (Pro Se Unit) in accordance with the provisions of Rule 5, FRCP.

CAUTION - EXTERNAL:

Carol: I wish to bring "a situation" to your attention in your Official Capacity as Clerk of Court for the U.S. District Court for the Eastern District of Louisiana.

Preliminarily, let me state that I recognize that sometimes "lesser mortals" than Federal Judges, like "Clerks" and "Deputy Clerks," may be "instructed" from time to time by Judges to violate the Rules. I sincerely hope that this is not the "situation" that I am asking you to investigate in your Official Capacity as Clerk of Court. And please be assured that this is NOT "a knock" against your Deputy Clerks in the EDLA Pro Se Unit who, until Friday, September 16, 2022 (and even since then), have treated me, a Pro Se litigant, efficiently and courteously. Even I recognize that Clerks and Deputy Clerks are vulnerable to being placed in "very difficult positions" by sometimes overbearing Federal Judges. But instructions from a Federal Judge upon pain of being in "a difficult position" can never justify violating the Federal Rules of Civil Procedure, which it is your sworn duty to obey and implement.

On Tuesday, August 22, 2022, I transmitted to the Eastern District "Pro Se Unit" located in Room C-151 of the Federal Courthouse a "Verified Complaint for Compensatory and Exemplary Damages," together with 21 Exhibits, as well as the civil filing fee, and

instructions for the acceptance, filing and processing of my papers, which were to be filed "in propria persona." The papers, etc. were delivered to the Courthouse at 10:58 AM on Wednesday, August 23, 2022, via Federal Express "Priority Overnight" and signed for by "J. Olivo," who is presumed to be a Federal employee. In due course during the day on Wednesday, the 23rd, I was advised by a Deputy Clerk that my papers had, in fact, been received by the Pro Se Unit and that they had, in fact, been filed. Thereafter, I transmitted Waiver of Service Forms to the each of the defendants via Certified Mail. In addition, I actually received from the Pro Se Unit signed and sealed Summoneses for each defendant in the event actual physical service of process became necessary.

On Tuesday morning, September 6, 2022, I was advised by a friend who has PACER access (I do not have PACER access, because subsist on a meager monthly Social Security check) that Judge Barbier had summarily DISMISSED my "Verified Complaint" on a sua sponte basis on September 1, 2022 in a written Order. My friend, Robert Burns, who owns the "SoundOffLa" web-site, sent me Judge Barbier's Order via E-mail on the 6th @ 11:13 AM.

I was not given written or electronic Notice of Judge Barbier's Order. I have not been served pursuant to Rule 4, FRCP, with a copy of Judge Barbier's Order by any U.S. Marshal, indeed, I have not been provided any "proof of service form" by Judge Barbier, by any Member of his Staff, by any Clerk or Deputy Clerk, or by the U.S. Postal Service.

Nonetheless, following my receipt and review of Judge Barbier's Order from my friend, Mr. Bums, I immediately went to work drafting papers designed to STAY execution of the Order, to SET IT ASIDE, and

to DISQUALIFY and RECUSE Judge Barbier, who I aver is biased and prejudiced towards me and in favor of his CORRUPT Brethern who hold the title of "Federal Judge," as well as those who are members of the Louisiana Plaintiffs' Bar, on whom tens of millions (maybe even "hundreds of millions") of dollars were bestowed by Judge Barbier in the BP case, over which Judge Barbier presided. The fruits of my labors were styled: "Motion to Reopen Case and to Set Aside Summarily-Issued Sua Sponte Order (Without Notice, Much Less a Hearing of Any Type), Together with Incorporated Memorandum in Support." The Motion, which is attached and made part hereof, includes, inter alia, my objections to the inadequacy of Notice and Service of Process, and denial of due process and court access, as well as other constitutional rights, by virtue of the "self-executing nature" of Judge Barbier's wrongfully-issued Order and no opportunity for judicial review.

For ease of reference, I may refer to that pleading as "the Motion." Five (5) separate Exhibits were identified in, attached to, and made part of the Motion.

On Thursday, September 15, 2022, I transmitted the Motion and other papers to the Eastern District Pro Se Unit for Priority Overnight delivery via FedEx, just as I had done on Tuesday, August 22nd, when I sent my Verified Complaint and other papers to be accepted, filed and processed. The envelope containing the Motion, etc. was delivered to the Courthouse at 9:57 AM on Friday, the 16th, and signed for by "S' Castin," who I assume to be a Federal employee. Simultaneously, a copy of the Motion and other papers were sent to Judge Barbier in Room C-256 and were delivered at 10:12 AM on the 16th, signed for by

"S/C.NLN," who is presumed to be a federal employee. Also note "the Certificate of Service" on toe last page of the Motion.

At about 4:30 PM in Friday, the 16th, because I had not heard from anyone in the Pro Se Unit, as I had requested, in writing, I called the Unit, being informed that they has received NOTHING from me during the course of the day and that I should check back with them on Monday, today, the 19th. My written communications with the Pro Se Unit on the 15th, on the 16th, and on the 17th, follow and are self explanatory.

When I called the Pro Se Unit today, during my second call (my papers still had not been received at the time of the first call), I was advised by Supervisor Deputy Clerk Brad Newell that my papers had been received by the Pro Se Unit today. However, when I asked if my papers had been filed, I was told by Deputy Clerk Newell that my papers had been "sent to Judge Barbier" and that any information about the status of my papers "would have to come from Judge Barbier" (or words to that effect). No explanation was given by the Pro Se Unit Deputy Clerks for why my papers were not received by them until today -or why the papers were not accepted, filed and processed by the Pro Se Unit (other than: "You must ask Judge Barbier" (or words to that effect).

I do not know what may be "going on" here. But I believe that what has happened to my papers is most unusual. I respectfully direct your attention to the provisions of Rule 5, and particularly to Subsections 5(b)(2)(A) and (B), and 5(4), as well as to the "Notes of Advisory Committee on Rules," which follow the Rule. I also direct your attention to my allegations of bias and prejudice on the part of Judge Barbier in the Motion. If

what appears to be "going on" is, in fact, actually what is going on, then I respectfully submit that my allegations against His Honor are CONFIRMED (as if any confirmation of my allegations of his bias and prejudice is really necessary). More particularly, I aver that what I believe Judge Barbier has done in my case has been done "with malice aforethought."

I also respectfully submit that I am entitled to answers to the following questions:

(1) Why were my papers not delivered to the Pro Se Unit after they were signed for by "S. Castin" at 9:57 AM on Friday, September 16, 2022?
(2) Why were my papers not received by the Pro Se Unit until today, Monday, the 19th?
(3) Who delivered my papers to the Pro Se Unit on August 23, 2022 and today?
(4) Why are my papers no longer in the possession of the Pro Se Unit?
(5) Why were my papers not accepted by, filed by and processed by the Pro Se Unit following their receipt by the Pro Se Unit today and on whose instructions?
(6) Why are my papers now in the actual or constructive possession of Judge Barbier and on whose instructions?
(7) Precisely what instructions have been given to you and your Deputy Clerks by Judge Barbier and/or by members of His Honor's Staff about my papers?

In closing, let me say that I am only requesting that my papers be filed in accordance with Rule 5, and for plain answers to some very simple questions I aver, upon information and belief, that "something amiss is

afoot here" and that your Deputy Clerks (and perhaps even you, personally) may have been asked by "someone" to assume a role that: "...is not a suitable role for the office of the clerk." Frankly, I don't care whether you agree with me or not. I just want you to discharge your Rule 5 obligations and file my papers, and to answer my simple questions. Please permit me to also direct your attention to the Advisory Committee Note to the 2018 Amendment to Rule 5, and more aprticularly to the penultimate paragraph, which is "pregnant with meaning, and which begins with: "Filings by a person proceeding without an attorney are treated separately." I respectfully submit that Judge Barbier and the Pro Se Unit need to read that paragraph to refresh their recollection. Ashton O'Dwyer, in propria persona, 2829 Timmons Lane, Unit 143, Houston, Texas 77027, telephone no (504) 812-9185.

—Original Message—
From: arodjrlaw@aol.com
To: prosedocs@laed.uscourts.gov
<prosedocs@laed.uscourts.gov>
Sent: Sat, Sep 17, 2022 9:36 am
Subject: Fwd: AROD Motion (and Incorporated Memorandum in Support) and Exhibits.

Dear Sirs or Mesdames: For your information, FedEx has now advised that "the envelope" that was delivered to the Federal Courthouse yesterday, the 16th, addressed as indicated below, at 9:57 AM, was actually SIGNED FOR by Federal employee: "S. CASTIN." I am anxious for my official papers to be filed, as requested, and as guaranteed by the U.S. Constitution and by Rule 5, and for the Postal Money Order to be processed by you and/or the Financial Unit

Additionally, since I paid FedEx "good money" that I can ill-afford, namely $51.50 to have "overnight delivery" completed yesterday (it WAS!), I respectfully submit that I am entitled to an explanation for precisely WHY the Pro Se Unit did not receive my papers for filing and processing yesterday, following delivery and being signed for by "S. Castin" at 9:57 AM. Respectfully, Ashton O'Dwyer (in propria persona), telephone no. (504) 812-9185.

—Original Message—
From: arodjrlaw@aol.com
To: prosedocs@laed.uscourts.gov
<prosedocs@laed.uscourts.gov>
Sent: Fri, Sep 18, 2022 4:51 pm
Subject: Fwd: AROD Motion (and Incorporated Memorandum in Support) and Exhibits.

Dear Sirs or Mesadames: The following SIGNED original and the referenced original and signed pleading, Exhibits and Postal Money Order were delivered by Federal Express to the Federal Courthouse, addressed to: "Deputy Clerk, Pro Se Unit, Room C-151, U.S. Courthouse, 500 Poydras Street, NOLA 70130" at 9:57 AM this morning. The FedEx Tracking Number is: 278017603791. The envelope was signed for, but I do not yet have the actual recipient's name from FedEx. Please trace these official documents and call me on Monday, the 19th. Thank you. Respectfully. Ashton O'Dwyer. See below for contact details.

—Original Message—
From: arodjrlaw@aol.com
To: arodjrlaw@aol.com

Sent: Wed, Sep 14, 2022 9:33 am
Subject: AROD Motion (and Incorporated Memorandum in Support) and Exhibits.

Madam Deputy Clerk: You will find enclosed the following for filing and processing:

(1) Original signed Motion (and Incorporated Memorandum in Support), Please note the signed "Certificate of Service" on the last page.

(2) Original Exhibits that are to be attached to and made part of the Motion. There are a total of five (5) Exhibits, each of which is clearly marked and described in detail in the body of the Motion and Incorporated Memorandum.

(3) Postal Money Order in the amount of $500.00 payable to: "Clerk, U.S.D.C., Eastern District of La." This Money Order is in full payment of the $500.00 sanction in Civil Action No. 06-7280 that is mentioned in the footnote in Judge Barbier's Order of September 1, 2022 (Record Document No. 3 in Civil Action No. 22-2813).

I would sincerely appreciate electronic confirmation of my filings, hopefully including "one free look" on PACER, to which I do not subscribe for financial reasons.

Should you have any questions about any of this, please contact me IMMEDIATELY @ (504) 812-9185.

Respectfully, Ashton R. O'Dwyer, Jr. (in propria persona), 2829 Timmons Lane, Unit 143, Houston, Texas 77027, telephone no. (504) 812-9185, e-mail address: arodjrlaw@aol.com.

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when

opening attachments or clicking on links.

AROD EXHIBIT "B"

AROD E-Mails with Eastern District Pro Se Unit and Clerk of Court in Chronological Order

On Thursday, September 15, 2022, AROD mailed a "hard copy "of the following letter to the Pro Se Unit of the Eastern District via Federal Express (for "Overnight Delivery"):

Madam Deputy Clerk: You will find enclosed the following for filing and processing:

(1) Original signed Motion (and Incorporated Memorandum in Support). Please note the signed "Certificate of Service" on the last page.

(2) Original Exhibits that are to be attached to and made part of the Motion. There are a total of five (5) Exhibits, each of which is clearly marked and described in detail in the body of the Motion and Incorporated Memorandum.

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I would sincerely appreciate electronic confirmation of my filings, hopefully including "one free look" on PACER, to which I do not subscribe for financial reasons.

Should you have any questions about any of this, please contact me IMMEDIATELY @ (504) 812-9185.

Respectfully, Ashton R. O'Dwyer, Jr. (in propria persona), 2829 Timmons Lane, Unit 143, Houston, Texas 77027, telephone no. (504) 812-9185, e-mail address: arodjrlaw@aol.com.

The next the day, Friday, the 16th, AROD was informed by Federal Express that his "proper papers" had been delivered to the Federal Court House @ 9:57 AM on the 16th; however, AROD was not informed of the identity of the person who actually signed for the papers. Accordingly, late on Friday the 16th, because he had not heard from the Pro Se Unit, as he had requested, he called the Unit, being informed that: "We have not received anything from you." This alarmed AROD, who feared that "someone" may have intercepted his papers to thwart their being "filed." Accordingly, AROD sent the following E-mail to the Pro Se Unit on Friday the 16th @ 4:51 PM:

> Dear Sirs or Mesadames: The following SIGNED original and the referenced original and signed pleading, Exhibits and Postal Money Order were delivered by Federal Express to the Federal Courthouse, addressed to: "Deputy Clerk, Pro Se Unit, Room C-151, U.S. Courthouse, 500 Poydras Street, NOLA 70130" at 9:57 AM this morning. The FedEx Tracking Number is: 278017603791. The envelope was signed for, but I do not yet have the actual recipient's name from FedEx. Please trace these official documents and call me on Monday, the 19th. Thank you. Respectfully. Ashton O'Dwyer. See below for contact details.

Then, @ 9:36 AM on Saturday morning, the 17th,

after AROD had learned from Federal Express the identity of the Federal employee who actually had signed for his proper papers at the Court House at 9:57 AM on the 16th, AROD sent the following E-mail to the Pro Se Unit:

> Dear Sirs or Mesdames: For your information, FedEx has now advised that "the envelope" that was delivered to the Federal Courthouse yesterday, the 16th, addressed as indicated below, at 9:57 AM, was actually SIGNED FOR by Federal employee: "S. CASTIN." I am anxious for my official papers to be filed, as requested, and as guaranteed by the U.S. Constitution and by Rule 5, and for the Postal Money Order to be processed by you and/or the Financial Unit. Additionally, since I paid FedEx "good money" that I can ill-afford, namely $51.50 to have "overnight delivery" completed yesterday (it WAS!), I respectfully submit that I am entitled to an explanation for precisely WHY the Pro Se Unit did not receive my papers for filing and processing yesterday, following delivery and being signed for by "S. Castin" at 9:57 AM. Respectfully, Ashton O'Dwyer (in propria persona), telephone no. (504) 812-9185.

On Monday, the 19th, AROD spoke with Deputy Clerks of the Pro Se Unit, culminating in a conversation with the Unit, Supervisor, Deputy Clerk Brad Newell. AROD was advised by Deputy Clerk Newell that although his papers had been "received" by the Pro Se Unit on Monday, the 19th, the papers had been "sent to Judge Barbier" and that any information about the status of AROD's papers, including whether the papers

had been "accepted, filed and processed" by the Clerk "...would have to come from Judge Barbier" or "You must ask Judge Barbier" (or words to that effect). Accordingly, in an effort to learn precisely "what might be going on," and to get his proper papers filed and processed by the Clerk under the applicable Rules, AROD transmitted the following E-mail to the Clerk of the Eastern District, Ms. Carl Michel, on Monday, the 19th @ 3:18 PM, on which the Pro Se Unit was open copied:

> Carol: I wish to bring "a situation" to your attention in your Official Capacity as Clerk of Court for the U.S. District Court for the Eastern District of Louisiana.
>
> Preliminarily, let me state that I recognize that sometimes "lesser mortals" than Federal Judges, like "Clerks" and "Deputy Clerks," may be "instructed" from time to time by Judges to violate the Rules. I sincerely hope that this is not the "situation" that I am asking you to investigate in your Official Capacity as Clerk of Court. And please be assured that this is NOT "a knock" against your Deputy Clerks in the EDLA Pro Se Unit who, until Friday, September 16, 2022 (and even since then), have treated me, a Pro Se litigant, efficiently and courteously. Even I recognize that Clerks and Deputy Clerks are vulnerable to being placed in "very difficult positions" by sometimes overbearing Federal Judges. But instructions from a Federal Judge upon pain of being in "a difficult position" can never justify violating the Federal Rules of Civil Procedure, which it is your sworn duty to obey

and implement.

On Tuesday, August 22, 2022, I transmitted to the Eastern District "Pro Se Unit" located in Room C-151 of the Federal Courthouse a "Verified Complaint for Compensatory and Exemplary Damages," together with 21 Exhibits, as well as the civil filing fee, and instructions for the acceptance, filing and processing of my papers, which were to be filed "in propria persona." The papers, etc. were delivered to the Courthouse at 10:58 AM on Wednesday, August 23, 2022, via Federal Express "Priority Overnight" and signed for by "J. Olivo," who is presumed to be a Federal employee. In due course during the day on Wednesday, the 23rd, I was advised by a Deputy Clerk that my papers had, in fact, been received by the Pro Se Unit and that they had, in feet, been filed. Thereafter, I transmitted Waiver of Service Forms to the each of the defendants via Certified Mail. In addition, I actually received from the Pro Se Unit signed and sealed Summonses for each defendant in the event actual physical service of process became necessary.

