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Case Nos.: MS 14-00030 JPD

USDC/DWY: 14-CR-27-F

NOTICE OF BONA FIDE CONTROVERSY AT LAW

TO: Office of Chief Judge
U.S. District Court
700 Stewart Street
Seattle 98101
Washington State, USA

FROM: Paul Andrew Mitchell, B.A., M.S.
FDC SeaTac Reg. No. 44202-086, Unit "EA"

SUBJECT: proper distinction between
"civil officer" and "civil service"

Greetings Your Honor:

I honestly believe I have now isolated one cause of the major misunderstandings which have developed in the instant cases: judges and clerks of court are properly included within the meaning of "civil officers"; but they are not properly included within the meaning of "civil service".

In what now follows, please allow this Notice to document the controversy at law that has arisen as a result of reconciling those two terms, with citations to key relevant authorities:

(1) A good starting place is the definition of "civil officer" as found in The Law Dictionary, Anderson Publishing Co. (2002).

Incorporated by reference in # 14-CR-27-F (USDC/DWY)

"civil officer" - any officer of the United States who holds his appointment under the national government, whether his duties are executive or judicial ... with the exception of officers of the army and navy.

Clearly, the latter distinguishes military officers from civilian officers, but the latter are not equated with "civil service".

The U.S. Constitution is helpful here because it requires an Oath of Office of all "executive and judicial Officers". That Fundamental Law necessarily implies that "civil officers" exist in both the Executive and Judicial Branches of the federal government. As such, all judicial officers are required by Art. VI, Sec. 3 above to execute a valid Oath of Office, irrespective of any definition which excludes judicial officers from the meaning of "civil service".

(2) The statute at 5 U.S.C. 2104 is very helpful where it defines "officer" to mean a justice or judge. As such, both are "civil officers" but not necessarily members of the "civil service", strictly speaking.

The controversy at hand rears its head where that statute reads: "an individual who is (1) required by law to be appointed in the civil service by ... a court of the United States...." NB: "in the civil service".

(2) continued

The clarification in the U.S. Code Service is very instructive where it interprets Section 2104 to refer to "civil officers of the United States" and not to the "civil service", strictly speaking:

"The term 'officer' is coextensive with and substituted for 'Each individual appointed hereafter as a civil officer of the United States ... by a court of law ...' in view of the definition of 'officer' at 5 U.S.C. 2104." See Notes under 5 U.S.C.S. 3332 here.

(3) Federal judges are therefore correctly described as "officers" and as "civil officers", even though they are not described as members of the "civil service" i.e. in the Executive Branch and only in that Branch. The controversy rears its head again, however, when we try to describe Clerks of Court and Deputy Clerks of Court:

Using the clarification above, a Clerk of Court must be an "officer" because that individual is appointed by a court of the United States. See 28 U.S.C. 751. Moreover, a Clerk of Court is also correctly described as a "civil officer", even though that office is not in the "civil service". Lastly, there is authority for concluding that Deputy Clerks of Court are also "officers". See Ex parte Burdell, 32 F. 681: "He takes the same oath of office as the Clerk of Court."

(4) A major problem at hand is to decide if the term "officer" at 5 U.S.C. 3332 is limited to "civil officers" in the Executive Branch, on the one hand, or expanded with "civil officers" in the Judicial Branch, on the other hand. The clarification at (2) above helps us to decide that "officer" at Section 3332 embraces both Executive and Judicial Branch officers.

Therefore, we are justified in concluding that the second affidavit required by Section 3332 is an obligation that is imposed upon justices, judges, magistrates, clerks and deputy clerks of court. This conclusion is justified by all of the evidence above, notwithstanding the use of "civil service" at 5 U.S.C. 2104(a)(1). Here, cf. OPM SF-61.

(5) The controversy at hand is further fueled by expanding this Notice also to examine 5 U.S.C. 3331. Some courts have already ruled that Section 3331 applies only to those in the "civil services" i.e. Executive Branch, or the "uniformed services" i.e. military, but not to judicial officers. See In re Anthony, 481 BR 602 (2012). Similarly, Miller v. Johnson, 541 F. Supp. 1165 (1982), says the same thing: "... judges serve in the judicial branch, not in the 'civil or uniformed services'." The 6th Circuit also quotes Miller with approval in U.S. v. Conces, 507 F.3d 1028 (2007).

