

party; (ii) the representative does not have or represent an interest adverse to the intervenor; and (iii) the representative does not fail in the fulfillment in their duty. *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir. 1993). Unless one of these three conditions are met, we “will presume that a proposed intervenor’s interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention.” *Id.*; *Int’l Tank Terminals, Ltd. v. M/V Acadia Forest*, 579 F.2d 964, 967 (5th Cir. 1978).

We conclude that the district court correctly denied Barth’s motion to intervene. Barth’s interest in the unsealing of the search warrant and all related materials is adequately protected by the existing intervenors. Judicial Watch, the media organizations, and the Florida Center for Government Accountability all share the same ultimate objective and continue to forcefully litigate to achieve it. Indeed, the existing intervenors have, for the most part, accomplished this interest. The search warrant and large portions of the affidavit have been unsealed. And almost a year later, the existing intervenors continue to move for further unsealing. The media organizations recently moved for the government to periodically reassess and report on unsealing of the search warrant affidavit as changed circumstances may undermine the government interests justifying the seal. We therefore presume that Barth’s interest is adequately represented by the existing intervenors who share the same ultimate objective.

Barth has not presented any reason to counter that presumption. The persistent effort of the existing intervenors to unseal the search warrant materials undercuts Barth's unsubstantiated suggestion that they only want to unseal the matter "so far." His further contention that the government is colluding with the intervenors is unsupported by any evidence in the record. And he has not explained how his interests are adverse to the existing intervenors given that they all share the same objective as him in unsealing the search warrant affidavit.

\*3 The "fatal mistakes" that Barth points to also do not suggest that the existing intervenors have failed in the pursuit of this goal. The record makes clear that the magistrate judge—not the existing intervenors—stated that the search warrant was supported by probable cause. At a hearing that took place before the affidavit was partially unsealed, counsel for the media intervenors characterized the warrant as being "based on alleged probable cause." The magistrate judge interjected: "Not alleged probable cause, I found there is probable cause." Counsel responded: "Indeed you did, your Honor." In context—where the intervenors could not have independently concluded that probable cause existed because the affidavit had not yet been unsealed—we do not interpret this exchange as a concession that probable cause existed. In any event, conceding that probable cause existed to support the warrant would not undercut efforts to unseal the affidavit.

Barth's second "fatal mistake" is not a mistake at all. The magistrate judge asked counsel for the media intervenors whether "as an abstract matter,

maintaining the integrity of the investigation, and particularly the sources and methods of conducting the investigation, can be[,] in the right case[,] a legitimate and sufficient Government interest to overcome the public right of access.” Counsel responded that “with the caveats that the Court has mentioned, in the right case, at the right moment of the right case” he “would agree with that principle as a general matter.” This is a correct statement of law and counsel’s agreement with it does not suggest that the existing intervenors are inadequately representing Barth’s interest. *See United States v. Valenti*, 987 F.2d 708, 714–15 (11th Cir. 1993) (holding that district court properly denied motion to unseal “as a necessary means to achieving the government’s compelling interest in the protection of a continuing law enforcement investigation”). Accordingly, we conclude that Barth’s interest is adequately represented by the existing parties to the litigation.

\* \* \*

The district court correctly denied Barth’s motion to intervene as of right under Rule 24(a) and Barth does not argue that he sought permissive intervention under Rule 24(b). Therefore, we have no reason to reverse the district court and dismiss the appeal for lack of jurisdiction.<sup>2</sup>

DISMISSED.

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<sup>2</sup> We previously dismissed this appeal to the extent that it concerned Barth’s motion for recusal and do not address the arguments that the parties raised on that matter in the briefing.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 22-12932-JJ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL S. BARTH,

Interested Party-Appellant,

SEALED SERACH WARRANT,  
Defendant.

Appeal from the United States District Court  
For the Southern District of Florida

Before: JILL PRYOR, NEWSOM, and GRANT,  
Circuit Judges.

BY THE COURT

Appellant's November 28, 2022 motion for  
reconsideration of our November 9, 2022 order  
dismissing this appeal for lack of jurisdiction is  
DENIED.

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Page: 2 of 2

To the extent Appellant wishes to seek mandamus relief, he should file an original petition in this Court. *See* Fed. R. App. P. 21.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 22-13061-J

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL S. BARTH,

Interested Party-Appellant,

SEALED SERACH WARRANT,  
Defendant.