On Tuesday morning, September 6, 2022, I was advised by a friend who has PACER access (I do not have PACER access, because I subsist on a meager monthly Social Security check) that Judge Barbier had summarily DISMISSED my "Verified Complaint" on a sua sponte basis on September 1, 2022 in a written Order. My friend, Robert Burns, who owns the "SoundOffLa" web-site, sent me Judge Barbier's Order via E-mail

on fee 6th @ 11:13 AM.

I was not given written or electronic Notice of Judge Barbier's Order. I have not been served pursuant to Rule 4, FRCP, with a copy of Judge Barbier's Order by any U.S. Marshal. Indeed, I have not been provided any "proof of service form" by Judge Barbier, by any Member of his Staff, by any Cleric or Deputy Clerk, or by the U.S. Postal Service.

Nonetheless, following my receipt and review of Judge Barbier's Order from my friend, Mr. Burns, I immediately went to work drafting papers designed to STAY execution of the Order, to SET IT ASIDE, and to DISQUALIFY and RECUSE Judge Barbier, who I aver is biased and prejudiced towards me and in favor of his CORRUPT Brethern who hold the title of "Federal Judge," as well as those who are members of the Louisiana Plaintiffs' Bar, on whom tens of millions (maybe even "hundreds of millions") of dollars were bestowed by Judge Barbier in the BP case, over which Judge Barbier presided. The fruits of my labors were styled: "Motion to Reopen Case and to Set Aside Summarily-Issued Sua Sponte Order (Without Notice, Much Less a Hearing of Any Type), Together with Incorporated Memorandum in Support" The Motion, which is attached and made part hereof, includes, inter alia, my objections to the inadequacy of Notice and Service of Process, and denial of due process and court access, as well as other constitutional rights, by virtue of the "self-executing nature" of

Judge Barbier's wrongfully-issued Order and no opportunity for judicial review.

For ease of reference, I may refer to that pleading as "the Motion." Five (5) separate Exhibits were identified in, attached to, and made part of the Motion.

On Thursday, September 15, 2022, I transmitted the Motion and other papers to the Eastern District Pro Se Unit for Priority Overnight delivery via FedEx, just as I had done on Tuesday, August 22nd, when I sent my Verified Complaint and other papers to be accepted, filed and processed. The envelope containing the Motion, etc. was delivered to the Courthouse at 9:57 AM on Friday, the 16th, and signed for by "S' Castin," who I assume to be a Federal employee. Simultaneously, a copy of the Motion and other papers were sent to Judge Barbier in Room C-256 and were delivered at 10:12 AM on the 16th, signed for by "S/C.NLN," who is presumed to be a Federal employee. Also note "the Certificate of Service" on the last page of the Motion.

At about 4:30 PM in Friday, the 16th, because I had not heard from anyone in the Pro Se Unit, as I had requested, in writing, I called the Unit, being informed that they have received NOTHING from me during the course of the day and that I should check back with them on Monday, today, the 19th. My written communications with the Pro Se Unit on the 15th, on the 16th, and on the 17th, follow and are

self-explanatory.

When I called the Pro Se Unit today, during my second call (my papers still had not been received at the time of the first call), I was advised by Supervisor Deputy Clerk Brad Newell that my papers had been received by the Pro Se Unit today.

However, when I asked if my papers had been filed, I was told by Deputy Clerk Newell that my papers had been "sent to Judge Barbier" and that any information about the status of my papers "would have to come from Judge Barbier" (or words to that effect). No explanation was given by the Pro Se Unit Deputy Clerics for why my papers were not received by them until today or why the papers were not accepted, filed and processed by the Pro Se Unit (other than: "You must ask Judge Barbier" (or words to that effect).

I do not know what may be "going on" here. But I believe that what has happened to my papers is most unusual. I respectfully direct your attention to the provisions of Rule 5, and particularly to Subsections 5(b)(2)(A) and (B), and 5(4), as well as to the "Notes of Advisory Committee on Rules," which follow the Rule. I also direct your attention to my allegations of bias and prejudice on the part of Judge Barbier in the Motion. If what appears to be "going on" is, in fact, actually what is going on, then I respectfully submit that my allegations against His Honor are CONFIRMED (as if any

confirmation of my allegations of his bias and prejudice is really necessary). More particularly, I aver that what I believe Judge Barbier has done in my case has been done "with malice aforethought."

I also respectfully submit that I am entitled to answers to the following questions:

(1) Why were my papers not delivered to the Pro Se Unit after they were signed for by "S. Castin" at 9:57 AM on Friday, September 16, 2022?
(2) Why were my papers not received by the Pro Se Unit until today, Monday, the 19th?
(3) Who delivered my papers to the Pro Se Unit on August 23, 2022 and today?
(4) Why are my papers no longer in the possession of the Pro Se Unit?
(5) Why were my papers not accepted by, filed by and processed by the Pro Se Unit following their receipt by the Pro Se Unit today and on whose instructions?
(6) Why are my papers now in the actual or constructive possession of Judge Barbier and on whose instructions?
(7) Precisely what instructions have been given to you and your Deputy Clerks by Judge Barbier and/or by members of His Honor's Staff about my papers?

In closing, let me say that I am only requesting that my papers be filed in accordance with Rule 5, and for plain answers to some very simple

> questions I aver, upon information and belief, that "something amiss is afoot here" and that your Deputy Clerks (and perhaps even you, personally) may have been asked by "someone" to assume a role that: "...is not a suitable role for the office of the clerk." Frankly, I don't care whether you agree with me or not. I just want you to discharge your Rule 5 obligations and file my papers, and to answer my simple questions. Please permit me to also direct your attention to the Advisory Committee Note to the 2018 Amendment to Rule 5, and more particularly to the penultimate paragraph, which is "pregnant with meaning, and which begins with: "Filings by a person proceeding without an attorney are treated separately." I respectfully submit that Judge Barbier and the Pro Se Unit need to read that paragraph to refresh their recollection. Ashton O'Dwyer, in propria persona, 2829 Timmons Lane, Unit 143, Houston, Texas 77027, telephone no. (504) 812-9185.

Nothing further was heard from Ms. Michel or the Pro Se Unit until Wednesday, September 21st @ 4:10PM, when Clerk Michel sent AROD Rec. Doc. 5, being Barbier's Order of the same date, containing the following post hoc instructions to the Clerk from Barbier:

> "The Clerk is instructed to file only the Motion itself as Rec. Doc 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer."

In her E-mail of the 21st, Ms. Michel made no

real effort to respond to AROD's prior very pointed questions, except to say:

> Dear Mr. O'Dwyer,
>
> Attached is a copy of an order entered by Judge Barbier today, September 21, 2022, in Civil Action 22-2813, O'Dwyer v. Carter, Section J(4). The order was docketed this afternoon and placed in the mail to you. As a courtesy, I am sending you this order by email that was entered in the referenced case this afternoon.
>
> As you were advised by the Clerk's Office Pro Se Unit employees, the documents you sent through Priority Overnight Mail through Fed Ex were received in the Clerk's Office. You, yourself, may have sent a copy of all of the documents you sent to the Clerk's Office to the chambers of Judge Barbier.
>
> The Clerk's Office has both an Intake Unit and a Pro Se Unit. Documents that are delivered by U.S. Mail, Fed Ex, or other courier are generally received in the Intake Unit and then transmitted as indicated to the appropriate Clerk's Office or Court Unit. The docket sheet indicates that you were served with the September 1, 2022 order by means other than CM/ECF, generally referring to mail service, i.e., a letter containing the documents issued by the court were addressed to you and placed in the U.S. mail for delivery to your address indicated in the court records.

Respectfully,

Carol Michel

Carol L. Michel

Clerk of Court
United States District Court
Eastern District of Louisiana
500 Poydras Street, Room C-l 51
New Orleans, LA 70130
Office: (504) 589-7650
Fax: (504) 589-7698
Carol_Michel@laed.uscourts.gov

Early the next morning, Thursday, the 22nd, @ 8:15 AM, AROD transmitted the following E-mail to Clerk Michel, on which the Pro Se Unit was open copied:

> Madam Clerk: This acknowledges electronic receipt of your missive of September 21, 2022 @ 4:10 PM, to which was attached Judge Barbier's (he did NOT disqualify himself or recuse, as he should have, and as I had requested, due of his obvious bias and prejudice) most recent Order, also dated the 21st. I first learned of His Honor's assuming the mantle of "bill collector" when a friend sent me a copy of the September 1, 2022 Order, which recited: "IT IS HEREBY ORDERED that this case is DISMISSED without prejudice, subject to Mr. O'Dwyer's payment of all outstanding monetary sanctions imposed by this Court within 21 days of this Order."

Today is the 22nd, which is the 21st day since the 1st. For the reasons expressed in my Motion and Exhibits, I will not be paying anything that I have not already paid. I fully expect that His Honor will be issuing another Order within the next 24 to 48 hours, dismissing Civil Action No. 22-2813 with prejudice. Please see to it "as a courtesy" that any such Order is served on me electronically, since I fully intend to file a timely Notice of Appeal (in propria persona). For your information, the Order of the 21st specifically provides that: "Nothing in this order precludes Mr. O'Dwyer from exercising any appellate rights he may have."

I was disappointed that you did not respond more completely to my "laundry list" of specific, but very straightforward and simple, questions of the 19th. It certainly would be "nice" to have "official" answers from the Clerk of Court in hand, regarding:

(a) Why the Intake Unit didn't transmit my proper papers (Motion and Exhibits) to the Pro Se Unit following receipt by the Intake Unit at 9:57 AM on Friday, the 16th?

(b) Why my proper papers (Motion and Exhibits) were not filed and docketed by the Pro Se Unit following their receipt by the Pro Se Unit (finally!) on Monday morning, the 19th?

(c) Why my proper papers (Motion and Exhibits) were given to Judge Barbier (via actual or constructive delivery) on

> Monday, the 19th rather than being filed and docketed by the Pro Se Unit upon receipt by the Pro Se Unit on Monday morning, the 19th?

Since you also are a lawyer, can't you see why the answers to those questions, among others, would be directly relevant to my rights on appeal, particularly since Judge Barbier has a penchant to ruling against me summarily and sua sponte, without Notice, much less a hearing of any type (I aver that is due to his bias and prejudice)?

But let's not be "coy" about the answers to these (and other) questions: We both already KNOW the answers, don't we?

[And by the way, I didn't ask you "how" I was "served" (allegedly) with a copy of the September 1, 2022 Order. I merely observed in my missive to you of the 19th @ 5:29 PM that: "I have not been provided any 'proof of service form' by Judge Barbier, by any member of his Staff, by any Clerk or Deputy Clerk, or by the U.S. Postal Service'." If you possess any written "proof" that I actually received, through proper "service of process," a copy of that Order, I'd very much like to see the proof.]

BUT LETS CUT TO THE CHASE (or get to "the meat of the coconut"):

The real test of your character and integrity, and the example that you, Madam Clerk, now have

the opportunity to demonstrate to your Deputy Clerks in the Courthouse at 500 Poydras Street, will be whether my proper papers (Motion and Exhibits) will be filed and docketed, as is required by Rules 5 and 77, and by 28 United States Code, Sections 452 and 457. And just to ensure that nothing is "lost in translation," by invoking the terms "proper papers" and "filed" and "docketed," I am referring to my Motion and five (5) Exhibits, which were the subject of: (1) My Letter of Transmittal (via Federal Express for Overnight Priority Delivery) to the Pro Se Unit on September 15, 2022, and (2) My missive to you of September 19, 2022 @ 5:29 PM. More particularly, if my five (5) Exhibits, which are directly relevant to, and an integral part of, my Motion, and necessary to an understanding of the relief sought in the Motion, particularly disqualification and recusal of Judge Barbier on grounds of bias and prejudice, are "returned to Mr. O'Dwyer" as is stated in Record Document No. 5, then that would constitute an improper Rule and statutory violation.

And pardon this observation, but it appears that Judge Barbier may be "setting you up for a fall" by his obviously deliberate use of carefully-chosen words: "The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer."

So, what are YOU going to DO, Madam Eastern District Clerk? What kind of example are you going to set for your Deputy Clerks? Will you

follow the provisions of the applicable Rules and statutes and file all of my proper papers or will you succumb to Judge Barbier's corrupt influence and break the law, again?

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF MISCELLANEOUS

ASHTON R. O'DWYER, JR. NO. 08-1492 "B"

RESPONDENT'S MOTION
FOR RECUSAL OF JUDGE LEMELLE
ON GROUNDS OF BIAS, PREJUDICE AND
PARTIALITY

COMES NOW Respondent, Ashton R. O'Dwyer, Jr., and moves for the recusal of The Honorable Ivan L.R. Lemelle in these proceedings on grounds of bias, prejudice and partiality. This motion is filed pursuant to the provisions of 28 U.S.C. §144 and/or 28 U.S.C. §455(a) and/or 28 U.S.C. §455(b)(1), without prejudice to the grounds for Judge Lemelle's recusal previously asserted by Respondent in these proceedings, including the fact that Judge Lemelle has a conflict of interests, because he is a named defendant in Civil Action No. 08-3170 on the docket of this Court,[1] as well as Judge Lemelle's bias and prejudice, and his inability to be fair and impartial in these proceedings, which Respondent avers were brought against him in retaliation for Respondent's allegations of judicial misconduct against a "Brother Judge" of Judge Lemelle, namely Stawood R. Duval, Jr.[2] Since the

[1] Three (3) judges, namely Judges Fallon, Feldman and McNamara, have already recused themselves from cases involving Respondent for this very same reason.

[2] And in retaliation for Respondent's suing the Stats of Louisiana in "Victims of KATRINA" litigation, arguing waiver of 11th Amendment immunity by the State, and seeking disqualification of

proceedings which were held in Open Court on October 8, 2008, during which Judge Lemelle made a Report and Recommendation "on the record" that Respondent's privileges to practice law before this Court should be suspended, it has been brought to Respondent's attention that Judge Lemelle is himself a well-documented "rule breaker", who has violated the Code of Conduct for United States Judges, all as more fully appears in the reported case of "In Re: High Sulphur Content Gasoline Products Liability Litigation, 517 F.3d 220 (5th Cir. 2008), a copy of which is appended hereto as Exhibit No. 1. In that case Judge Lemelle also is believed to have made very generous awards of attorney's fees to some of the very same plaintiffs' attorneys whose disqualification Respondent has sought in "Victims of KATRINA" litigation as a result of their violation of the Rules of Professional Conduct. Further, although Respondent avers that Judge Lemelle was under an ethical and legal obligation to do so, Judge Lemelle failed to disclose to Respondent in these proceedings either his extra-judicial relationship(s) with some of the very same plaintiffs' attorneys in "Victims of KATRINA" litigation, as well as his own judicial misconduct and abuse of discretion as documented in the cited case, which included prohibited ex parte communications, a penchant for secrecy, and other abuse of judicial power, all resulting in denial of due process of law to certain litigants and their attorneys. Had Respondent known about those

---

some "high profile" plaintiffs' lawyers, one of whom is a "close personal friend of long-standing" to Judge Duval, and who represented the interests of the State in the "Victims of KATRINA" litigation, at least until Thursday, October 9, 2008.

matters[3] prior to the time that Judge Lemelle made his Report and Recommendation in these proceedings on October 8, 2008, then Respondent would have voiced objection then, and does so now. Additional grounds for Judge Lemelle's recusal in these proceedings appear in Exhibit No. 1 and in the memorandum filed simultaneously herewith.

Respectfully submitted,

Ashton R. O'Dwyer, Jr.
In Proper Person
Law Offices of Ashton R. O'Dwyer, Jr.
Bar No. 10166
821 Baronne Street
New Orleans, LA 70113
Tel.: (504) 679-6166
Fax. (504) 581-4336

[3] And the fact that Respondent's attempt to have Judge Duval recused in "Victims of KATRINA" litigation was cited to Judge Lemelle by the "Fee Committee" in the cited proceedings, in opposition to efforts to have Judge Lemelle recused in that case, another feet which was not disclosed to Respondent by Judge Lemelle. Record Document No. 210 in Civil Action No. 04-1632. Respondent avers that he was defamed in the Fee Committee memorandum, and that Judge Lemelle became "poisoned" towards Respondent.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF MISCELLANEOUS

ASHTON R. O'DWYER, JR. NO. 08-1492

SECTION: "B"

ORDER AND REASONS

Respondent's Motion for Recusal (Record Document No. 17) is **DENIED,** Prior to ruling on the instant attorney disciplinary complaint, Respondent-Attorney stated be could not think of a fairer judge to hear the complaint against him than the undersigned. During the first hearing in open court on this matter, there was also a reference to how trial judges, including this one, sometime react to unfavorable appellate opinions. This was done to provide an example of how judges, like attorneys, have to exercise reasonable restraint in the face of adverse rulings. As an attorney, Respondent is presumed to know the law, including published opinions within this circuit. At that first hearing, Respondent was advised by the undersigned of an adverse circuit opinion reversing an attorney fee award in an unrelated matter rendered by this judge.

Moreover, the circuit opinion cited by Respondent has no bearing here. Respondent again takes issue with an adverse ruling by making unprofessional comments about judges he disagrees with in subsequent pleadings. There is no factual or legal basis to warrant the relief sought here.

