UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

2:08-cv-01109-FSH (Tare v. Bank of America, et al).

APPELLANT'S OPENING BRIEF
And/or
PETITION FOR A WRIT OF MANDAMUS

NOTE ON TRANSCRIPTS OF OPINION AND HEARING:
As part of the printed Appendix supplied with the brief, Appellant has provided those segments of the record that he has relied upon. It should be noted that the entire transcript of the opinion as well as relevant hearing is on the bankruptcy docket, if the Court wants to review it in its entirety (See Docket Entries 670, 671 of 02-38258-RG).

A Table of Content of the Appendix is also provided after the Table of Contents and Table of Authorities.

27 pages plus Certificate of Service.

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1. This appeal has far reaching impact on the public confidence in the judiciary and the bankruptcy system because Judge Gambardella has inconsistently applied the recusal statute, selectively disclosed her stock holdings in creditors of multiple bankruptcy estates, and misled litigants into believing that she may have divested her interests in those stocks whose holdings she had disclosed while continuing to conceal other holdings – All of this has been done in order to retain control over significant rulings, to obstruct subsequent appeals with the intent to cover up criminal misconduct of attorneys who have conspired to embezzle Millions of Dollars from the WebSci and other estates. In return, these attorneys and their partners support her in reappointments, recommend her for promotions/awards (e.g. The Judge Cecilia Award appears to be given to her as a reward for fixing cases through the influence of these very attorneys and/or their partners). See *U.S. v. Aguilar* 515 U.S. 593 (1995) indicting and convicting a Judge for obstructing justice.
2. This appeal is of particular significance this year as Hundreds of Thousands of Bank of America's customers will lose their homes/businesses as their attempts to seek bankruptcy protection and/or to litigate their claims resulting for violations of banking laws will be obstructed through corrupt practices such as the ones described in this brief.

RELATED PROCEEDINGS

3. Claims of Appellant and WebSci filed in the District Court of New Jersey, Docket 02-cv-03598-WJM in which Appellant and WebSci were plaintiffs were never litigated on the merits. Similarly, cases in State Court in which Appellant and WebSci were parties were closed without adjudicating on the merits. Some of these claims were examined by

Congressional authorities. See Appendix 5, p.5 - Letter from the Honorable Alan Greenspan and the then Comptroller of the Currency. The closure of cases, without ever litigating them on the merits, was a result of the Rule 9019 and Plan confirmation Orders entered by Judge Gambardella by concealing her stock holdings in creditors impacted by the Orders, by misleading Appellant into believing that she had divested her interests, and furthermore by not applying the recusal standard consistently.

4. Case 07-cv-583-JLL was filed by Appellant. It has not been litigated on the merits yet. It raises, among other claims, the conduct of certain parties, including Bank of America, in conspiring with Magistrate Judge Hedges in preventing submission from Appellant from reaching the District Court Judge (Judge Walls) before whom certain Bankruptcy Appeals were pending. Appellees then argued before the District Court Judge, as well as the Third Circuit, that evidence/arguments not presented to the lower Court cannot be raised/presented for the first time on Appeal. The complaint was dismissed without prejudice (See Order, even though the docket, unless corrected now, states otherwise).

VERY LIMITED RELIEF SOUGHT

5. The only relief that Appellant seeks here is that an independent Judge, with no equity interest in any creditor of the WebSci estate, be appointed to do a *De Novo* review of all the facts in the WebSci bankruptcy and that Judge only consider reversal of all payments, releases, exculpations and settlements granted to Bank of America, the trustee, and their counsels and/or law firms. Furthermore, that this Court ask the appropriate authority to inform all parties and their counsel, in all bankruptcies, in which Judge Gambardella concealed her financial interests in creditors and further inform them of the standard she used for voluntary recusal in the WebSci case, so that they can seek appropriate relief.

STATEMENT OF THE CASE

6. This is a Chapter 11 bankruptcy case of WebSci Technologies, Inc. It was converted into a liquidation one by the trustee Gary N. Marks in March 2003 without first seeking Court permission first (See DE 152. Discussed in detail *infra*).

7. In or around April 2003, a hearing was scheduled to sell the debtor's contract to provide services to AT&T, a creditor of the estate. Judge Gambardella recused herself from the hearing asserting that she had 30 shares in AT&T. **It is significant to note that AT&T was not a party to the sale proceeding or motion even though Judge Gambardella recused herself from the hearing**. At the time of Her Honor's recusal, Judge Gambardella did not disclose that she also held stocks in Verizon, a creditor of WebSci.

8. In or around July 2003, a Rule 9019 settlement was sought by the trustee which impacted distribution to all creditors, including AT&T and Verizon. Judge Gambardella, even then, did not disclose her share holdings in Verizon. Judge Gambardella also did not disclose that she had not divested and/or divested for subsequent purchase, her interests in AT&T.

9. Later, it became evident that Judge Gambardella was not providing full disclosures of the history of her stock holdings in AT&T despite repeated demands. On the contrary Bank of America reversed its position in a certain proceeding, demanding criminal proceedings against Appellant, when Appellant sought full disclosures on the Judge's stock holdings (See Appendix A-1, Appellant brief at page 23-25, ¶¶97-99). This prompted Appellant to demand this information from appropriate authorities. This information showed that Judge Gambardella had stock interest in several creditors of the estate as well as in other public companies whose stocks were held by the estate. It also showed that Judge Gambardella had neither divested herself of AT&T stock at any time, nor divested and subsequently

repurchased them, during the WebSci bankruptcy. More importantly, it was also discovered that Judge Gambardella had been adjudicating multiple bankruptcies and issuing Orders impacting creditors whose stocks she was holding at times material to the issuance of such orders while not applying the recusal standard she had set when voluntarily recusing from the sale of a services contract that the estate had with AT&T even though AT&T itself was not a party to the sale motion.

10. Appellant then filed a motion seeking Miscellaneous relief for the Judge's repeated violations of 28 USC 455. It was denied. Appellant filed a motion to reconsider. It was also denied. Appellant timely appealed.

STATEMENT OF JURISDICTION, PARTIES, STANDING, AND ARGUMENTS AGAINST MOOTNESS

11. The basis for the appeal is a motion filed by Appellant seeking "Miscellaneous Relief including Relief Based upon Judge Gambardella's violation of 28 USC § 455." (See Cover Page of Motion, Appendix 1). It should be noted that the motion and the appeal does not merely seek recusal but vacatuur of certain Orders pursuant to repeated violations of 28 USC 455. Appellant had asked the Bankruptcy Court, as a catch all statement, considering his Pro Se status:

"Any other relief that is appropriate and specifically considering that I do not have an attorney to represent me." (Appendix 1, p.28, ¶112).

