

14-4765

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In Re Frederick J. Neroni,

Appellant

An appeal from the United States District Court for the Northern District of New York

Appellant's Brief and Appendix of Frederick J. Neroni, Pro Se

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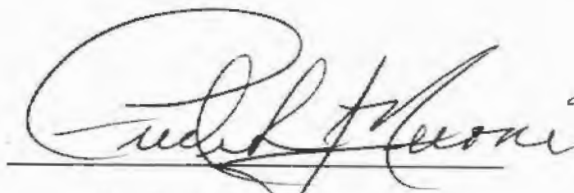
In Re Frederick J. Neroni,
Appellant.

Case No. 14-4765

I hereby certify under the penalty of perjury that my Appellant's Brief contains 5,968 words, according to the "word count" of the word processor "Microsoft Word" and thus does not exceed the limit of 14,000 imposed by the rules of this court.

Dated: April 3, 2015

Delhi, NY



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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The case was started by the district court *sua sponte*, without notification as to what is the basis of the original jurisdiction.

Appellate jurisdiction of this court is invoked under 28 USC § 1291, because the appeal is from the final order of the U.S. District Court for the Northern District of New York, Judge GARRY L. SHARPE, dated and filed on November 26, 2014, imposing a permanent anti-filing injunction upon Appellant.

Appellant's deadline to perfect this appeal is April 8, 2015.

There are no Appellees in the case.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Issues presented for review are:

1. The court lacked jurisdiction to start or prosecute proceedings against Appellant, especially in the way it did it.
2. The lower court violated Appellant's due process rights by failing to follow any established procedure in how the case was brought or prosecuted, prosecuting the case on behalf of attorneys who are part of the court, provide benefits to judges of the court and employ law clerks of the judges of the court, including Judge Sharpe.

time of the Order to Show Cause (Dkt. 1) where Appellant was represented by counsel, without notification of Appellant's counsel and without reassignment of the pending cases to Judge Sharpe.

4. Judge Sharpe has a history of retaliation with Appellant, the dealings of the court with the attorneys of record in the referenced cases whom the court protected raised appearance of impropriety for any judge of the Northern District of New York to preside over Appellant's cases, and Judge Sharpe deprived Appellant of his due process of law by not recusing from the case.

5. There is an appearance that Judge Sharpe punished Appellant for criticism of Judge Sharpe by Appellant's wife in the social media, outside of any court proceedings, in violation of Appellant's due process of law.

STATEMENT OF THE CASE

Out of the blue sky, Judge Sharpe filed a "sua sponte" Order to Show Cause demanding an answer from Appellant why his access to the court should not be blocked, based on five cases, three of them on appeal at the time, and two of them counseled cases pending in the same district court before other judges at the time of the Order to Show Cause.

No legal grounds were explained to Appellant in the Order to Show Cause for bringing such a separate court proceedings against him sua sponte.

Appellant was not given an adequate time to respond.

No established procedure was followed in prosecuting the case.

The case was designated on the Docket sheet as a "civil rights" case, even though the federal court is not and cannot be a civil rights plaintiff against a private party as a defendant.

Appellant responded and moved to recuse, providing evidence of dealings between the court and attorneys of record for parties in the cases referenced in the Order to Show Cause that raised appearances of impropriety in the court presiding over cases with such attorneys' participation and granting their clients any relief.

Judge Sharpe rejected all arguments, imposed an antifiling injunction with overbroad, irrelevant and harassing conditions and certified the future appeal of Appellant, in an ultra vires manner and without any necessity or relevance, as being in bad faith.

STATEMENT OF THE FACTS

Same as in statement of the case.

SUMMARY OF THE ARGUMENT

The district court judge had no jurisdiction to proceed with the case.

The district court and each of the judges had a personal interest and an appearance of impropriety in commencing and prosecuting a sua sponte court proceeding against Appellant.

Proceeding was commenced and prosecuted in retaliation for Appellant's spouse's criticism of Judge Sharpe in the popular social media.

The court violated Appellant's due process of law by punishing him for actions of third parties.

The court violated Appellant's due process of law by requiring him to communicate with the court, prematurely, and defend himself in reference to still pending counseled actions, actions pending in front of judges other than Judge Sharpe.

The totality of conduct of Judge Sharpe shows his bias and Judge Sharpe should not have decided the motion to recuse, and the Appellant's motion to recuse and dismiss should have been granted.

Appellant was entitled to a pre-deprivation due process hearing on the motion to recuse and especially on the anti-filing injunction, and the anti-filing injunction order should be reversed and dismissed or at the very least reversed and remanded to another court for a hearing.

ARGUMENT

POINT I

THE COURT HAD NO AUTHORITY TO COMMENCE A LAWSUIT AGAINST RESPONDENT

Pursuant to Article III of the U.S. Constitution, federal courts are courts of limited jurisdiction.

Courts cannot invent bases of jurisdiction to commence their own lawsuits, nor do courts have a right to give notice of the basis of proceedings commenced against people after the fact.

That is exactly what happened in the case at bar.

Judge Gary L. Sharpe, Chief Judge of the U.S. District Court for the Northern District of New York, commenced a sua sponte lawsuit against Appellant by an Order to Show Cause (Dkt. 1) served upon Appellant by certified mail, with a threat of blocking his access to the court completely, in all actions, including new and pending counseled actions, if Appellant does not appear in the action and does not answer the Order.

Procedure required for service of federal lawsuits requires the same notice as in state lawsuits. In other words, personal service is required. Recently, the same court has deemed that service was not proper upon defendants represented by Appellant's spouse Tatiana Neroni simply

because the envelopes in which the mailing that was made in addition to personal service upon individuals of reasonable age and discretion showed an address that could be associated with an attorney, see *Argro v Osborne*, 3:12-cv-910.

The above shows that the lower court is very strict in applying rules of service of federal lawsuits.

Yet, the same strict rules somehow cease to be applicable when the court commences an action against Appellant on the court's own motion. Nowhere in the Order of October 20, 2014 by which the lawsuit was commenced does the court indicate the legal grounds for commencing it (see Dkt. 1).

