

STATE OF WISCONSIN
IN THE SUPREME COURT

FILED

APR 03 2015

**CLERK OF SUPREME COURT
OF WISCONSIN**

STATE EX REL.
WILLIAM J. LEE,

PETITIONER-APPELLATE,

-V-

CASE No. 2014AP583-W
(L.C. No. 2002CF886)

PAUL KEMPER, WARDEN
RACINE CORRECTIONAL INSTITUTION
POST OFFICE Box 900
STURTEVANT, WI 53177-0900,

RESPONDENT-RESPONDENT.

MOTION FOR DISQUALIFICATION OF COURT OF APPEALS
JUDGE MICHAEL W. HOOVER FROM FURTHER INVOLVMENT
IN THE PENDING CASE BASED ON OBVIOUS BIAS, AND
FOR THE APPEARANCE OF BIAS. OR, ALTERNATIVELY A
ORDER FROM THE SUPREME COURT DIRECTING THAT THE
CASE BE TRANSFERRED TO ANOTHER DISTRICT WHERE
THE CASE CAN BE DECIDED BY UNBIASED JUDGES.

TO: HON. SHIRLEY ABRAHAMSON
CHIEF JUSTICE SUPREME COURT
110 EAST MAIN STREET, SUITE 215
POST OFFICE Box 1688
MADISON, WISCONSIN 53701-1688

NOW COMES WILLIAM J. LEE, PRO SE DEFENDANT-PETITIONER, WITH
THE ASSISTANCE OF A JAILHOUSE LAWYER, HEREBY MOVES THIS HONORABLE
SUPREME COURT PURSUANT TO WIS. STAT. § 757.19(2)(G), AND THE DUE
PROCESS CLAUSE OF THE STATE AND FEDERAL CONSTITUTIONS. DEFENDANT-
PETITIONER-APPELLATE PRESENTS THE FOLLOWING FACTS JUSTIFYING HIS
REQUEST FOR DISQUALIFICATION OF THE COURT OF APPEALS JUDGE:

A. FACTS

DEFENDANT-APPELLATE-PETITIONER WILLIAM J. LEE WAS ILLEGALLY ARRESTED, DRAGGED OUT OF A POLICE CAR AND PUT ON DISPLAY (SHOWUP) WHILE POLICE MARCHED WITNESSES IN FRONT OF HIM TO PICK HIM AS THE PERSON WHO COMMITTED A ROBBERY IN GREEN BAY, WISCONSIN. HE WENT TO A JURY TRIAL FIVE YEARS LATER AFTER THE ALLEGED VICTIM PASSED AWAY. THE ALLEGED VICTIM HAD NEVER SAID DEFENDANT ROBBED HER. NOR HAD THE VICTIM IDENTIFIED DEFENDANT AS A ROBBER. FROM 2002 UNTIL CONVICTION, DEFENDANT MADE IT KNOWN THAT HE WANTED TO APPEAL THE CONVICTION. IN MARCH OF 2009, APPELLATE COUNSEL THEREAS SCHMIEDER WAS APPOINTED TO APPEAL ON DIRECT APPEAL. FOR FOUR AND A HALF — YEARS DEFENDANT WROTE LETTERS AND ATTEMPTED TO TALK TO COUNSEL ON THE TELEPHONE, BUT COUNSEL IGNORED HIM, REFUSED TO TALK ON THE TELEPHONE OR EVEN VISIT HIM. COUNSEL ABANDONED HIM. PETITIONER THEN FILED THREE WRITS OF HABEAS CORPUS IN EVERY LEVEL OF COURTS IN WISCONSIN ON STATE LEVEL. CIRCUIT COURT, COURT OF APPEALS, AND THIS SUPREME COURT AT THE SAME TIME TRYING TO OBTAIN RELEASE FROM HIS ILLEGAL RESTRAINT. THE COURT OF APPEALS JUDGE HOOVER REVIEWED THE ENTIRE WRIT, INCLUDING ALL EVIDENTIARY DOCUMENTS PROVING THAT APPELLATE COUNSEL HAD ABANDONED DEFENDANT'S DIRECT APPEAL. JUDGE HOOVER DISMISSED THE WRIT FILED IN THE COURT OF APPEALS AS BEING UNVERIFIED PURSUANT TO WIS. STAT. § 782.04. MONTHS LATER HOOVER, AFTER REVIEWING THE COMPLETE FILE AND KNOWING ALL THE CONTENTS IN IT, ALLOWED APPELLATE COUNSEL TO FILE A FIVE YEAR LATE MOTION TO BE ALLOWED TO FILE A NO MERIT REPORT TO UNDERMINE THE WRIT THAT WAS PENDING IN BOTH THE SUPREME COURT AND THE CIRCUIT COURTS.