New Orleans, Louisiana, this 14th day of October, 2008.

UNITES STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

ASHTON R. O'DWYER, JR., on his own behalf and on behalf of each his clients in the "Victims of KATRINA" litigation, both individually and in representative capacities VERSUS STANWOOD R. DUVAL, JR., ET AL.	CIVIL ACTION NO. SECTION JUDGE MAGISTRATE

VERIFIED
CLASS ACTION CIVIL RIGHTS
COMPLAINT FOR COMPENSATORY
AND EXEMPLARY DAMAGES WHICH ARISES
FROM A COMMON SERIES OF TRANSACTIONS
AND OCCURRENCES WHICH ALSO INVOLVE
CRIMINAL CONDUCT, ABUSE OF POWER,
LEGAL MALPRACTICE AND INTENTIONAL
TORTS, INCLUDING CONSTITUTIONAL
TORTS

I.

This is an action for money damages, including both compensatory and exemplary damages, treble

damages, pre-judgment interest and taxable costs, and for reasonable attorney's fees and costs of investigation and litigation. Plaintiff herein is a person of the full age of majority who, at all material times, was and now is a citizen of the State of Louisiana and domiciliary of the City of New Orleans. Plaintiff was, at all times pertinent, and now is, a Member of the Louisiana State Bar, Bar No. 10166, and in good standing. Additionally, plaintiff was, at all times pertinent, and now is, the agent of, mandatary for, and attorney-in-fact for the individuals who are specifically identified by name, both individually and in representative capacities, on Exhibit "A" to this Complaint, which is incorporated herein by reference thereto as if copied *in extenso.*

II.

Plaintiff, both individually and in his representative capacities, as well as the individuals identified, both individually and in representative capacities, in Exhibit "A" hereto, are representative of the following persons, firms, and corporations:

A. Ethical and professional lawyers who represent innocent "Victims of KATRINA", who have been wrongfully deprived of the constitutional guarantee of due process of law, and subjected to unproductive protracted litigation, and unnecessary costs and expenses by the conduct described *infra,* which has irreparably corrupted the integrity of the litigation bearing Civil Action No. 05-4182 and consolidated cases.

B. Survivors of human beings who died as a

result of government's intentional and negligent malfeasance, misfeasance and nonfeasance prior to and after Hurricane KATRINA.

C. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who suffered bodily injury, physical pain and suffering, anguish, anxiety, mental suffering, fear, fright, despair, hopelessness and emotional distress as a result of government's intentional and negligent malfeasance, misfeasance and nonfeasance prior to and after Hurricane KATRINA.

D. Citizens and/or residents of the Parishes of Orleans, Jefferson and St Bernard, State of Louisiana, who suffered loss of or damage to property, both real and personal, and/or diminution in the value of their property as a result of government's intentional and negligent malfeasance, misfeasance and nonfeasance prior to and after Hurricane KATRINA.

E. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who suffered purely economic losses as a result of government's intentional and negligent malfeasance, misfeasance and nonfeasance prior to and after Hurricane KATRINA, including lost income, lost profits and increased living expenses.

F. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who suffered pollution

damage, including bodily injury, contamination of real or personal property, lost revenues, profits and earning capacity due to pollution, and damages for subsistence use, as well as damages for the cost of containment, clean-up and remediation and restoration, and for damage to the environment.

G. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who experienced the threat of loss or damage as a result of government's intentional, and negligent malfeasance, misfeasance and nonfeasance during and after Hurricane KATRINA.

III.

Made defendants herein are die following:

The Judicial Defendant:

Stanwood R. Duval, Jr., who is sued individually

The State Defendant:

Charles C. Foti, Jr., who is sued individually

The Lawyer and Law Firm Defendants:

James P. Roy, who is sued individually, and the law firm of Domengeaux, Wright, Roy & Edwards

Calvin Clifford Fayard and B. Blayne

Honeycutt, who are sued individually, and the law firm of Fayard & Honeycut

Daniel E. Becnel, Jr., who is sued individually, and the law firm of Daniel E. Becnel, Jr.

Drew A. Ranier, who is sued individually, and the law firm of Ranier, Gayle & Elliot, LLC

J.J. Jerry McKernan, who is sued individually, and the McKernan Law Firm

Jonathan Beauregard Andry, who is sued individually, and the Andry Law Firm

Joseph R. Bruno, who is sued individually and the law firm of Bruno & Bruno

Walter Dumas, who is sued individually, and the law firm of Dumas and Associates

And all others who may be similarly situated, against whom plaintiff and his clients reserve all rights.

IV.

This Court has jurisdiction of the claims herein asserted pursuant to the provisions of 28 U.S.C. §1331 and 28 U.S.C. §1343. This Court has jurisdiction of the State law claims asserted herein pursuant to the provisions of 28 U.S.C. §1367.

V.

Venue for this action is proper in the United States District for the Eastern District of Louisiana pursuant to the provisions of 28 U.S.C. § 1391(b), because jurisdiction is not founded under diversity of citizenship, because some defendants can be found within the territorial jurisdiction of the United States District Court for the Eastern District of Louisiana, and because virtually all of the acts and omissions giving rise to plaintiff's claims, and to his clients' claims, including particularly the conspiratorial acts and omissions, described infra, occurred within the Eastern District.

VI.

Plaintiff and his clients aver that they are entitled by our system of justice to the integrity of the "Victims of KATRINA" litigation, bearing Civil Action No. 05-4182 and consolidated cases on the docket of this Court, devoid of conflicts of interests, double- dealing and backroom political shenanigans involving unethical and unscrupulous members of the Bar, and/or misconduct by others, whether they be attorneys, parties, witnesses or members of the Judiciary and their Staffs. Regretfully, plaintiff and his clients aver that they have been deprived of these rights by the misconduct described herein, and that they have been deprived of the right to due process of law guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

VII.

There are only three (3) reasons why plaintiff files this action:

1) The integrity of the "Victims of KATRINA" litigation;
2) The integrity of the "Victims of KATRINA" litigation; and
3) The integrity of the "Victims of KATRINA" litigation.

NO JUDICIAL IMMUNITY

VIII.

Plaintiff and his clients aver that the jurisprudential concept of "judicial immunity" is not supported by Article III of the U.S. Constitution, or by any other provision of the Constitution, and that it is purely a creature of Judges, who directly benefit from the concept. Plaintiff and his clients further aver that although judicial immunity may have been ostensibly created "to benefit the public", over time, judicial immunity has been corrupted in its application by Judges, so as to benefit only malicious and corrupt judges, who should not be permitted to escape the legal consequences of outrageous and unlawful behavior, and who should enjoy no judicial immunity whatsoever, absolute, qualified or otherwise. Accordingly, plaintiff and his clients aver that defendant Duval has no immunity whatsoever from the criminal and wrongful behavior described herein, which also constituted judicial misconduct.

IX.

Further, plaintiff and his clients aver that "judicial immunity" is an unconstitutional "repugnant-to-the-constitution" concept which, if made applicable

to defeat plaintiff's and his clients' claims against defendant Duval in this case, would deprive plaintiff and his clients of the constitutionally guaranteed due process of law to which they are entitled pursuant to the Fifth and Fourteenth Amendments to the U.S. Constitution just as surely as if there was no constitutional guarantee to due process at all.

X.

In the alternative, since much of the misconduct described herein involves plaintiff's and his clients' claims against the State of Louisiana, its agencies and instrumentalities, political subdivisions, and individual department heads, over which defendant Duval has repeatedly determined he had no jurisdiction, then "judicial immunity" is unavailable to defendant Duval as a defense to any of the claims herein asserted.

XI.

Further in the alternative, should defendant Duval seek to invoke or plead the defense of "judicial immunity", absolute, qualified or otherwise, then plaintiff and his clients give notice of their intent to substitute as a party defendant herein, for defendant Duval, his spouse and law cleric who was (and is) a co-conspirator as to all matters pleaded herein,[1] and who is not entitled to invoke "immunity" as a defense to the claims herein asserted. Whether defendant Duval's spouse and law cleric is ultimately named as a defendant in these proceedings is a choice to be made

[1] Plaintiff also avers, "Plaintiff didn't put the spouse and law clerk in this position, defendant Duval did."

by defendant Duval.

THE FACTUAL ALLEGATIONS

XII.

Plaintiff and his clients aver that, although his first "Victims of KATRINA" case, Civil Action No. 05-4181, filed on September 19, 2005, which was assigned to defendant Duval, bore the "low number", one or more of the lawyer and law firm defendants named herein, and others, thereafter engaged in persistent and systematic efforts, which included prohibited *ex parte* communications with one or more Federal Judges and their Staffs, to have the "first-filed, higher numbered" case, Civil Action No. 05-4182, which was assigned to Judge Porteous, become the "lead" case for all "Victims of KATRINA" litigation. These efforts included an unsuccessful effort to have Judge Porteous appoint an "Interim Plaintiffs' Steering Committee" on an *ex parte* basis, so that some of the lawyer and law firm defendants named herein could unilaterally assume control and management of all "Victims of KATRINA" litigation. Record Document Nos. 19 and 20. These efforts also included Judge Porteous conducting a Status Conference in Civil Action No. 05-4182 on February 15, 2006, for which plaintiff was given no notice.

XIII.

Subsequently, after the lawyer and law firm defendants became aware of the fact that Judge Porteous, who at the time remained under investigation by the U.S. Department of Justice, would have to

recuse himself in all cases involving the Federal Government, the lawyer and law firm defendants realized that Civil Action No. 05-4181 gave them direct access to Section "K", over which Judge Duval presided. This access was particularly important both to defendant Fayard, who is a "close personal friend of long-standing" with defendant Duval, and to others with whom defendant Fayard had surrounded himself, including particularly, but without limitation, defendant Roy, who strongly desired to assume control and management of all "Victims of KATRINA" litigation.

XIV.

Thus began a persistent and systematic pattern of prohibited *ex parte* communications between and among defendant Duval and members of his staff, which at the time included defendant Fayard's daughter and defendant Duval's spouse, who also is his law clerk, and the lawyer and law firm defendants named herein, including particularly, but without limitation, defendant Fayard.

XV.

The lawyer and law firm defendants named herein then proceeded to do whatever was necessary to see to it that defendant Duval appointed them to Committees and Subcommittees in the "Victims of KATRINA" litigation, which assured them of control and management of the litigation, as well as attorney's fees to be awarded them by defendant Duval under a theory of "common benefit" at the end of the case or in the interim.

XVI.

As a result of those prohibited *ex parte* communications, defendant Duval handed control and management of the "Victims of KATRINA" litigation pending in the United States District Court for the Eastern District of Louisiana to the lawyer and law firm defendants, among others, ultimately ordering that the litigation would be organized into the following broad categories:

Levee

MRGO

Responder

Insurance

Dredging

XVII.

Plaintiff and his clients aver that membership on Committees and Sub- Committees in the "Victims of KATRINA" litigation visited on the lawyer and law firm defendants named herein the following professional responsibilities to claimants, plaintiffs and potential class members, including plaintiff and his clients:

Honesty

Professional loyalty

Professional independent judgment

Professional fiduciary responsibilities

Adequate and competent legal representation

VIII.

Plaintiff and his clients aver that although defendants Bruno's and Dumas' names have not appeared on any pleadings filed on behalf of the State of Louisiana IN THE "Victims of KATRINA" litigation, defendant Bruno is "Plaintiffs' Liaison Counsel" and defendant Dumas is a Committee Member. Accordingly, as a result of fee-sharing or fee-splitting agreements between and among the lawyer and law firm defendants, and others, defendants Bruno and Dumas subjected themselves to being "tainted" by the violation of the Louisiana Rules of Professional Conduct by lawyers whose fees they agreed to share.

XIX.

At some point in time, the lawyer and law firm defendants named herein including particularly, but without limitation, defendant Fayard, realized that there was money to be made by their representing the interests of the State of Louisiana, which had sustained some $200 billion in property damages[2] as a result of Hurricane KATRINA.

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[2] Plaintiff and his clients posit: "Can one ponder the attorneys' fees to be earned as a result of prosecuting an affirmative claim for $200 billion in property damages?"

XX.

There was only one "problem" with this "money-to-be-made" idea for representing the interests of the State of Louisiana, which was motivated solely by the five-letter word, "GREED": It was an unethical, prohibited representation due to a patently obvious conflict of interests with the interests of plaintiffs, claimants and potential class members to whom the lawyer and law firm defendants owed professional responsibilities by virtue of serving on Committees and Sub-Committees in the "Victims of KATRINA" litigation.

XXI.

Defendant Duval's, defendant Foti's, and the lawyer and law firm defendants' "solution" to the obvious conflict of interests was to attempt to have defendant Duval reorganize the "Victims of KATRINA" litigation so that the State of Louisiana was no longer a party, and to "eliminate" from the litigation any lawyer or parties who deigned to aver that the State had any legal liability to anyone as a result of the levee and retaining wall failures which the public calls "Hurricane KATRINA". Unfortunately, this included plaintiff and his clients, who "suffered" for almost two (2) years after the conspiracy described, *supra*, was implemented, and who continue to suffer to this day.

XXII.

The conspiracy to obstruct the orderly administration of justice and to deny plaintiff and his

clients due process of law also was kept "secret" by defendant Duval, by defendant Foti, and by the lawyer and law firm defendants named herein, until August 29, 2007, when the representation of the State of Louisiana could not be kept secret any longer. On that date, the lawyers and law firm defendants appeared on pleadings in the "Victims of KATRINA" litigation representing the interests of the State, which put them "on-the-record" in a direct conflict of interests position with plaintiffs, claimants and potential class members in "Victims of KATRINA" litigation by virtue of their serving on Committees and Sub-Committees in the litigation, appointed by defendant Duval.

XXIII.

This unethical and illegal representation, which commenced at an unknown time prior to August 29, 2007, but which only became public on August 29, 2007, did not come to an end until October 9, 2008, over one year after the second anniversary of Hurricane KATRINA, when the lawyers and law firm defendants named herein filed motions to substitute the Attorney General for the State of Louisiana as counsel of record for the State,[3] which plaintiff and his clients aver constituted recognition by defendant Duval, by defendant Foti, and by the lawyer and law firm defendants named herein that the lawyer and law firm defendants had an irreconcilable conflict of interests by virtue of their dual representation.

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[3] At least one of these "Special Assistant Attorneys General" still remains counsel of record for the State in Civil Action Nos. 06-8676 ad 07-5023.

THE COVER-UP

XXIV.

Plaintiff and his clients aver that there is currently underway a conspiracy to "cover-up" the aforesaid conflict of interests so as to attempt to avoid any embarrassing professional responsibility, or worse, and that defendant Duval and the lawyer and law firm defendants, among others, are co-conspirators in the cover-up. Plaintiff and his clients further aver that the cover-up has not only involved the withdrawal of the lawyers and law firm defendants from the representation of the State on October 9, 2008, but also to have plaintiff disbarred, which the co-conspirators erroneously believe will allow the lawyer and law firm defendants to continue representing plaintiffs, claimants and prospective class members in the "Victims of KATRINA" litigation by virtue of their serving on Committees and Sub-Committees, with defendant Duval continuing to preside over the case, and remaining in a position to give them whatever they want. With their having withdrawn from the representation of the State, and with plaintiff out of the way, the lawyer and law firm defendants believe they can tell the world, "Never mind", al la Gilda Radner.

THE CODE AND RULE VIOLATIONS

XXV.

Plaintiff and his clients aver that defendant Duval has violated the provisions of the "Code of Conduct for United States Judges" and, more particularly, the following:

CANON 1

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

Plaintiff and his clients aver that defendant Duval violated Canon 1 by demonstrating favoritism, time and time again, to his close personal friend of longstanding, defendant Fayard, and to defendant

Fayard's client, the State of Louisiana, in the "Victims of KATRINA" litigation. In addition, plaintiff and his clients aver that defendant Duval violated Canon 1 as a result of his knowledge, prior to August 29,2007, of the representation of the State of Louisiana by the lawyer and law firm defendants, and then "tailoring" his decisions to benefit the State and its lawyers. In this regard it is to be noted that Judge Duval has steadfastly refused to answer a very simple question in the "Victims of KATRINA" litigation:

> "When did Your Honor or any Member of Your Honor's Staff first become aware of the representation of the State of Louisiana by Daniel Becnel and/or by Calvin Fayard concerning any KATRINA-related matters?"

CANON 2

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special

position to influence the judge.

COMMENTARY

Canon 2A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny, A judge must therefore accept restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

Canon 2B. A judge should avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge should not use the judge's judicial position to gain advantage in litigation

> involving a friend or a member of the judge's family... A judge should be sensitive to possible abuse of the prestige of office.

Plaintiff and his clients aver that defendant Duval violated Canon 2 by demonstrating favoritism, time and time again, to his close personal friend of longstanding, defendant Fayard, and to defendant Fayard's client, the State of Louisiana, in the "Victims of KATRINA" litigation. Additionally, plaintiff and his clients aver, upon information and belief that defendant Duval conspired with defendant Fayard to have defendant Fayard call plaintiff by telephone on July 20, 2006, in an attempt to have plaintiff compromise his personal integrity by attempting to persuade plaintiff to agree to defendant Fayard's interceding on behalf of plaintiffs clients with defendant Duval via an *ex parte* communication, in order to have defendant Duval modify what he had already ruled in a written Order and Reasons. Plaintiff and his clients also aver that defendant Duval has conspired with others to wrongfully dismiss, on a summary basis, virtually all causes of action asserted by anyone against political subdivisions of Mr. Fayard's client, the State, and to attempt to bind settlement with Levee Boards and their insurer for a ridiculously low figure, which settlement will benefit only the lawyers and law firm defendants named herein. Plaintiff also avers that defendant Duval has wrongfully conspired with others to have plaintiff disbarred, for "nothing".

