

**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

**Respondent's Objection And Motion To Disqualify A Court  
Subordinate To The Complainant, Chief Judge Collier, From  
Hearing This Show Cause Order**

Respondent, having fully responded to the Show Cause Order, now pursuant to 28 U.S.C. § 455(a) respectfully moves to disqualify, this Court, and any Court that subornate to, or under the supervision of, the EDTN LR "complainant" who, in this case is Chief Judge Curtis Collier.

Respondent submits the reasons for disqualification under oath as provided by 28 U.S.C. § 144.

**Memorandum**

Chief Judge Curtis Collier is the Complainant in this case. Judge Collier has opined as to a number of opinions based on his review of the November 17, 2006 transcript.

Judge Collier is an essential witnesses because the burden of proof requires a finding of clear and convincing evidence. Even if the burden of show cause is on Respondent, because Respondent has, under oath, denied

the opinions and conclusions of Chief Judge Collier, ultimately a court will be required to determine whether Chief Judge Collier's opinions and conclusions constituted clear and convincing evidence of Respondent violating the Code of Professional Conduct and that Respondent is not fit to practice before the court or remain a member of the bar of the court.

While it appears that this Court will make the initial recommendation pursuant to Rule 83.7(i)(1) it remains unclear from the rule as to whether this Court will make a recommendation to Judge Collier or not. Because Judge Collier is the Complainant and has already made decisions, Counsel would object to Judge Collier participating further in this case.

EDTN LR 83.7(h)(2) appears to provide this Court authority to resolve all disputes on matters of procedure and evidence which arise during the hearing. Because Respondent denies and will offer evidence that Chief Judge Collier's opinions and conclusions are incorrect, this Court will be "resolving [those] disputes" between Chief Judge Collier and Respondent.

This Court is appointed and, in effect employed by Chief Judge Collier. Pursuant to 28 U.S.C. § 636 this Court serves at the pleasure of Chief Judge Collier.

Most respectfully, pursuant to 28 U.S.C. § 455 these relationships between Chief Judge Collier and this Court, or any subordinate court to Chief Judge Collier, might reasonably question the impartiality of this Court or subordinate courts.

Pursuant to 28 U.S.C. § 144 and again respectfully, Respondent makes oath under the penalties of perjury that he believes the relationship between this Court and Chief Judge Collier causes Respondent to reasonably question the impartiality of this Court.

*Lack of 28 U.S.C. § 636, Fed. R. Civ. P. 72 Jurisdiction*

Respectfully, 28 U.S.C. § 636 and Fed. R. Civ. P. 72 do not confer on a Magistrate-Judge jurisdiction to "resolve all disputes on matters of procedure and evidence which arise during the course of" the show-cause hearing.

Fed. R. Civ. P. 83 prohibits a local rule that increases the jurisdiction of Magistrate-Judges provided by 28 U.S.C. § 636 or Fed. R. Civ. P. 72. EDTN LR 83.7's use of the term "judicial officer" must be construed to include only those federal judges who have jurisdiction to try Respondent's case, i.e., a Title III judge.

Respondent does not consent to a trial by a Magistrate-Judge pursuant to Fed. R. Civ. P. 73.

WHEREFORE, most respectfully, Respondent objects to being tried by a Magistrate-Judge, including this Court and further moves to disqualify this Court pursuant to 28 U.S.C. § 455(a).

This 24th day of February 2008.



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HERBERT S. MONCIER

Respondent

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BPR # 1910

**Certificate**

The undersigned certifies that on February 24, 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.



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HERBERT S. MONCIER

Respondent