

FILED IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

NOV 16 2012

D. MARK JONES, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH CENTRAL DIVISION**

**Sophia Stewart,**

**PETITIONER**

**PETITION FOR RECUSAL**

**vs.**

**Case No. 2:07-CV-552 CW**

**JUDGE CLARK WADDOUPS**

**MAGISTRATE JUDGE EVELYN FURSE**

**RESPONDENTS**

**MOTION FOR RECUSAL OF JUDGE CLARK WADDOUPS AND MAGISTRATE JUDGE EVELYN FURSE FOR BIAS AND PREJUDICE AND EXTRAPREJUDICIAL**

Comes Now Petitioner, Sophia Stewart, pro-se and moves to recuse Judge Waddoups and Magistrate Judge Furse in the U.S. District Court of Utah in the court action for the reasons that the said judges are biased and prejudiced against Petitioner and for the further reason in the context of this Petition, all as more particularly appears in the Affidavit of Bias and Prejudice submitted herewith.

This complaint was filed on November 11, 2012 for cause of actions of "Constitutional Rights Violation" and "Fraud and Misrepresentation". The Respondents in the pending action acted with Bias, Prejudice and Extra Prejudicial.

Judge Waddoups acted impartial with extreme prejudice in terminating Defendant Webb over Plaintiff filed objection and cancelling all trials to date. Magistrate Judge Furse was assigned the case after Magistrate Judge Brook Wells.

The issue of extra prejudicial surfaced after Conferencing Magistrate Judge David Nuffer ordered a Show Cause Hearing with the stipulation that should Defendants fail to appear and show cause, their answers would be stricken and order for Default Judgment would issue. Plaintiffs appeared at the Show Cause Hearing, and Defendants Stoller, Lubell and Brown fail to appear. Magistrate Judge Nuffer entered order for Default against Defendant Lubell only. The issue was raised by Plaintiff, that Magistrate Judge Nuffer complies with his "own" order and the rule of law and enter default against all Defendants. Magistrate Judge Nuffer stepped off the bench and walked out the courtroom; fail to address Plaintiff or the issue of Default against Defendant Stoller and Brown.

The subsequent request for a "Default Order" and "Entry of Default Judgment" and "Writ of Mandate" is ignored by Respondents herein. Plaintiff is denied Due Process and Civil Rights pursuant to the Fourteenth amendment or a response on motions filed.

Recently Plaintiffs filed: (1) Writ of Mandate to compel Judge Waddoups to issue order for Magistrate Judge Furse to sign Default Order against Defendant Lubell and against all Defendants and for correction of fraud upon the court by Magistrate Judge Nuffer; and, (2) reply to opposition of Defendant Browns Motion to Strike Default Motion for Entry of Default Order.

Respondents have had enormous latitude in judging Plaintiffs motions to accord Due Process and Equal Protection.

This current motion requests Judge Waddoups and Magistrate Judge Furse recusal, and a hearing to Disclose their Fraud and Constitutional Treason and ties with fellow Judge Nuffer, and appointment of a judge who would uphold laws and U.S. Constitution in judging Plaintiffs' case.

#### **FACTUAL BACKGROUND**

In the instant case pretrial conference on December 7, 2011, Magistrate Judge Nuffer ordered defendants appear for a Show Cause Hearing on January 11, 2012 and further ordered by this Court failure to appear would result in their answers to Plaintiffs complaint would be stricken and Default Judgment Order would issue promptly. In a "Sham Proceeding" all defendants fail to appear. To the extent, no judges clerk or court reporter was present and no minutes were taken. Several witnesses or more were present and their names were taken. Yet

defendants Stoller, Lubell and Brown names were not added to the ledger as making an appearance for the mandatory Show Cause Hearing.

January 11, 2012 Magistrate Judge Nuffer knowingly and purposefully deprived Plaintiffs' Constitutional Rights of receiving a fair trial proceeding, entry of Default Judgment against all defendants, Due Process, an impartial Judge, constitutional protection which is guaranteed, preserved and protected pursuant to the Federal Constitution of the United States .