CANON 3

A JUDGE SHOULD PERFORM THE DUTIES

OF THE OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to and maintain professional competence in the law, and should not be swayed by partisan interests, public clamor, or fear of criticism.

(4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding.

B. Administrative Responsibilities.

* * *

(3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer,

(4) A judge should not make unnecessary appointments and should exercise that power only on the basis of merit, avoiding nepotism and favoritism.

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party...

* * *

(d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

Canon 3A(4). The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative

> responsibilities. A judge should make reasonable efforts to ensure that this provision sis not violated through law clerks or other staff personnel.

Plaintiff and his clients aver that defendant Duval violated Canon 3 by demonstrating favoritism, time and time again, to his close personal friend of longstanding, defendant Fayard, and to defendant Fayard's client, the State of Louisiana in "Victims of KATRINA" litigation. In addition, defendant Duval, with knowledge that the lawyer and law firm defendants named herein routinely communicated with him or his Staff on a frequent basis, and with knowledge that they had a conflict of interests, did nothing. Further, after defendant Duval's bias, prejudice and partiality were revealed, defendant Duval failed to disqualify himself. Lastly, for a period of over one (1) month, between February 1, 2007 and March 27, 2007, after it was disclosed to defendant Duval that a person related to defendant Duval within the third degree of relationship, or the spouse of such person, had an interest that could be substantially affected by the outcome of the "Victims of KATRINA" proceedings, did "something" known only to defendant Duval and members of his Staff, rather than to disqualify himself in the proceedings, as was required by the clear provisions of Canon 3(C)(1)(d)(iii).

XXVI.

Plaintiff and his clients aver that the lawyer and law firm defendants named herein violated Rule 1.7 of the Louisiana Rules of Professional Conduct, which rule provides as follows:

Rule 1.7. CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

The lawyer and law firm defendants violated Rule 1.7 by representing the interests of the State of Louisiana on pleadings filed on behalf of the State between August 29, 2007 and October 9, 2008, while simultaneously serving on Committees and Sub-Committees in the "Victims of KATRINA" litigation, which obligated them to represent the interests of plaintiffs, claimants and potential class members, whose interests were directly adverse to the interests of the State. This rule also was violated during the period of time that the lawyer and law firm defendants secretly represented the State prior to August 29, 2007, without informing other litigants.

The lawyer and law firm defendants named herein violated Rule 3.3 of the Louisiana Rules of

Professional Conduct, which rule provides as follows:

> RULE 3.3. CANDOR TOWARD THE TRIBUNAL
>
> (a) A lawyer shall not knowingly:
>
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> * * *
>
> (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measure, including, if necessary, disclosure to the tribunal.

The lawyer and law firm defendants violated Rule 3.3 by failing to disclose to plaintiff and his clients the fact that they represented the interests of the State of Louisiana until August 29, 2007, and in the meantime willfully allowing defendant Duval to dismiss plaintiff's clients' claims against the State, its agencies and instrumentalities, etc., and allowing sanctions to be imposed against plaintiff for suing the State, when they knew that they represented the interests of the State and would be asserting affirmative claims on behalf of

the State in Federal Court on August 29, 2007.

The lawyer and law firm defendants named herein violated Rule 3.5 of the Louisiana Rules of Professional Conduct, which rule provides as follows:

> RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL
>
> A lawyer shall not:
>
> (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
>
> (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

The lawyer and law firm defendants violated Rule 3.5 by engaging in, or causing others to engage in, since late 2005 or early 2006, a persistent pattern of *ex parte* communications with Judge Porteous and/or members of his Staff, and/or with defendant Duval and/or members of his Staff, which prohibited *ex parte* communications sought to influence judges and other court officials by means prohibited by law.

The lawyer and law firm defendants violated Rule 8.4 of the Louisiana Rules of Professional Conduct, which rule provides as follows:

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or

(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

The lawyer and law firm defendants violated Rule 8.4 by failing to reveal to the other litigants their representation of the State of Louisiana until August

29, 2007, by failing to resign their positions both as counsel of record for the State and from Committees or Sub-Committees in the "Victims of KATRINA" litigation, by causing defendant Fayard to contact plaintiff by telephone on July 20, 2007, implying that defendant Fayard could influence defendant Duval to modify his Order and Reasons of July 19, 2007, by assisting defendant Duval to do "something" other than disqualify himself from the litigation between February 1, 2007 and March 27, 2007, when the facts clearly required disqualification pursuant to 28 U.S.C. §455(b)(5)(iii), and by conspiring with defendant Duval to have disciplinary proceedings filed against plaintiff solely to obtain an advantage in this litigation.

CIVIL RIGHTS CLAIMS

XXVII.

Plaintiff and his clients aver that by virtue of their representation of the interests of the State of Louisiana prior to October 9, 2008, the lawyer and the law firm defendants named herein were acting as agents of the State of Louisiana in the capacity of "Special Assistant Attorneys General", thus clothing their action and inaction as State action and/or inaction "under color of State law".

XXVIII.

At all times pertinent, defendant Foti was the Attorney General of the State of Louisiana, which clothed his action and/or inaction towards plaintiff and his clients as State action.

XXIX.

The celebrated case of Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics. 403 U.S. 388, 91 S.Ct. 1999 (1971), held that a violation of a person's Fourth Amendment rights by Federal officials, acting under color of Federal law, gives rise to a Federal cause of action for damages for the unconstitutional conduct Federal Procedure. Lawyers Edition (1989) §11:34. The Bivens Doctrine has since been expanded to include causes of action based on the Fifth Amendment. Federal Procedure. Lawyers Edition (1989) §11:39. Accordingly, plaintiff and his clients aver that "The Bivens Doctrine", therefore, gives rise to a Federal cause of action in this case pursuant to 42 U.S.C. §1983 for defendant Duval's unconstitutional conduct towards plaintiff and his clients in the "Victims of KATRINA" litigation, in which defendant Duval wrongfully deprived plaintiff and his clients of their property interests without due process of law.

XXX.

In the alternative, plaintiff and his clients aver that defendant Duval, although ostensibly clothed with the mantel of "Federal official" willfully allowed himself to be used as the "dupe" or "foil" for the State of Louisiana in the "Victims of KATRINA" litigation, and as the agent of the State as a result of his relationships with certain "Special Assistant Attorneys General", i.e., the lawyer and law firm defendants named in this case, who were retained by then defendant Foti to represent the interests of the State in the "Victims of KATRINA" litigation. Accordingly, plaintiff and his

clients aver that defendant Duval, acting under color of State law, violated plaintiff's and his clients' constitutional rights to due process of law, all as is proscribed by 42 U.S.C. §1983.

TORTS AND CONSTITUTIONAL TORTS COMMITTED

XXXI.

As a result of the foregoing, plaintiff and his clients aver that the defendants and each of them are liable unto plaintiff and his clients, and to all others similarly situated, as a result of the following torts committed by defendants, including constitutional torts, against plaintiff, his clients and all others similarly situated, entitling plaintiff, his clients and all others similarly situated to damages from defendants, jointly, severally and in solido, for the following:

1. Legal malpractice;
2. Breach of the duty of loyalty;
3. Breach of fiduciary duty;
4. Abuse of process;
5. Wrongful deprivation of due process of law;
6. Prejudice to the "Victims of KATRINA" litigation;
7. Increased costs of prosecuting the litigation; and
8. Additional attorney's fees and taxable costs.

and conspiracy to commit same, all establishing causes of action against defendants under both Federal law

and State law, including particularly, but without limitation, under Louisiana Civil Code Articles 2315 and 2324.

XXXII.

By virtue of defendants having committed to above-described constitutional torts against plaintiff and his clients, each and every named defendant also violated rights, privileges and immunities guaranteed to plaintiff under the 5th and 14th Amendments of the United States Constitution, all in violation of the provisions of the Klu Klux Klan Act of 1871, which are now embodied in 42 U.S.C. §1983.

XXXIII.

Defendants' actions and inactions were practiced intentionally, with actual malice and/or with reckless disregard for and/or deliberate indifference to plaintiff's and his clients' federally protected rights, as well as plaintiffs and his clients' rights under State law, and more particularly under Article 1, Sections 1, 2, 4 and 9 of the Louisiana Constitution of 1974, and were criminal, willful, wanton and reckless, so as to constitute legal misconduct, entitling plaintiff and his clients to an award of punitive or exemplary damages from defendants and each of them under the unique circumstances in his case.

XXXIV.

Plaintiffs and his clients also aver that the Court should exercise the discretion vested in it and order an award of reasonable attorney's fees as part of the

taxable costs pursuant to the provisions of 42 U.S.C. §1988, since the tortious conduct complained of herein was clearly in excess of the power and jurisdiction of a Federal Judge, any agent of the State of Louisiana, the Attorney General of the State, and/or Special Assistant Attorneys General for the State of Louisiana.

ADDITIONAL CAUSES OF ACTION AGAINST ALL DEFENDANTS PURSUANT TO THE FEDERAL AND STATE RICO STATUTES

XXXV.

Plaintiff and his clients aver causes of action against each defendant pursuant to the provisions of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §1961 - 1968) and pursuant to the Louisiana Racketeering Act (LSA-R.S. 15:1351 — 1356) by virtue of a pattern of racketeering activity in which each defendant participated, involving at least two (2) acts, including aiding and abetting criminal acts and conspiracy to commit same, including, *inter alia*, those involving deceit, misrepresentation and the obstruction of the orderly administration of justice, and conspiracy to commit same, all of which entitles plaintiff and his clients to treble damages and attorney's fees pursuant to the provisions of 18 U.S.C. §1964(c), and to treble damages, attorney's fees and costs of investigation and litigation pursuant to the provisions of LSA-R.S. 15:1356(e). The specific crimes committed, crimes aided and abetted, and conspiracy to commit crimes, by each of the defendants, and by all of them, include, without limitation, the following, all of which have been committed against plaintiff and his clients:

Violation of 18 U.S.C. §242

Violation of 18 U.S.C. §1503

Violation of 18 U.S.C. §1512

Violation of 18 U.S.C. §1001

Criminal conspiracy, LSA-R.S. 14:26

False statements concerning denial of constitutional rights, LSA-R.S. 14:126.2

Obstruction of justice, LSA-R.S. 14:130.1

Malfeasance in office, LS-R.S. 14:134

Plaintiff and his clients also specifically aver that the defendants and each of them constitute an "enterprise" or group of individuals associated in fact, who have willfully and knowingly engaged in a pattern of criminal conduct, interrelated by a distinguishing characteristic, i.e., do whatever may be necessary to control and manage the "Victims of KATRINA" litigation, so we can all do whatever we want (and "don't worry", because if we can't "take" what we want, then Duval will "give" it to us), including ignoring a clear and concurrent conflict of interests between the interests of plaintiffs, claimants and potential class members and the interests of an adverse party, the State of Louisiana, who we also represent, but whose representation we willfully concealed from the world until August 29, 2007, and thus did not constitute isolated or unconnected events.

XXXVI.

As a direct result of the above-described tortious, unconstitutional and illegal conduct of defendants, plaintiffs and his clients aver their entitlement to monetary damages from defendants, and each of them, including both compensatory and exemplary damages, treble damages, attorney's fees and costs of investigation and litigation.

NO IMMUNITY UNDER STATE LAW

XXXVII.

Plaintiff and his clients aver that the wrongful and illegal actions and inactions of the defendants, complained of herein, were practiced with actual malice and reckless disregard towards plaintiff and his clients, and their legal rights, and were willful, and constituted criminal, malicious, intentional, willful, outrageous, reckless and flagrant misconduct, so as to deprive the defendants of immunity pursuant to State law. Plaintiff and his clients further aver that any State law, ordinance, proclamation, regulation, statute, etc. pursuant to which defendants, or any of them, claim they acted, is unconstitutional, and that defendants' conduct pursuant to any State law, ordinance, proclamation, regulation, statute, etc., which violated plaintiff's or his clients Federal constitutional rights, cannot be immunized by State law.

XXXVIII.

Plaintiff and his clients also aver that defendants had no discretion to violate the law and to deprive

plaintiff and his clients of their constitutional rights, and that, therefore, defendants have no immunity from liability to plaintiff and his clients. Plaintiff and his clients also aver that more of the action or inaction pleaded herein can be said to have been "objectively reasonable" or that the said action or inaction did not violate clearly established constitutional rights.

CLAIM FOR PROSPECTIVE INJUNCTIVE RELIEF

XXXIX.

Plaintiff and his clients also aver entitlement to and seek the following prospective injunctive relief pursuant to the provisions of Rule 65, FRCP:

1) Disqualification of defendant Duval from presiding over any issues in the "Victims of KATRINA" litigation, and his impeachment and prosecution for violating his oath of office.
2) Disqualification of the lawyer and law firm defendants named herein, and all others similarly situated, from representing anyone in the "Victims of KATRINA" litigation, and their prosecution for the criminal conduct identified herein.

XL.

Plaintiff and his clients desire and aver entitlement to trial by jury on all issues.

WHEREFORE, plaintiff and his clients pray

that their class status be recognized and for judgment in their favor and against defendants, jointly, severally, and *in solido*, for the full amount of their damages, both compensatory and punitive, together with prejudgment interest, costs and attorney's fees, and for all other just and equitable relief, and also including any and all relief to which they may be entitled pursuant to the provisions of the Racketeer Influenced and Corrupt Organizations Act and the Louisiana Racketeer Act, including treble damages, attorney's fees and costs of investigation and litigation.

Respectfully submitted,

LAW OFFICES OF
ASHTON R. O'DWYER, JR.

By: _____

Ashton R. O'Dwyer, Jr.
Bar No. 10166
821 Baronne Street
New Orleans, LA 70113
Telephone: (504) 679-6166
Facsimile: (504) 581-4336

VERIFICATION

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

ASHTON R. O'DWYER, JR.

who, being first duly sworn did depose and say that all of the averments contained in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

_____
ASHTON R. O'DWYER, JR.

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS _____ DAY OF _____, 2008.

_____
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ASHTON R. O'DWYER, JR., ET AL* CIVIL ACTION

VERSUS * NO. 08-4728

STANWOOD R. DUVAL., JR., ET AL* SECTION "F"

IT IS ORDERED that the above-captioned matter is hereby administratively closed pending resolution of the disciplinary proceedings in 08-MC-1492.

New Orleans, Louisiana, October 27, 2008.

MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MISCELLANEOUS
IN THE MATTER OF

NO: 08-1492

ASHTON R. O'DWYER, JR.

EN BANC ORDER

On November 5, 2008, the en banc Court considered the Findings and Recommendation of United States District Judge Ivan L.R. Lemelle in the matter of Ashton R. O'Dwyer, Jr. The Court also considered Ashton O'Dwyer's Motions for Recusal and objections to the Findings and Recommendation. After due deliberation, the Court enters the following rulings.

I. RECUSAL

Respondent Ashton R. O'Dwyer, Jr., moved to recuse every active judge of this Court and moved the Court to order the recusal of Judge Lemelle. For the following reasons, these motions are DENIED.

A. Background

On April 2, 2008, Chief United States District Judge Ginger Berrigan initiated a disciplinary proceeding against respondent Ashton R. O'Dwyer, Jr., a member of the bar of the U.S. District Court for the Eastern District of Louisiana, by filing a complaint pursuant to Rule III(A)(1) of the Local Rules of Disciplinary Enforcement. The complaint alleged that O'Dwyer committed repeated acts in violation of the Louisiana Rules of Professional Conduct, which are

specifically adopted by the Court. The matter was immediately referred to United States District Judge Ivan L.R. Lemelle to conduct proceedings and submit findings and recommendations to the court en banc regarding what action, if any, should be taken.

On that same day, O'Dwyer was ordered to show cause why discipline, including suspension or disbarment, should not be imposed. After O'Dwyer received the Order to Show Cause, he wrote to Judge Berrigan requesting that an independent counsel be appointed to investigate the matter. O'Dwyer based his request on Local Disciplinary Rule III(B), which provides that a judge presiding over disciplinary proceedings "shall appoint counsel to investigate the [alleged misconduct] and to make a report thereon."

On May 5, 2008, O'Dwyer filed a complaint in the U.S. District Court for the Eastern District of Louisiana naming the "active-duty judges" of the court as defendants. *See O'Dwyer v. Active Duty Judges of the United States District Court for the Eastern District of Louisiana*, Civ. No. 08-3170. He complained that the judges had failed to comply with Local Disciplinary Rule III(B) and that this action violated his Fifth, Sixth, and Fourteenth Amendments rights. The complaint seeks declaratory relief and an injunction mandating the appointment of an independent counsel. District Judge Carl Barbier was assigned to hear the case.

On May 13, 2008, Judge Lemelle denied O'Dwyer's request for counsel to be appointed to investigate his matter. Judge Lemelle found that Local Disciplinary Rule III(B) "is intended to deal with conduct that occurs outside the public record." Because the alleged misconduct in O'Dwyer's case "is all part of a public record proceeding," Judge Lemelle found that

Rule III(B) was inapplicable.

