

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, *
Plaintiff, * CRIMINAL NO. 08-364 (RHK)
vs. * CIVIL NO. 13-1110 (RHK)
THOMAS JOSEPH PETTERS, *
Defendant * AFFIDAVIT FORM

THOMAS JOSEPH PETTERS' RESPONSE TO "GOVERNMENT'S RESPONSE
IN OPPOSITION TO DEFENDANT PETTERS' MOTIONS TO ALTER AND
AMEND JUDGMENT PURSUANT TO RULE 59(e) AND MOTION TO
DISQUALIFY UNDER 28 U.S.C. §455" - DATED: JANUARY 8, 2014.

COMES NOW, Defendant THOMAS JOSEPH PETTERS, Pro Se, (hereinafter Movant) with the assistance of his JailHouse Lawyer John Gregory Lambros, MUNZ vs. NIX, 908 F.2d 267, 268 FootNote 3 (8th Cir. 1990) (JailHouse Lawyer has STANDING to assert rights of inmates who need help); BEAR vs. KAUTZKY, 305 F.3d 802, 805 (8th Cir. 2002), responding to the United States of America (hereinafter "Govt.") response to this above-entitled action dated January 8, 2014.

THOMAS JOSEPH PETTERS, declares under the penalty of perjury the following:

1. I am the Defendant/Movant in this above-entitled action that was filed on or about December 28, 2013 with the district court in Minnesota and forwarded to this Court. Movant's Motions:
 - a. MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), contained 41 numbered paragraphs with exhibits;
 - b. MOTION TO DISQUALIFY UNDER 28 U.S.C. §455, contained 59 numbered paragraphs with exhibits.

See, Federal Rules of Civil Procedure, Rule 10(b), states a party must state

its claims or defenses in NUMBERED PARAGRAPHS, each limited as far as practicable to a single set of circumstances. Also see, RULE 12 "Applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure", within "RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS" ("The Federal Rules of Civil Procedure, may be applied to a proceeding under these rules.").

2. On or about January 10, 2014, Movant received the Government's RESPONSE to Movant's two (2) motions filed on or about December 28, 2013, "MOTION TO ALTER OR AMEND PURSUANT TO RULE 59(e) and MOTION TO DISQUALIFY UNDER 28 U.S.C. §455." The Government's response was six (6) pages in length and signed by Attorney John R. Marti, Acting United States Attorney on January 8, 2014. Movant requests this Court to note that the Government DID NOT follow the requirements stated within Federal Rules of Civil Procedure, RULE 8(b), as to how any responsive pleading to a federal action must be drafted. The government's nonresponsive language in its response to most of Movant's complaint neither admitted or denied the factual allegations and has resulted in the averments of Defendant PETERS' action to be deemed admitted by the government. Movant requests that this Court proceed on that basis. See, RULE 8(b)'s plain roadmap, as it identifies only three (3) alternatives as available for use in an answer to allegation of a complaint: admit those allegations, to deny them or to state a disclaimer (if it can be made in the objective and subjective good faith demanded by Rule 11) in the express terms of the second sentence of Rule 8(b), which then entitles the pleader to the benefit of a deemed denial. RULE 8(b) states that averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, ARE ADMITTED WHEN NOT DENIED IN THE RESPONSIVE PLEADING. See, RULE 8(b)(6).

3. The government's answers fall short of the Rule 8(b) standards, as they DO NOT SPECIFICALLY ADDRESS ANY-NUMBERED PARAGRAPH OF MOVANT PETERS' ACTION. Again, Movant requests this Court to proceed in this action, as the government has ADMITTED TO ALL THE ALLEGATIONS WITHIN MOVANT'S MOTIONS FILED

TWO (2) MOTIONS FILED ON DECEMBER 28, 2013. See, RULE 8(b). Movant PETERS' is proceeding pro se, and his claims are plainly and cogently presented in numbered separate allegations. It is the government's job, and not this Court's, to perform the work called for by Rule 8(b), subject to the obligations set forth in Rule 11.