IT WAS OBVIOUS, OR SHOULD HAVE BEEN OBVIOUS TO THE JUDGE WHO KNEW THE TRUE RECORD THAT COUNSEL WAS FABRICATING THE FACTS, AND HER MOTION AMOUNTED TO A DELIBERATE LIE ABOUT WHY IT TOOK HER THE FIVE YEARS TO ADDRESS ANY COURT CONCERNING PETITIONER'S CASE. BUT DUE TO JUDGE HOOVER'S OWN PERSONAL BIAS IN THIS CASE, HE ALLOWED - COUNSEL TO BE HEARD EX PARTE WITHOUT EVEN INFORMING DEFENDANT OF HER FILING A MOTION WITH THE COURT OF APPEALS. LIKEWISE, THE COURT OF APPEALS JUDGE RULED ON THE MOTION GRANTING IT WITHOUT IT BEING SENT TO PETITIONER, OR NOTIFYING OF A NO MERIT REPORT FIVE YEARS LATE BEING FILED AGAINST HIM. WHEN DEFENDANT-PETITIONER WAS FINALLY INFORMED OF WHAT HOOVER AND COUNSEL HAD DONE, PETITIONER FILED A MOTION IN OPPOSITION TO THE NO MERIT REPORT. THE GRANTING OF SUCH A LATE MOTION BY JUDGE HOOVER FORCED DEFENDANT TO EITHER RESPOND BY ABANDONING HIS WRIT PENDING IN CIRCUIT COURT, OR HE HAD TO REQUEST TO BE PERMITTED TO PROCEED PRO SE. THIS WAS WHAT THE ENTIRE PLOT WAS ALL ABOUT. DEFENDANT OPTED TO PROCEED PRO SE AND HAVE THE NO MERIT REPORT DISMISSED.² AFTER GOING THROUGH ALL THE PROPER PROCEDURES TO GET THE RECORD COMPILED AND SENT TO THE COURT OF APPEALS, DEFENDANT LEARNED THAT CIRCUIT COURT JUDGE KENDALL KELLEY WAS IN A PLOT TO DENY HIM ANY TRANSCRIPTS OF WHAT HAD TRANSPIRED DURING THE LAST TWO EVIDENTIARY HEARING WHEN THE ATTORNEY CONFESSED HOW SHE ACTUALLY ABANDONED THE APPEAL. THEN

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DEFENDANT-APPELLATE LATER LEARNED THAT NO NO MERIT REPORT HAD EVEN BEEN FILED. THE THINGS DONE BY JUDGE HOOVER WAS TO FORCE DEFENDANT TO ALLOW COUNSEL TO BE DISMISSED AND PROCEED PRO SE, WHILE DENYING HIM ANY RECORD OF COUNSEL'S ACTIONS AT FOUR EVIDENTIARY HEARINGS.

ON FEBRUARY 7, 2014 CIRCUIT COURT JUDGE KENDALL KELLEY ISSUED HIS DECISION AND DENIED THE WRIT AND ALSO DENIED PETITIONER A RIGHT TO HAVE COPIES OF THE TRANSCRIPTS TRANSCRIBED AT THE TWO EVIDENTIARY HEARINGS. JUDGE HOOVER FOLLOWED THE LEAD OF JUDGE KELLY AND DENIED DEFENDANT'S REQUEST FOR THE TRANSCRIPTS TO BE PART OF THE RECORD ON APPEAL. THAT DENIAL WAS ON JUNE 9, 2014. JUDGE HOOVER WRONGLY ASSUMED THAT THE HEARINGS WERE ONLY STATUS HEARINGS. HE ALSO SAID WRONGLY THAT PETITIONER HAD NOT PROPERLY ORDERED THE TRANSCRIPTS.

