

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

CIVIL ACTION, _____

Related to District Court Docket No. 15: 3534

NICHOLAS E. PURPURA, a sovereign citizen, and for people
similarly situated in New Jersey that hold citizenship in United.

PETITION FOR

Petitioner

WRIT OF MANDAMUS

DEMAND FOR RELIEF
ORAL HEARING DEMANDED

v

VIOLATION OF CONSTITUTIONAL
RIGHTS and the PUBLICS' TRUST

Hon. Michael A. Shipp, District Court Docket No. 15: 3534
and William T. Walsh, Clerk of the District,

Defendants

Nicholas E. Purpura,
1802 Rue De La Port Dr.
Wall, New Jersey, 07719
(973) 366 9300

Hon. Michael A Shipp
US District Court
402 E. State Street
Trenton, NJ 08608

William T. Walsh
U.S. District Court
402 E. State Street
Trenton, New Jersey 08608

“ The Constitution...meant that its coordinate branches should be a checks on each other, But the opinion which gives to the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action but for the Legislature and Executive also in their spheres, would make the judiciary a despotic branch.” Thomas Jefferson to Abigail Adams, 1804

JURISDICTION

1. The United States Court of Appeals for the Third Circuit has jurisdiction over the subject matter of this cause of action pursuant to provisions of Title 28 U.S. Code , Chapter 85, Section 1361 (mandamus)

STATEMENT OF CLAIM

2. Mandamus is regarded as an extraordinary writ reserved for special situations. Among its ordinary preconditions are that the agency or official have acted (or failed to act) in disregard of a clear legal duty and that there be no adequate conventional means for review. In re: Bluewater Network & Ocean Advocates; 234 F.3d 1305, 1315 (D.C. Cir.2000); Telecomm. Research & Action Ctr. v FCC. 750 F.2d 70, 78 (D.C Cir. 1984). Mandamus will be granted if the Petitioner shows (1) the presence of novel and significant questions of law; (2) the inadequacy of other available remedies; and (3) the presence of a legal issue whose resolution will aid in the Administration of justice; see In re United States, 10 F.3d 229 at 931, 933 (2d Cir. 1993).

3. Repeated written and document correspondence [all of which are part of the official record; (see Purpura v. Christie, 15-cv-343500)] which included Petitioner's many requests for an official response relating to notifications sent to the Court concerning possible legal violations, and several requests for oral argument, appear to have been ignored. It is difficult to conclude otherwise, that Judge Michael A. Shipp, and the Clerk of the Court, William T. Walsh, et al., District Court (Trenton) have avoided various legal obligations.

4. Petitioner has time after time requested both intervention and compliance with the *FRCP*. All of which have been ignored by Judge Michael A. Shipp. A situation which leaves Petitioner no other option but to request this Writ of Mandamus be granted. It shall direct the District Court to immediately comply with the *FRCP* and issue a decision[s] and order[s] on the pending matters of Purpura v Christie et al, 15-cv-3534.

5. All Motion practices and memorandums of law collectively are incorporated herein by reference; see Purpura v. Christie 15-cv-3435 as if the same were set out in their entirety in the body of this Petition. Attached for the Court's convenience are all the written correspondences between Petitioner and the presiding District Court Judge Michael A. Shipp. See (Exhibit A).

BACKGROUND

The chain of events Petitioner has listed below are not set forth to influence any decision on the matter before the District Court. The incidents described demonstrate an apparent connivance between the Court and the Defendants, repeated violations of the *FRCP*, by acceptance of untimely and procedurally infirm documents.

Most notably, the Court's refusal to allow oral argument and/or an evidentiary hearing even after it was presented with incontrovertible proof of intentional deception and blatantly false statements, all of which points to possible perjury. Despite being apprised of those numerous violations, the Court remains silent. This could easily be construed as an effort to avoid a court record being established.

The District Court has refused to render a legal decision based upon established law which clearly mandates a Judgment for Default as well as a Summary Judgment in favor of Petitioner. It is the Petitioner's unmitigated belief that these proceedings are being intentionally protracted since no legal argument exists which can disprove any of the allegations set forth in the Petition.

Protracting this litigation any further is tantamount to aiding and abetting in unconstitutional behavior. The points detailed below will demonstrate and justify why I have petitioned this Honorable Court to mandate that a decision be rendered, by the District Court, the Honorable Judge Shipp presiding, on the matters referred to. *post haste*

POINT I

(Motion for a Default Judgment):

The irrefutable facts listed below justify that this Honorable Court should order the District Court of Judge Shipp to immediately issue a decision on the Motion for Default, one way or another.