The docket sheet states that that it is a "Civil Rights – other" action. That is the same designation as a lawsuit under 42 U.S.C. 1983. Yet, in a civil rights action, the government may not be the plaintiff, and a private party may not be a defendant.

In one of the cases referenced in the Order, Judge Sharpe ruled that Ellen Coccoma is not a "state actor" for purposes of a civil rights action, which did not prevent him from allowing Ellen Coccoma to be represented in such an action, for free, by the New York State Attorney General, which

defied Judge Sharpe's pronouncement that Ellen Coccoma is not a state actor.

Apparently, the district court did not believe that rules of service equally applies to actions commenced by itself.

Instead, the court used its power to force Appellant to waive his right to be served properly, and given proper time (20 days if served personally and 30 days if served by substituted service), to appear in the action. Under the threat of being blocked from filing anything in the court, including in pending counseled actions, Appellant appeared in the action in opposition.

Yet, Appellant insists that when he was acting under threat of being blocked any access if he does not appear, his appearance was coerced and did not constitute a valid waiver of service of the lawsuit.

Moreover, Appellant insists that Judge Sharpe had no authority to target, as he did in his Order of October 20, 2014, counseled actions of Appellant pending in the same court in front of other judges.

The proper way to address Appellant's conduct, if it was frivolous, was for the parties in the pending action making a motion to the court, on notice to Appellant's counsel.

By acting over the head of the assigned judge and over the head of Appellant's attorney of record in *Neroni v. Zayas*, while forcing Appellant to discuss that case without his counsel, Judge Sharpe violated rules of judicial ethics, acted without authority and showed his bias against Appellant that required recusal and disqualification of Judge Sharpe and his court from all proceedings, where it was clear that assigned judges could not remain in control of Appellant's cases as Judge Sharpe overpowered them and overruled them, without any appellate authority to do that.

In fact, Judge Kahn did not rule that Appellant was involved in frivolous conduct in the pending *Neroni v. Zayas* case, and this court has dismissed Appellant's appeal dismissing claims against several defendants as premature, yet Judge Sharpe overruled Judge Kahn and de facto decided that Appellant's conduct in that counseled case was frivolous, even though the assigned judge did not say so.

Furthermore, the lower court dismissed several cases that Judge Sharpe referenced in his Order of October 20, 2014, as failing to plead enough to be entitled to relief under the Civil Rights Act, 42 U.S. C. 1983.

Yet, the court applied a different, lenient standard, to its own pleadings where the court failed to indicate what was the legal basis to

commence a proceeding against a private individual seeking to block the individual's access to court.

The court provided no authority for its claimed right to commence such proceedings on its own.

The case proceeded with a lightning speed, and the court's final Anti-Filing Injunction Order of November 26, 2014 (Dkt 5), showed at the bottom of the first page that the basis of the proceedings was 28 U.S.C. 1651(a).

Yet, the pro se Appellant was never given notice by the court that 28 U.S.C. 1651(a) was the basis of the Order of October 20, 2014 (Dkt 1), so the court actually gave to pro se Appellant a notice of the basis of the proceedings backwards, and such a notice is not valid and violated Appellant's due process of law and his right to be notified of the legal grounds as to why the court was proceeding against him.

It was too late for Appellant, when the court already imposed an anti-filing order, to claim to the court that 28 U.S.C. 1651(a) did not apply and that its procedure was not followed.

Yet, Appellant was entitled not to guess as to the court's grounds, but to be put on notice of such grounds from the very beginning.

Apparently, the court invented new law for itself, in violation of its restricted authority under Article III, to:

- (1) commence sua sponte proceedings against individuals with a purpose of blocking their access to court based on their prior litigation activity against government officials;
- (2) to serve private individuals with sua sponte federal lawsuits commenced by the court by mail instead of personally,
- (3) to force private individuals to accept service by mail under the threat of blocking all of their filings in that court, including new claims based on constitutional violations and filings in pending cases, including counseled cases;
- (4) to reach pending counseled cases without notification of their counsel in those cases, or without notification or permission to deal with the case from the presiding judges in those counseled cases,
- (5) to force a represented party to respond to the court discussing the pending counseled case under the threat of blocking the individuals' access to court, without notifying his counsel;
- (6) to shorten the time for the individual to respond to the lawsuit from 30 days when served by substituted service by mail to 14 days, more than twice,

and to claim that the court can actually bring “civil actions” against private individuals (as the case is designated on the Docket Sheet).

Authority for acts described above in points (1) through (6), which Judge Sharpe engaged in, is not found in 42 U.S.C. 1983, while the case was designated on the Docket Sheet as a “civil rights – other” and nowhere in the order of October 20, 2014 did Judge Sharpe care to include the legal basis for commencement of proceedings against Appellant.

Apparently, the notice to defendants in a federal action that Judge Gary Sharpe required so vigorously from Appellant in cases he referenced, does not apply to Judge Gary Sharpe when he himself commenced an action against Appellant.

Judge Sharpe apparently believes that he can give notice to a litigant of the grounds of his lawsuit against that litigant in the final order in the case.

Appellant did not have to guess the grounds upon which the court was acting in order to be able to oppose the order to show cause.

Also, even in the final order the court claimed authority under 28 USC 1651 subsection (a), not (b) which allows the court to issue “rule nisi” (orders to show cause).

28 U.S.C. 1651(a) provides:

“The Supreme Court and all courts established by Act of Congress may issue all writs *necessary* or *appropriate* in aid of their respective jurisdictions and *agreeable to the usages and principles of law.*”

Thus, 28 U.S.C. 1651(a) must follow “agreeable usages and principles of law” and courts may issue “writs” only as “necessary or appropriate in aid of their respective jurisdictions”.

Blocking a private individual’s access to court based on the subject of his litigation, the identity or class of defendants in such litigations, or the identity, social status or background of the individual is not a “necessary or appropriate” ground for a writ to issue, it is actually a violation of Appellant’s constitutional rights guaranteed by 1st Amendment freedom of speech, 1st Amendment access to court, 5th and 14th Amendment due process and 14th Amendment equality under the law, as based on arguments above.