Appeal from the United States District Court  
For the Southern District of Florida

Before: JILL PRYOR, NEWSOM, and GRANT,  
Circuit Judges.

BY THE COURT

Michael Barth's November 21, 2022 motion for reconsideration of our November 1, 2022 order dismissing this appeal for lack of jurisdiction is DENIED.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 22-12932-JJ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL S. BARTH,

Interested Party-Appellant,

SEALED SERACH WARRANT,  
Defendant.

Appeal from the United States District Court  
For the Southern District of Florida

Before: JILL PRYOR, NEWSOM, and GRANT,  
Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Michael Barth's notice of appeal designated an appeal from "the Final Orders and Memorandums of the District Court that denied the

access to all the unsealed/unredacted court records in the above referenced matter" and listed three August 2022 orders as examples of such orders. However, these appealed from orders are not final or otherwise immediately appealable because they were all issued by a magistrate judge and the district court had not rendered them final at the time Mr. Barth filed the instant notice of appeal. *See Donovan v. Sarasota Concrete Co.*, 693 F.2d 1061, 1066-1067 (11<sup>th</sup> Cir. 1982); *United States v. Cline*, 566 F.2d 1220, 1221 (5<sup>th</sup> Cir. 1978); *see also Perez-Priego v. Alachua Cnty. Clerk of Court*, 148 F.3d 1272, 1273 (11<sup>th</sup> Cir. 1998). The district court had not been given an opportunity to effectively review the magistrate judge's orders and we cannot hear appeals directly from federal magistrate judges. *See United States v. Schultz*, 565 F.3d 1353, 1359 (11<sup>th</sup> Cir. 2009). Moreover, even if the district court were to subsequently render the magistrate judge's orders final, it would not serve to cure this premature notice of appeal. *See Robinson v. Tanner*, 798 F.2d 1378, 1385 (11<sup>th</sup> Cir. 1986); *Perez-Priego*, 148 F.3d at 1273. Accordingly, we lack jurisdiction over this appeal.

All pending motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11<sup>th</sup> Cir. R. 27-2 and all other applicable rules.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 22-12932-JJ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL S. BARTH,

Interested Party-Appellant,

SEALED SERACH WARRANT,  
Defendant.

Appeal from the United States District Court  
For the Southern District of Florida

Before: JILL PRYOR, NEWSOM, and GRANT,  
Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for the reasons outlined below. First, we lack jurisdiction to review this appeal to the extent that it concerns Michael Barth's motion for recusal because that

motion has not yet been explicitly addressed in a judgement or order. *See Bogle v. Orange Cnty, Bd. of Comm'rs*, 162 F.3d 653, 661 (11<sup>th</sup> Cir. 1998). And to the extent that the district court's August 19, 2022 order implicitly denied Barth's motion to recuse, he may not seek an immediate appeal of that denial because it is reviewable on appeal from the final judgement. *See Steering Comm. V. Mead Corp. (In re Corrugated Container Antitrust Litig)*, 614 F.2d 958, 960-61 (5<sup>th</sup> Cir. 1980).

Second, Barth challenged the district court's August 19, 2022 order overruling the objections to the magistrate judge's August 17, 2022 order denying his motion to intervene in appeal no. 22-12791, which was dismissed. Thus, to the extent that Barth again challenges the August 17 and 19 orders, this appeal is DISMISSED as duplicative. *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). *LA. Durbin Inc. v. Jefferson Nat Bank*, 793 F.2d 1541, 1551 (11<sup>th</sup> Cir. 1986) (noting that it is well established that federal courts avoid duplicative litigation as a general principle in order to conserve judicial resources); *Georgia ex rel Olsens v. McCarthy*, 833 F.3d 1317, 1321 (11<sup>th</sup> Cir. 2016) stating that litigation is generally duplicative if the parties, issues, and available relief do not significantly differ between two or more actions); *See also United States v. Arlt*, 567 F.2d 1295, 1297 (5<sup>th</sup> Cir. 1978) (holding that an appellant "is not entitled to two appeals").