12. It is assumed that the vacatuur was based upon all the applicable rules, including Rule 60, and statutes, including 28 USC 455, even though Appellant may not have named all the applicable laws. It is well accepted that "Pro Se Appellant's pleadings should be construed liberally and the Court should apply the applicable law, irrespective of whether the pro se litigant has mentioned it by name." See *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir.2002).

13. Only if required, Appellant also asks that this brief be also interpreted as a petition for a *Writ of Mandamus* to grant the relief sought as the relief has been denied by the lower Court.

14. Additionally, the plan is confirmed. Therefore, the Order is a final appealable Order. This Court can also exercise jurisdiction over other connected Orders even when the Orders are "not specified in a notice of appeal where there is a connection between the specified and unspecified order." *In re Mushroom Transp.* 382 F.3d 325, 334 (3d. Cir. 2004).

15. Appellant has timely filed this Bankruptcy appeal.

16. Parties: This is an appeal from a Bankruptcy Court in the Chapter 11 bankruptcy (02-38258-RG) of WebSci Technologies, Inc. ("**WebSci**"). *Appellant Ramkrishna S. Tare* **("Tare")**, is the founder-CEO and sole equity holder of WebSci. Bank of America ("BoA") asserts itself as a creditor. Gary N. Marks ("**Marks**") of the law firm of Norris McLaughlin Marcus, PA is the trustee assigned to the bankruptcy. Richard B. Honig ("**Honig**") is the counsel assigned to him from the law firm of Hellring Lindeman Goldstein and Siegal, LLP.

Appeal is not Moot.

17. Appellant is seeking very limited relief upon success in the Appeal (See *supra* - section on LIMITED RELIEF SOUGHT).

18. The striking of all transfers/releases/exculpations/etc., can be granted without unraveling other portions of the Plan/Settlement. *In re: PWS Holding Corp.*, 228 F. 3d 224, 235 (3d. Cir. 2000). For the same reason, there was also no need to ask for a stay from the Plan: *In re: Zenith Electronics Corp.* 329 F.3d 338, 347 (3d. Cir. 2003).

19. Surely this Court can grant some form of relief if Appellant prevails. "[W]hen a court can fashion '*some* form of meaningful relief,' even if it only partially redresses the grievances of the prevailing party, the appeal is not moot." *Isidor Paiewonsky Assoc. v. Sharp Props., Inc.*,

998 F.2d 145, 151 (3d Cir. 1993), quoting *Church of Scientology of Cal.*, 506 U.S. at 12 (1992). "The equitable mootness doctrine has been carefully developed to apply only in that rare situation in which a successful appeal would undo a complicated plan of reorganization." *Zenith at 347*. The instant appeal certainly does not represent that "rare situation."

20. Additionally, Appellant and WebSci, as discussed in "RELATED PROCEEDINGS," are parties who "have never had their day in court, have been forced to forfeit their claims against non-debtors, with no consideration in return. Even if successful, Plaintiff's appeal should not threaten the entire reorganization." See *In re: Continental*, 203 F.3d 203, 211 (3d. Cir. 2000). As is obvious from the description of cases under the section on Related Proceedings, Appellant has never had his day in Court.

Appellant has standing in appeals from this bankruptcy. It is the law of the case now.

21. This is a bankruptcy case of WebSci Technologies, Inc. docketed at 02-38258-RG. Appellant is the sole shareholder of WebSci Technologies. It is well settled that the Bankruptcy Code protects the equity holders of debtors. *In re: West Delta Oil Company*, 432 F.3d 347, 356 (5th Cir. 2005).

22. Appellant has been directly injured by all Orders of the Bankruptcy Court. Appellant has been continually given standing in all appeals from this bankruptcy making it the law of the case to grant him standing in this appeal because it questions all Orders issued by this Court. Appellant is not just an aggrieved party but the party most aggrieved. Marks, the trustee, through his counsel, Richard B. Honig, has acknowledged:

> And I understand that Mr. Tare, while he has, as the principal of this company[WebSci], has invested his life blood in this company

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW.

23. *Issue 1: Does the intentional non-disclosure by a Bankruptcy Judge of her stock holdings in multiple creditors of the estate, while issuing Orders concerning, among other issues, distribution of the estate monies to these very creditors as well as the disposition of legal claims of the estate impacting them, not require that all such orders be vacated as they were issued in the clear absence of any authority to issue them in the first place and particularly so after the Judge had recused herself earlier based upon a similar "financial interest"?*

24. *Issue 2: Does the evidence of the conduct of attorneys in her Court, which conduct goes unpunished in her court, suggest that Judge Gambardella is biased and/or prejudiced which is in violation of 28 USC 455 and therefore requires vacatuur of all relevant Orders?*

25. *Issue 3: Does the non-docketing of numerous documents which were considered by the Court, not an act of obstruction of the appellate process particularly when such documents include those which were submitted by attorneys who are required to only file electronically?*

STATEMENT OF FACTS

Judge Gambardella and/or Appellees have obstructed this Appellate Process by undocketing of important documents, by diluting the Order with unrelated issues, and by not addressing core issues raised in the motion.

26. The Order appealed from and entered recently, which is part of the appeal, was diluted with irrelevant issues after Appellant presented a Consent Order to illustrate that there will be anarchy in the bankruptcy system if parties were to file Consent Orders without seeking consent from parties who are signatories to the Consent Order. The **forged** Consent Order, after Judge Gambardella modified it, is at Appendix 5, pages 13-15. Discussed *infra* in detail.

27. The following are among some of the documents which are not on the docket even though they were presented to the Judge by Appellant and/or by Appellees:

- A letter from trustee Gary N. Marks showing that he had withheld child-support monies for over six months and instead of reimbursing them to the mother, had deposited them in accounts totally unrelated to the estate and was subsequently Ordered by the Family Court to show cause as to why he should not be held in contempt of the Family Court.
- Numerous documents evidencing that Richard B. Honig had filed falsified Rule 2014 affidavits in multiple bankruptcies.
- A report sought and received by Gary N. Marks in flagrant violation of a Court Order. That report proves unambiguously that Gary N. Marks materially violated a Court Order.
- Judge Gambardella's financial disclosure forms which I had received from appropriate authorities and which were submitted to her as an Appendix to my motion.