POINT II

THE ORDER OF OCTOBER 20, 2014 AND OF NOVEMBER 26, 2014 was an unlawful act of retaliation by Gary Sharpe, through Appellant, against Appellant’s wife for her criticism of Judge Sharpe’s incompetence in the press

Appellant has indicated and provided evidence in his motion to recuse Judge Sharpe and in opposition to the anti-filing Order to Show Cause, that Judge

Sharpe is simply retaliating against Appellant for the actions of his spouse who harshly criticized Judge Sharpe on an influential and popular blog Forbes.com.

The Show Cause Order was issued within days of Appellant's wife's criticism of Judge Sharpe and can be deemed as a consequence of her criticisms.

It is a clear violation of Appellant's due process of law when he is punished for acts of third parties, and the anti-filing injunction made with even an appearance of such a retaliatory motive by Judge Sharpe should be vacated, reversed and dismissed.

POINT III

SUA SPONTE ANTIFILING PROCEEDINGS AND THE WAY THEY WERE HANDLED, COUPLED WITH UNDISCLOSED INCESTOUS RELATIONSHIP BETWEEN THE COURT AND ATTORNEYS INVOLVED IN REFERENCED PROCEEDINGS DISQUALIFIED JUDGE SHARPE AND THE COURT FROM HANDLING ANY LITIGATION

In his opposition (Dkt. 3) and motion to dismiss/recuse (Dkt 4) Appellant pointed out that Judge Sharpe and other judges presiding over Appellant's proceedings in Judge Sharpe's court failed to disclose the incestuous relationship of the court and its individual judges and their personnel, including personnel of Judge Sharpe himself, with attorneys and

law firms that represented defendants in the cases referenced in Judge Sharpe's sua sponte Order to Show Cause (Dkt. 1).

Appellant showed that judges of Judge Sharpe's court participate in out-of-court corporations and events with attorneys of record in referenced proceedings, are likely financially benefited by such attorneys, that partners of attorneys of record in *Neroni v. Coccoma* (a referenced case in the Order to Show Cause, Dkt. 1) are participating in making Local Rules of the lower court, pick magistrate judges of the lower court, and they employ law clerks of judges of Judge Sharpe's court after they finish their one or two-year stints as law clerks.

Judge Sharpe's own law clerk is employed with Hiscock & Barclay, and evidence of that was provided to Judge Sharpe in the record.

First of all, such relationships with attorneys of record clearly disqualified the court from proceeding in the underlying actions, and *a fortiori* from commencing any anti-filing injunction proceedings *sua sponte*.

Second, the court had an obligation to disclose such relationships, which Judge Sharpe did not do.

Third, a separate judge, from an unaffected court, should have been assigned to preside over Appellant's motion to recuse under the circumstances, and that did not happen either.

Under the circumstances, Judge Sharpe had no discretion to preside over proceedings where his own court and the judge himself was accused, based on clear documentary evidence, of collusion with powerful attorneys for governmental defendants, in trying to block an individual's right to access to court.

Since Judge Sharpe improperly refused to recuse, Appellant was deprived due process of law, access to courts and a fair judicial review of his motion to recuse and dismiss and of his opposition to the Order to Show Cause of October 20, 2014 (Dkt. 1), and the antifiling injunction order should be reversed and dismissed.

POINT IV

PROCEDURE FOR ANTI-FILING INJUNCTIONS WAS NOT FOLLOWED, IN VIOLATION OF APPELLANT'S DUE PROCESS OF LAW

There is no procedure set for anti-filing injunction proceedings, inviting courts to create their own procedure *sua sponte*, and the courts obviously then are treating litigants on a case by case basis, without any uniform rules, which is a violation of Appellant's due process of law. 28 U.S.C. 1651(a) is unconstitutional as applied to Appellant, as it was used to obtain a *sua sponte* anti-injunction order without giving Appellant proper notice, due process or true opportunity to be heard by an unbiased court.

To practically completely block Appellant's access to the court to vindicate constitutional violations by the government, Appellant was entitled to a very high degree of protection.

No protection was given to Appellant.

There was no hearing, evidentiary hearing or even an oral argument, as he requested.

Appellant was given just 14 days, without addition of 5 days for mailing by the court and 5 days for mailing by the Appellant to the court that is usually provided, to appear in the action, while litigants are normally given 30 to 60 days to appear in a federal action.

Nor was Appellant allowed to do e-filing, which would have sufficiently cut his costs and added to his time to prepare the opposition, all of which Appellant ascribes to bias of the court and motivation of the district court to inconvenience Appellant in the worst degree.

The court appeared to have shifted the burden of proof, by providing no basis whatsoever for the anti-filing injunction to be granted, but still by imposing it, despite the fact that Appellant's opposition was enough to defeat it, and enough to recuse the judge on statutory grounds.

It is respectfully submitted to this court that the strict scrutiny standard should have been applied by the lower court to impose an anti-

filing injunction, as a burden on a fundamental constitutional right of access to court, protected by Petitions Clause of the 1st Amendment of the U.S. Constitution.

Yet, there is no indication as to what kind of standard of proof was even used. Apparently, Judge Sharpe is a law unto himself, and such trifles as burdens and standards of proof does not apply to him when he starts his own actions against litigants he does not like.

Judge Sharpe had no right to communicate with Appellant regarding two counseled cases still pending at the time of the Order to Show Cause (and one remains pending, *Neroni v. Zayas*).

Judge Sharpe had no right to communicate with Appellant and start proceedings against him pertaining to *Neroni v. Zayas* and *Neroni v Martens* over the heads of assigned judges to those pending cases.

Judge Sharpe had no right to blatantly engage in advocacy for governmental defendants, judges and personnel of courts, especially that judges are members of the same class that Judge Sharpe belongs to, and thus he was protecting himself in bringing a sua sponte anti-filing injunction against the Appellant.