On May 26, 2015, Petitioner served the Court and Defendants a Petition for civil rights violations pursuant to Title 42 USC 1983/1985/1986.

The Court protracted the issuance of a Summons until July 6, 2015. Thereafter Petitioner immediately served on all Defendants by July 13, 2015.

Service of said Petition was timely and acknowledged by Defense Counsels' [Susan M. Scott, Deputy Attorney General of Counsel] thereby "ratifying" service. It must be noted that numerous statements were incorporated in said acknowledgment, many of which border on perjury at the least and at best, were attempts to mislead and deceive the Court.

In defiance of the *FRCP* **NO** timely reply was forth coming from the Attorney General's Office representing all the Defendants except two individual Defendants (Police Chiefs) that chose to be represented by outside counsel, therefore;

On August 13, 2015, Petitioner filed with the Clerk of the Court, a request for a Default Judgment to be Docketed, and as well a Motion for Default was presented to His Honor, as required by the *FRCP*.

- The Clerk of the Court ignored *FRCP* 12, also violated Rule 55(a) when he/she refused to Docket a Notice of Default Judgment.
- More than 21-days had passed without any notice, or response from the court or defendant's counsels.
- At no time did the State of New Jersey's Department of Law submit a reply, as required by law, nor did the defense even submit a general denial, though the *FRCP* explicitly requires an affirmative reply in a RICO action. As this Court is aware, to stave off forfeiture, falling under those terms, each claim must be answered with specificity and particularity. General denials are unacceptable.

It must be noted; previously on August 6, 2015, the Attorney General's office forwarded a letter to the District Court stating their intentions were to submit a Motion to Dismiss.

- No proper Motion to Dismiss the Petition was ever submitted or docketed until September 4, 2015. [AFTER BEING IN DEFAULT]
- No Motion for enlargement of time was submitted by Defendants as required by Motion (see *FRCP*).
- It must also be noted: Again, the defense acknowledged that they knew about the Petition thereby ratifying service prior to the expiration of time, and yet still did nothing!

On August 13, 2014 at 2:04 PM, Petitioner received notification from the Court that the Default Judgment Motion was calendared for September 8, 2015 (see, Docket Text [11]')

- Oddly, the Clerk's Office stated that the Motion will be decided on papers, when in fact there were no papers on file or in the record submitted by the Defendants related to the Motion for default other than Petitioner's.
- It appears to Petitioner that either some collusion existed between the Clerk's Office and the Defendants; or the Clerk of the Court, being CLAIRVOYANT, knew of some *phantom papers* that would miraculously appear 11-days in the future.
- And, that the judge would be ruling on these phantom papers, yet to be served on the Court or Petitioner.

- That the matter having been calendared, therefore any papers that would magically appear, would be untimely.

On August 24, 2015, after time set forth by the subpoena had expired, the Department of Law, (Att. Generals' Office,) seemingly exempted themselves from all rules of the Court and submitted a letter response to the Motion for Entry of Default Judgment, choosing remarkably the date of September 8, 2015, as a returnable date. Nevertheless;

- No legal or timely Motion was ever submitted as required by the FRCP.
- Nor by law, does (letter submitted) qualify as even an acceptable quasi- motion after a matter has been calendared.
- The procedurally infirm letter was proven to be perjurious concerning service, as so stated in Petitioner's response.
- No request for an enlargement of time was ever applied for. Also relevant, the District Court by law, was/is restricted under [Rule 6] from granting any enlargement of time.

At no time throughout these civil RICO proceeding did the Defendants submit an affirmative or for that matter a general denial, to the allegations set forth in the Petition. The *FRCP* are unambiguous. Failure to answer with an affirmative defense with particularity, mandates by law, a forfeiture.

- The defense team was unable to present any defense to the allegations, but used deceitful as well as non-legal technicalities to avoid putting anything in writing that could (would) be used against them at a hearing and to avoid for that matter, being adjudicated or providing for the establishment of an official record.

Please Note: Throughout these proceedings the Defendants and the District Court failed to reply to a single correspondence. This appears to be further proof that there has been an effort and a possible connivance to avoid generating a court record.

As this Honorable Court is aware the Supreme Court unambiguously held, even if it were true Petitioner had violated some technicality [**which he did not!**] the case should be heard. As this Third Circuit made clear in *Picking v. Pennsylvania Railway*, 151 F2. (3rd Cir.), "...it was held *"Where a plaintiff pleads pro se in a suit for protection of civil rights. The Court should endeavor to construe Plaintiffs pleading without regard to technicalities."*

Note: In order, is a review of Petitioners 5-page, “*REPLY TO DEFENDANTS UNTIMELY LETTER IN LIEU OF FORMAL BRIEF IN RESPONSE TO PETITIONER MOTION FOR JUDGMENT BY DEFAULT* [served and Docketed September 1 2015.]