Appellant expected these documents to be on the docket and therefore did not bring them with him to India, where he is currently at. Appellees and Judge Gambardella are aware that Appellant is in India and have therefore tampered with the docket.

It is undisputed that Judge Gambardella recused herself from a hearing involving sale of a contract to provide services to AT&T even though AT&T was not a party to the sale proceeding. She recused on grounds that she held stock in AT&T.

28. It is undisputed that Judge Gambardella recused herself voluntarily from a hearing involving the sale of the estate's contract with AT&T and did so because she claimed to hold 30 shares of common stocks of AT&T (Appendix 1, Appellant's Brief – Bankruptcy Court at p. 2,3, ¶¶3-5). Also Judge Gambardella's acknowledgement in Transcript at Appendix 4, p.10-11:

> The conference consisted solely of this court [Gambardella] advising counsel for the parties that this judge [Gambardella] had a small stock interest in AT&T, to wit, 30 shares of common stock of AT&T Corporation, and for that reason this court would recuse itself from the proceedings at hand which involved AT&T. Immediately thereafter, this court announced in open court the holdings of this judge of AT&T stock and the intention to recuse from the motion. The motion was thereafter heard and decided by the Hon. Novalyn L. Winfield...

29. It is also undisputed that Judge Gambardella did not divest herself of her stock in AT&T at all times material to the WebSci proceedings and certainly not when she subsequently entered Orders which impacted distribution to AT&T and which proceedings involved AT&T as a creditor-party (Appendix 1, Appellant's Brief – Bankruptcy Court at p.3, ¶6, Appendix 2 - Supplemental Brief at ¶1).

30. The financial disclosure statements from appropriate authorities, albeit not docketed by Judge Gambardella, confirm this statement and indeed Judge Gambardella has not claimed any divestment of her interests in any of the stocks under discussion here.

It is undisputed that Judge Gambardella NEVER disclosed her stock holdings in Verizon which she acknowledges is a creditor in the WebSci bankruptcy and had even filed a Proof of Claim. Appellant sought relief as soon as the non-disclosure was discovered by him.

31. See Appellant's opening Briefs at Appendix 1, p.3-5, ¶¶11-16, Appendix 2, ¶2.

32. Judge Gambardella's continued holdings in AT&T stock and holdings in Verizon stock were discovered by Tare by getting Judge Gambardella's financial disclosures from appropriate authorities after suspecting Judge Gambardella's integrity. (Appendix 1, Appellant's Brief - Bankruptcy Court at page 3, ¶5, Appendix 2, Supplemental brief at p.1, ¶5). Judge Gambarella never disclosed these holding (Transcript at Appendix 4, p.27):

> Here, my stock interests consist of a relatively small number of outstanding shares of publicly traded corporations. Mr. Tare has asserted that my stockholdings in Verizon, AT&T, Lucent Technology, Vodaphone and PSE&G constitute financial interests that mandate recusal under Section 455(b)(4). With regard to the connection between these corporations and the matter at hand, a review of the court's claims register indicate that Verizon filed an unsecured nonpriority proof of claim in the amount of $250.36 in the Web-Sci bankruptcy case. That proof of claim has been designated clai number 15 on the court's electronic claims register…. Here, the Verizon status in the Web-Sci case is that of a general unsecured creditor.

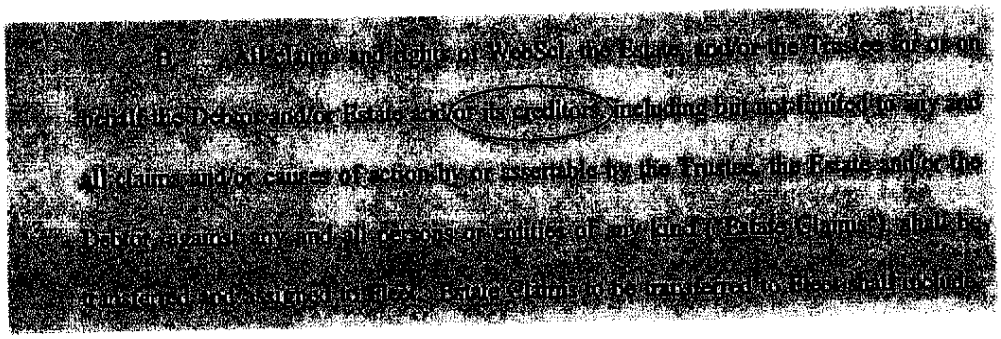
33. Appellant brought the non-disclosure of the stock holdings to the Bankruptcy Court's attention within a week after he became aware of it (Appellant's Brief, Appendix 2, p.1, ¶5).

Contrary to Judge Gambardella's statement, the evidence on the record shows that Orders issued by her, including the Rule 9019 settlement, directly impacted the rights and claims of creditors, who were parties to the proceedings, and in whom she had an equity interest.

34. It is undisputed that a Rule 9019 settlement was proposed by the Trustee and rubber-stamped by Judge Gambardella. However, Judge Gambardella HAS MADE AN INTENTIONALLY MISLEADING STATEMENT IN HER OPINION, when quoting sections of the Rule 9019 settlement. Judge Gambardella states (Appendix 4, Transcript at p.12):

> On July 28, 2003, Mr. Marks filed an application... The 9019 settlement proposed to resolve and dismiss all pending state court actions, as well as any and all actions or claims that could be asserted by the debtor against Fleet, its successors, officers or directors, but specifically excluded such claims asserted by the debtor on or before February 20, 2003.

35. However, the Stipulation of Settlement section proves that the settlement had the following provision, among others (Paragraph 1-B of the Stipulation of Settlement, emphasis added):



36. The Rule 9019 settlement therefore impacted "all claims and rights" of WebSci's creditors, including those of AT&T and Verizon, in whom the Judge had an equity interest.

Judge Gambardella confirmed a Plan of Liquidation (after the liquidation was completed). The Plan also impacted the rights and claims of both AT&T and Verizon. Still Her Honor did not disclose her share holdings in Verizon or the status of her share holdings in AT&T leading parties to believe that she must have sold her interests in AT&T stocks.

37. It is undisputed that a bankruptcy Plan impacts all creditors of the estate and that these creditors are effectively parties to the proceeding. Even though Verizon and AT&T were parties to the plan confirmation proceedings, she did not disclose her shareholdings in them.