If Judge Sharpe was concerned about his brethren, judges, and wanted to protect them against Appellant, he had to follow the rules as everybody

else, and that was, to file a federal lawsuit, establish his standing to sue, and bring it in front of a neutral court, not in his own court, as if he is a lord-judge dispensing "justice" as he sees fit in his own fiefdom.

Since Judge Sharpe's sua sponte Order to Show Cause was without authority, self-serving, did not follow any established procedures, unlawfully directed Appellant to communicate with the court on issues on which he was represented by counsel in pending cases and unlawfully usurped from assigned judges of such pending cases their right to decide those cases, the anti-filing injunction order should be reversed and the proceedings dismissed.

POINT V

ANTIFILING INJUNCTION IS UNCONSTITUTIONALLY OVERBROAD

The court claimed that it acted under authority of 28 U.S.C. 1651(a).

Appellant already addressed the issue that he was not given notice in the initial Order to Show Cause dated October 20, 2014 as to that authority, and thus was denied opportunity to address issues pertaining to 28 U.S.C. 1651(a) in the court below.

As a matter of due process of law, Appellant was supposed to be given notice of the court's legal grounds instead of having to engage in the

guessing game as to what the court's grounds for litigation against him might be.

Moreover, 28 U.S.C. 1651(a) provides:

"The Supreme Court and all courts established by Act of Congress may issue all writs *necessary* or *appropriate* in aid of their respective jurisdictions and *agreeable to the usages and principles of law.*"

The staggering scope of the anti-filing injunction imposed upon Appellant and the conditions of overcoming are nowhere near to being "necessary or appropriate", being in aid of the lower court's jurisdiction, nor are they "agreeable to the usages and principles of law".

If the court wanted to ascertain that all cases that Appellant is filing were non-frivolous, first of all, such inquiry would have been resorted only to cases where the court had jurisdiction.

If Appellant would file a case and the court had no jurisdiction over it, the court has power to dismiss the case sua sponte, and Judge Sharpe's court does such sua sponte dismissals, before actions are even served, making anti-injunction order and proceedings to obtain it neither necessary nor appropriate to begin with, in violation of 28 U.S.C. 1651(a).

In cases where the court has jurisdiction, the court still has a right to dismiss the cases sua sponte where there was a failure to state a claim, thus making the anti-filing proceedings not "necessary" or "appropriate".

Moreover, if the court's concern is to protect itself from "frivolous" constitutional lawsuits, whatever that may be, the court's inquiry as to any new filings must begin and end with the inquiry as to whether the new filing is in any way frivolous.

In this case, Judge Sharpe required that, in order to file any new claim in his court, and that is – either a diversity claim or a civil rights claim – not only Appellant's claim has to undergo a review whether the claim is frivolous, but the court included conditions (Dkt. 5, pp. 3-4, conditions (1) through (5)) that have nothing to do with the determination whether the particular claim that Appellant is presenting to the court is frivolous or not.

What the court wants from Appellant in order to gain his right of - access to court, which is already guaranteed by the 1st Amendment of the U.S. Constitution and by multiple federal statute defining private causes of action and jurisdiction of district courts, is a full-blown background check, involving:

- (1) list of all lawsuits by Appellant from the day he was born state courts, U.S. District Court for the Northern District of New York and the U.S. Court of Appeals for the 2nd Circuit;
- (2) "advising the court whether any defendant to the lawsuit was a party, litigant, judge, attorney, court officer, public official or participant to, or *was*

in any way involved in, any prior lawsuit involving Neroni, and if so, in what capacity”, emphasis added;

(3) providing to the court “a list of all federal or state cases in which a judgment was rendered against *Neroni*, if any”, emphasis added, and that wording included any judgment against any “Neroni”, not necessarily Appellant;

(4) “the amounts of judgments outstanding and the reasons therefor”;

(5) “a list of all federal or state cases in which a judgment was rendered in favor of Neroni, if any”;

(6) “a list identifying the procedural or monetary sanctions, assessment of attorney’s fees, contempt orders or jail sentences arising out of a civil prosecution imposed against Neroni by any court, including all appellate courts, if any”.

It is apparent that the district court has no authority to condition Appellant’s access to a federal court on a new claim of violation of his constitutional rights on, let’s say hypothetically, Appellant’s failure to satisfy any money judgment in any “federal or state cases”.

The district court is not a collection agency for private or governmental parties in state or federal courts or agencies, and if Judge

Sharpe believes that his court is, he should not be on the bench, nor should he be the Chief Judge of a U.S. District Court.

Judge Sharpe or his court do not have authority to ask Appellant why he did not satisfy or did not satisfy fully any judgments against him, if any, and condition Appellant's access to court on a new claim, constitutional or diversity, upon his answer to that inquiry.

Judge Sharpe or his court do not have authority to condition Appellant's constitutionally guaranteed access to court on a new claim on whether he did or did not successfully obtain judgments against the government in "federal or state cases", that is a clearly impermissible under 28 U.S.C. 1651(a), unconstitutional and politically charged inquiry.

Judge Sharpe or his court may not condition Appellant's access to court on a new meritorious claim, either in diversity or under federal law, on what happened in the past in other actions.

Any court may decide a claim presented to it only within the four corners of such a claim, and without any excursions into political, social or litigation status of the litigants.

Had Appellant be a mass murderer, he would still have had the same right of access to court as anybody else, that is what the Equal Protection Clause of the 14th Amendment guarantees.

Whether Appellant was or was not sanctioned anywhere, whether attorney's fees were or were not imposed upon him anywhere, whether he was or was not held in contempt of court is irrelevant to the inquiry whether his new claim is or is not meritorious, and that must be the beginning and the end of the court's inquiry.

The fact that Judge Sharpe does not understand that clearly indicates that Judge Sharpe should not be on the bench, holding people lives in his hands (literally, since there is still death penalty in federal criminal cases, and Judge Sharpe, as a district court judge, has a right to preside over them), or deal with people's constitutional rights that Judge Sharpe shows he knows or cares nothing about.

