

Memorandum of Law in Support of Plaintiff's Motion to Disqualify Judge Castel
Den Hollander v. Flash Dancers Topless Club, et al, 03 CV 2717 (PKC)

Judge Castel's Memorandum and Order ("Order") of September 28, 2004 in the case Roy Den Hollander v. Flash Dancers Topless Club, et al. raises questions of partiality under 28 U.S.C. 455(a) or indicates personal prejudice under 28 U.S.C. 144 toward the plaintiff.

In the written Order, Judge Castel singles out the plaintiff—but not the defendants—for censure in violating his Individual Practice Rules. "[P]laintiff, without prior consent of the Court and in contravention of my Individual Practices, filed a 147-page memorandum of law, along with an affidavit and exhibits...." Order at 2 n.1. Judge Castel saw fit not to rebuke the defendants even though their two key memoranda totaled 148 pages with 47 separate documents disguised as 30 exhibits and two affidavits. The plaintiff's memorandum contained only four exhibits and one affidavit, yet the plaintiff alone was criticized. Judge Castel also rebuked the plaintiff for filing a Motion to Strike without his prior consent. The motion requested exclusion of external documents the plaintiff did not rely on in drafting the Complaint.

What makes the above one-sided censure of the plaintiff egregious is that it is based on a false premise. When the plaintiff submitted his memorandum of law and Motion to Strike, the case was before Chief Judge Mukasey, not Judge Castel. The plaintiff's memorandum and motion complied with Chief Judge Mukasey's rules. The case was subsequently transferred to Judge Castel, but the Judge, or one of his clerks, over looked this obvious fact in order to take advantage of an apparent opportunity to discredit the plaintiff before the Court of Appeals for the Second Circuit, which is where this case is going.

Perhaps this was just one of those inadvertent screw-ups, but I doubt it, since the plaintiff's nonexistent violation of the Judge's rules apparently led to the Court ignoring the

plaintiff's memoranda but not the defendants. The first sentence of the first page of the Order plays off a sarcasm that the defendants used throughout their papers. The Complaint alleges the Enterprise, or Russian mafia, to be an organization that "spans the globe." The defendants used this repeatedly in their papers to snipe at the plaintiff's Complaint as farfetched. The defendants can ridicule all they want, but when the Court repeats their derision in a written Order, it becomes a different matter entirely. Judge Castel also picked up another criticism directed at the plaintiff, this time concerning the Supplemental Complaint, leveled by one of the defendant's lawyers. In opposing the plaintiff's request to file a Supplemental Complaint, Jack Sachs' wrote, "[S]ince it appears that few, if any, of the events cited in the Supplemental Complaint ever *really happened*,...." (Sach's August 30, 2004 letter to the Court, the emphasis is his.) Judge Castel went one better in citing to Sach's letter by writing, "few, if any, of the events set forth in the Supplemental Complaint ever really happened" The Court conveniently left out Sach's qualifier of "it appears" and went on to state "it is not the Court's role at this stage of the litigation to assess the truth or validity of plaintiff's allegations, no matter how fanciful they appear or how difficult they may be to prove." (Emphasis added) Everyone knows on a Rule 12(b)(6) motion to dismiss that the Court doesn't determine fact issues, so why add this back handed slap to make sure everyone knows that the Court doesn't believe the Complaint's allegations and that it thinks they can't be proved—unless to discredit the plaintiff. Moreover, how does the Judge know or why should he care at this stage in the litigation whether the plaintiff has a witness to the events in Wisconsin as described in the Supplemental Complaint. Does it matter that the plaintiff actually has a witness, since it shouldn't even be an issue at this point?

The Judge also criticized the plaintiff for drafting the Supplemental Complaint “with the defendants’ motions to dismiss in hand” Order at 5. But one of the basic policies of the Federal Rules of Civil Procedure “is that a party should be given every opportunity to join all of his grievances against other parties regardless of when they arose.” Wright & Miller, Federal Prac. and Proc.: Civ.2d § 1506, p 193 of 1990 edition. Finally, the Court once again chose to denigrate the plaintiff’s allegations for no discernable legal reason by stating on page one of its Order that the Complaint “spins a tale.”

Such comments by Judge Castel are unnecessary, inappropriate and do not bolster the legal basis for the Order, but they do discredit the plaintiff for when he appears before the Second Circuit to argue his appeal. As such, the only conclusion is that these remarks manifest Judge Castel’s partiality, beyond that already held by Second Circuit courts against civil RICO actions, or personal prejudiced toward the plaintiff.

WHEREFORE, the plaintiff requests the recusal of Judge Castel from any further proceedings in this case.

Dated: New York, New York
October 8, 2004

Respectfully submitted
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