THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

No. 1:92-CR-182-4,5

GEORGE W. HIGH, SR. & VIRGINIA C. HIGH,
(INDIVIDUALLY AND/OR JOINTLY)

MOTION TO DISQUALIFY JUDGE

George W. High, Sr., Pro Se
5888 Par Three Ct.
Lithonia, Ga. 30038
(770) 323-3909

Notice of Motion to Disqualify Judge on Motion for Appointment of Counsel and Petition for Writ of Error Coram Nobis

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of the petitioner, George W. High, Sr., the attached memorandum of law, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court in the chambers of the Honorable, Robert L. Vining, Jr., Room 2211, United States District Courthouse, at 75 Spring St., Atlanta, Ga. 30335, for an Order disqualifying the Honorable Robert L. Vining, Jr. from passing judgment on the merits of the Petitioner's pending motion for PETITION FOR WRIT OF ERROR CORAM NOBIS and MOTION FOR APPOINTMENT OF COUNSEL, and for such other and further relief as to this Court may seem just and proper.

This motion is accompanied by supporting documentation and petitioners would show for cause the following:

WITH ALL DUE RESPECT to this Honorable Court , It is the Highs firm belief, and they respectfully submit, that Judge Robert L. Vining, Jr., has invinced in this case a bias against George and Virginia High, so strong as to effect his objectivity in assessing the claim made in Their pending Petition for Writ of Error Coram Nobis, and Motion for Appointment of Counsel, as to warrant his disqualification on this matter.

This Motion is invoked under:

28 U.S.C. § 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate 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.

CASE HISTORY

Mr. and Ms. High were tried by a jury before the Honorable Robert L. Vining, Jr. United States District Judge. On October 13, 1993, the jury returned guilty verdicts against Mr. and Ms. High in count one (conspiracy to distribute cocaine); count thirteen (conspiracy to launder drug proceeds, to structure currency transactions and to defraud the United States) counts three and nine (weapons violations); and count fourteen (structuring currency transactions). The jury returned Guilty verdicts against Ms. High in count one; count thirteen; counts sixteen, nineteen, twenty-one and twenty-two (structuring currency transactions) and counts seventeen, eighteen, twenty, twenty-three and twenty-four (money laundering) (R2-348; R5-349).

On January 20, 1994, Mr. High was sentenced to 97 months on both counts one and nine, to Run concurrent. and to concurrent sentences of 60 months on both counts Three and thirteen, which were to run concurrent with the sentences on counts one and nine. The court imposed a term of five years of supervised release to follow the term of imprisonment and a special assessment of $200.00. (R24-11).

The court sentenced Ms. High to 97 months each on counts 1, 17, 18, 20, 23 and 24, all to run concurrently, and 60 months on count 13, to run Concurrent with the other sentences (R23-9). The court also ordered Ms. High to pay a $350.00 special assessment and to serve a five-year period on Supervised release following her sentence of incarceration (R23-10).

AT SENTENCING

Prior to sentencing , the probation officer prepared a Pre-sentencing-Report, (page 20 # 17 as follows: Since the defendant's Involvement in the conspiracies outlined in Count's One and Thirteen of the indictment involves activities related to money laundering, these two counts will be treated as money laundering counts, pursuant to U.S.S.G. §1B1.2(a).

On January 20, 1994, (sentencing transcript, 15 pages).

THE COURT: (page 8, lines 17-19) The court adopts the factual statements and guideline applications made in the presentence investigation report to which there has been no objections filed. George and Virginia High was found guilty on October 13, 1993, and The Supreme Courts decision in Ratzlaf v United States, 510 U.S. 135 was on January 11, 1994, and the High's were sentenced on January 20, 1994. counts 1 and 13 should have been dismissed, because under Ratzlaf, George and Virginia Highs sentences were imposed unlawfully and in violation of the United States Constitution. Judge Vining was bias and prejudice against the highs at sentencing, as he should have dismissed all counts, and Judge Vining had personal knowledge of disputed evidentiary facts concerning proceedings, as per ratzlif.

ON APPEAL

On July 21, 1997, in a PER CURIAM opinion, the 11th Circuit Court of Appeals affirmed the Highs' conviction on Count One , and reverse the appellants' convictions on Count Thirteen 117 F3d. 464 (11th Cir. 1997).

Because the Highs were sentenced under the money laundering statues On Count One, that conviction was also reversed, inadverately, and the Appellate court concluded with:

CONCLUSION

Because the evidence was sufficient, we affirm the Highs' convictions on Count One. Because we cannot determine whether the jury convicted the appellants on a legally sufficient basis on Count Thirteen, we reverse the convictions of the appellants on that count and remand for further proceedings consistent with this opinion….

