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IN THE JUSTICE COURTS OF THE STATE OF ARIZONA  
IN AND FOR THE PRECINCT OF MANISTEE, COUNTY OF MARICAPA

Kent C. Harding )  
Plaintiff, )  
vs. )  
John W. Stone )  
Shirley D. Stone )  
Defendants )

**Case No. CC2007176431**

**DEFENDANTS’ MOTION TO RECUSE  
JUDGE RICHARD HAWORTH WITH  
SUPPORTING AFFIDAVIT AS PER  
ARIZONA RULES OF CIVIL  
PROCEDURE, RULE 42(f)(2)**

**Expedited Consideration Requested**

With all due respect to this court, attached to this motion is the defendants’ affidavits pursuant to Arizona Rules of Civil Procedure, Rule 42(f)(2).

**“When affidavit is filed which states facts showing personal bias and prejudice on part of judge, it becomes his duty to retire from the case. Antonello v. Wunsch, CA10 (Kan.) 1974, 500 F.2d 1260.”**

The defendants hereby allege that Judge Richard Haworth has deliberately perverted the course of justice violating his Oath of Office ..... under the Constitution and laws of the United States”. (28 U.S.C. 453)

Judge Haworth’s conduct qualifies as malfeasance and misconduct in office. The canons of law make it clear that a judge has a duty to follow the law and uphold the Constitution of Arizona and the United States. The defendants bring this motion to recuse Judge Haworth as per 28 U.S.C.A. § 455 and is supported by the following memorandum of facts and authorities.

1 MEMORANDUM OF FACTS AND AUTHORITIES

2  
3 The record of this Court supports the fact that on June 20, 2008, Judge Richard Haworth  
4 granted the defendants' June 6, 2008, post-judgment motion to vacate the August 10, 2005  
5 Judgment of Restitution that was not vacated on August 11, 2005 at the time the August 10, 2005  
6 Writ of Restitution was vacated.

7 Since the record of the case evinces that the court lacked jurisdiction as a matter of law, it  
8 was mandatory that Judge Haworth vacate the void August 10, 2005 Judgment of Restitution,  
9 which he did, since he had no discretion.

10 Case law provides that “[w]here a judgment is vacated or set aside by a valid order or  
11 judgment, ***it is entirely destroyed and the rights of the parties are left as though no such***  
12 ***judgment had even been entered.***” 49 C.J.S. Judgments §357. See also, *Buchanan v.*  
*Cabiness*, 245 S.W.2d 868, 873 (Mo. 1951).

13 Furthermore, with no jurisdiction and with the fact that the defendants had not filed a  
14 second motion to vacate the September 7, 2005 writ, Judge Haworth appropriately denied the  
15 plaintiff's motion to strike the defendants' motion that they had not filed.

16 This is a case where the plaintiff by and through his attorneys is tampering with the  
17 record to corruptly validate a void judgment, a violation of A.R.S. § 13-2407, simulating a legal  
18 process – A.R.S. 13-2814, criminal trespass – A.R.S. § 13-1504 and other criminal acts.

19 However, after properly recognizing that the court lacked jurisdiction and the plaintiff's  
20 request for the court to strike a motion that did not exist, Judge Haworth ordered a gratuitous  
21 emergency oral argument for July 14, 2008, to reconsider and relitigate the plaintiff's post-  
22 judgment motion to strike a motion that was not filed, and reconsider vacating the order vacating  
23 the void August 10, 2005 Judgment of Restitution that was rendered without jurisdiction of the  
24 court, pursuant to ARCP, Rule 60(c)(4).  
25

1           **"Courts are constituted by authority and they cannot go beyond that power delegated to**  
2           **them. If they act beyond that authority, and certainly in contravention of it, their**  
3           **judgments and orders are regarded as nullities. They are not voidable, but simply VOID,**  
4           **AND THIS EVEN PRIOR TO REVERSAL." [Emphasis added]. Valley v. Northern Fire**  
5           **& Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116 (1920). See also Old Wayne Mut. I. Assoc. v.**  
6           **McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Williamson v. Berry, 8 How. 495, 540, 12**  
7           **L.Ed. 1170, 1189 (1850); Rose v. Himely, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).**

8           On July 14, 2008, the defendants appeared at the scheduled emergency hearing that was granted  
9           in contravention of ARCP, Rule 7.1(e) and Rule 60(c)(4). The plaintiff was not in attendance.

10           However, while waiting for the plaintiff and or his attorney to show, the defendants asked Judge  
11           Haworth about the court's jurisdiction over the matter. Judge Haworth told the defendants, that since  
12           the plaintiff was not there, he would not discuss the matter, but informed the defendants, that the  
13           plaintiff maybe filing a motion for continuance, and if so, he would grant the motion.

14           Also, during the hearing, the defendants asked Judge Haworth if he had received their motion  
15           responding to and opposing the plaintiff's motion for reconsideration. Judge Haworth looked through  
16           the file indicating that he had received the defendant's motion, but had not read the motion in  
17           preparation for the hearing.