THE CONDUCT OF JUDGE GAMBARDELLA AND ATTORNEYS IN THE WEBSCI BANKRUPTCY EVIDENCES CONTINUED BIAS, PREJUDICE, LACK OF INDEPENDENCE AND TOTAL DISREGARD OF ALL LAWS.

The Operations of a Chapter 11 estate were terminated without providing any notice or seeking Court Order. Appellate review was avoided by not issuing an Order on the issue even while Judge Gambardella concealed her stock holdings at that time.

38. The estate's operations were terminated by the trustee Gary Marks when Appellant started finding out that the Rule 2014 affidavits filed by the trustee's law firm as well as the law firm of his counsel were materially false. The trustee walked one day into the estate's premises, ordered employees to leave the Office and terminated the estate's operations without first getting a Court Order to convert the case or seeking permission from the Court. Judge Gambardella's response was to hold a hearing subsequently, after the estate's termination was completed. She did so, as is part of her pattern of adjudication - In isolation so that no other person would know of such outrageous misconduct. During the hearing she promised that an Order and an Opinion will be issued, but never issued an Order (See Docket Entry 152) knowing that Appellant would wait indefinitely for an Order to file an Appeal. Her Honor also concealed her stock holdings when effectively ruling that the trustee could convert a Chapter 11 case to a Chapter 7 without notice to anyone including the Court.

Forged Consent Orders were filed by Louis T. DeLucia, counsel for Bank of America. Judge Gambardella's response to this act is a flagrant display of bias and prejudice.

39. It is undisputed that Louis T. DeLucia, counsel for Bank of America, filed a consent Or with my signature forged (Appendix 5, Pages 13-15 - Forged Consent Order. The subsequently altered Consent Order is on the bankruptcy docket at DE#221). Judge Gambardella acknowledged that the Consent Order was forged – No consent was so from Appellant even though his signature was put on the consent Order (see quotat transcript in Appellant's brief to the Bankruptcy Court at Appendix 1, page 26):

> Court: …but I think the issue that had been raised by Mr. Tare, in the letter that I received, was that the orders were submitted as consents Orders, and Mr. Tare indicated he had not consented to the form of those orders, so I… did want to raise that with counsel. They were --- as I recall those orders were electronically filed, and they had consent signatures. I assume there's a certification of consents that were obtained and that's a requirement that certifications of the… signature be obtained.

40. It is undisputed that no certifications of the signature were obtained.

41. Judge Gambardella even went ahead to acknowledge that Appellant could not have agreed to the provisions in the Consent Order. Yet, Louis T. DeLucia was not even referred for disciplinary action or criminal prosecution proving that Judge Gambardella is biased and prejudiced in violation of 28 USC 455.

42. It is even more shocking that when I filed a consent Order to illustrate its effect, she rubber-stamped a proposed order filed by Appellees as obstruction of justice and did so without even providing me any notice and did so knowing that I was not present at the hearing (See Order on appeal).

43. This is a perfect example of bias and prejudice requiring vacatuur.

Trustee was caught depositing Estate monies in personal accounts totally unrelated to the estate and the filing of fraudulent financial reports under penalty of perjury to embezzle the sale proceeds. Judge Gambardella refuses to order an audit of the finances of the estate despite acknowledging such acts.

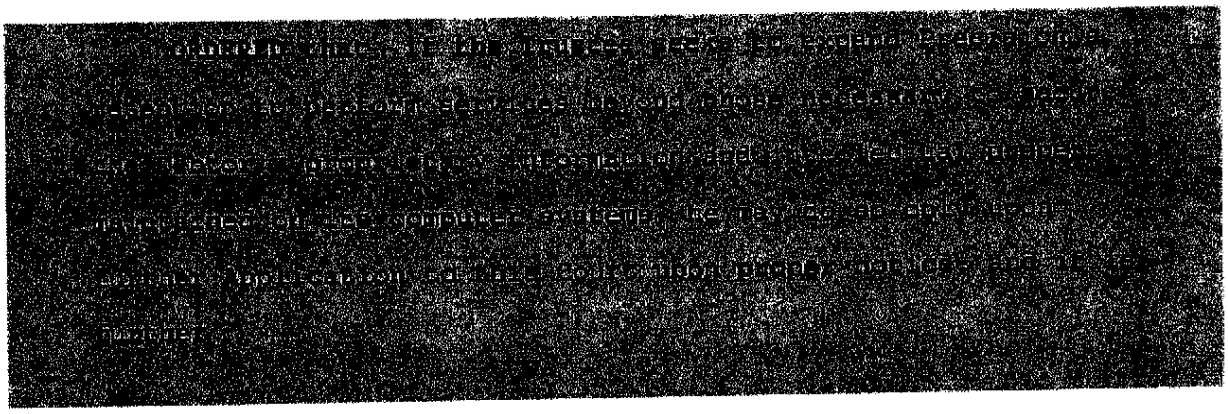
44. It is undisputed that the trustee sold estate assets and deposited monies in accounts which had absolutely nothing to do with the estate accounts and further more did not report these receipts, even as a receivable, in monthly reports filed for him. When Appellant caught the fraud Garmbardella's response was to hold hearings in isolation and to put restraints on communication on Appellant in a flagrant display of bias and prejudice. The law is clear that

"bankruptcy-related funds may not be deposited to the trustee's business, personal or trust account." (See Appendix A-1, Appellant Brief, pages 8-11). The sale was consummated in April 2003 and yet he did not report the sale proceeds, even as receivables, until the fraud was caught. He had deposited them in his personal and/or accounts totally unrelated to the estate. Gambardella, as part of her "biased and prejudiced" adjudication style has avoided addressing such issues head-on leading any reasonable person to believe that there may be more than mere bias and prejudice in the conspiracies here.

Trustee Gary Marks flagrantly violated a Court Order. The Judge has obstructed appellate review by not docketing an important document, which was certainly presented to her, and which proves a flagrant violation of the Order.

45. Gary N. Marks violated a Court Order (See Order at Appendix 5, pages 9-12).

46. That Court Order unambiguously states (portions electronically inserted from Id, page5):



47. Gary N. Marks violated this Court Order by expanding Precision's retention and performing services beyond those necessary to secure the Debtor's proprietary information and intellectual property maintained on its computer systems.

48. However, the document that unambiguously proves the violation – The Report that Marks sought and received - in clear violation of the Court's Order was removed from the Docket. Judge Gambardella referenced the report in her opinion on Plan confirmation:

Judge Gambardella put arbitrary restraints, without providing due notice, on an attorney, from representing Appellant. This attorney was willing to represent Appellant on a contingent basis, had moved to disqualify the trustee and was ready to oppose the Judge.