On September 19, the defendant judges in O'Dwyer's civil action moved to dismiss the claims against them pursuant to FED. R. CIV. P. 12(b)(1) and 12(b)(6). O'Dwyer filed a motion to continue the hearing date of the motion indefinitely, which the court granted. The court also administratively stayed the case pending resolution of the disciplinary proceedings.

On October 15, after receiving O'Dwyer's responses to the Order to Show Cause, and after conducting a hearing, Judge Lemelle submitted a transcript containing his Findings and Recommendation to the Court en banc. O'Dwyer was given the opportunity to file objections to the Findings and Recommendations, which he has done.

On October 14, 2008, O'Dwyer filed a motion before Judge Lemelle asking the judge to recuse himself from the disciplinary proceeding. Judge Lemelle denied the motion in a written order. O'Dwyer has now filed a motion with the en banc Court asking the judges named as defendants in the *O'Dwyer* lawsuit—that is, all of the active judges of the U.S. District Court for the Eastern District of Louisiana—to recuse themselves from the disciplinary proceedings. He has also asked the en banc Court to order the recusal of Judge Lemelle. We now address these motions.

B. Motion to Recuse All Judges

O'Dwyer makes two arguments for recusal that apply to all of the members of the en banc panel. First, he argues that they are disqualified because they have been named defendants in another action involving O'Dwyer. Second, although he does not say so outright, O'Dwyer suggests that the judges should recuse

themselves because much of the conduct that gave rise to the disciplinary proceedings took place in a case assigned to a "Brother Judge."

The principal federal disqualification statute, 28 U.S.C. § 455, provides in relevant part:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding...

The two sections of the statute overlap but are slightly different in operation. Section 455(a), which the Supreme Court has described as a "'catchall' recusal provision," focuses on the *appearance* of bias or prejudice rather than the judge's actual state of mind. *Liteky v. United States*, 510 U.S. 540, 548 (1994). "The judge does not have to be *subjectively* biased or prejudiced, so long as he *appears* to be so." *Id.* at 553 n.2 (emphasis in original). Section 455(b)(1), by contrast, contains a "subjective limitation": the judge need not recuse unless he is actually biased with respect to a particular party. *Id.*

i. Actual Bias

O'Dwyer has not alleged, and there is nothing in the record that would suggest, that any of the members

of the en banc Court harbors actual bias or prejudice toward O'Dwyer. As the Supreme Court has explained disqualifying prejudice, a judge must recuse if he possesses "a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess..., or because it is excessive in degree...." *Liteky*, 510 U.S. at 550 (emphasis in original). Here, the record does not indicate that we have any "disposition or opinion" toward O'Dwyer at all, let alone a "wrongful or inappropriate" disposition or opinion. Moreover, although O'Dwyer intimates that we are biased in favor of Judge Duval, Judge Duval is not a "party" to this proceeding and is thus not covered by the terms of Section 455 (b)(1). *Cf. Gomez v. St. Jude Medical Daig Div. Inc.*, 442 F.3d 919, 938 (5th Cir. 2006) (holding that bias must be directed at party, not party's attorney). The proper inquiry as to O'Dwyer's motions to recuse is therefore under the broader standard in Section 455(a).

ii. Appearance of Bias

A judge whose recusal is sought under Section 455(a) must ask "whether a well-informed, thoughtful and objective observer would question the court's impartiality." *Trust Company of Louisiana v. N.N.P. Inc.*, 104 F.3d 1478, 1491 (5th Cir. 1997) (citing *United States v. Jordan*, 49 F.3d 152, 155-58 (5th Cir. 1995)). In other words, the party seeking recusal "must show that if a reasonable man knew of all the circumstances, he would harbor doubts about the judge's impartiality." *Chitimacha Tribe of Louisiana v. Harry L. Laws Company, Inc.*, 690 F.2d 1157, 1165 (5th Cir. 1982), *cert. denied*, 464 U.S. 814 (1983); see *also In re Billedeaux*, 972 F.2d 104, 105 (5th Cir. 1992); *In re Faulkner*, 856

F.2d 716, 720 (5th Cir. 1988) (per curium).

In general, the challenged judge is best positioned to determine whether recusal is warranted. See *Chitimacha Tribe*, 690 F.2d at 1162 (disapproving the transfer of a disqualification motion). The decision is committed to his sound discretion and will be reviewed only for abuse of that discretion. *See id.* at 1166.

There is no *per se* rule requiring a judge to recuse himself from a case "simply because he was or is involved in litigation with one of the parties." *In re Taylor*, 417 F.3d 649, 652 (7th Cir. 2005); *see also United States v. Sutcliffe*, 505 F.3d 944, 958 (9th Cir. 2007) ("[A] judge is not disqualified by a litigant's suit or threatened suit against him, or by a litigant's intemperate and scurrilous attacks.") (quoting *United States v. Studley*, 783 F.2d 934, 940 (9th Cir. 1986)); *Azubuko v. Royal*, 443 F.3d 302 (3d Cir. 2006) ("[T]he mere fact that [the presiding judge] may be one of the numerous federal judges that Azubuko has filed suit against is not sufficient to establish that her recusal from his case is warranted under 28 U.S.C. § 144 or § 455(a)."); *United States v. Grismore*, 564 F.2d 929, 933 (10th Cir. 1977) ("A judge is not disqualified merely because a litigant sues or threatens to sue him.").

That said, there may be circumstances in which a "well-informed, thoughtful and objective observer" would conclude that a judge who is named as a defendant is unable to impartially preside over a case involving his opponent. In considering when a judge named as a defendant should recuse himself, the Seventh Circuit has instructed that the judge should focus on the purpose and merit of the suit against him. *See In re Taylor*, 417 F.3d at 653. If the litigation was initiated in order to harass the judge or to "shop" for a new judge by forcing recusal, the judge may ordinarily

continue to hear the case. *Id.* at 652. Similarly, disqualification is unnecessary if the claims against the judge are frivolous. As the Seventh Circuit explained, "suits against public officials are common and a judge would likely not harbor bias against someone simply because the person named him in a meritless civil suit." *Id.*; *see also Lyons v. Sheetz*, 834 F.2d 493, 495 n.1 (5th Cir. 1987).

Other courts have invoked this standard in similar circumstances. For example, although recusal is ordinarily required when a judge is assigned to hear a case in which he is named as a defendant, *see* 28 U.S.C. § 455(b)(5)(I), courts have consistently held that the rule assumes that there is "a legitimate basis for suing the judge." *Tamburro v. City of East Providence*, 981 F. 2d 1245, 1992 WL 380019 at *1 (1st Cir. 1992) (table) (quoting *Anderson v. Roszkowski*, 681 F. Supp. 1284, 1289 (N.D.Ill. 1988)). If the plaintiff's claims against the judge are meritless, the judge need not recuse. Similarly, Canon 3C(1) of the Code of Conduct for United States Judges, which is nearly identical to Section 455,[1] does not require recusal when the claims against the judge are frivolous or barred because of judicial immunity. *See* Committee on Codes of Conduct, Judicial Conference of the United States, Op. No. 103 (July 12, 2002). As one advisory body reasoned, "[s]uch a nonmeritorious complaint, standing alone, will not lead reasonable minds to conclude that the judge is biased against the litigant or that the judge's impartiality can reasonably be questioned, and thus will not require the judge to recuse." *Id.*

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[1] Indeed, Section 455 was amended in 1974 to bring it into conformity with Cannon 3C. *See Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1108 (5th Cir. 1980).

In this case, the complaint alleges that the Eastern District judges failed to comply with Local Disciplinary Rule III(B) and thereby violated O'Dwyer's Fifth, Sixth, and Fourteenth Amendments rights. These claims are frivolous. The courts of appeals have consistently forbidden litigants from collaterally attacking proceedings and judgments in this manner. A litigant who has recourse to the federal judiciary's established review procedures—post-judgment motions, appeals, and petitions for extraordinary writs—may not circumvent those procedures by initiating a separate lawsuit against a judge who renders an unfavorable decision. *See Switzer v. Coan*, 261 F.3d 985, 990-91 (10th Cir. 2001); *Bolin v. Story*, 225 F.3d 1234, 1242-43 & n.7 (11th Cir. 2000); *Mullis v. U.S. Bankruptcy Court for Dist. of Nevada*, 828 F.2d 1385, 1391-94 (9th Cir. 1987). If O'Dwyer is dissatisfied with the procedures employed in his disciplinary proceeding, he may seek an interlocutory appeal or request a writ of mandamus. He may also take appropriate action after final judgment is rendered. He may not, however, sue the judges of the Eastern District.

Moreover, federal judges are absolutely immune from suits that call their judicial acts into question. *See Azubuko*, 443 F.3d at 303-04; *Bolin*, 225 F.3d at 1242; *Mullis*, 828 F.2d at 1385. There can be no doubt that a judge's application of the Local Disciplinary Rules in an attorney disciplinary proceeding is judicial in nature and is thus barred by the doctrine of judicial immunity. Because his claims against the judges are patently frivolous, a "well-informed, thoughtful and objective observer would [not] question the court's impartiality." *Trust Company of Louisiana*, 104 F.3d at 1491. Recusal is therefore unnecessary.

As noted, O'Dwyer has also suggested that we

appear to be partial because much of the conduct that gave rise to, the disciplinary proceedings took place in a case assigned to a "Brother Judge." This suggestion is without merit. It is well- established that each court has the power to discipline attorneys appearing before it. See *Ex parte Burr*, (1824) (Marshall, C.J.) (noting that the power to impose discipline is "incidental to all Courts, and is necessary for the preservation of decorum, and. for the respectability of the profession"). The recusal statutes have never been understood to divest the courts of their inherent disciplinary powers or to transfer those powers to judges in faraway districts. Indeed, the standard practice is for disciplinary proceedings to be initiated in the court where the alleged infractions occurred and for the judges of that court to determine the appropriate punishment. See, e.g., *In re Moncier*, 550 F. Supp. 2d 768 (E.D. Tenn. 2008); *In re Zeno*, 517 F. Supp. 2d 591 (D.P.R. 2007), *aff'd* 504 F.3d 64 (1st Cir. 2007); *cf. Cheney v. U.S. Dist. Court for Dist. of Columbia*, 541 U.S. 913, 916 (2004) (Memorandum of Scalia, J.) ("[W]hile friendship is a ground for recusal of a Justice where the personal fortune or the personal freedom of the friend is at issue, it has traditionally not been a ground for recusal where official action is at issue, no matter how important the official action was to the ambitions or the reputation of the Government officer."). In light of this established practice and longstanding history, no reasonable observer would believe that the judges of this Court are disqualified from hearing disciplinary proceedings arising out of conduct before a fellow judge. O'Dwyer's suggestion to the contrary is unfounded.

iii. Rule of Necessity

The "rule of necessity" provides us with an alternate basis for declining to recuse. Under the traditional formulation of the rule of necessity, a judge "not only may but must" take part in the decision of a case in which he has a personal interest "if the case cannot be heard otherwise." *United States v. Will*, 449 U.S. 200, 213 (1980) (quoting Pollack, A First Book of Jurisprudence 270 (6th ed. 1929)). The courts of appeals have interpreted this doctrine to bar recusal when a plaintiff indiscriminately sues all of the judges of a circuit. See *Ignacio v. Judges of U.S. Court of Appeals for Ninth Circuit*, 453 F.3d 1160, (9th Cir. 2006); *Bolin*, 225 F.3d at 1238; *Switzer v. Berry*, 198 F.3d 1255, 1257 (10th Cir. 2000); *Tapia-Ortiz v. Winter*, 185 F.3d 8, 10 (2d Cir. 1999); see *also In re City of Houston*, 745 F.2d 925, 930 n.9 (5th Cir. 1984). In that situation, the courts have held that mandatory recusal would provide litigants with a "veto power over sitting judges, or a vehicle for obtaining a judge of their choice." *Switzer*, 198 F.3d at 1257 (quoting *United States v. Cooley*, 1 F.3d 985, 992-93 (10th Cir. 1993)). It does not matter whether judges from other courts could be brought in to hear the case; bringing in new judges "would be the pragmatic equivalent of having the case transferred out of circuit." *Ignacio*, 453 F.3d at 1165.

The O'Dwyer recusal motion falls within this rule. Under the Local Disciplinary Rules, the U.S. District Court for the Eastern District of Louisiana must sit en banc to determine "the final discipline, if any, to be taken." Local Disciplinary Rule III(D)(1). After learning that a disciplinary action had been initiated against him, O'Dwyer "uncritically" named all of the members of the en banc Court as defendants in a frivolous lawsuit. *Ignacio*, 453 F.3d at 1165. Under these circumstances, the rule of necessity precludes

recusal. The result would be no different if it were possible to bring in judges from other districts to preside over the disciplinary proceeding. "To hold otherwise would allow and possibly encourage plaintiffs to impede the administration of justice by suing wholesale all the judges in a district... until their case is transferred." *Id.*

For these reasons, the judges of this Court need not recuse themselves from participating in the disciplinary proceedings currently pending against O'Dwyer. O'Dwyer's motion seeking our recusal is DENIED.

B. Motion to Order Recusal of Judge Lemelie

O'Dwyer has also asked the en banc Court to order the recusal of Judge Lemelle. The motion incorporates arguments made in an October 14 motion before Judge Lemelle, which Judge Lemelle denied on October 15. Relying on a Fifth Circuit ruling in a case having nothing to do with O'Dwyer, the motion contends that Judge Lemelle is "bias[ed], prejudice[d] and partial[]" with respect to O'Dwyer. The motion is facially without merit.

Putting to one side the question whether we have the power to order Judge Lemelle to recuse, we may examine the record to ensure that the Findings and Recommendation on which we rely are not infected with bias. As noted, recusal may be warranted if the circumstances reveal actual bias toward a party or, alternatively, if they give rise to the appearance of impartiality. In either case, "the alleged bias must be personal, as distinguished from judicial, in nature." *United States v. Scroggins*, 485 F.3d 824, 830 (5th Cir. 2007) (quoting *Phillips v. Joint Legislative Committee*

on Performance & Expenditure Review, 637 F.2d 1014, 1020 (5th Cir. 1981)). O'Dwyer has not alleged, let alone produced any evidence, that Judge Lemelle said or did anything that would reveal actual bias toward O'Dwyer. Indeed, O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him. Moreover, while adverse judicial rulings may support a claim of bias if they "reveal an opinion based on an extrajudicial source or if they demonstrate such a high degree of antagonism as to make fair judgment impossible," *id.*, there is absolutely nothing in the record to suggest such conduct by Judge Lemelle. If anything, Judge Lemelle bent over backwards to ensure that O'Dwyer received a fair hearing.

For these reasons, O'Dwyer's motion asking the en banc Court to order the recusal of Judge Lemelle is DENIED.

III. RULING ON THE MERITS

The Court en banc, having considered the Findings and Recommendation and respondent's objections thereto, makes the following determinations.

The objections by respondent Ashton O'Dwyer have no merit and are rejected. The en banc Court adopts the Findings of Judge Lemelle and determines that the following allegations in the matter of Ashton R. O'Dwyer, Jr., have been established by clear and convincing evidence:

> Violations of Rule of Professional Conduct 3.1 by bringing frivolous pleadings and asserting frivolous issues despite repeated warnings from the court to avoid such conduct, as alleged in the

first Count of the Complaint;

Violations of Rule of Professional Conduct 3.49(c) by knowingly disobeying an obligation under rules of a tribunal, without valid cause, as alleged in the third Count of the Complaint;

Violations of Rule of Professional Conduct 1.4 (3) by failing to keep his clients reasonably informed about the status of their case, as alleged in the third Count of the Complaint;

Violations of Rule of Professional Conduct 3.5 (d) by using unprofessional language that challenged the competence of the court and by engaging in conduct intended to disrupt a tribunal, including disobeying court orders and using abusive language challenging the court's lawful authority, as alleged in the fourth Count of the Complaint;

Violations of Rule of Professional Conduct 4.4 (a) by engaging in retaliatory attempts to sanction other attorneys and parties with frivolous motions and accusations intended to embarrass, delay and burden his opponents, as alleged in the fifth Count of the Complaint;

Violations of Rule of Professional Conduct 8.4(a), (c), (d) and (g) by using unprofessional language with opposing counsel, misrepresenting the conduct of opposing counsel, engaging in conduct prejudicial to the administration of justice, disregarding court warnings to avoid further unprofessional conduct and threatening opposing

counsel with false allegations of conduct criminal or disciplinary in nature solely to obtain an advantage in the civil action before Section K of the Court, as alleged in the sixth Count of the Complaint.

Accordingly, IT IS ORDERED that respondent Ashton R. O'Dwyer, Jr., is hereby suspended from the practice of law in the United states District court for the Eastern District of Louisiana for a period of five years, with the first two years being active suspension, and the remaining years on a probationary status.