Finally, we lack jurisdiction to review the remaining orders designated in the notice of appeal because they were all issued by a magistrate judge and the district court had not rendered them final at the time Barth filed the instant notice of appeal. *See Donovan v. Sarasota Concrete Co.* 693 F.2d 1061, 1066-67 (11<sup>th</sup> Cir. 1982); *United States v. Cline*, 566 F.2d 1220, 1221 (5<sup>th</sup> Cir. 1978); *see also Perez-Priego v. Alachua Cnty. Clerk of Court*, 148 F.3d 1272, 1273 (11<sup>th</sup> Cir. 1998). The district court had not been given an opportunity to effectively review the magistrate judge's orders and we cannot hear appeals directly from federal magistrate judges. *See United States v. Schultz*, 565 F.3d 1353, 1359 (11<sup>th</sup> Cir. 2009). Moreover, even if the district court were to subsequently render these orders final, it would not serve to cure this premature notice of appeal. *See Robinson v. Tanner*, 798 F.2d 1378, 1385 (11<sup>th</sup> Cir. 1986); *Perez-Priego*, 148 F.3d at 1273. Accordingly, we lack jurisdiction over this appeal.

All pending motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11<sup>th</sup> Cir. R. 27-2 and all other applicable rules.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-MJ-08332  
IN RE: SEALED SEARCH WARRANT

ORDER OVERRULING OBJECTION TO  
MAGISTRATE JUDGE ORDER ON  
INTERVENTION

This matter is before the Court on the *pro se* Movant's Letter Memorandum filed on August 18, 2022, which the Court construes as an objection to Magistrate Judge Bruce E. Reinhart's paperless order at docket entry 64. That paperless order reads as follows:

PAPERLESS ORDER denying pro se motion DE 62 to intervene and unseal documents. The interests asserted by the movant are adequately represented by the media-intervenors. *See In re Horizon Organic Milk Plus DHA Omega-3 Mkt. & Sales Prac. Litig.* No. 12-MD-02324, 2014 WL 12496734, at \*2 (S.D. Fla. July 10, 2014) (citing Fed. R. Civ. P. 24) (collecting cases). Signed by Magistrate Judge Bruce E. Reinhart on 8/17/2022 (hk02 (Entered 08/17/2022).

This Court construes the Movant's objection as arguing that the Movant's request to intervene in this matter should have been granted. Intervention is governed by Rule 24 of the Federal Rules of Civil Procedure. Pursuant to that Rule, a district court may permit an intervenor to intervene when the intervenor shares a claim or defense with the main

action. This Court “will presume that a proposed intervenor’s interest is adequately represented when a existing party pursues the same ultimate objective as the party seeking intervention.” *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.* 983 F.2d 211, 215 (11<sup>th</sup> Cir. 1993). Adequate representation exists when “no collusion is shown between the representative and an opposing party, if the representative does not have or represent an interest adverse to the proposed intervenor, and if the representative does not fail in fulfilment of his duty.” *Id.* (quotation marks omitted.)

Here, under both an abuse of discretion and *de novo* standard of review, the Court concludes that Judge Reinhart’s decision was correct. This Court has considered the issues presented at the hearing on this matter before Judge Reinhart on August 18, 2022. Based upon that review, the Court concludes that the parties who have been permitted intervention in this matter – various outlets of the national news media have thoughtfully and professionally litigated their position. This Court can therefore conclude with certainty that the interests of the *pro se* Movant are adequately represented. There is no evidence of collusion between the media outlets in this case and the Government, there is no adverse interest between the media outlets and the *pro se* Movant, and the media outlets have not failed in the fulfillment of their duty. The media outlets seek the same relief that the *pro se* Movant does, and they have adequately litigated on behalf of their shared relief with the Movant.

For all of the foregoing reasons, it is hereby  
ORDERED AND ADJUDGED that the *pro se*  
Movant's objection [DE 70] is OVERRULED.

DONE AND ORDERED IN Chambers, West Palm  
Beach, Florida, this 19<sup>th</sup> day of August, 2022.

ROBIN L. ROSENBERG, U.S.D.J.