18           The defendants' motion filed in response and opposition to the plaintiff's motion for  
19           reconsideration told the court that it lacked jurisdiction to continue and any subsequent adjudication on  
20           the case would be without jurisdiction and void.

21           After failing to attend the emergency hearing that was set to reconsider the post-judgment  
22           motions, later that day the plaintiff filed an ex parte motion for continuance. The motion was  
23           immediately granted, rescheduling the emergency hearing for August 13, 2008, a month away.

24           Judge Haworth knew or should have known that vacated order did not give him jurisdiction to  
25           proceed any further. Judge Haworth is exercising power that he does not possess. He has unlawfully  
              seized and assumed power not authorized by law.

1 For Judge Haworth to reconsider striking a motion that was not filed by the defendants and to  
2 reconsider a post-judgment motion to vacate a void judgment for lack of jurisdiction makes it appear  
3 that Judge Hayworth is granting the plaintiff a favor and is attempting to alter the record by attempting  
4 to record with the clerk of the court, a void judgment to make it appear to be valid.

5 The procuring of a wrongful execution on a void judgment, or the filing of a certified  
6 copy of the void judgment in office of clerk of .....court, ..... is an abuse of process.  
Little v. Sowers, 204 P.2d, 605, 608, 167 Kan. 72.

7 The record shows that the plaintiffs presented the court with multiple misrepresentations,  
8 committed fraud on the court and violated Rule 11. Yet, it appears, that instead of depending on the  
9 record of this case, Judge Haworth is condoning the plaintiff's attorneys' misconduct of filing frivolous  
10 motions and is assisting him in continuing the misconduct.

11 **In the case *Preston v. U.S.* 932 F.2d 731 (9th Cir. 1991), it states: "Standard for judging  
12 appearance of partiality requiring recusal under recusal statute is objective one and  
13 involves ascertaining whether reasonable person with knowledge of all the facts would  
conclude that judge's impartiality might reasonably be questioned." 28 U.S.C.A. § 455.**

14 Because Judge Haworth is intentionally refusing to arrest the plaintiff's misconduct, the  
15 defendants also allege that Judge Haworth has violated Canon 3, Section B(3) of the Code of Judicial  
16 Conduct, which states that, "A judge should initiate appropriate action when the judge becomes aware of  
17 reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer".

18 The defendants do not know whether or not Judge Haworth is colluding with the plaintiff and his  
19 attorneys, however Judge Haworth's actions clearly give rise to the "appearance of improprieties and  
20 partiality" and he is definitely operating outside of the law.

21 **It is not necessary for the defendant to await the consummation of threatened injury to  
22 obtain preventive relief; impending injury is enough to create a "case or controversy"  
23 particularly when such injury is certain. *U.S. Constitution, Art. 3, Sec. 2, cl. 1, Anderson v.  
Hooper, D.C.N.M.1980, 498 F.Supp. 898.***

24 **Obstruction of Justice statute is construed broadly to include to variety of corrupt  
25 methods by which the proper administration of justice may be impeded or thwarted, a**

1 **variety limited only by the imagination of the criminally inclined. 18 U.S.C.A. § 1503,**  
2 **U.S. v. Andres @ 39 F.Supp.2d 1048, 1051.**

3 Under **Canon 3E**, it states that, as a general matter, “a judge should disqualify himself in a  
4 proceeding in which his impartiality might reasonably be questioned”.

5 Case law also provides the following:

6 **Acts in excess of judicial authority constitutes misconduct, particularly where a**  
7 **judge deliberately disregards the requirements of fairness and due process.**  
8 **Gonzalez v. Commission on Judicial Performance, (1983) 33 Cal. 3d 359, 371, 374**

9 **"No judicial process, whatever form it may assume, can have any lawful authority**  
10 **outside of the limits of the jurisdiction of the court or judge by whom it is issued;**  
11 **and an attempt to enforce it beyond these boundaries is nothing less than lawless**  
12 **violence." *Ableman v. Booth*, 21 Howard 506 (1859)**

13 **Where there is no jurisdiction, there can be no discretion, for discretion is incident**  
14 **to jurisdiction." *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall.**  
15 **335, 20 L.Ed. 646 (1872)"**

16 **By law, a judge is a state officer. The judge then acts not as a judge, but as a**  
17 **private individual (in his person). When a judge acts as a trespasser of the law,**  
18 **when a judge does not follow the law, the Judge loses subject-matter jurisdiction**  
19 **and the judges' orders are not voidable, but VOID, and of no legal force or effect.**  
20 ***Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974)**

21 In conclusion, Judge Haworth recent decisions prove that Judge Haworth is not operating within  
22 the boundary of the law and thus is bias and prejudice against the defendants to the benefit of the  
23 plaintiff.

24 **WHEREFORE**, based on the foregoing reasons, the Judge Haworth should be disqualified to  
25 continue this case and should recuse himself from adjudicating this and any other case involving the  
defendants.

Respectfully submitted this 21st day of July 2008.