Judge Sharpe seeks from Appellant disclosure of "jail sentences arising out of a civil prosecution imposed against Neroni by any court".

Not only this is an irrelevant and unconstitutional inquiry, as a condition for access to court on a new meritorious claim, but Judge Sharpe, a former prosecutor, apparently does not realize that a sentence is a punishment in a criminal case, and that a "jail sentence" arising out of a "civil prosecution" is a legal nonsense.

Appellant was very apparently denied judicial review of proceedings in the court below by a judge of elementary competence and integrity, in violation of his due process of law.

Moreover, Judge Sharpe requires Appellant to file an affidavit with the court (not an affirmation which is allowed by federal law in lieu of an affidavit, but necessarily an affidavit, for no known reason other than to put an additional burden upon the Appellant to seek a notary to notarize his assertions), as a condition of access to court on a new meritorious claim, while whether the claim is meritorious can be easily ascertained by the court.

The affidavit must state the following:

“(1) that the complaint or claims Neroni wishes to present, or the relief he seeks, has never before been raised by him and disposed of by any federal or state court and are not, to the best of his knowledge, barred by collateral estoppel or res judicata”.

Both collateral estoppel and res judicata are affirmative defenses that are waived by defendants if defendants default after being served or fail to raise them in the answer or motion to dismiss.

Thus, the court has no authority, under 28 U.S.C. 1651(a), to condition access to court guaranteed by the 1st, 5th and 14th Amendment and

numerous acts of Congress, upon a claim under oath that the claim is not subject to any affirmative defenses of defendants.

Such a requirement clearly puts the court in a position of an advocate of all future defendants, and disqualifies the court from presiding over all proceedings, while also requiring a reversal and dismissal of the anti-filing injunction, as the anti-filing proceeding was clearly brought and prosecuted by the court not to "aid its jurisdiction", but to protect government officials in the future from potential successful and meritorious claims of violations of constitutional rights, as clearly shown by conditions for access to court imposed by Judge Sharpe upon Appellant.

Given the incestuous relationships of the court with attorneys for defendants in the cases referenced in the Order to Show Cause (Dkt. 1), as shown by documentary evidence provided by Appellant to the court in Dockets 3 and 4, there is a clear appearance of collusion and corruption with the government and powerful attorneys connected to the government and providing benefits to the court and its judges, as the main motivation for the proceeding against Appellant.

In the affidavit Judge Sharpe also required Appellant to affirm under oath that Appellant will comply with all federal and local rules of procedure, including rules of service, which was a completely uncalled for condition

since there was no indication anywhere that Appellant did not comply with such rules, nor did the court make such findings to warrant such a condition.

The list of irrelevant and politically motivated conditions which in no way is warranted under the U.S. Constitution, 1st, 5th and 14th Amendment, or under 28 U.S.C. 1651(a), together with the incestuous relationship of the lower court and its judges with politically connected attorneys and attorneys that are practically part of the court and providing benefits to the court's judges and personnel outside of court proceedings, clearly shows that the true purpose of the anti-filing injunction is a witch-hunt against Appellant, harassment of Appellant and making Appellant an outlaw, since Appellant's access to court on new meritorious claims is now conditioned on whether he is suing the government (which is what the Civil Rights Act is for), whether he satisfied all of his money judgment, if any, or whether he obtained successful judgments against the government in the past.

Due to glaring unconstitutionality of how the anti-filing injunction proceedings were brought, prosecuted and decided, Appellant is entitled to a reversal, dismissal of the anti-filing proceedings and to disqualification of the U.S. District Court for the Northern District of New York and all of its judges from all proceedings involving Appellant in the present or in the future.

POINT VI

UNNECESSARY CERTIFICATION UNDER 28 U.S.C. 1915(a)(3)

28 U.S.C. 1915(a)(3) provides:

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”

Nothing indicated to the court that Appellant is a poor person.

Appellant never applied to proceed as a poor person, as the docket indicates.

Therefore, Judge Sharpe’s certification that an appeal will not be taken in good faith was completely unnecessary and only additionally shows Judge Sharpe’s bias and personal hatred against Appellant.

Moreover, notwithstanding whether Appellant was or was not a poor person and whether he is taking this appeal as a poor person or not, the statute under which the certification was made against him by Judge Sharpe is clearly unconstitutional, as it allows the court whose decisions is challenged on appeal to block access to court on an appeal as of right on the basis of poverty.

Any actions of the government blocking access to court on an appeal as of right and thus impairing a right guaranteed by the 1st Amendment and

the Equal protection clause of the 14th Amendment to all other appellants, must be subject to strict scrutiny.

Here, not all appeals are blocked, but only those of poor people.

To block access of the poor to federal court to vindicate their constitutional rights, because of their poverty, is not only unconstitutional, but is immoral and profoundly disgusting, as the poor were the main beneficiaries of the Civil Rights Act whose rights are most frequently abused by the government.

It is clear that no attorney will touch a civil rights appeal when such a certification is made, because the attorney will be afraid of sanctions for frivolous conduct.

It is apparent that the appeal is costly, it costs \$505.00 to file it and additional money to prepare the brief and appendix and have it filed and served.

It is apparent that if a poor person is not given a poor person status for a federal civil rights appeal, that person will effectively be prohibited to appeal, even though the appeal is "as of right".

So, in this country apparently, your right to access the court is officially conditioned on your status and wealth, which is, once again, immoral, disgusting and unconstitutional.

Even though I am not a poor person, I insist that a lower court may not be allowed authority to affect the appeal from its own decision in any way, including by making certifications.

Moreover, Judge Sharpe far exceeded the authority for certification, in addition to constitutional challenge to the statute under which the certification was made. Judge Sharpe, in contravention to authority given to him under 28 U.S.C. 1915(a)(3), claimed in his certification in the Anti-Filing injunction (Dkt. 5) that not just appeals made by Appellant in case he applies as a poor person, but “any appeal from this order would not be taken in good faith”.

