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

9 Kent C. Harding)
10)
11 Plaintiff,)
12 vs.)
13 John W. Stone)
14 Shirley D. Stone)
15 Defendants)

Case No. CC2007176431

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

Expedited Consideration Requested

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’ contend and the record of this Court supports the fact that on September 11, 2007, this Court validated a Writ of Restitution Order issued by this Court on September 7, 2005, that issued pursuant to an August 10, 2005 Judgment of Restitution Order issued by this Court that was void.

"Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply VOID, AND THIS EVEN PRIOR TO REVERSAL." [Emphasis added]. Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116 (1920). See also Old Wayne Mut. I. Assoc. v.

1 **McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Williamson v. Berry, 8 How. 495, 540, 12**
2 **L.Ed. 1170, 1189 (1850); Rose v. Himely, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).**

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

7 An inspection of the original trial **court** record in this case has shown, and does show, a finding
8 that the **Judgment** of Restitution **order**, issued by this Court on August 10, 2005, was **void**, and
9 therefore the decision made by Judge Handley was also void, as he held NO jurisdiction.

10 This Court’s record further evinces that on August 11, 2005 Judge Lex Anderson issued an order
11 vacating the August 10, 2005 Writ of Restitution based on the fact that the defendants’ were under
12 bankruptcy protection and that the automatic stay was in full effect. **SEE Exhibit B, August 11, 2005**
13 **order.**

14 Thus as a matter of fact and law, the Order for Judgment of Restitution also issued by Judge
15 Anderson on August 10, 2005 was also issued without jurisdiction and void as well.

16 This Court with full knowledge of the fact that the underlying Judgment of Restitution, the
17 August 10, 2005 Order was void, intentionally concealed that fact and validated the September 7, 2005
18 Writ of Restitution.

19 The defendants’ appealed that decision and Maricopa County Superior Judge Pro Tem William
20 Schaffer reviewed the record and found that this Court knew that the Defendants were under a
21 bankruptcy stay when it issued the August 10, 2005 Judgment of Restitution. (See page 2 ¶ 5 of Exhibit
22 A, Appellate Opinion).

23 Judge Schafer also found that the September 7, 2005 Writ of Restitution Order was issued
24 pursuant to the August 10, 2005 Judgment of Restitution Order which this Court issued without
25 jurisdiction because the bankruptcy stay was in full effect.

1 **Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if**
2 **a court is "without authority, its judgments and orders are regarded as nullities. They are**
3 **not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal**
4 **in opposition to them. They constitute no justification; and all persons concerned in**
5 **executing such judgments or sentences, are considered, in law, as trespassers." Elliot v.**
6 **Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)**

7 Many cases hold that a judge has no lawful authority to make a void order valid. An order issued
8 based on a void order is itself void. In Eugene W. Alpern v. Philip S. Lieb, 38 F.3d 933 (7th Cir. 1994),
9 the judge acted entirely without jurisdiction. Since he held no jurisdiction, all actions derived from the
10 void orders of the court are also void.

11 Whether or not Judge Handley is colluding with the Plaintiff and his attorneys is uncertain,
12 however his actions clearly give rise to the "appearance of improprieties and partiality".

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

17 **"Access to courts" encompasses all the means required for a litigant to get a fair hearing**
18 **from the judiciary on the charges brought against him or grievances alleged by him.**
19 **Gilmore v. Lynch, 319 F.Supp. 105 (N.D.Cal. 1970), aff'd 404 U.S. 15, 92 S.Ct. 250, 30**
20 **L.Ed.2d 142 (1971); Padgett v. Stein, 406 F.Supp. 287 (M.D.Pa. 1975)." O'Connor v.**
21 **Mowbray (1980), 504 F.Supp. 139, 141.**

22 **Obstruction of Justice statute is construed broadly to include to variety of corrupt**
23 **methods by which the proper administration of justice may be impeded or thwarted, a**
24 **variety limited only by the imagination of the criminally inclined. 18 U.S.C.A. § 1503,**
25 **U.S. v. Andres @ 39 F.Supp.2d 1048, 1051.**

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

WHEREFORE, based on the foregoing reasons the defendants believe that Judge Handley is
prejudiced and bias against them and will not rule fairly pursuant to the law. The defendants request
that Judge Handley recuse himself from adjudicating this and any other case involving the defendants.

 Respectfully submitted this 16th day of June 2008.