*United States v. Sealed Search Warrant* (9:22-mj-08332) (S.D. Fla.) Relevant Portions of Docket:

Document Number 64, Aug 17, 2022:

PAPERLESS ORDER Denying pro se motion DE 62 to intervene and unseal documents. The interests asserted by the movant are adequately represented by the media-intervenors. *See In re Horizon Organic Milk Plus DHA Omega-3 Mktg. & Sales Prac. Litig.*, No. 12-MD-02324, 2014 WL 12496734, at \*2 (S.D. Fla. July 10, 2014) (citing Fed. R. Civ. P. 24) (collecting cases). Signed by Magistrate Judge Bruce E. Reinhart on 8/17/2022. (hk02) Modified text per chambers on 8/17/2022 (mf). (Entered: 08/17/2022)

Document Number 84, Aug. 22, 2022:

NOTICE OF APPEAL by Michael S Barth as to Sealed Search Warrant Re: 78 Order on Motion for Miscellaneous Relief. Filing fee \$ 505.00. Receipt#: 7996. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Attachments: # 1 Appellate Filing Fee Receipt, # 2 Transcript (apz) Modified text on 8/22/2022 (apz). (Entered: 08/22/2022)

Document Number 106, Aug 31, 2022: "NOTICE of Motions for Leave to Intervene for Purpose of Taking an Appeal by Michael S. Barth as to Sealed Search Warrant. (apz) (Entered: 09/01/2022)"

Document Number 107, Aug 31, 2022: "Movant Michael S. Barth's MOTION to Intervene for Purpose of Taking an Appeal and Supporting Memorandum by Michael S Barth as to Sealed Search Warrant. Responses due by 9/14/2022 (apz) (Entered: 09/01/2022)"

Document Number 108, Aug 31, 2022:

NOTICE OF APPEAL by Michael S Barth as to Sealed Search Warrant Re: 80 Order, 94 Order on Motion to Unseal Document, 99 Order to Unseal. FILING FEE: (NOT PAID). Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (apz) (Entered: 09/01/2022)

Document Number 110, Sep 1, 2022:

PAPERLESS ORDER denying 107 Motion by Non-Party Michael S. Barth to Intervene for Purposes of Appeal. See Davis v. Butts, 290 F.3d 1297, 1299 (11th Cir. 2002) ("Standing alone, an order denying permissive intervention is neither a final decision nor an

appealable interlocutory order because such an order does not substantially affect the movant's rights."). Signed by Magistrate Judge Bruce E. Reinhart on 9/1/2022. (hk02) (Entered: 09/01/2022)

Document Number 111, Sep 2, 2022:  
"Acknowledgment of Receipt of NOA from USCA as to Sealed Search Warrant re 108 Notice of Appeal - Other Order, date received by USCA: 9/1/2022.  
**USCA Case Number: 22-12932-J.** (kpe) (Entered: 09/06/2022)"

Document Number 113, Sep 7, 2022: "Clerks Notice of Receipt of Appeal Filing Fee received on 9/6/2022 re DE 108 Notice of Appeal. (kpe) (Entered: 09/07/2022)"

Document Number 118, Sep 7, 2022: "NOTICE OF RULE 72 MOTIONS (Responses due by 9/21/2022), MOTION to Unseal Document by Michael S Barth as to Sealed Search Warrant. (ebz) (Entered: 09/07/2022)"

Document Number 120, Sep 8, 2022:

PAPERLESS ORDER construing the filing at 118 as a Motion for Reconsideration of this Court's Order entered at DE 110. To the extent DE 118 seeks reconsideration of this Court's prior order, that portion of the motion is DENIED. The remainder of the relief sought in DE 118 is DENIED AS MOOT because the motion at DE 70 (which sought review by the District Court) has already

been denied at DE 78 and the filings at DE 80, 94, and 99 have already been unsealed. Signed by Magistrate Judge Bruce E. Reinhart on 9/8/2022. (hk02) (Entered: 09/08/2022)

Document Number 121 Sep 9, 2022:

Amended NOTICE OF APPEAL by Michael S. Barth as to Sealed Search Warrant Re: 64 Order, 110 Order on Motion for Miscellaneous Relief, 120 Order on Motion for Miscellaneous Relief, Order on Motion to Unseal Document, 78 Order on Motion for Miscellaneous Relief. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (apz) (Entered: 09/12/2022)

Document Number 132, Sep 15, 2022:

“Acknowledgment of Receipt of NOA from USCA as to Sealed Search Warrant re 121 Notice of Appeal - Other Order, date received by USCA: 9/12/2022. USCA Case Number: 22-13061-J. (kpe) (Entered: 09/16/2022)”

Document Number 174, Aug. 15, 2023: “The public and the media have a qualified right of access to judicial proceedings...Media intervenors focus on two categories of information.”