Judge Waddoups and Magistrate Judge Furse knowingly and purposefully deprived Plaintiffs' Constitutional Rights of having Due Process accorded pursuant to the Fourteenth Amendment preserved to Plaintiff.

Plaintiff filed motions, oppositions, and appealed, but received no response from Respondent Judges except for denial of Due Process. Defendants Stoller, Lubell and Brown have fail to appear for all pretrial conferences since July 30, 2007. To the extent, no defendant in the pending civil action has appeared before a U.S. District Court Judge of Utah, nor has any Judge laid eyes on or identified the Defendants in court.

Plaintiff has the longest civil action on record in U.S. District Court of Utah in history.

#### **DISCUSSION**

Title 28 U.S.C. Section 144 provides in pertinent part that whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. Plaintiff files this recusal request on November 11, 2012 attached affidavit in support of recusal motion. Respondent Judges ties with Judge Nuffer reeks of Collusion, Conspiracy and Deprivation of Rights as Principals Aiding and Abetting in R.I.C.O. activity; therefore, there is extrajudicial issues included in this recusal. Respondent Judges knowingly concealed the long-term fraud upon the court by Judge Nuffer, but decided not to report his misconduct thereby enjoining the Conspiracy against Rights.

Plaintiff Stewart respectfully request Respondent Judges to disclose their knowledge and participation in fraud upon the court, and reassign her case to another judge pursuant to Title 28 Section 144 in this cited case. Title 28 U.S.C. Section 455 is to promote public confidence in the judicial system by avoiding even the appearance of partiality. Section 455 requires the judge to disqualify himself for personal bias even in the absence of a party complaint. See Trotter v. International Longshoremen, 704 F.2d 1141, 1144 (9th Cir. 1983), and Accord In Re City of Detroit, 828 F .2d 1167.

Statute pertaining to disqualification of a biased or prejudiced judge requires that the bias or prejudice be twofold: (1) personal directed against the party; and, (2) extrajudicial. See *United States v. Carignan*, 600 F.2d 762, (9th Cir. 1979); wherein the alleged prejudice was extrajudicial therefore require disqualification.

Respondent Judges continuing the fraud and associations with Judge Nuffer who has consistently coveted the same denied, deprived, ignored and violated Due Process of Plaintiff while judging on this case, also has been protecting the Defendants Stoller, Lubell and Brown in the pending civil action.

The foregoing is evidence of Respondent Judges extrajudicial conducts. Although Respondent Judges should have Defaulted defendants Stoller and Brown upon receiving the case and ruled on Writ of Mandate, as of now, they are still judging the case as if Default did not occur.

Plaintiff brings this recusal motion because Respondent Judges exemplify the standard for recusal under Title 28 U.S.C. Section 144 for Bias, Prejudice and Extra Prejudicial Due Process Violations.

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudices either against him or in favor of any adverse party, such judge shall precede no further therein, but another judge shall be assigned to hear such proceeding. See *US v. Hernandez*, 109 F.3d 1450 (9th Cir. 1997) and *US v. Manning*, 56 F.3d 1188, 1196 (9th Cir. 1995). Title 28 U.S.C. Section 455 - He shall also disqualify himself in the following circumstances: where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.

Whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. See *US v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986). Magistrate Judge Furse actions of ignoring the Default Order and request for Entry for Default Judgment would cause a reasonable person to have doubt of Magistrate Judge Furse impartiality. Plaintiff Stewart has been tremendously prejudiced by Respondent Judge's extrajudicial conducts whose recusal should occur before any further case proceedings. See *US v. Gordon*, 9 974 F.2d 1110, 1114 (9th Cir. 1992) and *US v. Studley*, 783 F.2d 934 (9<sup>th</sup> 10 Cir. 1986).

Plaintiff upon the depth of her own life experiences, upon the knowledge and understanding of people and of human nature and inevitably of one's ethnic and racial background contribute to the amount of justice she will receive from Respondent Judges.