49. Judge Gambardella put unconstitutional restraints on an attorney, Mr. Raymond Wong, who had filed a motion to disqualify the trustee. The arbitrarily imposed restraints prohibited him from representing Appellant or WebSci. No reasons were given by Judge Gambardella. No notice was provided. (See Order at Bankruptcy Docket Entry #578, Paragraph 3). The restraints on representing Appellant and WebSci were put at the last minute in the absence of Mr. Wong. He had sent his assistant to approve a proposed Order, which was sent to all parties, and which did not have provisions such as the restraints. Judge Gambardella did not address this issue in her Opinion, despite the fact that it was raised before Her Honor (Appendix 1, Appellant Brief at p. 16). This denial of an important constitutionally protected right is further evidence of bias and prejudice – A violation of 28 USC 455.

Judge Gambardella knowingly, through her silence, allowed Trustees and their counsel to file Falsified Rule 2014 affidavits to enable them to unjustly enrich themselves in the Millions of Dollars and in return got their support for Her Honor's reappointment, promotions and even awards.

50. Gary N. Marks, the trustee, concealed that his law firm was representing Fleet Bank in litigations (e.g. in the District Court of New Jersey 00-cv-971-DRD) when he entered into a Rule 9019 settlement with Fleet Bank. In fact, the entire Rule 2014 affidavit filed by his partner Joel Jacobson (Appendix 5, page1) was materially false. Judge Gambardella not only covered-up the falsity of his affidavit but in a hearing held to discuss it, but stooped so low as to prod Marks into making statements which would help her render an opinion to cover-up the crime of filing a materially false affidavit.

51. Richard Honig, counsel to Marks, also filed a falsified Rule 2014 affidavit (Appendix 1, Appellant-Brief at p. 21-23, Affidavit at Appendix 5, pages16,17). He states in his affidavit

that: "To the best of his knowledge he has no connections with Fleet Bank or its attorneys." However, at that very time, he was representing Steven Kartzman who was given numerous litigation cases by Fleet Bank. Therefore, Honig's affidavit is materially false. Honig was representing Kartzman in 00-36021-RG, 00-31251-RG, and other such cases before Gambardella and Gambardella knew that Kartzman was representing Fleet Bank due to which he was asked to resign in Appellant's personal bankruptcy. However, Honig is still not in jail because Gambardella denied Appellant of an attorney who was willing to confront such crimes and undocketed important evidentiary documents, and by other such acts in violation of 28 USC 455.

52. Honig and Marks have filed falsified Affidavits of disinterestedness in other bankruptcies where they have concealed that Honig was representing Marks in the WebSci bankruptcies and that their law firms have other relationships. In WebSci alone, Honig and Marks have earned at least One Million Dollars. Judge Gambardella, in return, has, upon information and belief, was promised by Mr. Goldstein, Mr. Honig's partner, an award (she received the Judge Cecilia award recently), promotion and most certainly reappointment for fixing such crimes and for allowing unjust enrichment of attorneys who would further her career.

Trustee Steven Kartzman redacted sections of the tape recording of Appellant's 341(a) meeting to Appellant's detriment. He was also using a non-operating law firm to be a trustee in bankruptcies in which Fleet Bank was a creditor and another law firm to get business from Fleet Bank. Judge Gambardella ensured that the evidence was not docketed.

53. Kartzman was a trustee who was appointed to Appellant's personal bankruptcy.

54. It is undisputed, even admitted by Steven Kartzman, that he redacted sections of 341(a) tape recordings. When Appellant checked the recordings and confronted Kartzman, his hilarious response was that the redaction was a result of his intermittent stopping of the tape recorder

to take notes (See his letter at Appendix 5, pages 7,8). He redacted sections which were detrimental to Appellant but favorable to Fleet Bank(now Bank of America).

55. It was later discovered that Kartzman was using two different law firms – One was a non-operating law firm to represent himself as a trustee (Wacks Mullen Kartzman, LLC) and another to get litigation business from Fleet Bank (Mellinger Sanders Kartzman). Evidence included letters from Mr. Wacks and Mr. Mullen stating that the law firm of Wacks Mullen Kartzman had stopped operating long before even though Mr. Kartzman continued to use it to conceal his partnership in Mellinger Sanders Kartzman. See letter from Kartzman at Appendix 5, page 18, dated October 14, 2002 using the law firm of "Wacks Mullen Karzman." See Appendix 5, pages 19,20, letter from Mr. Wacks, stating that this law firm had stopped operating in June 2002. See Appendix 5, page 21 showing a list of dockets, among hundreds of cases, in which Kartzman's real law firm, Mellinger Sanders Kartzman represented Fleet Bank while Kartzman was using the non-operating law firm of Wacks Mullen Kartzman to be a trustee in bankruptcies in which Fleet Bank was a creditor.

56. When Appellant sent all this information to Judge Gambardella, Judge Gambardella promptly ignored it and ensured that the evidence was never docketed to obstruct appeals.

Numerous other actions provide evidence of Judge Gambardella's violations of § 455(a).

57. Other acts of Judge Gambardella which provide evidence of bias and prejudice include:

- Selectively, when holding hearings involving Appellant, calling security guards to instill fear in Appellant (See Appendix 1, page 19)
- Imposing bizarre restraints on communications on Appellant, even forbidding him from communicating with legal associations and attorneys, including those who were neither parties nor counsel in the WebSci or Tare bankruptcies (See Appendix 1, page 17).

STANDARDS OF REVIEW

58. A court's denial of the motion for recusal is reviewed for abuse of discretion *United States v. Antar*, 53 F.3d 568, 573 (3d Cir.1995). In general, a court abuses its discretion when it "bases its opinion on a clearly erroneous finding of fact, an erroneous legal conclusion, or an improper application of law to fact." *LaSalle Nat'l Bank v.FirstConn. Holding Group,L.L.C. XXIII*, 287 F.3d 279, 288 (3d Cir. 2002).

LEGAL ARGUMENTS

Recusal is mandatory when a Judge has a financial interest, through ownership of legal or equitable interest, "however small" in a party to the proceeding. A creditor, whose rights and claims are directly impacted in a proceeding, is a party in that proceeding.