Judge Sharpe did not have a right to such a certification, and the fact that he felt the need to make such an ultra vires certification additionally shows his egregious bias against the Appellant herein. Once again, Judge Sharpe exercised a double standard and, while declaring that he is punishing Appellant for not following the law, displays a clear disdain of law of his own and a clear determination to disregard any law if it does not serve his purpose – to hurt Appellant and block his access to court, no matter what the law says.

CONCLUSION

In view of the above, Appellant requests to reverse the Anti-Filing Injunction Order and to dismiss the proceedings, or, in the alternative, reverse and remand it for a hearing in another, neutral, district court.

Dated: April 3, 2015
Delhi, NY

A handwritten signature in black ink, appearing to read "Frederick J. Neroni", written over a horizontal line.

FREDERICK J. NERONI,
Appellant Pro Se
203 Main Street
Delhi, NY 13753
Telephone: (607) 746-6203

APPENDIX

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

IN RE: FREDERICK J. NERONI,

**3:14-af-5
(GLS)**

Respondent.

ANTI-FILING INJUNCTION ORDER

On October 20, 2014, respondent Frederick J. Neroni was ordered to show cause as to why he should not be enjoined from filing future cases in this District without permission from the Chief Judge. (Dkt. No. 1.)

Although Neroni filed a response, (Dkt. No. 3), and a motion to dismiss and for recusal, (Dkt. No. 4), he has failed to provide sufficient justification for his previous conduct. It follows that he is permanently enjoined from filing any document or pleading of any kind in the Northern District of New York without leave of the Chief Judge and subject to the requirements outlined below, and his motion to dismiss and for recusal is denied.

NOTICE TO PRO SE LITIGANT: FAILURE TO STRICTLY COMPLY WITH THE REQUIREMENTS OUTLINED BELOW MAY SUBJECT YOU TO FURTHER SANCTIONS, INCLUDING THE DISMISSAL OF YOUR COMPLAINT/PETITION OR REJECTION OF YOUR SUBMISSION.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that pursuant to 28 U.S.C. § 1651(a), Neroni is

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permanently enjoined from filing any document or pleading of any kind with this court, except as outlined below; and it is further

ORDERED that the Clerk of the United States District Court for the Northern District of New York shall maintain a miscellaneous file with the general title "In the Matter of Frederick J. Neroni." Unless otherwise ordered by the Chief Judge or his designee, this file shall serve as the repository of all orders relating to Neroni in this District, documents submitted under the procedures set forth herein, any order entered pursuant thereto, and any document or pleading of any kind, whether rejected or not, submitted by Neroni. The Clerk of the Court shall also maintain a docket sheet associated with this file and shall list all documents filed therein; and it is further

ORDERED that before initiating any action in this District or filing a document of any kind with the court, Neroni must first obtain permission from the Chief Judge or his designee. To do so, Neroni must submit to the court three documents in the form described below: (1) a petition requesting leave to file; (2) an affidavit; and (3) a copy of the document or pleading sought to be filed. The filing shall be entitled "Application Pursuant to Court Order Seeking Leave to File," and shall contain the

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assigned miscellaneous file number in the caption; and it is further

ORDERED that a petition requesting leave to file must contain the following information:

(1) a statement advising the court whether any defendant to the lawsuit was a party, litigant, judge, attorney, court officer, public official or participant to, or was in any way involved in, any prior lawsuit involving Neroni, and if so, in what capacity;

(2) a list of all lawsuits in the United States District Court for the Northern District of New York, Court of Appeals for the Second Circuit, and state courts in which Neroni was or is a party; the name, case number and citation, if applicable, of each case; a statement indicating the nature of Neroni's involvement in each lawsuit and its current status or disposition;

(3) a list of all federal or state cases in which a judgment was rendered against Neroni, if any; the name, case number and citation, if applicable; the amount of the judgment rendered against him; the amount, if any, of the judgment that remains outstanding and the reasons therefor;

(4) a list of all federal or state cases in which a judgment was

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rendered in favor of Neroni, if any; the name, case number and citation, if applicable; and

(5) a list identifying the procedural or monetary sanctions, assessment of attorneys' fees, contempt orders or jail sentences arising out of a civil prosecution imposed against Neroni by any court, including all appellate courts, if any; the name, case number and citation, if applicable, of each case; a brief statement explaining the sanctions, contempt order, attorneys' fees or jail sentence imposed; the type or amount of sanctions; the outstanding amount of any sanctions or attorneys' fees; and the current status or disposition of the matter; and it is further

ORDERED that Neroni shall also submit with the above petition an affidavit, in the proper legal form, with appropriate jurat and notarization, containing the following recitals:

(1) that the complaint or claims Neroni wishes to present, or the relief he seeks, has never before been raised by him and disposed of by any federal or state court and are not, to the best of his knowledge, barred by collateral estoppel or res judicata;

(2) that to the best of his knowledge the claim or claims are not

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frivolous or taken in bad faith; that they are well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; that the lawsuit is not interposed for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation, or to avoid the execution of a valid judgment;

(3) that the claim or claims are not meant to harass any judicial officer, attorney, individual, organization or entity; and

(4) that in prosecuting the action, Neroni will comply with all federal and local rules of procedure, including those requiring the service on other parties of all pleadings and papers filed with the court, and will provide the court with acceptable proof that such service was made; and it is further

ORDERED that Neroni shall include with the above-described petition and affidavit a copy of the complaint and/or any other documents to be filed with the court. The complaint shall conform with the requirements of this Order, Fed. R. Civ. P. 8, all other provisions contained in the Federal Rules of Civil Procedure, and the Local Rules of Practice; and it is further

ORDERED that upon filing of the Application Pursuant to Court Order

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Seeking Leave to File, the Clerk or his designated deputy shall docket the documents in the miscellaneous case and in accordance with the rules, and immediately forward them to the Chief Judge or his designee for review; and it is further

ORDERED that if the Application Pursuant to Court Order Seeking Leave to File includes a pleading of any kind, the Clerk shall **STAY** the case and shall not issue the requisite summonses until directed to do so by the Chief Judge or his designee; and it is further

ORDERED that the Chief Judge or his designee should consider the following:

- (1) whether Neroni has complied with the procedures set forth in this Order in all particulars;
- (2) whether Neroni's complaint complies with the Federal Rules of Civil Procedure and Local Rules of Practice;
- (3) whether the complaint is frivolous, abusive, harassing or malicious;
- (4) whether the claims raised in Neroni's complaint have been adjudicated previously by any state or federal court;
- (5) whether Neroni has complied in all respects with Fed. R. Civ. P.

