

FILED

2009 JUL -9 PM 3:03
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

1 RICHARD I. FINE
2 Prisoner ID # 1824367
3 c/o Men's Central Jail
4 441 Bauchet Street
5 Los Angeles, CA 90012

6
7 **UNITED STATES DISTRICT COURT**

8 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
9

10
11 RICHARD I. FINE,
12 Petitioner,

13 vs.

14
15 SHERIFF OF LOS ANGELES COUNTY,
16 Respondent.

Case No. CV09-1914 JFW (CW)

REQUEST UNDER FRCP RULES
60(b)(2), (4) AND (6) TO RECUSE
JUDGE WALTER FOR BIAS FOR
FAILURE TO DISCLOSE THAT HE
WAS A CRIMINAL DEFENSE
ATTORNEY PRIOR TO BECOMING A
JUDGE, AND IS SUBJECT TO
MALPRACTICE CLAIMS IF HE RULES
THAT IT IS A DENIAL OF DUE
PROCESS FOR L.A. SUPERIOR COURT
JUDGES TO TAKE PAYMENTS FROM
L.A. COUNTY WHEN HE DID NOT
RAISE SUCH ISSUE ON BEHALF OF
HIS OWN CLIENTS WHEN THEY
WERE PROSECUTED BY THE L.A.
COUNTY DISTRICT ATTORNEY

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26 Prior to becoming a U.S. District Court Judge, John F. Walter
27 practiced civil and criminal litigation from 1972-2002. He defended cases in
28 the LA Superior Court, brought by the LA County District Attorney and

1 presided over by LA Superior Court judges who were receiving illegal
2 payments from LA County in addition to their State salary. (See Sturgeon v.
3 County of Los Angeles, 167 Cal.App.4th 630 (2008); rev. denied 12/23/08.)
4 The LA Superior Court judges have also received retroactive immunity from
5 criminal prosecution, civil liability and disciplinary action for receiving such
6 illegal payments from LA County. (See Senate Bill SBX2 11 enacted
7 2/20/09; Gov't Code § 68220-68222.)

8
9 As a private attorney, John F. Walter did not raise the issue of the
10 denial of due process of a LA Superior Court judge who is receiving illegal
11 money from LA County presiding over a case where LA County, through the
12 LA County District Attorney's office, is a party.

13 In this Petition for Writ of Habeas Corpus, Petitioner contended that it
14 was a violation of due process for LA Superior Court Judge Yaffe, who had
15 received illegal payments from LA County, to preside over a case where LA
16 County was a party, make an order in its favor and in favor of its co-applicant
17 for an Environmental Impact Report (EIR) and then preside over a contempt
18 proceeding to judge his own actions and enforce the order.

19
20 Based upon his former practice and actions, it is clear that if Judge
21 Walter decides[ed] to grant the writ, he will open himself up to malpractice
22 claims from clients for whom he did not raise the issue of denial of due
23 process and transfer the case.

24 Knowing this, Judge Walter should have recused himself immediately
25 upon receiving the case.
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1 28 U.S.C. § 455(a) states:

2 “Any justice, judge or magistrate judge of the United States shall disqualify
3 himself in any proceeding in which his impartiality might reasonably be
4 questioned.”

5 The issue of the criteria for recusal and a denial of due process was
6 discussed in the recent U.S. Supreme Court case of Caperton, et al, v. A.T.
7 Massey Coal Co., Inc., et al, 566 U.S. ___ (2009), Slip Opinion pages 11-13.
8

9 The objective standard is set forth in ABA Annotated Model Code of
10 Judicial Conduct Canon 2 (2004):

11 “A judge shall avoid impropriety and the appearance of impropriety.”
12

13 THE ABA Model Code’s test for appearance of impropriety is
14 “whether the conduct would create in reasonable minds a perception that the
15 judge’s ability to carry out judicial responsibilities with integrity, impartiality
16 and competence is impaired.”

17 In Liteky v. United States, 510 U.S. 540, 558 (1994), Kennedy, J.,
18 concurring in the judgment, stated:

19 “[U]nder [28 U.S.C.] Section 455(a), a judge should be disqualified
20 only if it appears that he or she harbors an aversion, hostility or
21 disposition of a kind that a fair-minded person could not set aside
22 when judging the dispute.”