IT IS FURTHER ORDERED that at the expiration of the first two years of the suspension and at least at the one-year anniversary thereafter, and up until the five years, respondent Ashton R. O'Dwyer, Jr., may apply to the court for reinstatement, which application must contain the following:

(1) Evidence by clear and convincing proof that he has taken significant and meaningful steps to bring his practice and behavior in court up to the standards of ethics, civility, professionalism, and respect for the institutional role of the court that are expected of the members of the bar of the Eastern District of Louisiana;

(2) A certification that he has not been accused of any other unethical or unprofessional conduct of any type by an attorney, client, board, judge or entity since the date of this order. If the first application is denied, then any later application shall contain a certification which is limited to the preceding two year period;

(3) A certification that no official body or judge or court has taken action of any type against him for any unethical or unprofessional conduct of any type since the date of this order. If the first application is denied, then any later application shall contain a certification which is limited to the preceding two year period; and

(4) A certification that he has paid all outstanding monetary sanctions against him; and

(5) Evidence that he has obtained stress and anger management counseling/treatment with a licensed counselor in that area, which shall include the certification of the counselor that respondent has successfully completed the course of treatment, together with a description of the treatment administered.

IT IS FURTHER ORDERED that respondent Ashton R. O'Dwyer, Jr., shall file no pleadings or documents in any proceeding before this court, whether existing or sought to be initiated, including as a pro se litigant, without first paying all outstanding monetary sanctions issued against him and without first obtaining an order of a member of this Court. This Order does not apply to the filing of a Notice of Appeal or to a document required to be filed by this order.

IT IS FURTHER ORDERED that no later than twenty (20) days from entry of this order respondent Ashton R. O'Dwyer, Jr., shall provide written notification to each, of his clients in any case pending in the Eastern District of Louisiana of the orders issued in this proceeding. Respondent shall also certify in writing to the Chief Judge of this Court that he has complied

with this requirement no later than twenty (20) days from the entry of this order.

Respondent Ashton R. O'Dwyer, Jr. is cautioned that failure to comply with this order may result in the imposition of further sanctions, including disbarment.

This order is effective immediately.

New Orleans, Louisiana this 7th day of November, 2008.

s/ Sarah Vance
FOR THE EN BANC COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF MISCELLANEOUS

ASHTON R. O'DWYER, JR. NUMBER: 08-5170

REPORT AND RECOMMENDATION

Considering the attorney disciplinary complaint filed by Chief United States District Judge Sarah s. Vance, the answers and defenses asserted to that complaint by Ashton R. O'Dwyer, Jr. (Respondent), and finding the record abundantly clear to allow resolution of all issues without need of oral argument or evidentiary hearing, the following report and recommendations are presented to the *En Banc* Court.

The instant complaint was filed on December 18, 2008. The complaint is based upon a charge that Respondent willfully engaged in multiple violations of an *en banc* Court order and the Louisiana Rules of Professional Responsibility, which this Court has specifically adopted. Rule 11(A)(2). That *en banc* Court order entered on November 7, 2008, suspended Respondent from the practice of law in this Court for a period of five years, with the first two years being active suspension, and the remaining years on probationary status. As conditions of reinstatement, the *en banc* Court order required Respondent's certification that he (1) has taken significant and meaningful steps to bring his practice and behavior in court up to the standards of ethics, civility, professionalism and respect for the institutional role of the court that are expected of the members of the bar of this Court; (2) has not been accused of any other

unethical or unprofessional conduct of any type within the preceding two years; (3) has paid all outstanding monetary sanctions; and (4) has successfully completed a course of treatment for stress and anger management with a licensed counselor in that area. Further, the *en banc* Court order prohibited Respondent from filing pleadings or documents in any proceeding before this Court, whether existing or sought to be initiated, including as a *pro se* litigant, without first paying all outstanding monetary sanctions issued against him and without first obtaining an Order from a member of this Court. The *en banc* Court Order also mandated Respondent to notify within 20 days each of his clients in any case pending in this Court of the orders issued in connection with the disciplinary suspension, and to certify to the Chief Judge of this Court in writing his compliance with the notification requirement within 20 days. Finally, the *en banc* Court Order cautioned Respondent that failure to comply with the Order may result in the imposition of further sanctions, including disbarment.[1] In addition to citing specific documented and undisputed events attributable to Respondent, the complaint also cited, as to each event, the specific Louisiana Rule of Professional Conduct allegedly violated.

Respondent admitted to willfully engaging in multiple violations of the aforementioned *en banc* Order, but alleges that under the First, Fifth and Fourteenth Amendments to the United States Constitution he has a right to violate that Order. Specifically, Respondent claims that the *en banc* Court is "illegally carrying out the malevolently motivated

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[1] See *In* re *Ashton R. O'Dwyer, Jr.*, Misc. No. 08-1492 at Record Document 31.

will of (Judge) Stanwood R. Duval, Jr., and of his alter egos." (See Misc. No. 08- 5170, Record Document 3, Quotation from p. 3 of Respondent's Answers And Defenses.)

Respondent admits to filing a motion on November 11, 2008 styled "Ashton O'Dwyer's 28 U.S.C. § 1746 Declaration of Intentionally Contemptuous Non-Compliance with the Court's Order of 11/07/08, Which is Directed to the Court *En Banc*", without first paying his outstanding monetary sanctions, or obtaining permission from a member of this Court as required by the *en banc* Court order. Respondent's "Declaration" was ordered stricken as a violation of the express terms of the *en banc* Court order.[2] The instant complaint cites Respondent's "Declaration" as a violation of Rule of Professional Conduct 3.4(c) which prohibits lawyers from knowingly disobeying an obligation under the rule of a tribunal. While admitting to this event, i.e. filing the "Declaration", Respondent asserts "no valid obligation exists for him to be required to comply with an illegal order".

As in the prior disciplinary action against him, Respondent reurges his prior defenses of recusal, disqualification, appointment of investigating counsel, discovery beyond the public record and urges a new defense, i.e. "That he and his client are being denied fundamental due process of law by virtue of the Court's having imposed unfair and unmeetable 'conditions' to the right to file pleadings with the Clerk of Court in clear violation of 28 U.S.C. §242".[3] [4]

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[2] Misc. No. 08-1492 at Record Document Numbers 32 and 33.

[3] *See* Misc. No. 08-5170, Answers and Defenses of Ashton R. O'Dwyer, Jr., at Record Document 3, pp. 2-3; and Misc. No. 08-1492, Record Documents 8, 15 and 28.

[4] The unfair and unmeetable conditions are purportedly based on a

With exception of the new defense, the *en banc* Court order of November 7, 2008 denied, with reasons, Respondent's other defenses. The same result should occur here.[5] The "unfair and unmeetable" conditions defense should also be denied as unfounded. First, Respondent contradicts himself by saying the *en banc* order conditions are unfair. During the hearing of the first disciplinary complaint, Respondent acknowledged that in response to an adverse ruling on a motion to disqualify, he used "strident language" in a court pleading by suggesting it was "none of the Court's business", but said in "the heat of the moment". Misc. #08-1492, Record Document 23-2, Hearing Transcript at p. 27 lines 4-11; p. 28 lines 16-23. In defense of those remarks in the first disciplinary proceeding as well as now in defense of his declaration of non-compliance with the *en banc* order and conditions of suspension, Respondent claims he is "not going to comply... because I didn't have the financial wherewithal to do so; but even if I did, I wouldn't, and then I got, admittedly, flippant because... I still maintain it is none of the Court's business". *Id.*, at p. 33 lines 20-25; p. 34 lines 1-5. He later says he should have left the latter comment out, regretted it and wish he could take it back. *Id.*, at p. 35 lines 7 and 21-22. But subsequently, Respondent

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footnoted question by Respondent, wherein he asks: "how can O'Dwyer be expected to pay absurd monetary sanctions imposed against him if his ability to earn a living and practice his chosen profession has been suspended for five (5) years?" (Quoted from Misc. No. 08-5170, Record Document 3 at p. 3, footnote 1 of Respondent's Answers And Defenses).

[5] There is no need for oral argument or evidentiary hearing on defenses or answers asserted here. The alleged conduct is all a matter of public record. There are no material factual disputes, only disputed issues of law remain.

says he did not overreact, claiming the existence of a "scandal of monumental proportions... that will make what Judge Porteous has done look like Becky Thatcher in comparison". *Id.*, at p. 39 lines 7-13. At various other times during the hearing of the first disciplinary complaint, Respondent acknowledged using other demeaning words in the course of pertinent litigation before the court in describing a Judge's ruling and/or attorney, including "done for an illicit purpose", "sleeping with the devil", "disingenuous", "No one fires a shot across my bow without getting a broadside back", "the fix is in", "being railroaded", and "they are not human beings", "criminal, sociopaths, psychopaths, human scum, and vermin". *Id.* at p. 55 lines 1-25; p. 56 lines 1-3; p. 57 lines 5-19; p. 63 lines 1-6; p. 67 lines 5-9; Record Document 24-2, p. 8 lines 10-14; p. 10 lines 1-3; p. 25 lines 22-25. Eventually, as an oral ruling was being issued at the end of the first disciplinary proceeding, Respondent interrupted the Court at least seven (7) times despite cautionary warnings against such conduct. All of above, among other events cited in the November 7, 2008 *en banc* order, required imposition of the disciplinary action by suspension from practice and conditions for reinstatement imposed at that time by the *en banc* Court.

Respondent's contentions of an inability to pay financial sanctions and denied access to court are not supported by the record. In that regards, his reliance on 28 U.S.C. §452 and 18 U.S.C. §242 is misplaced. The right of access to court under constitutional and statutory authorities is a fundamental tenet of our judicial system, but not exercisable absolutely. Abusers of that right can and should be held accountable, after warning and hearing, for their transgressions in disobeying court orders and the filing of frivolous,

repetitive, abusive, and harassing pleadings. Moreover, attorneys who engage in multiple acts of unprofessional behavior, including self-declarations of "intentional contempt...no intention of ever complying" with court orders subject themselves to disciplinary actions, including reasonable conditions upon their license to practice law and access to court. Access to court conditions, similar to that imposed in the relevant *en banc* Court order, have been approved in a variety of precedential authorities. *In re McDonald,* 489 U.S. 180, 109 S. Ct. 993 (1989) (per curiam); *Al-Hakim v. Publix Supermarkets,* 128 S. Ct. 712 (2007) (per curiam); *Gelabert v. Lynaugh,* 894 F. 2d 746 (5th Cir. 1990); *Brown v. U.S.,* No. 08-10238 (unpublished) (5th Cir. 2008); Support Systems International, *Inc. v. Mack,* 45 F. 3d 185 (7th Cir. 1995); *In The Matter of: City of Chicago,* 500 F. 3d 582 (7th Cir. 2007); *Pryor v. U.S.,* 96 Fed, Appx. 663, 2004 WL 1089482 (10th Cir. 2004).

There is no record in these proceedings of a proper motion or supporting affidavit for pauper status from Respondent, nor did he seek relief from payment of court ordered sanctions due to claimed inability to pay by filing an appropriate motion for same with this court. As Respondent expressly states, even if he had the means to pay, he would not pay the court ordered sanctions or even notify his clients of adverse rulings and orders against him. By his own words and deeds, Respondent would forfeit the opportunity offered by this Court to access same, choosing instead to ignore court warnings and, ultimately, to violate court orders designed to promote professional conduct.

Allegations that a judge has mishandled a trial are beyond the reach of the Rules of Professional Conduct; but accusations of judicial "dishonestly" "corruption" and criminality are not. *United States v.*

Brown, 72 F.3d 25, 27-29 (5th Cir. 1995). Respondent's ongoing defense for non-compliance with allegedly invalid court orders is again misplaced, misdirected and filled with displays of wilful intransigence, despite repeated and explicit warnings against such conduct. The correctness of a court order or ruling is not contested by deciding to willfully disobey it, without suffering the consequences of that disobedience. Respect for judicial process is a small price for the civilizing hand of law. Absent a showing of transparent invalidity or patent frivolity surrounding that order, it must be obeyed until stayed or reversed by orderly review. *Maness v. Meyers*, 419 U.S. 449 (1975); *Cf. United States* v. *Dickinson*, 465 F. 2d 496 (5th Cir. 1972).

Not satisfied with declaring his intent to not comply with the *en banc* court order, Respondent injects that instead of questioning the motivations for rulings by Judge Duval, the *en banc* Court chose "to react in 'knee-jerk' fashion" to his declaration of non-compliance. Respondent's own declaration states, in conclusion, "The Court *en banc* is invited to disbar O'Dwyer, forever". After further personalizing ongoing attacks upon rulings that he disagrees with through his chosen words, e.g. "Intentional contempt", Respondent now in defense to a complaint that he expressly invited "denies his motivation was intent to disrupt a tribunal" and that he "did not intend to be openly contemptuous of the Court's *en banc* Order" in attempting to file various pleadings cited in the instant complaint.[6]

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[6] Respondent's attempt to insulate himself by referring to actions taken by his secretary and his attorney, in attempted filings, fails. Either through intent or callous neglect Respondent did not take measures to reasonably assure compliance by his staff or counsel to the *en banc* court order. Based on his own declarations on non-compliance, including refusal to notify his own clients of court

Based on the foregoing undisputed facts. Respondent's admissions in this record and all other evidence in this record, we find, by clear and convincing evidence of record, that Respondent has violated the following Rules of Professional Conduct:

Rule 3.4(c) and (d) by knowingly disobeying obligations and court orders under the rule of a tribunal;

Rule 3.5(d) by engaging in conduct through the making of openly contemptuous statements intended to disrupt a tribunal;

Rule 8.2(a) by making statements that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the integrity of a judge.

Having found professional misconduct, we must consider the appropriate sanction for Respondent's misconduct. In determining an appropriate sanction, we are mindful that the purpose of disciplinary proceedings is not primarily to punish the lawyer, but rather to maintain high standards of professional conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Association v. Reis*, 513 So. 2d 1173 (LA 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved, considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Association v. Whittington*, 459 So.2d 520 (LA. 1984).

Respondent knowingly and intentionally violated duties to his clients, the public, the legal system, and as

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orders as ordered to do, it is clear that Respondent's failures here are done intentionally or out of gross indifference to orderly process.

a professional, causing serious harm. Aggravating factors are found present, including a pattern of misconduct, multiple offenses, bad faith obstruction of the previously imposed disciplinary order of suspension with conditions by intentionally failing to comply with the *en banc* Court Order issued in that action, and substantial experience in the practice of law. There are no mitigating factors of record. There appears to be little doubt that the proper sanction for Respondent's ongoing misconduct is disbarment. We do not lightly reach this conclusion. Respondent has repeatedly disregarded and ignored his obligation to uphold the high standards that he assumed when he took the oath as a member of the bar. A lesser sanction, as previously noted, has not deterred repetitive misconduct.

Accordingly, IT IS RECOMMENDED that:

(1) Respondent be disbarred from the practice of law before this Court;

(2) The Clerk of Court shall strike Respondent's name from the active role of attorneys admitted to the Eastern District of Louisiana;

(3) Respondent's license to practice law before this Court be cancelled, effective upon the finality of the decision here by the *en banc* Court;

(4) During the disbarment period, and with the exception of exercising appellate rights in these proceedings, Respondent shall not file pleadings or documents in any proceeding before this Court, whether existing or sought to be initiated, including as a *pro se* litigant, without first paying all outstanding monetary sanctions

issued against him and without first obtaining an Order from a member of this Court;

(5) Within 21 days after adoption of this report and recommendation by the *en banc* Court, Respondent shall notify each of his clients in any case pending in this Court of the *en banc* Court orders issued in connection with this disciplinary action, and to certify to the Chief Judge of this Court in writing his compliance with the notification requirement within 28 days after entry of the *en banc* Order of disbarment, if any; and

(6) After the fifth year of disbarment, Respondent may file a petition for reinstatement with proof that (a) he has taken significant and meaningful steps to bring his behavior up to the standards of ethics, civility, professionalism and respect for the institutional role of the court that are expected of the members of the bar of this Court; (b) he has not been accused of any other unethical or unprofessional conduct within the preceding five years; (c) he has satisfied all outstanding monetary sanctions; (d) he has successfully completed a course of treatment for stress and anger management with a licensed counselor in that area; and

(7) The placement of these proceedings upon the public record, including the Court's CM/ECF system for electronic access.

No later than 14 days from entry of this report and recommendation. Respondent may file his written objections to same with the Clerk of Court for consideration by the *en banc* Court.

New Orleans, Louisiana, this 10th day of February, 2009.

s/ Ivan L.R. Lemelle
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF MISCELLENOUS

ASHTON R. O'DWYER, JR. NUMBER: 08-5170

ORDER OF DISBARMENT

Considering the attorney disciplinary complaint filed by Chief United States District Judge Sarah S. Vance, the answers and defenses asserted to that complaint by Ashton R. O'Dwyer, Jr. (Respondent), the Report and Recommendation of the Honorable Ivan L.R. Lemelle, Respondent's failure to respond to the same, and finding the record abundantly clear to allow resolution of all issues, the *En Banc* Court adopts Judge Lemelle's Report and Recommendation and issues the following order disbarring Respondent from practicing law before this Court.