4. Movant PETERS DENIES each and every material allegation contained in the government's January 8, 2014 "RESPONSE", except as herein may be expressed and specifically admitted.

GOVERNMENT'S RESPONSE - PAGE ONE (1):

5. The government states, "... moves this Court pursuant to Local Rule 1.3 to strike defendant Petters' Motion to Alter and Amend (Doc. 630) and Motion to Disqualify (Doc. 631) or, ..." Movant does not understand why Local Rule 1.3 applies in this action!! First of all, the U.S. Penitentiary Leavenworth inmate law library does not contain the local rules of this court. Movant requests this court to ORDER the government to forward the Local Rules of this court to Movant. A quick search of Local Rule 1.3 for the District of Minnesota only informs Movant that "if an attorney violates the local rules, the Court may impose appropriate sanctions, financial or otherwise, as needed to protect the parties and the interests of justice." This is very confusing to Movant, as the only attorney that was present in this action - Steven J. Meshbeshier - does not represent Movant as to December 5, 2013. See,

- a. EXHIBIT A: December 5, 2013 letter from Attorney Steven J. Meshbeshier to Movant THOMAS J. PETERS, requesting \$25,000.00 to attempt an appeal in this action.
- b. EXHIBIT B: January 8, 2014, article by David Phelps, Star Tribune, "TOM PETERS TRIES ONCE AGAIN FOR A SHORTER PRISON SENTENCE", states "Petters previous attorney on the plea bargain appeal, Steve Meshbeshier, said the most recent motions

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were written without his involvement. 'MY REPRESENTATION IS OVER,' Meshbesher said Tuesday. 'I did what I told him I was going to do. Judge Kyle made his ruling, AND IT IS NOT APPEALABLE.'

6. The government states:

"Because Petters' is represented by a non-lawyer not authorized to appear in this Court, the motions should be stricken."

THIS IS NOT TRUE! Movant PETERS is clearly PROCEEDING PRO SE. The following elements are stated within both of Movant's December 28, 2013 motions:

- a. "COMES NOW, Defendant THOMAS JOSEPH PETERS, **Pro Se,**"
- b. Within the **"CONCLUSION"** of both motions Movant Petters is the only person requesting RELIEF.
- c. Within the **"CONCLUSION"** of both motions, Movant Petters is the only person that states, "I THOMAS JOSEPH PETERS, declares under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. §1746."
- d. Movant PETERS' signs both motions, as required by **RULE 11, Federal Rules of Civil Procedure.** **"(a) Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name - OR BY A PARTY PERSONALLY IF THE PARTY IS UNREPRESENTED. The Court must strike an UNSIGNED PAPER unless the omission is promptly corrected after being called to the attorney's or party's attention."

See, EXHIBIT C: (Rule 11, Federal Rules of Civil Procedure, 2010 Revised Edition)

It is this Movant's belief that both he and John Gregory Lambros, JailHouse Lawyer signed both motions. If for some reason Movant did not sign both motion he would forward another copy of the motions signed. See, WILLIAM vs. FRAME, 145 F.R.D. 65 (E.D. Pa. 1992)(complaint submitted by two (2) prisoners must be signed by both because one non-attorney cannot act in behalf of another). This is the procedure Movant Petters' and JailHouse Lawyer Lambros followed.