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11 and all pleadings and filings would not give rise to liability under 28 U.S.C. § 1927, regarding unreasonable and vexatious multiple filings;

(6) whether the complaint alleges claims against judges, court officials, public officers or any other individuals who may have immunity from suit; and

(7) whether the complaint meets such other reasonable requirements established by the court; and it is further

ORDERED that failure to comply with the procedures and principles set forth in this Order shall be grounds for denying the Application Pursuant to Court Order Seeking Leave to File without further review. Likewise, false or misleading recitals in the complaint or petition shall be grounds for denial and may subject Neroni to further sanctions under Fed. R. Civ. P. 11, 28 U.S.C. § 1927 and/or the court's inherent power to sanction a litigant for bad faith conduct or for disobeying court orders; and it is further

ORDERED that Neroni is further advised that nothing in this Order hinders his ability to defend himself in any criminal action brought against him; limits his access to any court other than the Northern District of New York; or affects his rights in any of his currently pending actions in state or

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federal court; and it is further

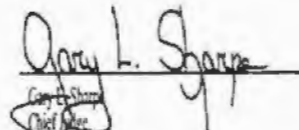
CERTIFIED pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith; and it is further

ORDERED that Neroni's motion to dismiss or for recusal (Dkt. No. 4) is **DENIED**; and it is further

ORDERED that the Clerk shall serve a copy of this Order on Neroni by certified mail.

IT IS SO ORDERED.

November 26, 2014
Albany, New York


Gary L. Sharpe
Chief Clerk
U.S. District Court

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U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

DEC 22 2014

U.S. District Court
Northern District of New York

LAWRENCE K. BAERMAN, CLERK
ALBANY

IN RE: FREDERICK J. NERONI,

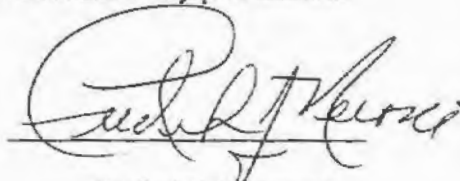
3:14-af-00005-GLS

Respondent.

NOTICE OF APPEAL

TO: The court

PLEASE TAKE NOTICE that Frederick J. Neroni, Plaintiff herein, appeals to the U.S. Court of Appeals for the 2nd Circuit from the Anti-Filing Injunction Order, attached herein, filed and entered on November 26, 2014 and from each and every part thereof.



Frederick J. Neroni,
Plaintiff Pro Se
203 Main Street
Delhi, NY 13753
Telephone: (607) 746-6203

Dated: December 20, 2014
Delhi, NY

U.S. District Court
Northern District of New York – Main Office (Syracuse) [LIVE – Version 6.1]
(Binghamton)
CIVIL DOCKET FOR CASE #: 3:14-af-00005-GLS

In Re: Frederick J. Neroni
Assigned to: Chief Judge Gary L. Sharpe
Cause: 28:1331 Fed. Question

Date Filed: 10/20/2014
Date Terminated: 11/26/2014
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

In Re**Frederick J. Neroni**

represented by **Frederick J. Neroni**
203 Main Street
Delhi, NY 13753
607-746-6203
PRO SE

Date Filed	#	Docket Text
10/20/2014	<u>1</u>	ORDER – That Neroni shall, within fourteen (14) days of the date of this Order, show cause, in writing, why he should not be enjoined from any further filings in the Northern District of New York without leave of the Chief Judge. That if Neroni does not fully comply with this Order, the court will issue a subsequent order, without further explanation, permanently enjoining Neroni from filing a pleading or document of any kind in any other case in this District without leave of the court. (Notice of Compliance Deadline 11/3/2014, Case Review Deadline 11/6/2014). Signed by Chief Judge Gary L. Sharpe on 10/20/2014. (jel,) (Entered: 10/20/2014)
10/20/2014		Mailed copy of the <u>1</u> Order to the respondent by certified mail. (jel,) (Entered: 10/20/2014)
10/24/2014	<u>2</u>	RETURN RECEIPT received as to Frederick J. Neroni re <u>1</u> Order. (lah) (Entered: 10/28/2014)
11/03/2014	<u>3</u>	AFFIRMATION IN OPPOSITION To Court's Order by Frederick J. Neroni. (lah) (Entered: 11/05/2014)
11/03/2014	<u>4</u>	MOTION to Dismiss and for Recusal filed by Frederick J. Neroni. (Attachments: # <u>1</u> Exhibits 6–22, # <u>2</u> Exhibits 23–40, # <u>3</u> unnumbered Exhibit, # <u>4</u> Exhibits 41–50, # <u>5</u> Exhibits 51–86) (lah) (Entered: 11/05/2014)
11/26/2014	<u>5</u>	ANTI-FILING INJUNCTION: ORDERED that pursuant to 28 U.S.C. § 1651(a), Neroni is permanently enjoined from filing any document or pleading of any kind with this court, except as outlined below; and it is further ORDERED that the Clerk of the United States District Court for the Northern District of New York shall maintain a miscellaneous file with the general title In the Matter of Frederick J. Neroni. Unless otherwise ordered by the Chief Judge or his designee, this file shall serve as the repository of all orders relating to Neroni in this District, documents submitted under the procedures set forth herein, any order entered pursuant thereto, and any document or pleading of any kind, whether rejected or not, submitted by Neroni. The Clerk of the Court shall also maintain a docket sheet associated with this file and shall list all documents filed therein; and it is further ORDERED that before initiating any action in this District or filing a document of any kind with the court, Neroni must first obtain permission from the Chief Judge or his designee. To do so, Neroni must submit to the court three documents in the form described below: (1) a petition requesting leave to file; (2) an affidavit; and (3) a copy of the document or pleading sought to be filed. The filing shall be entitled Application Pursuant to Court Order Seeking Leave to File, and shall contain the assigned miscellaneous file number in the caption; and it is further ORDERED that a petition requesting leave to file must contain the following information: (1) a statement advising the court whether any defendant to the lawsuit was a party, litigant, judge, attorney, court officer, public official or participant to, or