THE COURT OF APPEALS JUDGE WRONGLY ASSUMED THE NATURE OF THE CONTENT OF THE COURT PROCEEDINGS WITHOUT READING THE TRANSCRIPTS. LIKewise, THE COURT OF APPEALS JUDGE WRONGLY ASSUMED THAT THERE WAS NOT A PROPER ORDER OF ALL RELEVANT TRANSCRIPTS MADE BY THIS PETITIONER. AND THIS ASSUMPTION WAS DONE WITHOUT EVEN READING THE RECORD LOG TO SEE THAT ALL TRANSCRIPTS WERE PROPERLY ORDERED BY THIS PETITIONER. WHEN CONSIDERING THE FACT THAT THE COURT OF — APPEALS JUDGE REALLY DID KNOW THE FACTS OF THE RECORD BUT ALLOWED COUNSEL TO FILE AN OBVIOUS LIE AND REQUEST TO FILE A FIVE YEAR LATE NO MERIT REPORT, AND THE COURT ALLOWED ALL OF THIS EX PARTE TO KEEP THIS PETITIONER IN THE DARK ON WHAT WAS HAPPENING WITH HIS CASE. THE FACTS UNDERLYING THE ACTIONS OF THIS JUDGE FORMS A BASIS FOR BIAS AND THE REQUEST FOR DISMISSAL OF THIS JUDGE FROM FURTHER INVOLVEMENT IN THIS CASE. AS IT PRESENTS A DELIBERATE THINKING PROCESS ON THE PART OF THE JUDGE TO BE INVOLVED IN A CONSPIRACY TO DEPRIVE THIS PETITIONER OF HIS RIGHT TO BE HEARD ON A WRIT OF HABEAS CORPUS PETITION. THIS POINT BECAME EVEN MORE APPARENT WHEN AFTER

JUDGE HOOVER GRANTED PERMISSION FOR PETITIONER TO PROCEED PRO SE, HE THEN ATTEMPTED TO HAVE DEFENDANT FILE A POSTCONVICTION MOTION IN THE CIRCUIT COURT AND ABANDON HIS ALREADY PENDING WRIT. BUT PETITIONER RESISTED THAT ORDER. AND AS A DIRECT RESULT OF THIS PETITIONER RESISTING THAT ORDER, JUDGE HOOVER RETALIATED BY THIS DENIAL OF ANY TRANSCRIPTS OF THE EVIDENTIARY HEARINGS WITH COUNSEL EXPLAINING WHY SHE ABANDONED DEFENDANT'S APPEAL FOR FIVE YEARS.

ARGUMENT

1. THE COURT'S SEEMING PREJUDGMENT OF THE SUBSTANCE OF THE TWO MISSING TRANSCRIPTS AND UNFOUNDED ACCUSATIONS THAT DEFENDANT DID NOT PROPERLY ORDER THE TRANSCRIPTS, HAS CREATED AT LEAST THE APPEARANCE OF BIAS, REQUIRING THIS COURT TO DISQUALIFY JUDGE HOOVER FROM FURTHER PERSONAL INVOLVEMENT. OR ALTERNATIVELY, TRANSFER THE CASE TO ANY OTHER COURT OF APPEALS FOR DECISION.

THERE ARE, UNDER WISCONSIN LAW, TWO TEST FOR DISQUALIFICATION OR RECUSAL. (A) SUBJECTIVE TEST BASED ON THE JUDGE'S OWN DETERMINATION OF HIS OR HER IMPARTIALITY AND, (B) AN OBJECTIVE TEST BASED ON WHETHER IMPARTIALITY CAN REASONABLE BE QUESTIONED. STATE V. WALBERG, 109 Wis.-2d 96, 106, 325 N.W.2d 687 (1982). THE FIRST, OR OBJECTIVE TEST IS SATISFIED BY JUDICIAL INDICATION OF LACK OF BIAS. Id.

LEE PASSES OVER THIS JUDICIAL INDICATION OF LACK OF BIAS. Id. SEE WALBERG, 109 Wis.2d AT 106. SEE ALSO, SEC. § 757.19(2)(g), STATS. (RECUSAL REQUIRED WHEN "IT APPEARS (THE JUDGE) CANNOT ACT IN AN IMPARTIAL MANNER.").

IN THE PRESENT CASE THE APPEARANCE OF JUDICIAL BIAS IS CLEAR AND READILY APPARENT. THE COURT, WITHOUT THE SLIGHTEST SUPPORT IN THE RECORD, MADE THE FOLLOWING STATEMENT.