7. The government states:

** "Petters is represented by Steven Meshbesh, Esq., (**WHO HAS NOT BEEN RELIEVED AS COUNSEL**) yet a 'jailhouse lawyer' (prisoner John G. Lambros) purports to appear on Petters' behalf even though the jailhouse lawyer is not authorized to practice law in this Court under **LOCAL RULE 83.5**. Petters has two (2) choices concerning his legal representation, he can chose to stick with Steven Meshbesh, Esq. (or another lawyer) **OR HE MAY PROCEED PRO SE**. There are no other choices. Petters cannot choose to be represented by a non-lawyer prisoner yet that is exactly what Petters does here. Therefore, because these motions violate this Court's rules governing representation, the Court should strike these motions under **LOCAL RULE 1.3** (establishing sanctions for violations of the Local Rules, including 'striking pleadings or papers')." **

As stated within paragraph five (5) above and within **EXHIBITS A & B**, Attorney Steven Meshbesh does not represent Movant Petters. Attorney Meshbesh even admitted same to David Phelps, a reporter for the Star Tribune on **JANUARY 7, 2014**, one day before the government's response was filed.

8. **LOCAL RULE 83.7, District of Minnesota:** It appears that Attorney Marti, Acting U.S. Attorney is stating that Attorney Steven J. Meshbesh, Movant past attorney, **HAS "OBVIOUSLY" WITHDRAWN WITHOUT COMPLYING WITH LOCAL RULE 83.7**. This is not Movant Petters' problem and suggests that if this Court wants to sanction someone under **LOCAL RULE 1.3** "[f]ailure to comply with local rule may be sanctioned by any appropriate means to protect the parties and the interest of justice.", it should be Attorney Steven J. Meshbesh. **NOT MOVANT PETERS OR JAILHOUSE LAWYER JOHN GREGORY LAMBROS.**

9. Title 28 U.S.C. §1654, allows Movant Petters to "plead and conduct their own cases". This is the case in this action. Movant has clearly stated that he is proceeding **PRO SE** and **HAS SIGNED ALL PLEADING AND MOTIONS, TO THE BEST OF HIS KNOWLEDGE.**

10. Movant PETERS' pleadings should not be struck!

11. John Gregory Lambros, JailHouse Lawyer has always maintained that it is "my job - as a jailhouse lawyer - to provide transparency and lift the veil on how the government and Petters' lawyers applied federal law in

in Tom Petters' trial and conviction." This standard is the same for any prisoner John Gregory Lambros assists in legal matters. To assist this Court and Attorney John R. Marti, Acting U.S. Attorney in this action, Lambros believes it is best to offer a legal overview as to the question:

WHAT IS A JAILHOUSE LAWYER?

** "Jailhouse lawyers are inmates that are often referred to as 'writ-writers', that try to help other inmates with their legal problems. The Supreme Court has held that prison authorities cannot prohibit prisoners from helping each other with legal matters. JOHNSON vs. AVERY, 393 U.S. 483, 490 (1969). LAMBROS believes a prisoner helping someone else would be exercising his own First Amendment rights as well as the other prisoner's. Therefore, litigation undertaken in good faith by a prisoner motivated to bring about social change and protect constitutional rights in the prison is a form of political expression."

** Jailhouse lawyers are viewed by many courts as having STANDING TO ASSERT THE RIGHTS OF THE INMATES WHO NEED THEIR HELP. See, MUNZ vs. NIX, 908 F.2d 267, 268, FootNote 3 (8th Cir. 1990). They may assist in PREPARING AND FILING PLEADINGS BUT MAY NOT FILE THEM ON BEHALF OF OTHER PRISONERS UNLESS SIGNED BY BOTH BECAUSE ONE NON-ATTORNEY CANNOT ACT IN BEHALF OF ANOTHER. See, STORSETH vs. SPELLMAN, 654 F.2d 1349, 1355 (9th Cir. 1981)(jailhouse lawyer may assist in PREPARING AND FILING PLEADINGS but may not file them on behalf of others); WILLIAM vs. FRAME, 145 F.R.D. 65 (E.D. Pa. 1992)(complaint submitted by two (2) prisoners must be signed by both because one-non-attorney cannot act in behalf of another).

On rare occasions, courts have PERMITTED IN-COURT REPRESENTATIONS of one prisoner by another. See, WILLIAMSON vs. STATE OF INDIANA, Dept. of CORRECTIONS, 577 F.Supp. 983 (N.D. Ind. 1984); THURMAN vs. ROSE, 575 F. Supp. 1488, 1489 FN.1 (N.D. Ind. 1983).