(6) Another important piece of this puzzle is the statute at 5 U.S.C. 2906, which defines the legal custodian for the general Oath of Office imposed by 5 U.S.C. 3331. Specifically, that Oath is delivered to, and preserved by, the "court to which the office pertains." As such, Section 2906 clearly requires all judicial officers to deliver their 3331 Oaths to the court because their offices pertain to the court that employs them; their offices do not pertain to either House of Congress, nor to any Executive Branch positions; and, 2906 thus defines a duty for the Office of Clerk.

(7) In direct contradiction of the clear language Congress enacted at Sec. 2906, one federal district court has ruled otherwise. In Miller v. Johnson, supra, the court ruled that 2906 does not apply to judges, and Sec. 3331 only applies to individuals who take an oath "in the civil service or uniformed services." The problem here can be resolved by constructing 3331 to be maintaining the distinction between civilian positions and military positions, not by restricting "civil service" to Executive Branch positions. Once again, see the clarification at (2) above: 2104 refers to "civil officers" not "civil service".

(8) The Miller court also ruled that: "The Administrative Office keeps judges' personnel records under authority vested in the Director by 28 U.S.C. 604." The latter is a curious claim, in part because of the clear language in the reference to "court"

(8) continued
 in Section 2906, and the long PAST DUE
SUBPOENA which this writer served upon
 the A.O. for all Oaths of Office in the A.O.'s
 custody for all justices, judges, magis-
 trates, clerks and deputy clerks, no exceptions.
 The A.O. never produced a single Oath
 in response to that SUBPOENA, in stark
 contrast to the ruling in Miller, discussed
 above. Moreover, there is absolutely no
 mention of any oaths, or custody of any
 oaths, in the A.O. Director's duties as
 defined at 28 U.S.C. 604. Compare 5 U.S.C. 2906;
 it clearly designates the "court" as the legal
 custodian, not the A.O. The A.O. is obviously
not a court. In practical terms, 2906
 keeps oaths in the courthouses where
 litigants can easily access them, not
 in some distant government office building
 located in the District of Columbia!

(9) This writer now feels compelled to offer
 the following points, by way of settling
this Bona Fide Controversy at Law:

(a) The Fundamental Law requires an Oath
 of all judicial officers;

(b) Justices, judges, magistrates, clerks
 and deputy clerks are all defined as
judicial officers;

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(c) All judicial officers must execute the three affidavits required by 5 U.S.C. sections 3331, 3332 and 3333;

(d) All 3 affidavits are presently found on a single form, known as the OPM Standard Form 61 APPOINTMENT AFFIDAVITS;

(e) 5 U.S.C. 2906 clearly cites the court as the legal custodian of the SF-61 for each and every judicial officer employed by the court;

(f) The A.O. is not a "court" and, as such, it is not the designated legal custodian of any oaths required of any judicial officers;

(g) The consistent practice of numerous federal judges - spanning many decades - has been to execute OPM SF-61 APPOINTMENT AFFIDAVITS; the resulting pattern has enormous ^{weight};

(h) Clerks and Deputy Clerks of Court should also execute SF-61 and maintain custody of same;

(i) Although judicial oaths are a "matter of public record," In re Anthony supra, FOIA exempts the entire judicial branch at 5 U.S.C. 551;

(j) Court clerks routinely refuse to honor FOIA requests for oaths, citing 5 U.S.C. 551;

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(k) Such refusals by clerks violate a holding in Miranda v. Arizona, to wit: "where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them";

(l) Therefore, the FOIA exemption for the judiciary should be amended to authorize FOIA requests for the APPOINTMENT AFFIDAVITS and OATHS OF OFFICE of all judicial officers;

(m) An even better solution is to publish electronic copies of these credentials on the Internet, in addition to maintaining custody of the originals at the "court to which the office pertains"; and,

(n) The Library of Congress maintains an electronic registry of Agents for Notification of Copyright Infringement Claims. That registry is an excellent model for publishing judicial credentials on the Internet. See 17 U.S.C. for copyright laws.

INCORPORATION

The Undersigned hereby incorporates the following document by reference, as if set forth fully here:

MEMORANDUM OF LAW RE:
CLERK OF COURT IS AN OFFICER (2/10/2014)

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VERIFICATION: 28 U.S.C 1746

I, Paul Andrew Mitchell, B.A., M.S., hereby verify under penalty of perjury, under the laws of the United States of America, without the United States (Federal government) that the above statement of facts and laws is true and correct, according to the best of my current information, knowledge and belief, so help me God.

Dated: 2/12/2014 A.D.

Signed: Paul Andrew Mitchell, B.A., M.S.

Printed: Paul Andrew Mitchell, Sui Juris

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