"...[T]HE APPELLATE HAS FILED A LETTER INFORMING THIS COURT THAT HE BELIEVES THE RECORD IS NOT COMPLETE BECAUSE IT IS MISSING TRANSCRIPTS OF "MOTION HEARINGS" HELD SEPTEMBER 6, AND SEPTEMBER 11, 2013. CCAP ENTRIES INDICATE THAT STATUS HEARINGS WERE HELD ON THOSE DATES. HOWEVER, THE TRANSCRIPTS HAVE NOT BEEN PREPARED BECAUSE THEY HAVE NOT BEEN PROPERLY ORDERED. THE APPELLANT FILED MULTIPLE STATEMENTS ON TRANSCRIPTS, NONE OF WHICH WERE SIGNED BY THE COURT REPORTERS. BECAUSE THE TRANSCRIPTS WERE NOT PROPERLY ORDERED AND HAVE NOT BEEN PREPARED, THEY ARE NOT A PART OF THE RECORD ON APPEAL. THE APPELLANT'S BRIEF CONTINUES TO BE DUE WITHIN FORTY DAYS OF THE MAY 12, 2014 TRANSMISSION OF THE RECORD...."

SEE (COURT OF APPEALS ORDER DATED JUNE 9, 2014). THE COURT WRONGLY ASSUMED THAT THE UNSIGNED STATEMENT ON TRANSCRIPTS WERE THE SAME ONES THAT HAD BEEN RETURNED FROM THE COURT REPORTERS FROM GREEN BAY, WISCONSIN. THAT ASSUMPTION WAS COMPLETELY WRONG. ALL OF THE COURT REPORTERS FROM GREEN BAY REFUSED TO SIGN AND RETURN COPIES OF THE STATEMENT ON TRANSCRIPTS BECAUSE EVERY TRANSCRIPT HAD BEEN PREPARED ALREADY AND WAS FILED WITH THE CLERK'S OFFICE. AND EVERY TRANSCRIPT WAS ADDED TO THE RECORD TO BE SENT TO THE COURT OF APPEALS. EXCEPT THE TWO MENTIONED ABOVE, AS JUDGE KELLEY ORDERED THE COURT REPORTER NOT TO SEND THOSE TRANSCRIPTS UP. THE COURT OF APPEALS JUDGE MICHAEL HOOVER KNEW THIS WHEN HE JOINED IN WITH THE JUDICIAL CONSPIRACY TO PROHIBIT REVIEW OF THOSE TRANSCRIPTS. SEE,

(CIRCUIT COURT ORDER DATED 02/07/14 BY JUDGE KELLEY). AT PAGE 2-3
JUDGE KELLEY STATES:

"...[T]HE COURT CANNOT GRANT LEE'S PETITION BECAUSE HE CANNOT DEMONSTRATE THAT HE HAS NO OTHER ADEQUATE REMEDY AVAILABLE AT LAW. SPECIFICALLY, LEE IS ABLE TO CHALLENGE HIS CONVICTON IN THIS CASE NUMBER 02-CF-886 BY FILING A POSTCONVICTION MOTION WITH THIS COURT AND, IF NECESSARY, AN APPEAL WITH THE COURT OF APPEALS. CONSEQUENTLY, THE PETITION WILL BE DENIED.

THE RELEVANT PORTIONS

"...[T]HE COURT WILL ALSO DENY LEE'S REQUEST FOR TRANSCRIPTS FROM THE SEPTEMBER 6, 2013 AND SEPTEMBER 11, 2013 HEARINGS. THOSE HEARINGS INVOLVED DETERMINING WHETHER: (1) APPELLATE COUNSEL WOULD FILE A MOTION TO EXTEND THE TIME LIMITS FOR FILING AN APPEAL AND NO MERIT REPORT; OR (2) WHETHER APPELLATE COUNSEL WOULD WITHDRAW AND MR. LEE WOULD PROCEED PRO SE BECAUSE THE STATE PUBLIC DEFENDER'S OFFICE WOULD NOT APPOINT SUCCESSOR COUNSEL. THEREFORE, THOSE HEARINGS HAVE NO BEARING ON ANY ISSUES LEE WOULD NEED TO ADDRESS IN REGARD TO ANY OR CHALLENGING THE VALIDITY OF HIS CRIMINAL CONVICTONS. THE COURT WILL NOT EXPEND COUNTY RESOURCES TO SUPPLY LEE WITH UNNECESSARY TRANSCRIPTS..."