12. Please note that Movant PETERS' was the person who signed and **FILED** the two (2) **December 28, 2013 motions.** The December 30, 2013 cover-letter and **"CERTIFICATE OF SERVICE"** is clearly signed by Movant Petters only.

"Dear Clerk:

Attached for filing in this above-entitled action, is copy of my: (listing motions)"

The PRISONER **"MAILBOX RULE"**: HOUSTON vs. LACK, 487 US 266 (1988) clearly states prisoner motion is **FILED WITH CLERK WHEN DELIVERED TO PRISON MAILBOX OR ROOM.**

Movant PETERS' DELIVERED THE MOTIONS TO THE PRISON MAILROOM - NOT LAMBROS.

13. CURRENT INFORMATION FOR THIS COURT: The California Supreme Court granted a law license to an UNDOCUMENTED IMMIGRANT TO PRACTICE LAW. Jailhouse Lawyer Lambros really does not understand why Attorney Marti, Acting US Attorney, is making such a fuss when Lambros is only trying to help inmates with their legal problems. EXHIBIT D. (USA TODAY, "California grants law license, but now what?", January 3, 2014, Page 3A.)

GOVERNMENT'S RESPONSE - PAGE TWO (2):

14. The government offers a paragraph of legal cases surrounding "A defendant in a criminal case does not have a sixth amendment right to the assistance of a non-lawyer." All of the cases cited by the government are not applicable, as the U.S. Supreme Court has clearly held that prison authorities cannot prohibit prisoners from helping each other with legal matter. JOHNSON vs. AVERY. Movant restates and incorporates paragraph 11 here.

15. The government again stomps its legal foot - stating Lambros is "IMPROPERLY APPEARING AS COUNSEL IN THIS COURT". Again, JailHouse Lawyer Lambros is NOT APPEARING AS COUNSEL IN THIS COURT. END OF SUBJECT!!!! Lambros is only helping Movant Petters in his legal matters, as per the ruling of the Supreme Court. JOHNSON vs. AVERY.

GOVERNMENT'S RESPONSE - PAGE THREE (3):

16. The government states, "For the foregoing reasons, Petters' motions filed by a "jailhouse lawyer" should be stricken." THIS IS NOT TRUE. As stated above, Movant Petters' is proceeding PRO SE IN THIS ACTION AND IS NOT REPRESENTED BY A NON-LAWYER OR ANY OTHER TYPE OF LAWYER. Movant is only receiving legal advice from Jailhouse Lawyer Lambros and other JailHouse Lawyers incarcerated at the United States Penitentiary Leavenworth. Movant has signed and filed all

motions filed within this court after December 5, 2013, as per Rule 11, Federal Rules of Civil Procedure and HOUSTON vs. LACK - "PRISONER MAIL-BOX RULE".

17. The government now states:

"2. Petters' Rule 59(e) Motion should be summarily denied because it merely restates facts and arguments previously raised and disposed of in the Court's order denying his \$2255 motion."

THIS IS NOT TRUE!!

18. Movant Petters requests this Court to give his Pro Se Pleadings liberal construction. See, JONES vs. POLLARD-BUCKINGHAM, 348 F.3d 1072, 1073 (8th Cir. 2003), citing HAINES vs. KERNER, 404 U.S. 519, 520-521 (1972) (Pro Se pleadings are entitled to liberal construction)

19. The government offers an overview of Rule 59(e) that is very restrictive. Movant offers a quick overview of Rule 59(e) for this court:

a. Rule 59(e), motion to alter or amend is timely if filed within 28 days, as amended in 2009, of the entry of this court's judgment either granting, denying, or dismissing Movant's \$2255.