59. The recusal statute 28 USC 455, in pertinent part, requires a Judge's recusal when:

> **(b)** He shall also disqualify himself in the following circumstances:
> **(4)** He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or…;
> **(d)** For the purposes of this section the following words or phrases shall have the meaning indicated:
> **(4) "financial interest" means ownership of a legal or equitable interest, however small, or…**

60. The Numerous Orders issued by Judge Gambardella impacted the rights and claims of creditors (parties in interest – Bankruptcy Rules 9019, 2002) in whom she held an equity interest but knowingly and intentionally concealed the interest.

61. The following, with emphasis added, is a quote from *Chase Manhattan Bank v. Affiliated FM Ins. Co.* 343 F.3d 120 (2nd Cir. 2003):

> Congress has, as noted, provided that a known financial interest in a party, no matter how small, is a disqualifying conflict of interest and one that cannot even be waived by the parties. This is a bright-line test that is, as to actual partiality, more than a little overbroad. One share of stock in a large corporation cannot induce a corrupt decision. However, a bright-line test as to equity interests in parties, particularly stock, avoids many difficult line-drawing decisions and is in that sense actually helpful to judges. As Congress has observed, in the absence of bright-line rules, judges are forced to decide the extent of their financial

interest at their "peril," leaving them open "to a criticism by others who necessarily had the benefit of hind sight ... [and] weaken[ing] public confidence in the judicial system." H.R.Rep. No. 93-1453 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6351, 6352. A bright-line rule also avoids mistaken but sensationalist accusations of corruption that are wrong — even dead wrong — but may further shake public confidence in the judiciary. *Id.* We are fully confident of our observation that the judge had no real financial stake in the outcome.

62. Despite the confidence that the Appellate Court had that the Judge had no real financial stake in the outcome of the proceeding, the Appellate Court demanded recusal and vacatuur of Orders because Congress intended the statute to require recusal when there is a financial interest, no matter how small, by virtue of stock holdings in parties to the proceeding.

Litigants are not expected to check the Judge's disclosure Forms. It is the Judge's duty to do a self-examination of financial interests which interests cannot be waived.

63. As cited in *Chase Manhattan Bank v. Affiliated FM Ins. Co.* 343 F.3d 120 (2nd Cir. 2003):

Indeed, a Section 455(b)(4) conflict is non-waivable by the parties' express consent, much less by their silence. There are important reasons for this. One is the damage to public confidence in the federal judiciary's impartiality that would result from constant recusal motions or recurrent controversies over judges' financial interests in parties to litigation. Another reason is that lawyers for the most part expect judges to disqualify themselves under Section 455(b)(4) without a formal motion. In fact, lawyers do not routinely research judges' financial disclosure forms — the only information available on a particular judge's financial holdings — but even if they did, those forms are generally a minimum of four months out-of-date, i.e., the forms are filed by May 1 and report holdings and transactions for the previous calendar year. Judges therefore bear the principal burden of compliance with that section.

Judge Gambardella's non-disclosure and intentional misleading statements also deprived Appellant of an important and related issue in earlier appeals impacting their outcome. The Supreme Court requires vacatuur of prior such Orders.

64. Judge Gambardella has admitted that she had a financial interest in multiple creditors of the estate, all of which she never disclosed, despite the issue coming before her. The U. S. Supreme Court's ruling in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988) is directly on point here:

"Court of Appeals correctly noted, Judge Collins' failure to disqualify himself on March 24, 1982, also constituted a violation of 455(b)(4), which disqualifies a judge if he 'knows that he, individually or as a fiduciary, . . . has a financial interest in the subject matter in

controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.' **This separate violation of 455 further compels the conclusion that vacatur was an appropriate remedy; by his silence, Judge Collins deprived respondent of a basis for making a timely motion for a new trial and also deprived it of an issue on direct appeal.** This separate violation of 455 further compels the conclusion that vacatur was an appropriate remedy; by his silence, Judge Collins deprived respondent of a basis for making a timely motion for a new trial and also deprived it of an issue on direct appeal." *Id at 866*

65. If Judge Gambardella had timely disclosed all her financial interests and her non-divestment of interests already disclosed, Appellant would have raised the issue in all prior appeals. This is one more reason why the outcome of prior appeals is not relevant to the instant appeal.

66. Judge Gambardella's Conduct is worse than Judge Collins. Judge Gambardella had raised the issue of stock ownership and yet failed to make a complete and continued disclosure.

67. Like Judge Collins, Judge Gambardella refuses to acknowledge that she had known of her financial interests in Verizon and AT&T and that she had not divested these interests.

68. Even if a Deferential treatment is given to Judge Gambardella's application of the recusal law, the conclusion should be that she should have recused because she recused herself once based upon shareholdings in AT&T even in a proceeding in which AT&T was not a party. If she did not divest her interest, which she did not, all she could have done was to recuse herself from all other proceedings involving AT&T and most certainly those involving Verizon. See *Moody v. Simons*, 858 F.2d 137 (3d. Cir. 1988).

69. As the Moody Court noted "That principle applies here. Although we express no opinion as to whether the law requires that the judge recuse himself, the judge here clearly found that the appearance of impartiality could be compromised by reason of his daughter's employment at Mellon Bank and by his lawsuit in state court defended by counsel before him in the bankruptcy case. We will defer to that finding." *Id.* Similarly, applying Judge Gambardella's own standard for recusal applied by her to voluntarily recuse earlier, it is important that the

Rule 9019 settlement and the plan confirmation, among other orders involving the granting of releases impacting the claims and rights of A&T and Verizon, be vacated in their entirety.

Prior Appeals are of no relevance for other reasons too: The Orders were issued in the absence of any authority - The factual conclusions were given a Deferential Treatment by the Appellate Court. The Judge also deprived Appellant of an Attorney of his choice who was willing to oppose the Judge and the trustees by moving to disqualify the trustee.

70. Judge Gambardella has acknowledged Appellant's argument (Appendix 4, Transcript at p.20):

> On May 23, 2007 Mr. Tare filed a letter in response to Mr. Honig's May 18, 2007 letter, in which Mr. Tare argues that his recusal motion was not rendered moot, that he is entitled to vacate all orders issued by this court as it did not have authority to issue those orders...

71. This argument is significant because it is well accepted that a Bankruptcy Court's factual conclusions are not given de novo review. Therefore the factual conclusions in earlier appeals which reviewed Orders by Judge Gambardella, which Orders were issued in the absence of any authority to issue them, were subjected to a biased (deferential) treatment by Appellate Courts (See pages 5,6 for standard of review in the Third Circuit's opinion, as provided by Appellees, on previous appeals).