Id. JUDGE HOOVER OF THE COURT OF APPEALS DENIED THE TRANSCRIPTS OF THE TWO HEARINGS FOR A DIFFERENT REASON BECAUSE HE KNEW THAT THE REASON JUDGE KELLEY GAVE WOULD NOT STAND, BECAUSE A DEFENDANT IN A CRIMINAL CASE IS ENTITLED TO ALL TRANSCRIPTS INVOLVED IN HIS CASE. SO HOOVER MADE THE UNTRUTH STATEMENT THAT THE TRANSCRIPTS HAD NOT BEEN PREPARED. THEY HAVE BEEN PREPARED, BUT JUDGE KELLEY WILL NOT ALLOW THE COURT REPORTER JANE SWAGEL TO RELEASE THEM FOR APPEAL. APPELLATE KNOWS WHY. THOSE TRANSCRIPTS DEMONSTRATES THAT KELLEY HAD DELIBERATELY LIED IN HIS ORDER CONCERNING THE NATURE OF THE HEARINGS ON THOSE TWO DAYS. SO WITH WINK AND NOD TO JUDGE HOOVER, HOOVER DECIDED TO GO WITH THE JUDICIAL CONSPIRACY TO DENY THOS TRANSCRIPTS BE PART OF THE RECORD ON APPEAL.

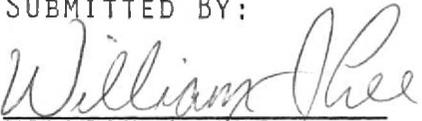
AND CONTRARY TO JUDGE KELLEY'S CLAIM OF WHAT THOSE HEARINGS WERE ABOUT, THEY WERE SPECIFICALLY ABOUT WHY COUNSEL HAD NOT APPEALED, OR RESPONDED TO THIS PETITIONER AND HIS APPEAL FOR FIVE YEARS, AND WHETHER SHE HAD ACTUALLY ABANDONED THIS APPELLATE. COUNSEL ANSWERED IN THE AFFIRMATIVE AND STARTED HER PUSH TO WITHDRAW FROM THE CASE SHE HAD ALREADY ABANDONED TO AVOID LOSING HER LAW LICENSE DUE TO A PROVEN FRAUD FOR LYING TO THE STATE PUBLIC DEFENDER'S OFFICE WHEN SHE CLAIMED MANY HOURS OF WORK DONE ON DEFENDANT'S CASE. JUDGE HOOVER, LIKE ALL OTHER COURT OF APPEALS JUDGES, INHERITS ALL CASES FOR REVIEW FROM THE CIRCUIT COURTS. HOWEVER, JUDGE HOOVER'S FIRST IMPRESSION OF THIS CASE WAS NOT DUE TO WHAT JUDGE KELLEY SUGGESTED TO HIM. JUDGE HOOVER KNEW THAT WHAT JUDGE KELLEY HAD WRITTEN IN HIS ORDER ABOUT A POSTCONVICTION BEING AVAILABLE FOR PETITIONER WAS NOT TRUE, AS HOOVER SAW ALL THE LETTERS FROM PETITIONER TO COUNSEL DATED YEARS BACK DEMANDING HIS CASE BE APPEALED. HOOVER KNEW THAT THE ONLY AVENUE PETITIONER HAD WAS TO FILE A WRIT OF HABEAS CORPUS WITH THE COURTS, AND HE ALSO KNEW THAT THE LAND MARK DECISION IN EVANS, (CITE OMITTED) PROHIBITED COURTS FROM GRANTING EXTENSIONS OF TIME TO FILE NO MERIT REPORTS IN ORDER TO AVOID HAVING TO GIVE AN ANSWER FOR COUNSEL'S OMISSIONS OR ABANDONING OF CASES FOR YEARS. THEREFORE, JUDGE HOOVER'S STATEMENTS IN DENYING TRANSCRIPTS WERE THE PRODUCT OF A WILLINGNESS TO FURTHER VIOLATE A DEFENDANT'S RIGHT TO DUE PROCESS AND AN EFFECTIVE APPEAL. IT WAS QUINTESSENTIALLY EXTRA-JUDICIAL. THIS EXPLAINS WHY HOOVER AND APPELLATE COUNSEL HAD AN EX PARTE RELATIONSHIP TO DO THE NO MERIT REPORT WITHOUT PROVIDING DEFENDANT WITH A COPY OF NOTICE OF THE FILING OF IT.