b. The "mailbox rule" applies to **Pro Se motions** filed pursuant to Rule 59(e). Edwards v. U.S., 266 F.3d 756, 758 (7th Cir. 2001)(collecting cases).

c. Rule 59(e) motions **TOLLS THE TIME FOR APPEAL**. See, Fed. R. App. P. 4(a)(4)(A)(iv). The time for filing an appeal begins to run anew from the date this Court rules on Movant's Rule 59(e) motion. BROWDER vs. DIRECTOR, 434 U.S. 257, 264 (1978).

d. An appeal from the denial of a Rule 59(e) motion brings up the entire underlying judgment for review. See, FORMAN vs. DAVIS, 371 U.S. 178, 181-182 (1962).

e. **ALMOST ANY REASON JUSTIFYING RECONSIDERATION CAN BE ASSERTED IN A RULE 59(e) MOTION:** A motion under Rule 59(e) is a "device to relitigate the original issue decided by the district court, and used to allege legal error." See, U.S. vs. FIORELLI, 337 F.3d 282, 288 (3rd Cir. 2003)(internal marks omitted).

Almost any substantive reason justifying reconsideration of the district court's decision may be asserted in a motion premised on Rule 59(e). Rule 59(e) motions may also seek reconsideration

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of procedural rulings by the district court, such as the erroneous denial of an evidentiary hearing. See, BROWDER, 434 U.S. at 265-267.

GOVERNMENT'S RESPONSE - PAGES THREE (3) AND FOUR (4):

20. The government states, "Petters' motion under Rule 59(e) adds next to nothing new to the litigation in this case ..." **THIS IS NOT TRUE.** Movant Petters' will not further lengthen the record by re-stating the issues raised within his Rule 59(e).

21. The government states, "Petters fails to demonstrate that this Court made a mistake of fact or law." **THIS IS NOT TRUE!** Movant Petters pointed out to this court many mistakes of fact, within his Rule 59(e).

GOVERNMENT'S RESPONSE - PAGES FOUR (4) AND FIVE (5):

22. The government states:

"3. Petters' Disqualification Motion should be rejected as an unauthorized second §2255 motion."

THIS IS NOT TRUE!!!

23. The government states, "Petters, through creative pleading, impermissibly attempts to bootstrap his judicial disqualification claim into his first §2255 motion using Rule 59(e). Petters' judicial disqualification claim could have been presented at trial, on direct appeal, and in the prior habeas action." **AGAIN, THIS IS NOT TRUE!!** Movant clearly informed the Court within his "MOTION TO DISQUALIFY ..." that he requested his original attorney's to submit a "MOTION TO DISQUALIFY" starting September 1, 2010, to no avail. See, **EXHIBITS J, K, & L** and paragraphs 48 thru 53 within Movant's "MOTION TO DISQUALIFY ..." In fact Attorney Meshbeshar had a duty to file for recusal of Judge Kyle, when

Movant's trial attorney's - attorney's with similar years of legal practice and knowledge BELIEVED THE ISSUE OF "RECUSAL" HAD SUBSTANCE AND WAS A "DECENT ONE".

See, September 17, 2010 letter from Attorney Eric J. Riensche and Hopeman to Movant Petters:

"... you might make a Section 2255 motion on that ground, and perhaps ARGUE YOUR COUNSEL (US) WERE INEFFECTIVE FOR FAILING TO MOVE FOR DISQUALIFICATION."

Movant gave this letter to Attorney Meshbesh and he refused to file for same after Movant paid him.