When a case has been decided by the Court of Appeals and remanded to the district court, it is considered as finally settled. The district court is bound By the decree as the law of the case, and must carry it into execution. The Highs prevailed in the Appellate Court, and the district court did not give full effect to the mandate, and adamantly refused to carry out the judgment of the 11th Circuit Court of appeals. On the high seas this would be been considered an act "mutiny", and in time of war (as such is the case now), this would be "treason", (based on bias, prejudice and racism). However, at common law this was a clear abuse of discretion and an usurpation of judicial power…

United States V CERCEDA,
Nos. 94-5017, 95-4610 to 95-4613, 95-4617, 95-4618, 95-4626, 95-4628 to 95-4635, 95-4659, 95-5244, 95-5298, 95-5369, 95-5566, 96-4584, 96-5043 and 96-5067 April 23, 1998. (11th *Cir.)*

The Need for Recusal

*Sec*ection 455(a) states: "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C.

§ 455(a). The standard under § 455(a) is an objective one, focusing on a hypothetical reasonable observer. The test of whether to recuse is one of objective reasonableness, that is, whether "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *United States v. Torkington,* 874 F.2d 1441, 1446 (11th Cir.1989); *see also Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859-60 , 108 S.Ct. 2194, 2202-03, 100 L.Ed.2d 855 (1988). A judge is under an "affirmative, self-enforcing obligation to recuse himself *sua sponte* whenever the proper grounds exist," and is required to resolve any doubts in favor of disqualification. *United States v. Kelly,* 888 F.2d 732, 744 (11th Cir.1989).

The district court, at the behest of, and acting in collusion with the government, and the Highs attorneys, Granted the governments ex parte motion (R3-544) to dismiss count 13 against the Highs, giving the illusion that the district court and government was in compliance with the mandate. George and Virginia High languished in prison an additional 4 years due to “malfeasance” on the part of the judge, the government and the Highs court appointed attorneys. The Highs filed numerous motions in the district court after July 21, 1997, all to no avail (see RECORD EXCERPTS AND EXHIBITS of the PETITION FOR WRIT OF ERROR CORAM NOBIS), and MOTION FOR APPOINTMENT OF COUNSEL. On September 24, 1997, after the court’s refused to grant the Highs a new trial or dismissal, George High filed a motion to disqualify Judge Vining, with brief in support (R3-523, and that motion was arbitrarily dismissed on February 26, 1998 (R3-546).

Murray v Scott, 99-12194, (11th Cit. June 13, 2001),

II

Plaintiff argues that Judge DeMent abused his discretion when he did not recuse himself from this case under 28 U.S.C. § 455. Congress amended the recusal statute in 1974, which "liberalize[d] greatly the scope of disqualification in the federal courts." United States v. State of Alabama, 828 F.2d 1532, 1541 (11th Cir. 1987). Under section 455, a judge has a "self-enforcing obligation to recuse himself where the proper legal grounds exist." Id. at 1540. Most important, the benefit of the doubt must be resolved in favor of recusal. Id. We review a judge's decision to recuse for abuse of discretion. McWhorter v. City of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990).

The Highs avers that Judge Vining had personal knowledge of disputed evidentiary facts And should have recused himself in 1997.

C.

Plaintiff says that these facts implicate the federal recusal statute. 28 U.S.C. §455. Section 455(b) requires disqualification under certain circumstances, for example, when a judge has "personal knowledge of disputed evidentiary facts," §455(b)(1) . . . concerning the proceeding…Under this provision, recusal is mandatory. In such situations, "the potential for conflicts of interest are readily apparent." State of Alabama, 828 F.2d at 1541…..Congress has directed federal judges to recuse themselves in certain situations, and we accept that guidance. Judges must not recuse themselves for imaginary reasons; judge shopping should not be encouraged. Still, federal judges must early and often consider potential conflicts that may arise in a case and, in close cases, must err on the side of recusal.[8] And if a judge must step aside, it is better to do it sooner instead of later.

No person can say with absolute certitude what is on the mind of another. However, insofar as one can do so, I can and do assert that Judge Vining possesses a partiality Toward the government in the present case which makes an objective assessment of the points raised in the Highs pending petitions impossible. In light of

the above, it is respectfully urged that Judge Vining be disqualified from further participating in the determination of the Highs pending partition in the instant case and hereafter be disqualified from participating in any judicial determination involving George and/or Virginia High.

I declare under the penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Executed on this the 24th day of June 2002

_____

George W. High, Sr, Pro Se

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing MOTION TO DISQUALIFY JUDGE, and EXHIBITS upon:

William S. Duffey, United States Attorney
Northern District of Georgia
1800 U.S. Courthouse
75 Spring St. S.W.
Atlanta, Ga. 30303

By depositing the same in the United States Mail with adequate postage Affixed thereto to ensure delivery to same.

This the 24th day of June, 2002

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George W. High, Sr., Pro Se

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. 1:92-cr-182-4,5

GEORGE W. HIGH, SR. & VIRGINIA C. HIGH
INDIVIDUALLY AND/OR JOINTLY

MOTION TO DISQUALIFY JUDGE

EXHIBITS

Exhibit A	**28 U.S.C. § 2255**
Exhibit B	**Statement of Facts (excerpts)**