23 Clearly, Judge Walter falls within these criteria as shown by his
24 acceptance of the Magistrate Judge’s Report and Recommendation over the
25 Objections. This is particularly true of page 18, first paragraph and footnote
26 10. Here, the Magistrate Judge acknowledges that judges who have received
27 illegal payments have immunity from prosecution for such payments. She
28 then argues that such judge is not biased in a case where the county who

1 made the illegal payment is a party to the case. She then confuses the levels
2 of government at footnote 10 to equate a county with a federal and state
3 government.

4
5 The Report and Recommendation became more bizarre given the fact
6 that neither the Sheriff, the LA Superior Court nor Judge Yaffe opposed the
7 grounds, facts or claims set forth in the Petition for Writ of Habeas Corpus.

8 Given the 100% probability of a malpractice claim if Judge Walter
9 grants the writ, Judge Walter, like Magistrate Judge Woehrle, has an “interest
10 in the outcome” and must be recused.


11
12 An additional factor for recusal is that Judge Walter, like Magistrate
13 Judge Woehrle, is one of the 250 judges who are graduates of Loyola Law
14 School and who were honored at a dinner. Judge Walter, like Magistrate
15 Judge Woehrle, has not disclosed which LA Superior Court judges who are
16 Loyola graduates are friends, colleagues and associates of his or his family.
17 It is inconceivable that any person who has practiced civil and criminal law
18 in private practice since 1972 does not know any LA Superior Court judge, or
19 any of the Superior Court judges, California Court of Appeal justices or
20 California Supreme Court justices who received illegal payments from
21 counties or who are members of the Judicial Council of California (who
22 wrote Senate Bill SBX2 11).

23 Knowing all of this information, Judge Walter was under a duty to
24 disclose such and recuse himself. He did neither and elected to conceal the
25 information.

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27 He must be recused.

1 Dated this 9th day of July, 2009

Respectfully submitted,

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3 BY: 
4 RICHARD I. FINE,
5 In Pro Per
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PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I am Greg McPhee. My business address is 2450 N. Lake Avenue, PMB 227, Altadena, CA 91001.

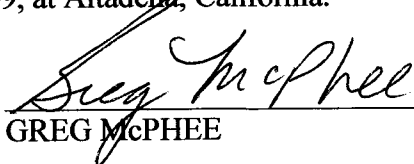
On July ⁹/₈, 2009, I served the foregoing document described as on interested **REQUEST UNDER FRCP RULES 60(b)(2), (4) AND (6) TO RECUSE JUDGE WALTER FOR BIAS FOR FAILURE TO DISCLOSE THAT HE WAS A CRIMINAL DEFENSE ATTORNEY PRIOR TO BECOMING A JUDGE, AND IS SUBJECT TO MALPRACTICE CLAIMS IF HE RULES THAT IT IS A DENIAL OF DUE PROCESS FOR L.A. SUPERIOR COURT JUDGES TO TAKE PAYMENTS FROM L.A. COUNTY WHEN HE DID NOT RAISE SUCH ISSUE ON BEHALF OF HIS OWN CLIENTS WHEN THEY WERE PROSECUTED BY THE L.A. COUNTY DISTRICT ATTORNEY** parties in this action by depositing a true copy thereof, which was enclosed in a sealed envelope, with postage fully prepaid, in the United States Mail, addressed as follows:

Aaron Mitchell Fontana
Paul B. Beach
LAWRENCE BEACH ALLEN & CHOI, PC
100 West Broadway, Ste. 1200
Glendale, CA 91210-1219

Kevin M. McCormick
BENTON, ORR, DUVAL & BUCKINGHAM
39 N. California Street
P.O. Box 1178
Ventura, CA 93002

I certify and declare, under penalty of perjury under the laws of the United States of America and the State of California, that the foregoing is true and correct.

Executed on this ⁹/₈th day of July, 2009, at Altadena, California.



GREG MCPHEE