24. TIMELINESS OF MOTION TO DISQUALIFY UNDER 28 USC §455:

IN RE KENSINGTON INT'L, LTD., 368 F.3d 289, 312-316 (3rd Cir. 2004). In this case, the JUDGE KNEW of conflict from or near its inception more than 18 months before recusal motion but never disclosed it to parties. The Third Circuit stated:

** "In the recusal context, we are satisfied that if there is to be a burden of disclosure, THE BURDEN IS TO BE PLACED ON THE JUDGE DISCLOSE POSSIBLE GROUNDS FOR DISQUALIFICATION. See, U.S. vs. BOSCH, 951 F.2d 1546, 1555 fn. 6 (9th Cir. 1991)(noting that §455(a) 'has a DE FACTO DISCLOSURE REQUIREMENT.'; See also PARKER vs. CONNORS STEEL CO., 855 F.2d 1510, 1525 (11th Cir. 1988)(recognizing that recusal motion could have been avoided IF JUDGE HAD DISCLOSED GROUNDS FOR RECUSAL TO PARTIES.)

As we stated in U.S. vs. SCHREIBER, 599 F.2d 534, 537 (3rd Cir. 1979), "sound public policy considerations ... militate for the adoption of a rule that the parties should be apprised of ANY POSSIBLE GROUNDS FOR DISQUALIFICATION KNOWN PRIVATELY TO THE JUDGE." The most compelling of these public policy considerations is that the judge is in the best position to know of the circumstances supporting a recusal motion." (emphasis added)

Id. at 313-314.

25. Movant's motions are filed in a timely manner in this action.

GOVERNMENT'S REPOSE - PAGE FIVE (5) AND SIX (6):

26. The government states within the "CONCLUSION":

"As Petters' latest motions make clear, he will continue to VIOLATE AND IGNORE THE LAW if he believes doing so gains him an advantage. THESE MOTIONS ARE ONE MORE 'CON'. Petters has spurned this Courts' rule that defendants appear PRO SE or through qualified counsel, and THEN INVOKES 'CREATIVE PLEADING' in an attempt to raise claims that are procedurally foreclosed. Once again, but perhaps not for the last time, the Court should deny Petters' motions seeking relief from his sentence." (emphasis added)

27. Why is the Acting U.S. Attorney John R. Marti being so SPITEFUL? The above "CONCLUSION" is not true. Movant with the assistance of JailHouse Lawyer John Gregory Lambros and other JailHouse Lawyers at the United States Penitentiary Leavenworth, functioning within the boundaries of the Supreme Court's decision JOHNSON vs. AVERY, have offered excellent research within all motions filed with this court. In fact, Lambros believes that Attorney Marti is trying to defame his JailHouse Lawyer status. Lambros has not made one incorrect legal cite nor has he "VIOLATED AND IGNORED THE LAW" in any pleading in this action.

28. Attorney Marti's DEFAMATION OF LAMBROS' REPUTATION to violate and ignore the law in this above-entitled matter involves a matter of public concern and Attorney Marti is constitutionally required to prove both the statement's falsity and Lambros fault.

29. The motions Movant filed are the ONLY PRIMARY POSTJUDGMENT MOTIONS IN SECTION 2255 PROCEEDINGS: (1) a motion to alter or amend judgment under Federal Rules of Civil Procedure 59(e), and (2) a motion for relief from judgment under Federal Rule of Civil Procedure 60(b). Movant's Rule 59(e) was filed in a timely fashion and tolls the time for appeal.

30. If movant is victorious in this Court, he may seek release pending appeal under Federal Rule of Appellate Procedure 23.

CONCLUSION:


31. For all of the foregoing reasons, Movant requests this court

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CERTIFICATE OF AUTHENTICITY

I JOHN GREGORY LAMBROS, declare under penalty of perjury that this RESPONSE TO GOVERNMENT, dated January 15, 2014, Criminal No. 08-364 and/or Civil No. 13-1110, is one (1) of the two (2) motions I originally typed within the inmate law library at U.S. Penitentiary Leavenworth in this action for Tom Petters, as JailHouse Lawyer for THOMAS JOSEPH PETERS. Also, I verify that the signatures of John Gregory Lambros and Thomas Joseph Petters are authentic. The foregoing is true and correct pursuant to 28 U.S.C. §1746.

EXECUTED ON: January 15, 2014.



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