The instant complaint was filed on December 18, 2008. The complaint is based upon a charge that Respondent willfully engaged in multiple violations of an *en banc* Court order and the Louisiana Rules of Professional Responsibility, which this Court has specifically adopted. Rule 11(A)(2). That *en banc* Court order entered on November 7, 2008, suspended Respondent from the practice of law in this Court for a period of five years, with the first two years being active suspension, and the remaining years on probationary status. As conditions of reinstatement, the *en banc* Court order required Respondent's certification that he (1) has taken significant and meaningful steps to bring his practice and behavior in court up to the standards of ethics, civility,

professionalism and respect for the institutional role of the court that are expected of the members of the bar of this Court; (2) has not been accused of any other unethical or unprofessional conduct of any type within the preceding two years; (3) has paid all outstanding monetary sanctions; and (4) has successfully completed a course of treatment for stress and anger management with a licensed counselor in that area. Further, the *en banc* Court order prohibited Respondent from filing pleadings or documents in any proceeding before this Court, whether existing or sought to be initiated, including as a *pro se* litigant, without first paying all outstanding monetary sanctions issued against him and without first obtaining an Order from a member of this Court. The *en banc* Court Order also mandated Respondent to notify within 20 days each of his clients in any case pending in this Court of the orders issued in connection with the disciplinary suspension, and to certify to the Chief Judge of this Court in writing his compliance with the notification requirement within 20 days. Finally, the *en banc* Court Order cautioned Respondent that failure to comply with the Order may result in the imposition of further sanctions, including disbarment.[1] In addition to citing specific documented and undisputed events attributable to Respondent, the complaint also cited, as to each event, the specific Louisiana Rule of Professional Conduct allegedly violated.

Respondent admitted to willfully engaging in multiple violations of the aforementioned *en banc* Order, tout alleges that under the First, Fifth and Fourteenth Amendments to the United States

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[1] See *In re Ashton R. O'Dwyer, Jr.*, Misc. No. 08-1492 at Record Document 31.

Constitution he has a right to violate that Order. Specifically, Respondent claims that the *en banc* Court is "illegally carrying out the malevolently motivated will of (Judge) Stanwood R. Duval, Jr., and of his alter egos." (See Misc. No. 08-5170, Record Document 3, Quotation from p. 3 of Respondent's Answers And Defenses.)

Respondent admits to filing a motion on November 11, 2008 styled "Ashton O'Dwyer's 28 U.S.C. § 1746 Declaration of Intentionally Contemptuous Non-Compliance with the Court's Order of 11/07/08, Which is Directed to the Court *En Banc*", without first paying his outstanding monetary sanctions, or obtaining permission from a member of this Court as required by the *en banc* Court order. Respondent's "Declaration" was ordered stricken as a violation of the express terms of the *en banc* Court order.[2] The instant complaint cites Respondent's "Declaration" as a violation of Rule of Professional Conduct 3.4(c) which prohibits lawyers from knowingly disobeying an obligation under the rule of a tribunal. While admitting to this event, i.e. filing the "Declaration", Respondent asserts "no valid obligation exists for him to be required to comply with an illegal order".

As in the prior disciplinary action against him, Respondent reurges his prior defenses of recusal, disqualification, appointment of investigating counsel, discovery beyond the public record and urges a new defense, *i.e.* "That he and his client are being denied fundamental due process of law by virtue of the Court's having imposed unfair and unmeetable 'conditions' to the right to file pleadings with the Clerk of Court in

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[2] Misc. No. 08-1492 at Record Document Numbers 32 and 33.

clear violation Of 28 U.S.C. §242".[3] [4]

With exception of the new defense, the *en banc* Court order of November 7, 2008 denied, with reasons, Respondent's other defenses. The same result should occur here.[5] The "unfair and unmeetable" conditions defense should also be denied as unfounded. First, Respondent contradicts himself by saying the *en banc* order conditions are unfair. During the hearing of the first disciplinary complaint, Respondent acknowledged that in response to an adverse ruling on a motion to disqualify, he used "strident language" in a court pleading by suggesting it was "none of the Court's business", but said in "the heat of the moment", Misc. #08-1492, Record Document 23-2, Hearing Transcript at p. 27 lines 4-11; p. 28 lines 16-23. In defense of those remarks in the first disciplinary proceeding as well as now in defense of his declaration of non-compliance with the *en banc* order and conditions of suspension, Respondent claims he is "not going to comply... because I didn't have the financial wherewithal to do so; but even if I did, I wouldn't, and then I got, admittedly, flippant because... I still maintain it is none of the

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[3] *See* Misc. No. 08-5170, Answers and Defenses of Ashton R. O'Dwyer, Jr., at Record Document 3, pp. 2-3; and Misc. No. 08-1492, Record Documents 8, 15 and 28.

[4] The unfair and unmeetable conditions are purportedly based on a footnoted question by Respondent, wherein he asks: "how can O'Dwyer be expected to pay absurd monetary sanctions imposed against him if his ability to earn a living and practice his chosen profession has been suspended for five (5) years?" (Quotated from Misc. No. 08-5170, Record Document 3 at p. 3, footnote 1 of Respondent's Answers And Defenses).

[5] There is no need for oral argument or evidentiary hearing on defenses or answers asserted here. The alleged conduct is all a matter of public record. There are no material factual disputes, only disputed issues of law remain.

Court's business". Id., at p. 33 lines 20-25; p. 34 lines 1-5. He later says he should have left the latter comment out, regretted it and wish he could take it back. *Id.*, at p. 35 lines 7 and 21-22. But subsequently, Respondent says he did not overreact, claiming the existence of a "scandal of monumental proportions... that will make what Judge Porteous has done look like Becky Thatcher in comparison". *Id* , at p. 39 lines 7-13. At various other times during the hearing of the first disciplinary complaint, Respondent acknowledged using other demeaning words in the course of pertinent litigation before the Court in describing a Judge's ruling and/or attorney, including "done for an illicit purpose", "sleeping with the devil", "disingenuous", "No one fires a shot across my bow without getting a broadside back", "the fix is in", "being railroaded", and "they are not human beings", "criminal, sociopaths, psychopaths, human scum, and vermin". *Id.* at p. 55 lines 1-25; p. 56 lines 1-3; p. 57 lines 5-19; p. 63 lines 1-6; p. 67 lines 5-9; Record Document 24-2, p. 8 lines 10-14; p. 10 lines 1-3; p. 25 lines 22-25. Eventually, as an oral ruling was being issued at the end of the first disciplinary proceeding, Respondent interrupted the Court at least seven (7) times despite cautionary warnings against such conduct. All of above, among other events cited in the November 7, 2008 *en banc* order, required imposition of the disciplinary action by suspension from practice and conditions for reinstatement imposed at that time by the *en banc* Court.

Respondent's contentions of an inability to pay financial sanctions and denied access to court are not supported by the record. In that regards, his reliance on 28 U.S.C. § 452 and 18 U.S.C. § 242 is misplaced. The right of access to court under constitutional and

statutory authorities is a fundamental tenet of our judicial system, but not exercisable absolutely. Abusers of that right can and should be held accountable, after warning and hearing, for their transgressions in disobeying court orders and the filing of frivolous, repetitive, abusive, and harassing pleadings. Moreover, attorneys who engage in multiple acts of unprofessional behavior, including self-declarations of "intentional contempt...no intention of ever complying" with court orders subject themselves to disciplinary actions, including reasonable conditions upon their license to practice law and access to court. Access to court conditions, similar to that imposed in the relevant *en banc* Court order, have been approved in a variety of precedential authorities. *In re McDonald,* 4 89 U.S. 180, 109 S. Ct. 993 (1989) (per curiam); *Al-Hakim v. Publix Supermarkets,* 128 S. Ct, 712 (2007) (per curiam); Gelabert *v. Lynaugh,* 894 F. 2d 746 (5th Cir. 1990); *Brown v. U.S.,* No. 08-10238 (unpublished) (5th Cir. 2008); *Support Systems International, Inc. v. Mack,* 45 F. 3d 185 (7th Cir. 1995); *In The Matter of: City of Chicago,* 500 F. 3d 582 (7th Cir. 2007); *Pryor v. U.S.,* 96 Fed, Appx. 663, 2004 WL 1089482 (10th Cir. 2004).

There is no record in these proceedings of a proper motion or supporting affidavit for pauper status from Respondent, nor did he seek relief from payment of court ordered sanctions due to claimed inability to pay by filing an appropriate motion for same with this court. As Respondent expressly states, even if he had the means to pay, he would not pay the court ordered sanctions or even notify his clients of adverse rulings and orders against him. By his own words and deeds, Respondent would forfeit the opportunity offered by this Court to access same, choosing instead to ignore court warnings and, ultimately, to violate court orders

designed to promote professional conduct.

Allegations that a judge has mishandled a trial are beyond the reach of the Rules of Professional Conduct; but accusations of judicial "dishonestly" "corruption" and criminality are not. *United States v. Brown*, 72 F.3d 25, 27-29 (5th Cir. 1995). Respondent's ongoing defense for non-compliance with allegedly invalid court orders is again misplaced, misdirected and filled with displays of wilful intransigence, despite repeated and explicit warnings against such conduct. The correctness of a court order or ruling is not contested by deciding to willfully disobey it, without suffering the consequences of that disobedience. Respect for judicial process is a small price for the civilizing hand of law. Absent a showing of transparent invalidity or patent frivolity surrounding that order, it must be obeyed until stayed or reversed by orderly review. *Maness v. Meyers, 419 U.S. 449 (1975); Cf. United States v. Dickinson*, 465 F. 2d 496 (5th Cir. 1972).

Not satisfied with declaring his intent to not comply with the *en banc* Court order. Respondent injects that instead of questioning the motivations for rulings by Judge Duval, the *en banc* Court chose "to react in 'knee-jerk' fashion" to his declaration of non-compliance. Respondent's own declaration states, in conclusion, "The Court *en banc* is invited to disbar O'Dwyer, forever". After further personalizing ongoing attacks upon rulings that he disagrees with through his chosen words, e.g. "Intentional contempt", Respondent now in defense to a complaint that he expressly invited "denies his motivation was intent to disrupt a tribunal" and that he "did not intend to be openly contemptuous of the Court's *en banc* Order" in attempting to file

various pleadings cited in the instant complaint.[6]

Based on the foregoing undisputed facts, Respondent's admissions in this record and all other evidence in this record, we find, by clear and convincing evidence of record, that Respondent has violated the following Rules of Professional Conduct:

Rule 3.4(c) and (d) by knowingly disobeying obligations and court orders under the rule of a tribunal;

Rule 3.5(d) by engaging in conduct through the making of openly contemptuous statements intended to disrupt a tribunal;

Rule 8.2(a) by making statements that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the integrity of a judge.

Having found professional misconduct, we must consider the appropriate sanction for Respondent's misconduct. In determining an appropriate sanction, we are mindful that the purpose of disciplinary proceedings is not primarily to punish the lawyer, but rather to maintain high standards of professional conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Association v. Reis*, 513 So. 2d 1173 (LA 1987). The discipline to be imposed depends upon the

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[6] Respondent's attempt to insulate himself by referring to actions taken by his secretary and his attorney, in attempted filings, fails. Either through intent or callous neglect Respondent did not take measures to reasonably assure compliance by his staff or counsel to the *en banc* court order. Based on his own declarations on non-compliance, including refusal to notify his own clients of court orders as ordered to do, it is clear that Respondent's failures here are done intentionally or out of gross indifference to orderly process.

facts of each case and the seriousness of the offenses involved, considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Association v. Whittington*, 459 So.2d 520 (LA. 1984).

Respondent knowingly and intentionally violated duties to his clients, the public, the legal system, and as a professional, causing serious harm. Aggravating factors are found present, including a pattern of misconduct, multiple offenses, bad faith obstruction of the previously imposed disciplinary order of suspension with conditions by intentionally failing to comply with the *en banc* Court Order issued in that action, and substantial experience in the practice of law. There are no mitigating factors of record. There appears to be little doubt that the proper sanction for Respondent's ongoing misconduct is disbarment. We do not lightly reach this conclusion. Respondent has repeatedly disregarded and ignored his obligation to uphold the high standards that he assumed when he took the oath as a member of the bar. A lesser sanction, as previously noted, has not deterred repetitive misconduct.

Accordingly, **IT IS ORDERED** that:

(1) Respondent be disbarred from the practice of law before this Court;

(2) The Clerk of Court shall strike Respondent's name from the active roll of attorneys admitted to the Eastern District of Louisiana;

(3) Respondent's license to practice law before this Court be cancelled, effective upon the finality of the decision here by the *en banc* Court;

(4) During the disbarment period, and with the exception of exercising appellate

rights in these proceedings, Respondent shall not file pleadings or documents in any proceeding before this Court, whether existing or sought to be initiated, including as a *pro se* litigant, without first paying all outstanding monetary sanctions issued against him and without first obtaining an Order from a member of this Court;

(5) Within 21 days after entry of this *en banc* Court order, Respondent shall notify each of his clients in any case pending in this Court of the *en banc* Court orders issued in connection with this disciplinary action, and to certify to the Chief Judge of this Court in writing hie compliance with the notification requirement within 28 days after entry of this *en banc* Order of disbarment; and

(6) After the fifth year of disbarment, Respondent may file a petition for reinstatement with proof that (a) he has taken significant and meaningful steps to bring his behavior up to the standards of ethics, civility, professionalism and respect for the institutional role of the court that are expected of the members of the bar of this Court; (b) he has not been accused of any other unethical or unprofessional conduct within the preceding five years; (c) he has satisfied all outstanding monetary sanctions; (d) he has successfully completed a course of treatment for stress and anger management with a licensed counselor in

that area; and

(7) The placement of these proceedings upon the public record, including the Court's ECF system for electronic access, shall be done by the Clerk of Court upon receipt of this *en banc* order.

New Orleans, Louisiana, this _____ day of March, 2009.

s/ Ivan L.R. Lemelle
For the *En Banc* Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

USA	CRIMINAL
VERSUS	NO. 10-34
ASHTON R. O'DWYER, JR.	SECTION "N"(1)

ORDER

The Judges of this Court, having recused themselves in the captioned case, IT IS ORDERED that the captioned case is assigned to Senior United States District Judge Donald E. Walter, who has previously been designated to hold court in the Eastern District of Louisiana.

New Orleans, Louisiana, this 12th day of February, 2010.

SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ASHTON R. O'DWYER, JR. CIVIL ACTION

VERSUS NUMBER: 08-3170

SECTION: J

ACTIVE DUTY JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, ET AL

ORDER OF DISMISSAL

This case was filed on May 5, 2008, and administratively closed on October 14, 2008. Because this case is now moot in light of the fact that underlying disciplinary proceedings have concluded,

IT IS ORDERED that this matter be re-opened for the sole purpose of entering this order of dismissal.

IT IS FURTHER ORDERED that this case is DISMISSED with prejudice.

Dated at New Orleans, Louisiana, this 8th day of OCTOBER, 2010.

CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

3. Judge Duncan's Misconduct in Failing to Disclose Conflicts of Interests is Bad Enough, but Respondent Avers that Judicial Misconduct on the Fifth Circuit Bench Runs Much Deeper Than Just Judge Duncan.

The filing of Respondent's "Motion to Re-Open Case" put Judge Duncan (and the entire Panel) "on notice" that the subject matter of Respondent's Motion was "undisclosed conflicts of interest" on Judge Duncan's part. Respondent maintains that that fact alone should have disqualified Judge Duncan from participating any further in this case. Accordingly, Respondent was more than "just a little" surprised when Judge Duncan's name appeared on the summarily issued "...motion to reopen the case is DENIED" Order that emanated from the Panel within 24 hours of the Motion being filed. And the said Order did not provide Respondent with any insight as to why Judge Duncan had failed to disclose his conflicts of interests to Respondent. Nor did it address any of the consequences that this Court has said must flow therefrom under *Commonwealth Coatings*.

The lack of any meaningful "communication" from Judge Duncan and the Panel put Respondent at a disadvantage, because Respondent simply does not know what "may be in Judge Duncan's head." The complete depth, breadth and scope of Judge Duncan's associations and relationships with the State of Louisiana, and with State entities, cases and individuals, since 2008, are known to and can be attested to by Judge Duncan better than by anyone else. Nevertheless, it is evident that Judge Duncan has, since 2008, dutifully served, as his "Lord and Master," the State of Louisiana, upon whose good graces he was virtually totally dependent for his livelihood until May

2017, when he assumed the Federal Appellate Bench.

Judge Duncan knows what cases he handled and/or supervised for the State, the names of those cases, the identities of the parties, and the nature of the issues in those cases. Judge Duncan knows what KATRINA cases he handed or supervised, and the issues that were litigated in those cases. He knows whether he had ever heard of Respondent prior to this case, and whether he ever discussed Respondent or any of his litigation or disbarment proceedings with colleagues within the Louisiana Department of Justice, the Office of the Attorney General or any other State entity, or with anyone else. Judge Duncan also knows whether he might harbor any bias or prejudice in favor of his former employer and client, the State, or against Respondent, even "unconscious bias." And Judge Duncan knows why he failed to make disclosure in this ease, and why he failed to disqualify himself, perhaps because "the most biased judges [are] the least willing to withdraw." See John Leubsdorf, *Theories of Judging and Judge Disqualification;* 62 N.Y.U.L. Rev. 237, 245 (1987).

It is readily apparent from Judge Duncan's responses to Senators during his confirmation process demonstrated that he contemplated both "disclosure" and possible "disqualification," once he was on the Federal Bench, particularly in cases that might involve the State of Louisiana (App. 47-48). Why Judge Duncan did neither in this case is unknown.

Respondent avers that the fact that Judge Duncan failed to disclose his associations and relationships with the State gave rise to, in reasonable minds, "a concrete, not speculative impression of bias."