Plaintiff asserts the case should be decided, should it not, on the evidence introduced and the law properly applied to that evidence and the facts thereto. A judge must decide based on the legal rules and should do equal justice to the poor, the rich, Pro se or those represented by privately retained counsel, especially if it comports with the fair administration of justice.

**CONCLUSION**

Based upon above cited precedents and evidence submitted Petitioner respectfully request Respondents Judges to recuse themselves for "fraud upon the court," "Due Process Violations," "Bias," "Prejudice" and "Extra Prejudicial."

Respectfully Submitted November 11, 2012

Petitioner

Sophia Stewart

**VERIFICATION AND AFFIDAVIT**

Before me, the undersigned authority, personally came and appeared the affiant named below, who, being first duly sworn upon oath, deposed and said that she has read the above and foregoing document and knows the contents thereof, and that all statements of fact contained therein are true.

This is the 11th. Day of November 2012,

Sophia Stewart

**AFFIANT**

Subscribed and sworn to before me, this 13 day of November 2012.

NOTARY PUBLIC

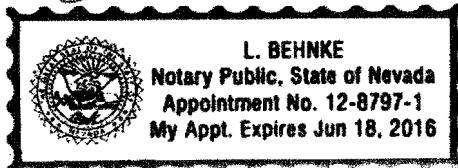
Lindi Behnke

Commission Expires:

6/18/16

Signature:

SEAL:



FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

NOV 16 2012

D. MARK JONES, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

Cc: Federal Bureau of Investigations

Federal Task Force

**AFFIDAVIT OF BIAS AND PREJUDICE**

**IN RE:**

**SOPHIA STEWART**

**Petitioner**

**V**

**JUDGE CLARK WADDOUPS**

**MAGISTRATE EVELYN FURSE**

**Respondents**

Comes Now Petitioner, Sophia Stewart, pro-se, who, being first duly sworn, states that she believes the Honorable Clark and Magistrate Judge Furse is biased and prejudiced against her personally and significantly against the civil action involving attorneys as defendants.

Petitioner is the Plaintiff in Stewart v Stoller, Lubell and Brown and denied Due Process and Equal Protection under the Fourteenth amendment in the discriminatory and prejudice misconduct of Respondents.

Petitioner has initiated the independent action against the Respondents in this matter and that the record clearly shows an extreme PREJUDICE against Petitioner as a Black Woman and Pro-Se Litigant.

The effect of this exercise of Petitioner's Due Process Rights is so prejudice by Respondents, and now avows that she cannot obtain a fair trial in this Utah court.

Respondents have been unconstitutionally bias, prejudice and extra prejudicial against Petitioner in this case, by unconstitutional conduct they acted in a prejudicial fashion toward Petitioner. Further the court has imposed such impossible burden on Petitioner by denying Due Process Rights and unfair

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

Respondents actions are done maliciously and corruptly, and are flawed by grave procedural error in violation of federal law and the U.S. Constitution.

Petitioner makes this affidavit in good faith and not for reasons of hinder, delay or obstruction and avows under oath the belief that a fair and impartial trial cannot be obtained, by the presiding district court judges, due to bent of mind. The forgoing facts as set forth constitute the requisite grounds for disqualification of the Respondents.

Accordingly, affiant moves and prays that the Honorable Judge Waddoups and Magistrate Judge Furse be disqualified from further proceedings in this matter.

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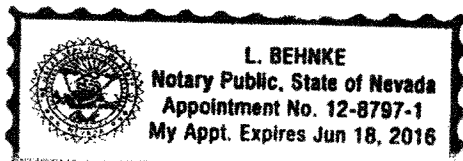
Subscribed and sworn to before me, this 13 day of November 2012.

NOTARY PUBLIC *Lindi Behnke*

Commission Expires: *6/18/16*

Signature: 

SEAL:



CERTIFICATE OF SERVICE

I SOPHIA STEWART HEREBY DECLARE THAT THE ENCLOSED PETITION FOR RECUSAL AGAINST JUDGE CLARK WADDOUPS AND MAGISTRATE JUDGE EVELYN FURSE WAS SENT BY CERTIFIED MAIL ON NOVEMBER 13, 2012 TO THE ADDRESS BELOW;

U.S. DISTRICT CLERK OF COURT

D. MARK JONES

JUDGE CLARK WADDOUPS

MAGISTRATE JUDGE EVELYN FURSE

350 SOUTH MAIN ST, RM 150

SALT LAKE CITY, UTAH 84101- 2180

SOPHIA STEWART

P O BOX 31725

LAS VEGAS NV 89173

Cc: FEDERAL BUREAU OF INVESTIGATION

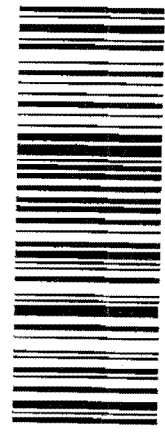
FEDERAL TASK FORCE

A handwritten signature in black ink, appearing to read "Sophia Stewart". The signature is written in a cursive style with a long horizontal line extending to the right.

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Las Vegas, NV 89173



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**RETURN RECEIPT  
REQUESTED**

Judge Clark Waller  
M.S. District Court  
District of Utah  
350 S. Main St. Rm 150  
Salt Lake City, Utah 84101-2150

OperationNation.com

Cc: Federal Bureau of Investigations

Federal Task Force

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The effect of this exercise of Petitioner's Due Process Rights is so prejudice by Respondents, and now avows that she cannot obtain a fair trial in this Utah court.

Respondents have been unconstitutionally bias, prejudice and extra prejudicial against Petitioner in this case, by unconstitutional conduct they acted in a prejudicial fashion toward Petitioner. Further the court has imposed such impossible burden on Petitioner by denying Due Process Rights and unfair

proceedings that a person of reasonable intellect could understandably conclude that bias and prejudice exist by evidentiary facts concerning the proceedings against Petitioner and in favor of defendants in *Stewart v Stoller, Lubell and Brown*. Respondents impartiality is more than reasonably questioned under the circumstances, in the instant case.

Respondents through and by way of their actions commit "fraud on the court." In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. ." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge.

Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

Petitioner asserts the Supreme Court's holding; if the party has been denied of any of his / her rights, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce". The judge has acted in the judge's personal capacity and not in the judge's judicial capacity.

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

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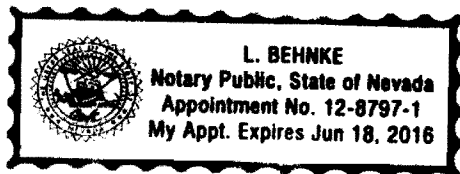
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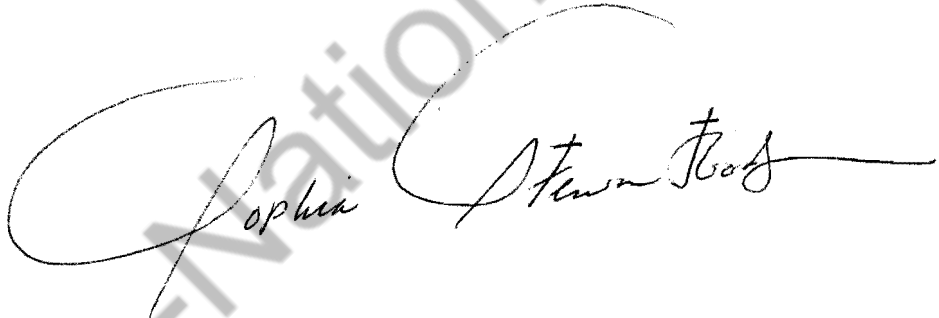
350 SOUTH MAIN ST, RM 150

SALT LAKE CITY, UTAH 84101- 2180

SOPHIA STEWART

P O BOX 31725

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Cc: FEDERAL BUREAU OF INVESTIGATION

FEDERAL TASK FORCE