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was in any way involved in, any prior lawsuit involving Neroni, and if so, in what capacity; (2) a list of all lawsuits in the United States District Court for the Northern District of New York, Court of Appeals for the Second Circuit, and state courts in which Neroni was or is a party; the name, case number and citation, if applicable, of each case; a statement indicating the nature of Neronis involvement in each lawsuit and its current status or disposition; (3) a list of all federal or state cases in which a judgment was rendered against Neroni, if any; the name, case number and citation, if applicable; the amount of the judgment rendered against him; the amount, if any, of the judgment that remains outstanding and the reasons therefor; (4) a list of all federal or state cases in which a judgment was rendered in favor of Neroni, if any; the name, case number and citation, if applicable; and (5) a list identifying the procedural or monetary sanctions, assessment of attorneys fees, contempt orders or jail sentences arising out of a civil prosecution imposed against Neroni by any court, including all appellate courts, if any; the name, case number and citation, if applicable, of each case; a brief statement explaining the sanctions, contempt order, attorneys fees or jail sentence imposed; the type or amount of sanctions; the outstanding amount of any sanctions or attorneys fees; and the current status or disposition of the matter; and it is further ORDERED that Neroni shall also submit with the above petition an affidavit, in the proper legal form, with appropriate jurat and notarization, containing the following recitals: (1) that the complaint or claims Neroni wishes to present, or the relief he seeks, has never before been raised by him and disposed of by any federal or state court and are not, to the best of his knowledge, barred by collateral estoppel or res judicata; (2) that to the best of his knowledge the claim or claims are not frivolous or taken in bad faith; that they are well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; that the lawsuit is not interposed for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation, or to avoid the execution of a valid judgment; (3) that the claim or claims are not meant to harass any judicial officer, attorney, individual, organization or entity; and (4) that in prosecuting the action, Neroni will comply with all federal and local rules of procedure, including those requiring the service on other parties of all pleadings and papers filed with the court, and will provide the court with acceptable proof that such service was made; and it is further ORDERED that Neroni shall include with the above-described petition and affidavit a copy of the complaint and/or any other documents to be filed with the court. The complaint shall conform with the requirements of this Order, Fed. R. Civ. P. 8, all other provisions contained in the Federal Rules of Civil Procedure, and the Local Rules of Practice; and it is further ORDERED that upon filing of the Application Pursuant to Court Order Seeking Leave to File, the Clerk or his designated deputy shall docket the documents in the miscellaneous case and in accordance with the rules, and immediately forward them to the Chief Judge or his designee for review; and it is further ORDERED that if the Application Pursuant to Court Order Seeking Leave to File includes a pleading of any kind, the Clerk shall STAY the case and shall not issue the requisite summonses until directed to do so by the Chief Judge or his designee; and it is further ORDERED that the Chief Judge or his designee should consider the following: (1) whether Neroni has complied with the procedures set forth in this Order in all particulars; (2) whether Neronis complaint complies with the Federal Rules of Civil Procedure and Local Rules of Practice; (3) whether the complaint is frivolous, abusive, harassing or malicious; (4) whether the claims raised in Neronis complaint have been adjudicated previously by any state or federal court; (5) whether Neroni has complied in all respects with Fed. R. Civ. P. 11 and all pleadings and filings would not give rise to liability under 28 U.S.C. § 1927, regarding unreasonable and vexatious multiple filings; (6) whether the complaint alleges claims against judges, court officials, public officers or any other individuals who may have immunity from suit; and (7) whether the complaint meets such other reasonable requirements established by the court; and it is further ORDERED that failure to comply with the procedures and principles set forth in this Order shall be grounds for denying the Application Pursuant to Court Order Seeking Leave to File without further review. Likewise, false or misleading recitals in the complaint or petition shall be grounds for denial and may subject Neroni to further sanctions under Fed. R. Civ. P. 11, 28 U.S.C. § 1927 and/or the courts inherent power to sanction a litigant for bad faith conduct or for disobeying court orders; and it is further ORDERED that Neroni is further advised that nothing in this Order hinders his ability to defend himself in any criminal action brought against him; limits his access to any court other than the Northern District of New York; or affects his rights in any of his currently pending actions in state or federal court; and it

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		is further CERTIFIED pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith; and it is further ORDERED that Neronis motion to dismiss or for recusal (Dkt. No. 4) is DENIED. Signed by Chief Judge Gary L. Sharpe on 11/26/2014. (jel,) (Entered: 11/26/2014)
11/26/2014		Mailed copy of the <u>5</u> Anti-Filing Injunction order by certified mail to the respondent. (jel,) (Entered: 11/26/2014)
12/05/2014	<u>6</u>	RETURN RECEIPT received as to Frederick J. Neroni re Anti-Filing Injunction Order <u>5</u> .(lah) (Entered: 12/05/2014)
12/22/2014	<u>7</u>	NOTICE OF APPEAL by Frederick J. Neroni of the Anti-Filing Injunction Order, dkt. no. <u>5</u> . Filing fee \$ 505, receipt number ALB008909. Attachment # <u>1</u> Cover Letter) (lah) (Notice of Appeal added on 12/29/2014 to replace cover letter) (lah) (Entered: 12/24/2014)
12/24/2014	<u>8</u>	ELECTRONIC NOTICE AND CERTIFICATION sent to U.S. Court of Appeals re <u>7</u> Notice of Appeal. (lah) (Entered: 12/24/2014)