AS A PURELY OBJECTIVE MATTER, THE COURTS' COMMENTS CAN BE REASONABLY BE SEEN AS EVINCING BIAS IN ITS PUREST FORM, PREJUDGMENT OF THE ISSUE DEFENDANT WAS PRESENTING ABOUT HIS COUNSEL. UNITED STATES V. SCUTO, 531 F.2D 842, 845-846 (7TH CIR. 1976); PEACOCK RECORDS INC V. SHECKER RECORDS, 430 F.2D 85, 89 (7TH CIR. 1970); IN RE MARRIAGE OF MURRAY V. MURRAY, 128 Wis.2D 458, 463, 383 N.W.2D 904 (CT. APP. 1986). THE COURT STATED IN NO UNCERTAIN TERMS ITS BELIEF THAT MR. LEE'S ISSUES DOES NOT DESERVE ANY PROPER DUE PROCESS RIGHT OF HAVING TRANSCRIPTS RELEVANT TO HIS ISSUE. THE ACTION OF JUDGE HOOVER ALSO SAYS THAT WHAT EVER COUNSEL SAID AT THOSE HEARING IN COURT WOULD BE IRRELEVANT TO HIS APPEAL. THOSE SORT OF JUDICIAL DETERMINATIONS, WHICH NECESSARILY EFFECT THE MERITS OF THE CASE, ARE USUALLY MADE 'AFTER', RATHER THAN BEFORE EVIDENCE HAS BEEN HEARD BY THE COURT, OR THE COURT HAS READ THE TRANSCRIPTS HIMSELF AND NOT SIMPLY ASSUME THAT THE CIRCUIT COURT JUDGE WHOM A CASE IS BEING APPEALED FROM IS CORRECT IN HIS RULINGS. HOOVER'S ACTIONS TOOK AWAY PETITIONER'S RIGHT TO CHALLENGE ANY WRONG RULINGS ON THE PART OF JUDGE KELLEY. BECAUSE JUDGE HOOVER APPEARS TO HAVE PREJUDGED THE ISSUE PRESENTLY BEFORE IT, DISQUALIFICATION IS REQUIRED UNDER THE OBJECTIVE TEST. HAVING EX PARTE COMMUNICATIONS WITH THE ATTORNEY WHO IS BEING CHALLENGED BY A PETITIONER FOR ABANDONING OF A DIRECT APPEAL, AND THE JUDGE GRANTS COUNSEL MOTION TO FILE A FIVE YEAR LATE NO MERIT REPORT WITHOUT EVEN ATTEMPTING TO ADDRESS THE ISSUES OF PETITIONER'S WRIT BASED ON COUNSEL'S ABANDONING OF HIS DIRECT APPEAL, THIS PRESENTS A CASE OF A JUDGE HAVING PERSONAL TIES WITH THAT ATTORNEY IN SOME WAY.

ANY CLAIMS OF JUDICIAL BIAS BASED ON AN ATTORNEY IS NOT ESSENTIALLY DIFFERENT FROM ANY OTHER CLAIM OF JUDICIAL PREJUDICE. WALBERG, 109 Wis.2d at 106. Thus, the impartiality on the part of Judge Hoover can reasonably be questioned based on the Judge's relationship with the attorney, and disqualification is mandatory and mandated in this case. Id. at 107. Judicial bias against counsel or due to her being a friend of the judge may deprive the client of his right to effective assistance of counsel as well as his due process right to an impartial tribunal. WALBERG V. ISRAEL, 766 F.2d 1071, 1075-77 (7th Cir. 1985). The actions of Judge Hoover is extremely suspect and cannot be trusted to hear this case impartially. It is better that Judge Hoover be disqualified from any further involvement in this case, allowing someone else to sit with the other judges, or this court can simply have this case transferred to District II in Dane County. Petitioner prefer the latter, and pray the motion be granted to avoid more suspicion.

DATED THIS 25th DATE OF March 2015.

SUBMITTED BY:


WILLIAM J. YEE
PRO SE LITIGANT.

CC: FILE
WJL:STM