Document Number 173, Aug. 2, 2023:

The Media Intervenors" refers to Intervenors American Broadcasting Companies, Inc.; the Associated Press; Cable News Network, Inc.; CBS Broadcasting Inc. o/b/o CBS News.; Dow Jones & Company, Inc., publisher of The Wall Street Journal; the E.W. Scripps Company; The Palm Beach Post, and USA TODAY, publications operated by subsidiaries of Gannett Co., Inc.; NBCUniversal Media, LLC d/b/a NBC News; The New York Times Company; Times Publishing Company, publisher of the Tampa Bay Times; and WP Company LLC d/b/a The Washington Post, and Proposed Intervenors Advance Publications, Inc.; Bloomberg L.P.; CMG Media Corporation; Fort Myers Broadcasting Company; Gray Media Group, Inc.; Guardian News & Media Limited; Insider Inc.; Los Angeles Times Communications LLC, publisher of The Los Angeles Times; the McClatchy Company, LLC d/b/a the Miami Herald; National Cable Satellite Corporation d/b/a C-SPAN; Orlando Sentinel Media Group, publisher of the Orlando Sentinel; POLITICO LLC; Radio Television Digital News Association; Reuters News & Media Inc.; Sun-Sentinel Company, LLC, publisher of the South Florida Sun Sentinel; TEGNA Inc.; Telemundo Network Group LLC d/b/a Noticias Telemundo; Tribune Publishing Company; and Univision Networks & Studios, Inc.

Interested Parties Per District Court References

Advance Publications, Inc.  
American Broadcasting Company, Inc.  
Bekesha, Michael  
Bloomberg, L.P.  
Cable News Network, Inc. o/b/o CBS News  
Caramanica, Mark Richard  
CBS Broadcasting Inc.  
CMG Media Corporation  
Dorsey, Paul M.  
Dow Jones & Company, Inc.,  
    publisher of *The Wall Street Journal*  
E.W. Scripps Company (SSP)  
Fl. Center for Government Accountability,  
Inc.  
Fort Myers Broadcasting Company  
Fugate, Rachel Elise  
Gonzalez Jr., Juan Antonio  
Gray Media Group, Inc.  
Guardian news & Media Limited  
Insider Inc.  
Irvine, Gerald  
Judicial Watch, Inc.  
King, Nellie Linn  
Lewis, James D.  
LoCicero, Carol Jean  
Los Angeles Times Communication LLC,  
    publisher of *The Los Angeles Times*  
Martin, Andy  
McClatchy Company, LLC  
    d/b/a the *Miami Herald*  
McElroy, Dana Jane  
Minchin, Eugene Branch  
Moon, James Calvin  
Morgensen, Andrea Flynn

National Cable Satellite Corporation,  
d/b/a C-SPAN  
NBC Universal Media, LLC d/b/a NBC News  
Orfanedes, Paul J.  
Orlando Sentinel Media Group,  
publisher of the *Orlando Sentinel*  
Palm Beach Post  
POLITICO LLC  
Radio Television Digital News Association  
Reeder Jr., L. Martin  
Reinhart, Honorable Bruce E.  
Reuters News & Media Inc.  
Rosenberg, Honorable Robin L.  
Rubio, Lisa Tobin  
Seidlin-Bernestein, Elizabeth  
Shullman, Deanna Kendall  
Smith, Jeffrey Michael  
Smith, John (Jack) Luman  
Sun-Sentinel Company, LLC,  
publisher of the *South Florida Sun Sentinel*  
TEGNA Inc.  
Telemundo Network Group LLC,  
d/b/a Noticias Telemundo  
The Associated Press  
The New York Times Company (NYT)  
Times Publishing Company,  
publisher of the *Tampa Bay Times*  
Tribute Publishing Company  
Tobin, Charles David  
Univision Networks & Studios  
USA TODAY  
WP Company LLC d/b/a The *Washington Post*

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Article II of the Constitution provides, in relevant part, that: "President shall take Care that the Laws be faithfully executed..."

Article III, § 1 of the Constitution provides, in relevant part, that "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior."

The First Amendment to the United States Constitution provides, in relevant part, that: "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."

The Fourth Amendment to the United States Constitution provides in relevant part that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no, Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that:

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.

Title 28 C.F.R. § 600.3 (a) provides in relevant part, that:

(a) An individual named as Special Counsel shall be a lawyer with a reputation for integrity and impartial decision making, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies.

