

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

Edgar Dietrich,

Petition No. 17-6322

Petitioner,

v.

Anthony Patti,

Respondent.

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MOTION FOR RECONSIDERATION OF THE DENIAL
OF PETITION SEEKING WRIT OF CERTIORARI

RELIEF REQUESTED

Edgar Dietrich, pro se, seeks reconsideration of this Court's December 11, 2017, decision DENYING a Writ of Certiorari in this matter, for the reasons stated herein.

LEGAL BASIS FOR RECONSIDERATION

S.C. Rule 44 directs, in relevant part that, a party may seek reconsideration of denial of a

Writ of Certiorari by:

“1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. [...] a petitioner proceeding in forma pauperis under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. [...] The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. A petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court, at the instance of a Justice who concurred in the judgment or decision.

2. Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. “,

id.

Dietrich herein complies with these rules; further, Dietrich relies on a “substantial ground[] not previously presented.”, *supra*.

ARGUMENT FOR RECONSIDERATION

The substantial ground not previously presented was this: Dietrich asserts that the District Court below did NOT comport with the Rules and Procedures of the Court, as issued by THIS Honorable Court, when it transferred the case from a neutral judge (Hon. Robert Cleland) to another judge (Hon. Judge Denise Page Hood), without cause, and without notice to Dietrich.

The legal prejudice to Dietrich from the transfer is that the new judge (Hon. Judge Hood) was biased from previous decisions, and dismissed the matter, as Dietrich contends, without legal basis for dismissal.

U.S. Code directs that:

“The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.”,

28 U.S. Code § 137, “Division of business among district judges”.

This Honorable Court retains jurisdiction for hearing cases which are decided outside of the “Accepted and Usual Practice”:

“The following, although neither controlling nor fully measuring the Court’s

discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power”,

S.C. Rule 10, relevant part (emphasis added).

In the Eastern District of Michigan, that Court has adopted the following rules for assignment:

“LR 83.11 Assignment and Reassignment of Civil Cases to Judges

(a) Random Method for Assignment of Cases to Judges.

(1) In Ann Arbor, Detroit, Flint and Port Huron, the Clerk shall employ a random method for the assignment of civil cases (excluding social security cases and special civil cases) to Judges.

...

(b) Reassignment of Civil Cases.

(1) Cases shall be reassigned only by order of the Court.

(2) To promote docket efficiency, or to conform to the requirement of any case

management plan adopted by the Court, or upon **consent** of the parties, or after **notice and hearing**, or in the interests of justice, the Chief Judge may order a civil case to be reassigned, but only with the consent of the Judge to whom the case was originally assigned and with the consent of the Judge to whom it is to be reassigned.

(3) To promote judicial efficiency in cases not requiring reassignment under these Rules, the Judges, **after notice to the parties and opportunity to respond**, may jointly order consolidation of some or all aspects of related cases.

(4) Reassignment of cases because of a change in judicial personnel shall be in accordance with an administrative order authorized by the Court.”,

Local Rule 83.11, United States District Court for the Eastern District of Michigan.

(a) The District Court did NOT follow its own re-assignment Rule.

Dietrich asserts, and the facts below demonstrate, that the Eastern District of Michigan did NOT follow the Re-Assignment Rule at L.R. 83.11(b), and thus prejudiced his case, by making and arbitrary and capricious re-assignment to an un-sympathetic judge, who then proceeded to dismiss the case.

(b) This Honorable Court should correct this injustice.

Claims of assignment manipulation clearly strike a raw nerve. Judges are sensitive to the appearance of impropriety that might be inferred from unusual assignment procedures.

Moreover, the perception that judicial assignments matter is supported by the continuing contentiousness over judicial appointments. Chief Justice Rehnquist expressed concern over delays in confirming federal judges, a phenomenon apparently due to political differences between the White House and the Senate. William H. Rehnquist, The 1997 Year-End Report of the Federal Judiciary, THE THIRD BRANCH, Jan. 1998, at 1, 3.

There are also well-documented efforts to evade customary procedures for assigning cases to judges. People have gone to jail (See, e.g., United States v. August, 745 F.2d 400 (6th Cir. 1984); State v. Jurek, 556 N.E.2d 1191 (Ohio Ct. App. 1989); State v. McCool, 544 N.E.2d 933 (Ohio Ct. App. 1988)) and lawyers have been severely disciplined (See, e.g., Grievance Adm'r v. August, 475 N.W.2d 256 (Mich. 1991) (suspension); Cleveland Bar Ass'n v. Jurek, 581 N.E.2d 1356 (Ohio 1991) (disbarment)); Office of Disciplinary Counsel v. Melamed, 580 N.E.2d 1077 (Ohio 1991) (disbarment); In re Bennett, 960 S.W.2d 35 (Tex. 1997) (\$10,000 sanction)) for trying to circumvent the assignment system.

There is a surprisingly large body of case law on judicial assignment. Most of that case law has arisen in lower-profile disputes than civil rights and desegregation. The bulk of them involve judicial assignment at the trial court level, although the analysis in those

cases presumably should apply to analogous situations at the appellate level. Some claims in this area invoke the Constitution, while others rely on various theories under state law or court rules and procedures.

Whatever the basis for these claims, they rarely succeed even when the facts suggest that judges were assigned in non-random fashion.

That should not be case, however, and this Court should intervene here, and **now**. Manipulation of judicial assignments can deprive litigants of their right to a fair hearing and contravene basic principles of due process.

As the Supreme Court has put it, due process

"clearly requires a 'fair trial in a fair tribunal.'",

Bracy v. Gramley, 117 S. Ct. 1793, 1797 (1997) (quoting Withrow v. Larkin, 421 U.S. 35, 46 (1975).)

However, the federal courts, as well as most state courts, have generally been unreceptive to constitutional challenges to judicial assignment. It is noteworthy that the Sixth Circuit Court of Appeals passed on this issue, as presented below.

This Court should reconsider, and intervene to correct this glaring injustice.

Respectfully Submitted,

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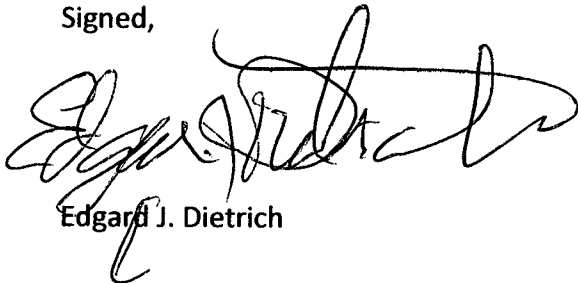
Edgar J. Dietrich, pro se.

CERTIFICATION

This **"MOTION FOR RECONSIDERATION OF THE DENIAL**

OF PETITION SEEKING WRIT OF CERTIORARI" is presented in Good Faith, and not for purposes of delay.

Signed,

A handwritten signature in black ink, appearing to read "Edgar J. Dietrich". The signature is fluid and cursive, with a large loop at the end.

Edgar J. Dietrich