Respondent maintains that, at the very least,

Judge Duncan's personal interest in this case, which placed his own undisclosed conflicts of interests "front and center," should have disqualified him from acting further in Respondent's case pursuant to a Rule that fair tribunals must follow, recently reinforced in *Williams v. Pennsylvania*, 136 S.Ct. 1899 (2016), which held:

> "Due process guarantees 'an absence of actual bias' on the part of a judge. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, L.Ed. 942 (1955). Bias is easy to attribute to others and difficult to discern in oneself. To establish an enforceable and workable framework, the Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, 'the average judge in his position' is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'. *Caperton*, 556 U.S., at 881, 129 S.Ct. 2252. Of particular relevance to the instant ease, the Court has determined that an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case. See *Murchison*, 349 U.S., at 136-137, 75 S.Ct. 623. This objective risk of bias is reflected in the due process maxim that '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.' *Id.*, at 138, 75 S.Ct. 623." (Emphasis supplied.)

Applying the objective test to Judge Duncan's

undisclosed conflicts of interests, coupled with his continued participation in deciding Respondent's Motion to Re-Open the Case, and Respondent's Motion for Reconsideration (App. 108, 120), resulted in the likelihood or appearance for bias rising to an unconstitutional level. *Peters v. Kiff*, 407 U.S. 495, 502 (1972). Indeed, the fact that Judge Duncan failed to make proper disclosure to Respondent, and concealed from Respondent information about his multiple direct, extensive and substantial associations and relationships with the State of Louisiana, brings to mind the words of Fifth Circuit Judge Jacques Weiner in Ms dissent in *Positive Software Solutions, Inc. v. New Century Mortgage Corporation*, 378 F.3d 278 (5th Cir. 2007), namely: "But Shurn's very act of preemptively deciding, solely on his own, that his relationship with council for New Century need not be disclosed and then withholding that information conveys an unmistakable appearance of impropriety," 376 F.3d at 293.

And because Respondent avers that "whatever" may have motivated Judge Duncan's failure to disclose his conflicts of interests with the State indubitably stemmed from relationships that began to be forged as early as 2008, Judge Duncan's bias and prejudice, actual or likely (but reasonably "plausible" under the circumstances), was "extra-judicial." *Liteky v. United States*, 510 U.S. 540 (1994).

Unfortunately, this concrete, not speculative impression of bias also extends to Judge Duncan's brethren on the Panel, Judges Costa and Willett. More particularly, Respondent avers that these other Panel Members were also corrupted, tainted and polluted by permitting Judge Duncan's continued participation in the ease once they were "on notice" that Respondent was claiming that Judge Duncan had failed to disclose

conflicts of interests to Respondent. Judges Costa and Willett were put on notice by virtue of the contents of Respondent's "Motion to Re-Open Case, etc.," as well as by the contents of "Respondent's Rule 27.4 Certificate of Interested Persons and Entities" (App. 14-33, 100-105), which was filed on November 27, 2020, along with Respondent's Motion.[3] The Certificate clearly reflects that "These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal."

The "response" by Judges Costa and Willet (as well as Judge Duncan) to being placed "on notice" of Judge Duncan's undisclosed conflicts of interests was to summarily deny Respondent's Motion to Re-Open Case, as well as his Motion for Reconsideration, without any written reasons, and to allow Judge Duncan's participation in both decisions notwithstanding the fact that Respondent had squarely placed Judge Duncan's conduct at issue by virtue of his non-disclosed conflicts of interests (App. 108, 109-119, 120.)

Judges Costa, Willett and Duncan were members of the very same Panel which:

1. SEALED the entire record in Respondent's case, a virtually unprecedented action which ran directly contrary to the Fifth Circuit Opinion which had been only recently authored by Judge Costa in the ease of *BP Exploration & Production Incorporated v. Claimant ID 100246928,* 920 F.3d 209 (5th Cir. 2019), and which prompted Respondent to ask

[3] Another such Certificate also was filed simultaneously with Respondent's "Motion for Reconsideration."

rhetorically: "Does the actual bias and prejudice ran deeper than just Judge Duncan? What is the Panel hiding? Who is the Panel protecting? What is the Panel covering up?"

2. Failed to address, even in cursory fashion, any of Respondent's Affirmative Defenses to his disbarment in the Federal or State disciplinary proceedings. See Respondent's "Motion to Unseal the Record" (App. 69-76, 85-99) and his "Declaration Under Penalty of Perjury." (App. 56.) Respondent's Motion was summarily denied without any written reasons.

3. Made a false finding "on-the-record" in the Per Curiam Opinion, even going so far as to falsely and maliciously accuse Respondent of the crime of forgery by forging his cousin's signature on a pleading, which was the "linchpin" of the Panel's (and the Louisiana Supreme Court's) erroneous conclusion that Respondent had engaged in the unauthorized practice of law while under suspension. (App. 56, 77-81, 83.)

By joining their Brother-on-the Federal-Bench, Judge Duncan, in improvidently sealing the record, failing to address material issues, and making blatantly false statements "on-the-record," Respondent avers that it is entirely plausible for reasonable minds to conclude that something other than "truth, justice and

the American way" was at work in this case.

Accordingly, Respondent avers that by allowing Judge Duncan's continued participation in Respondent's ease, and by continuing to participate in the case themselves, Judges Costa and Willett became Judge Duncan's all-too-willing "partners in crime," and actually joined in Judge Duncan's unethical behavior. In so doing, Respondent avers that Judges Duncan Costa and Willett ran afoul of *Williams v. Pennsylvania,* 136 S.Ct. 1899 (2016), and cases cited therein.

Williams is important, not only because it stands for the proposition that a constitutional violation of a due process right by one Judge on a Panel of three Judges cannot constitute "harmless error," but because it implicitly recognizes the truth of the proverb: "One bad apple spoils the whole barrel." The *Williams* Court expressed this concept much more eloquently than Respondent could ever hope to do by saying:

> "The Court has little trouble concluding that a due process violation arising from the participation of an interested judge is a defect "not amenable" to harmless-error review, regardless of whether the judge's vote was dispositive. *Puckett v. United States,* 556 U.S. 129, 141, 129 S.Ct. 1423, 173 L.Ed.23 266 (2009) (emphasis deleted). The deliberations of an appellate panel, as a general rule, are confidential. As a result, it is neither possible nor productive to inquire whether the jurist in question might have influenced the views of his or her colleagues during the decision-making processing. Indeed, one purpose of judicial confidentiality is to assure jurists that they can reexamine old ideas and suggest new ones, while

both seeking to persuade and being open to persuasion by their colleagues. As Justice Brennan wrote in his *Lavoie* concurrence,

> 'The description of an opinion as being [for the court] connotes more than merely that the opinion has been joined by a majority of the participating judges. It reflects the fact that these judges have exchanged ideas and arguments in deciding the case. It reflects the collective process of deliberation which shapes the court's perceptions of which issues must be addressed and, more importantly, how they must be addressed. And, while the influence of any single participant in this process can never be measured with precision, experience teaches us that each member's involvement plays a part in shaping the court's ultimate disposition." 475 U.S., at 831, 106 S.Ct. 1580.

"These considerations illustrate, moreover, that it does not matter whether the disqualified judge's vote was necessary to the disposition of the case. The fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position. That outcome does not lessen the unfairness to the affected party. See *id.*, 15 831-832, 106 S.Ct. 1580 (Blackmun, J., concurring in judgment).

"A multimember court must not have its

> guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the role of law itself. When the objective risk of actual bias on the part of a judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless."

Separate and apart from whatever "influence" their "bad-apple" Panel Brother may had on them, Respondent also does not know what Judges Costa and Willett "knew or didn't know," and "when." Respondent does not know precisely when they acquired knowledge of Judge Duncan's undisclosed associations and relationships with the State of Louisiana. Did they have such knowledge when they were assigned to the Panel in 2018? Did they acquire that knowledge at some later date, independently of what they may have been informed about by Respondent?

But what Respondent does know is that Judges Costa and Willett, like Judge Duncan, remained completely silent, even after they had become familiar with the contents of Respondent's Motion to Re-Open Case, etc., with Respondent's Declaration, and with Respondent's Motion for Reconsideration (App, 14-38, 34-57, 109-119), remaining silent, while "circling the wagons" around

their Brother Judge.[4] They then ruled against Respondent, in Judge Duncan's "favor," in Orders that were issued summarily, without any explanation or written reasons. Respondent avers that such conduct renders Judges Costa and Willett equally as guilty of unethical behavior as Judge Duncan.

[4] They also ignored, again, the detailed contents of Respondent's "Motion to Unseal the Record." (App. 58-99.)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-46 -B
consolidated w/
No. 09-12

IN RE: ASHTON R O'DWYER, JR

Respondent - Appellant

Appeals from the United States District Court for the Eastern District of Louisiana, New Orleans

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CLERK'S OFFICE:

Under 5th Cir. R.42.3, the appeals are dismissed as of May 24th, 2010, for want of prosecution. The appellant failed to timely file record excerpts.

Clerk of the United States Court
of Appeals for the Fifth Circuit

By:_____
Misty L. Fontenot, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-46
consolidated with
No. 09-12

IN RE: ASHTON R O'DWYER, JR.

Respondent - Appellant

Appeals from the United States District Court for the Eastern District of Louisiana, New Orleans

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Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:

A member of this panel previously denied appellant's motion to reinstate the appeals and to consolidate ease numbers 08-46 and 09-12 with 09-30289. The panel has considered appellant's motion for reconsideration. IT IS ORDERED that the motion is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-00046
consolidated with
No. 09-00012

IN RE:

ASHTON R. O'DWYER, JR.,

Respondent-Appellant,

Appeals from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING EN BANC

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.
PER CURIAM:*

No member of the panel or judge in regular active service having requested that the court be polled on rehearing en banc (Fed. R. App. P. 35 and 5TH Cir. R. 35), the petition for rehearing en banc is DENIED.

ENTERED FOR THE COURT:

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* Chief Judge Jones and Judge Garza are recused and did not participate in the considered of the petition.

/s/ Jerry E. Smith
JERRY E. SMITH
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 10-30701

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

ASHTON R. O'DWYER, JR.,

Defendant Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:10-CR-34-1

Before REAVLEY, ELROD, and GRAVES, Circuit Judges.
PER CURIAM:*

In February 2010, the government obtained an indictment against Ashton O'Dwyer alleging a violation of 18 U.S.C. § 875(c), which criminalizes the interstate communication of certain threats. The government appeals from the district court's dismissal of the

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.0.4.

indictment. Because the district court correctly determined that O'Dwyer's speech was protected by the First Amendment, and not a true threat, we AFFIRM.

I. FACTS AND PROCEEDINGS

O'Dwyer sent an e-mail to Sean McGinn, an employee of the bankruptcy court for the Eastern District of Louisiana. At the time of the e-mail, O'Dwyer was the debtor in bankruptcy proceedings before Bankruptcy Judge Jerry Brown. The apparent purpose of O'Dwyer's e-mail was to obtain leave from Judge Brown to pay for his anti-depressant medication out of his most recent Social Security check. The full text of O'Dwyer's e-mail is as follows:

> Well, please convey to Judge Brown my belief that he can "try" to protect the CRIMINALS Duval, Lemelle and Dennis, but he can't protect them from themselves, and the "damage" is already done. As is the case with Judge Porteous, their impeachment is "just a matter of time". Also convey to Judge Brown a reminder that I have been totally without money since the weekend of January 8, 9, and 10, and that I have been without my anti-depressant medication, for which I have sought leave to pay Walgreen's from my most recent Social Security check, since last weekend. I could not sleep last night, which I attribute to the effects of abruptly stopping my medication on Sunday, the 24th (my pills "ran out", and I have no money to purchase more). Maybe my creditors would benefit from my suicide, but suppose I become "homicidal"?

> Given the recent "security breach" at 500 Poydras Street, a number of scoundrels might be at risk if I DO become homicidal. Please ask His Honor to consider allowing me to refill my prescription at Walgreen's, and allowing me to pay them, which is a condition for my obtaining a refill. Please communicate this missive to creditors and their counsel. Thank you.

McGinn contacted the U.S. Marshals after receiving O'Dwyer's e-mail. About nine hours later, O'Dwyer was arrested outside his home.

The district court dismissed the indictment on the ground that O'Dwyer's "statements are insufficient to warrant submission to a jury to determine if they are a true threat." The district court concluded that, read in context, O'Dwyer's statements did not constitute a threat as a matter of law. The government timely appealed.

II. DISCUSSION

We review *de novo* the district court's dismissal of an indictment. *See United States v. Ollison*, 555 F.3d 152, 160 (5th Cir. 2009). To uphold dismissal of the indictment we must determine as a matter of law that no reasonable jury could find the allegedly criminal statement to be a true threat. *See United States v. Daughenbaugh*, 49 F.3d 171, 173 (5th Cir. 1995) (whether a statement "constitutes a 'threat' is an issue of fact for the jury"); *United States v. Morales*, 272 F.3d 284, 287 (5th Cir. 2001) (applying the reasonable jury standard on review of a motion for judgment of acquittal).

The First Amendment provides that "Congress

shall make no law... abridging the freedom of speech." U.S. Const, amend. I. Nevertheless, the First Amendment does not protect "true threat[s]." *Virginia v. Black*, 538 U.S. 343, 359 (2003) ("[T]he First Amendment... permits [the government] to ban a 'true threat.'"). A communication rises to the level of an unprotected threat, within the meaning of 18 U.S.C. § 875(c), only if "in its context [it] would have a reasonable tendency to create apprehension that its originator will act according to its tenor." *Morales*, 272 F.3d at 288 (internal quotation marks omitted).

We agree with the district court that O'Dwyer's statement is not a true threat as a matter of law. His statement is hypothetical and conditional: "[S]uppose I become 'homicidal'... a number of scoundrels might be at risk if I DO become homicidal." *See Watts v. United States*, 394 U.S. 705, 708 (1969) (statement not a true threat considering in part its "expressly conditional nature"). Moreover, as the district court correctly observed, O'Dwyer's e-mail did not threaten bodily harm to any particular individual. O'Dwyer made his allegedly threatening statement in an e-mail transmitted to a bankruptcy court employee, with a message for Judge Brown, in which he never identified any individual whom he intended to harm. The most he said was that "a number of scoundrels might be at risk." We conclude, based on the language of Q'Dwyer's statement, and in light of his documented history of using coarse and hyperbolic language in prior court proceedings, that no reasonable jury could find that O'Dwyer's communication constitutes a true threat.

We therefore AFFIRM the district court's dismissal of the indictment.

RELEVANT PROVISIONS INVOLVED

U. S. Constitution, Article IV, Section 2, Clause 1: Access to Courts and Privileges and Immunities Clause

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

U. S. Constitution, First Amendment

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Fifth Amendment

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall

private property be taken for public use, without just compensation.

U. S. Constitution, Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Code of Conduct for U. S. Judges (Applicable Canons and Commentary)

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgements and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law, and in the context of all relevant circumstances. The Code is to be construed so it does not impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and nominees for judicial office. It may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§

332(d)(1), 351-364). Not every violation of the Code should lead to disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the improper activity, the intent of the judge, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system. Many of the restrictions in the Code are necessarily cast in general terms, and judges may reasonably differ in their interpretation. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the Code is not intended to be used for tactical advantage.

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities

(A) *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and Impartiality of the judiciary.

(B) *Outside Influence.* A judge should not allow family, social, political, financial, or other relationships to influence judicial

conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

COMMENTARY

Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed

as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

Canon 2B. A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving a friend or a member of the judge's family.

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The

judge should adhere to the following standards:

(A) *Adjudicative Responsibilities.*

(1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

(B) *Administrative Responsibilities.*

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.

(2) A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge.

(5) A judge with supervisory authority over other judges should take reasonable measures to ensure that

they perform their duties timely and effectively.

(6) A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravened this Code, that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct.

(C) *Disqualification.*

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such

association as a lawyer concerning the matter, or the judge or lawyer has been a material witness;

COMMENTARY

Canon 3A(3). The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

Canon 3A(4). The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law

teachers, and others who are not participants in the proceeding. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. A judge should make reasonable efforts to ensure that law clerks and other court personnel comply with this provision.

Canon 3A(6). The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A. A judge may comment publicly on proceedings in which the judge is a litigant in a personal capacity, but not on mandamus proceedings when the judge is a litigant in an official capacity (but the judge may respond in accordance with Fed. R. App. P. 21(b)).

Canon 3B(6). Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. A judge, in deciding what action is appropriate, may take into account any request for confidentiality made by a person complaining of or reporting misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(6) (providing that "cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable Information reasonably likely to constitute judicial misconduct or disability. A judge who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the chief district judge or chief circuit judge, who

shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A judge's assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the judiciary, A person reporting information of misconduct or disability must be informed at the outset of a judge's responsibility to disclose such information to the relevant chief district judge or chief circuit judge. Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most senior active circuit judge. Such information related to a chief district judge should be called to the attention of the chief circuit judge.").

Appropriate action may include direct communication with the judge or lawyer, other direct action if available, reporting the

conduct to the appropriate authorities, or, when the judge believes that a judge's or lawyer's conduct is caused by drugs, alcohol, or a medical condition, making a confidential referral to an assistance program. Appropriate action may also include responding to a subpoena to testify or otherwise cooperating with or participating injudicial or lawyer disciplinary proceedings; a judge should be candid and honest with disciplinary authorities.

28 United States Code, Section 455 – Disqualification of Justice, Judge, or Magistrate Judge

a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

b) He shall also disqualify himself in the following circumstances:

1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

2) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy; or

3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.