72. Therefore, a De Novo review of the factual conclusions of Judge Gambardella is required to be done by a Judge who has authority to do so.

73. If Judge Gambardella had timely disclosed all her financial interests and disclosed that she had not sold her interests in those equities that she held earlier, Appellant would have introduced it as an additional issue on appeal which would have also further supported the other issues on appeal. Clearly, Judge Gambardella deprived Appellant of all the facts relevant to earlier appeals also.

Once a Judge recuses herself from a proceeding based upon the application of 455(b)(4), absent divesting her interests in the financial interests, all she could have done was to issue housekeeping Orders, nothing more. Vacatuur of other Orders is the appropriate remedy.

74. It is undisputed that AT&T and Verizon, as creditors, were parties to the Rule 9019 settlement, the Plan of Liquidation, the expungement of claims of creditors and other such Orders of the Bankruptcy Court. Since Judge Gambardella recused herself from a hearing in which AT&T was not even a party, on grounds that she held stock of AT&T, she should have recused herself from all hearings involving creditors in whom she held stock and not mislead parties into believing that she had divested her interests in AT&T and conceal her other interests in creditors of the company. See Briefs filed in Bankruptcy Court Appendix 1, at page 1-5, Appendix 2, pages 1-5.

75. The Third Circuit has clarified a Judge's role after the Judge has acknowledged that recusal was warranted (Supplemental brief, Appendix 2, p. 7, ¶32).

> "Once a judge has disqualified himself, he or she may enter no further orders in the case. *Arnold v. Eastern Airlines, Inc.*, 712 F.2d 899 (4th Cir.1983); *Stringer v. United States*, 233 F.2d 947 (9th Cir.1956). His power is limited to performing ministerial duties necessary to transfer the case to another judge (including the entering of 'housekeeping' orders). *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1024-25 (9th Cir.1982)...Thus, the only other relevant inquiry is whether the orders entered here can be characterized as 'housekeeping.' We conclude that orders converting a Chapter 11 bankruptcy proceeding to Chapter 7, disqualifying counsel or vacating a contingent fee agreement, and findings impugning counsel are too substantial to be considered mere housekeeping."

76. Here Judge Gambardella has entered numerous Orders which were clearly not housekeeping Orders and the law is clear – Vacatuur of these Orders.

In Her Opinion now, Judge Gambardella WRONGLY and certainly INCONSISTENTLY, relied on the Third Circuit's Internal Operating Procedure rules with respect to recusal based upon her ownership of stocks in the creditors of the estate. If she thought these rules applied, she should not have recused earlier based upon her stock holdings in AT&T.

77. Judge Gambardella trivializes her knowing and intentional concealment of her financial interests by resorting to the Internal Operating Procedures of the Third Circuit which are intended for Appellate Judges only. She ruled (See Appendix 4, Transcript p. 36,37):

> As stated earlier, those operating procedures fully incorporate the provisions of 11 U.S.C. Section 455 and provide with regard to stockholdings in specifically Chapter 11.2.2(b), again, "Ownership of a small percentage of the outstanding shares of a publicly traded corporation that is listed as a creditor of the bankrupt who is a party to the lawsuit is not a financial interest in the subject matter in controversy or in the party to the proceeding unless the owner has an interest that can substantially be affected by the outcome of the proceeding." Again, see the Internal Operating Procedures for the Third Circuit, Chapter 11.2.2(b).

78. Judge Gambardella's trivialization is wrong for many reasons.

79. **First, the Internal Operating Procedures are designed for Appellate Judges and not for Bankruptcy Judges and there is a reason for the same.** Appellate Judges' role in reviewing an appeal from the Bankruptcy Court is much more limited than the role of the Bankruptcy Court Judge while issuing an Order. There is, for example, no De Novo review of all the factual conclusions of a Bankruptcy Judge. Also Appellate Decisions are made by a panel of Judges and not by an Individual Judge. Therefore, the same recusal standard may not be applied to Appellate Judges as applied to the lower court judge.

80. Second, the Internal Operating Procedures do not and cannot overrule the Supreme Court's rulings, the Statute, and the guidance provided by the Judicial Conference, if indeed these procedures are to be construed to be law. Indeed they fully incorporate the statutes and the law and if there is a conflict, these laws and statutes should apply.

81. Third, even if the Internal Operating Procedures apply, then Judge Gambardella erred in not applying it consistently. It is undisputed that her financial interests in AT&T, Verizon, etc. were at the same level – Income Level "A" and Value Level "J" (Appellant's brief at App-1,

page 3, ¶10). Therefore, if Judge Gambardella thought that her equity interest in AT&T was sufficiently material to warrant her recusal from a sale transaction then she should have certainly applied the same standard when the same level of equity was held by her in multiple creditors – when issuing Orders impacting them and in which they were parties, as creditors.

Judge Gambardella's acknowledgement of her lack of due diligence to check her financial interests when rubber-stamping a motion filed by the trustee to liquidate the stock portfolio held by the WebSci, which included stocks of public companies in which she held an equity interest, further justifies vacatuur of Orders.

82. Judge Gambardella acknowledges that she did not make any efforts to check her financial interest when she rubber-stamped a motion by the trustee to liquidate WebSci's portfolio (See Appendix 4, Transcript at pages 38,39):

> Mr. Tare has additionally made reference to WebSci's portfolio of liquidated securities, which Mr. Tare asserts that, "To the best of his recollection included stock of Vodaphone, AT&T, Lucent, et cetera." Mr. Tare asserts that the trustee sought to obtain an order from this court to liquidate those securities...
> ...A review of the trustee's application provides no indication that the securities investment account at issue contained stockholdings in Vodaphone, AT&T, Lucent or other corporations in which this judge has stockholdings. Any financial interests as well would be at best remote, contingent and speculative; and thus, Mr. Tare's assertions are not supported by the record nor provide appropriate basis for this court's recusal.

83. This failure further establishes the pattern of disregard that Judge Gambardella has for applicable law for recusal. In fact, the Supreme Court recommends vacatuur based on such disregard of the law by a Judge:

> Although Judge Collins did not know of his fiduciary interest in the litigation, he certainly should have known. In fact, his failure to stay informed of this fiduciary interest may well constitute a separate violation of 455. See 455(c). *Liljeberg at 867,868*

84. Judge Gambardella, by her own admission, failed to stay informed of her fiduciary interests in a proceeding. This separate violation of 455 further compels the conclusion that vacatur was an appropriate remedy. *Liljeberg* at *866*.