Title 28, C.F.R. § 600.7(a) provides, in relevant part, that: "A Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice."

Title 28, U.S.C. 455 (a) provides in relevant part that: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in

which his partiality might reasonably be questioned.”

Title 28 U.S.C. § 636 (c)(1) (“Upon consent of the parties...”). 90 Stat. 2729, 26 U.S.C. § 636 (b) (3) (A magistrate may only be assigned “such additional duties as are not inconsistent with the Constitution and law of the United States.”)

Title 28, U.S.C. 1291 provides, in relevant part, that “The court of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States..., except where a direct review may be had in the Supreme Court.”

28 U.S.C. Fed. R. Civ. P. 24 provides, in relevant part, that:

**(a) Intervention of Right.** On timely motion, the court must permit anyone to intervene who:

- (1)** is given an unconditional right to intervene by a federal statute; or
- (2)** claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

**(b) Permissive Intervention.**

**(1) *In General.*** On timely motion, the court may permit anyone to intervene who:

- (A)** is given a conditional right to intervene by a federal statute; or

**(B)** has a claim or defense that shares with the main action a common question of law or fact.

**(2) *By a Government Officer or Agency.***

On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

**(A)** a statute or executive order administered by the officer or agency; or

**(B)** any regulation, order, requirement, or agreement issued or made under the statute or executive order.

**(3) *Delay or Prejudice.*** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

**(c) Notice and Pleading Required.** A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

28 U.S.C. Fed. R. Civ. P. 72 provides, in relevant part, that:

**(a) Nondispositive Matters.** When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when

appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

**(b) Dispositive Motions and Prisoner Petitions.**

(1) Findings and Recommendations. A magistrate judge must promptly conduct the required proceedings when assigned, without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement. A record must be made of all evidentiary proceedings and may, at the magistrate judge's discretion, be made of any other proceedings. The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact. The clerk must promptly mail a copy to each party.

<[Text of subsection (b)(1) effective December 1, 2023, absent contrary Congressional action.]>

(1) Findings and Recommendations. A magistrate judge must promptly conduct the required proceedings when assigned, without the parties' consent, to hear a pretrial matter

dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement. A record must be made of all evidentiary proceedings and may, at the magistrate judge's discretion, be made of any other proceedings. The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact. The clerk must immediately serve a copy on each party as provided in Rule 5(b).

(2) Objections. Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient.

(3) Resolving Objections. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Federal Rules of Appellate Procedure Rule 4, provides, in relevant part, that:

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

- (i) the United States;
- (ii) a United States agency;
- (iii) a United States officer or employee sued in an official capacity; or
- (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf--including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the

time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure--and does so within the time allowed by those rules--the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

- (i) for judgment under Rule 50(b);
- (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
- (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
- (iv) to alter or amend the judgment under Rule 59;
- (v) for a new trial under Rule 59; or

<[Text of subsection (a)(4)(A)(vi) effective until December 1, 2023, absent contrary Congressional action.]>

- (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

<[Text of subsection (a)(4)(A)(vi) effective December 1, 2023, absent contrary Congressional action.]>

(vi) for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment--

but before it disposes of any motion listed in Rule 4(a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal--in compliance with Rule 3(c)--within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14

days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal.

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

- (i) the entry of either the judgment or the order being appealed; or
- (ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

- (i) the entry of the judgment or order being appealed; or
- (ii) the filing of a notice of appeal by any defendant.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Federal Rules of

Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

- (i) for judgment of acquittal under Rule 29;
- (ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or
- (iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order--but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)--becomes effective upon the later of the following:

- (i) the entry of the order disposing of the last such remaining motion; or
- (ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective--without amendment--to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

... (5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a

notice of appeal from a judgment of conviction.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

...

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court docketed the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

64 Fed. Reg. 37038-01, 1999 WL 462200 (F.R.) provides, in relevant part, that:

This order amends the Code of Federal Regulations to provide regulations concerning Attorney General appointment of Special Counsel to investigate and, when appropriate, to prosecute matters when the Attorney General concludes that extraordinary circumstances exist such that the public interest would be served by removing a large degree of responsibility for a matter from the Department of Justice

Code of Conduct for United States Judges, Canon 2(A) provides, in relevant part, that: "An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired."