

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

FILED UNDER SEAL

In re:
HERBERT S. MONCIER
BPR NO. 1910

Motion For Disclosures

Respondent moves this Court disclose communications the Court, or the Court's staff, received other than from the pleadings and proceedings on January 9, 2008 pertaining to the pending Show Cause Order in this matter or the case of *United States v. Lee Almany*, EDTN Nos. 2:07-cr-88 and 1:08-cr-1.

Memorandum

On January 2, 2008, District Judge J. Ronnie Greer on the undersigned's motion in the case of *United States v. Almany*, No. 2:07-cr-88 disqualified himself pursuant to 28 U.S.C. § 455(a). [Doc. 132]

The next day, on January 3, 2008, *Almany's* case was reassigned by Order by this Court as Chief District Judge to itself to be heard in Chattanooga, Tennessee. Chattanooga, Tennessee is the furthest distance from Greeneville, the witnesses and attorneys in the *Almany* case. [Doc. 133]

In that same Order, this Court set a hearing on the Government's motion for an inquiry into the undersigned's conflicts in *Almany* for January 9, 2008. [Doc. 133]

On January 9, 2008 this Court disqualified Respondent from representing Lee Almany in the pending criminal case of *United States v. Almany*, No. 2:07-cr-88 and 1:08-cr-1. Respondent requested factual findings as provided for by Fed. R. Crim. P. 12(d) be stated on the record, however, this Court denied Respondent's request. No Memorandum Opinion was entered by this Court pertaining to its Order denying *Almany's* Respondent of choice.

On January 17, 2008 this Court entered a Show Cause Order charging Respondent with violations of the Tennessee Rules of Professional Conduct and ordered Respondent to notify judicial officers in this District of the Show Cause order "so judicial officers may take appropriate action with respect to the schedules or scheduling of their cases involving Respondent."

Then on January 31, 2008 this Court in *Almany* entered a one-line Order transferring *Almany's* case back to Judge Greer in Greeneville without motion or explanation.

Most respectfully, these events "might reasonably be questioned" as to this Court's impartiality or whether this Court has information known to the Court that has not been

disclosed or placed of record pertaining to the subject matter of its Orders that is unknown to Respondent or *Almany*.

Federal Rules of Judicial Conduct Provide:

A. Adjudicative Responsibilities.

. . .

(4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte communications on the merits, or procedures affecting the merits, of a pending or impending proceeding. A judge may, however, obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. A judge may, with consent of the parties, confer separately with the parties and their Respondent in an effort to mediate or settle pending matters.

Respectfully, District Judge Greer is under this Court's supervision as Chief Judge of this district. Obviously, District Judge Greer, by his finding Respondent guilty of criminal contempt of Court and by his June 14, 2006 complaint to the Tennessee Board of Professional Responsibility, has opinions pertaining to Respondent, within the meaning of 28 U.S.C. § 455(b) and Canon 3(E) of the Federal Rules of Judicial Conduct.

Based on these rapidly occurring events within a close time-frame, it is reasonable to question whether this Court or

through its staff had communications with District Judge Greer or through his staff, at the time this Court assigned the *Almany* case to itself and then disqualified Respondent from representing *Almany*.

For the same reasons, Respondent has a reasonable basis to question whether this Court or through its staff had communications with District Judge Greer or through his staff before this Court issued the Show Cause Order and notification directive. Disclosure of any communications between District Judge Greer or through his staff and this Court or through its staff may pertain to a 28 U.S.C. § 455(b)(1) bias against *Almany's* Respondent or an undisclosed 28 U.S.C. § 455(b)(1) "personal knowledge" of information pertaining to issues of disqualification in *Almany* or this Court's decision to issue the Show Cause Order against Respondent.

Respondent has received reports that Senior Judge Leon Jordan and deceased Senior Judge James Jarvis had conferences with Judge Greer after November 17, 2006 pertaining to Respondent's contempt of court charges and potential disciplinary action. As Chief Judge, Respondent has a reasonable basis to question whether this Court also had conferences with Senior Judges Jordan, the late Senior Judge Jarvis or other judges or their staffs pertaining to the actions of Respondent.

Respondent has a reasonable basis to question whether this Court had the matter of a Show Cause order against Respondent before it at the time the Court disqualified Respondent in *United States v. Almany* on January 9, 2008.

Most respectfully, Respondent and Lee Almany, have due process rights under Fifth Amendment and the Federal Code of Judicial Conduct to know what information this Court had when this Court made decisions and orders in Respondents matter and in *Almany*.¹

WHEREFORE, the undersigned in this matter, and for the record in *United States v. Almany*, request this Court disclose all communications with the Court or its staff from District Court J. Ronnie Greer or his staff or any other judge or person pertaining to the matter of Respondent's representation of Lee Almany, or this Court's Show Cause Order, or that may otherwise create a reasonable question as to this Court's impartiality in these matters under 28 U.S.C. § 455(a) or disqualification under 28 U.S.C. § 455(b).

This the _____ day of February 2008.

¹ "[C]ore requirements" of due process require that notice and the opportunity to be heard must be given "at a meaningful time and in a meaningful manner." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950), *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965)

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BPR # 1910

Certificate

The undersigned certifies that on February 1, 2008, pursuant to the Court's directive, the foregoing Motion for Relief has been served only upon Geneva Ashby, Division Manager, 209 Joel. W. Solomon Federal Building and United States Courthouse, 900 Georgia Avenue, Chattanooga, TN 37402, by United States Mail, with proper postage thereon, to e filed under seal.

HERBERT S. MONCIER
Respondent