Judge Gambardella's failure to disclose her "financial interests" vis-à-vis her stock holdings when rubber-stamping a motion filed by the trustee to expunge claims of certain creditors in whom she held a "financial interest"warrants vacatuur of such Orders particularly so when she had recused earlier based upon these very financial interests.

85. Judge Gambardella acknowledges that she expunged claims of AT&T and Verizon while not disclosing that at that very time she had a "financial interest," HOWEVER SMALL, in these creditors (See Appendix 4, Transcript at page 40, See Motion at Bankr. Docket Entry #587, Order at Docket Entry 598):

> A review of the docket reveals that in January 2005 Trustee Marks filed a motion to expunge or reduce claims and amend schedules. The court granted that motion by order dated March 15, 2005. A review of the pleadings indicate that the court, by the March 15, 2005 order reduced, among other claims, a $36.74 claim of AT&T Wireless and a $456.67 claim by AT&T and a $421.07 claim by Verizon. All those claims being reduced to zero.

86. Judge Gambardella's explanation is (Appendix 4, Transcript at page 41):

> My interests in AT&T and Verizon, in this court's view, in conjunction with those motions were not interests that would be substantially affected by the expungement of claims motion filed by the trustee. The court does not believe that it was obligated to recuse itself from the entire proceeding, as suggested by Mr. Tare, and is satisfied that a reasonable person with knowledge of the full record would not perceive any impropriety by my presiding either under the uncontested motion to expunge claims or, for that matter, my continued presiding over the Web-Sci case.

87. As explained supra, this explanation is contrary to the statute. Judge Gambardella was required to recuse herself **no matter how small her equitable interest** in AT&T and Verizon was. It is not for her to decide if her interests would be substantially affected by the motion. When equity interest is involved, no matter how small, recusal is required. It is only

"other interest" which provides her the luxury of deciding if the interests will be substantially impacted.

88. Her non-recusal and non-disclosure was also inconsistent with her prior recusal – Earlier she had recused herself even when AT&T was not a party claiming that she had an equity interest in AT&T. All she could have done in future rulings in AT&T and Verizon was to recuse herself. She did more. Vacatuur is appropriate.

Judge Gambardella's disregard of her stock ownerships in creditors of other bankruptcies in which she adjudicated when issuing Order impacting them, further supports vacatuur of all her orders as her violations have impacted numerous bankruptcies.

89. It is undisputed that Judge Gambardella also concealed her financial interests and stock ownerships in creditors of other bankruptcies also (E.g. 01-36753-RG, 05-32079-RG, 05-29093-RG). See Supplemental Brief of Appellant in Bankruptcy Court at page 6.

90. Judge Gambardella has conveniently not addressed these bankruptcies in her opinion. In any event, the parties in the other bankruptcies have no knowledge of Judge Gambardella's concealment of her financial interests in creditors of these estates and the bizarre restraints imposed on Appellant are intended to cover-up these "financial interests."

91. The Lilgeberg Court has strongly suggested that vacatuur is particularly important when injustice would occur in other cases too.

> "It is appropriate to consider the risk of injustice to the particular parties, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process." *Liljeberg at 862.*

All cases cited by Judge Gambardella in her Honor's opinion are totally inopposite to the facts here.

92. None of the case laws relied upon by Judge Gambardella involves a Judge holding equity interest in a creditor of the estate while issuing Orders impacting them and/or a Judge

voluntarily recusing based upon a certain holding of equity and then not doing so when the same standard of recusal was clearly applicable.

93. None of the cases involves evidence of a trustee or party-in-interest depositing monies belong to an estate in his personal or his law firm's accounts.

94. None of the cases involves acknowledgement of an attorney filing a forged consent Order.

95. None of the cases involves the filing of falsified Sworn affidavits and financial reports by trustees and their professionals.

96. Perhaps most importantly, none of the cases cited by Judge Gambardella involves arbitrarily depriving a party of the right to an attorney who was willing to confront parties with whom the Judge was aligned.

The merits of the case, the improper denial of constitutionally protected right to Appellant of an attorney of his choice during the Appellate and other proceedings, and the continued improper and inconsistent application of the law further evidences 455(a) violation.

97. As explained supra, Judge Gambardella runs a Court lacking in independence. But for her bias and prejudice, clearly trustee Gary Marks would have been jailed for conspiring to steal estate monies. Another trustee, Steven Kartzman would have been jailed for redacting Federal evidence. Attorney Louis T. DeLucia would have been indicted for forgery. Attorneys Honig and Marks would have been additionally indicted for filing falsified Rule 2014 affidavits (See *U.S. v. Gellene* 192 F.3d 578 (7th Cir. 1999) as cited by Appellant in his brief to the lower court – See Appendix 1, page 21).

98. Judge Gambardella's conduct in allowing, covering and even fixing such crimes rises to obstruction of justice. It appears that Judge Gambardella was promised support for her reappointment, support for receiving the Judge Cecilia Award and/or even support for a possible promotion to become a Magistrate Judge – All in return for fixing these crimes.

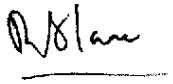
Clearly this is a violation of 28 USC 455, even if Judge Gambardella fixed these crimes without promise of any benefits. See *U.S. v. Aguilar* 515 U.S. 593, 599-600 (1995) (As cited by Appellant in his brief to the lower court at Appendix A-1, p. 23). **Judge Gambardella had not disclosed all her financial interests while issuing her separately biased Orders.**

CONCLUSION – THE LIMITED RELIEF SOUGHT SHOULD BE GRANTED.

99. Based upon the foregoing, Appellant respectfully requests that the limited relief he seeks be granted and that others prejudiced by Judge Gambardella's concealment of stock interests be informed at the earliest possible so that they too can seek appropriate relief. Indeed there are hundreds of litigants impacted by the non-disclosure of her financial interests and random application of the recusal statutes.

"Moreover, providing relief in cases such as this will not produce injustice in other cases; to the contrary, the Court of Appeals' willingness to enforce 455 may prevent a substantive injustice in some future case by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988).

Respectfully submitted,



/s/Ramkrishna S. Tare

CERTIFICATE OF SERVICE

The undersigned certifies that before April 3, 2008, the following parties and/or their counsel were mailed a true copy of the brief and associated appendix. An email copy was also forwarded to them.

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