Clearly, this Petitioner is entitled to a decision and the issuance of an order.

POINT II

(Motion for a Summary Judgment)

Petitioner respectfully requests this Honorable Court order an immediate decision to be rendered on the *Motion for a Summary Judgment*.

On August 4, 2015, Petitioner received a letter and a 21-page Answer & Separate Defense to the Petition properly served on Defendants Richard Cook & Achille “Gil” Tagliatella [answered in a timely fashion]. But that being said, like the Attorney’s General defense team, they too failed to address a single allegation as mandated by law. Instead:

On August 17, 2015, Petitioner received a 2nd letter from Defense Counsel representing the above two Defendants (**NOT FORWARDED TO THE COURT**) (EXHIBIT B) stating:

“Please note, per F.R.C.P. 7(a) the only pleadings permitted are allowed:

- (1) A complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a cross-claim;
- (5) a third party complaint;
- (6) an answer to a third party complaint; and
- (7) **if the court orders one**, a reply to an answer

“You may not file a reply to the answer filed by this office unless the court orders you to do so, which it has not.” [my emphasis]*

Note: Petitioner asks this Court to question as to why the Defense Team is so insistent that Petitioner not be afforded the opportunity to reply.

On August 26th 2015, Petitioner instituted a *Motion for Summary Judgment* against Defendants Richard Cook & Achille Tagliatella, who chose to be represented separately from the other Defendants in the same Petition.

Please refer to the Court Record, incorporated herein, by reference see; *Purpura v. Christie* 15-cv-3435 as if the same were set out in their entirety in the body of this Writ of Mandamus, and all collectively.

On September 1, 2015, upon receiving said *Summary Judgment Motion*, immediately thereafter, the original defense team jumped ship and substituted out of the matter, requesting an adjournment of the return date on the *Summary Judgment* until September 21, 2015.

- No motion exists for the delay.
- Petitioner was not served with any papers requesting a postponement. Yet on September 8, 2015, the following took place:

September 8th 2015, Petitioner received notification that the *Motion for Summary Judgment* had been reset for October 5, 2015. Once again the Court stated: The Motion will be decided on the papers. The Court must either have some ability to see into the future or it is aware of how future events will transpire.

- The only *Motions* before the Court were submitted by Petitioner.
- No papers or submissions existed in the court record or were on file by the Defendants at that time.
- No reason is given for the delay.
- No motion was submitted for a postponement, or a request to submit a reply.
- The case had already been calendared, normally no papers are accepted without notification or permission from the Court. Neither notification nor permission ever occurred.
- No opportunity was given to Petitioner to object to the unnecessary protraction of this matter as required.
- The above being said, it has become obvious the rules set forth in the *FRCP*, do not appear to apply in the matter of *Purpura v Christie!* In addition, the District Court appears to be acting in concert with the Defense teams while employing every effort to keep this Petitioner out of the information loop. This statement is validated in the next paragraph.

On September 26, 2015, Petitioner was notified that Defense Counsel had submitted for the Court's acceptance (untimely papers) dated September 23, 2015 in a self-styled letter/memorandum posing as a suitable legal document.

First, the papers submitted on September 23, 2015, are procedurally infirm and have no legal right to be accepted. This irrefutably demonstrates, someone or some party has been "acting in concert" with the Defense Teams to avoid having this Constitutional Civil Rights violation challenge be fairly, as well as properly, adjudicated.

I quote the Defense Counsel (in kangaroo court fashion) to the Judge: “*Kindly accept this was a letter memorandum in lieu of a more formal; submission in opposition to Petitioners Motion for a Summary Judgment which is presently returnable on October 8, 2015.*”

- As demonstrated above, no legal papers exit.
- No Motion was made for an extension of time to submit any papers.
- The *FRCP* does not allow for self-styled untimely letter/memorandums to be accepted as legal documents after a Motion has been calendared.
- Obviously, the *FRCP* are non-existent in the matter of *Purpura v Christie*, and one could conclude that the Defense is “**acting in concert**” with members of the District Court to avoid a proper legal proceeding from going forward.

The Defense Counsel’s hubris as well as his arrogant belief that they are not required to heed to the rules of the Court system is demonstrated by their own rules of civil procedure, as well as their interpretation of the *FRCP* demonstrated by the following:

- (Defense Counsel) “*The Summary Judgment is an inappropriate remedy and in the interest of justice, I should be permitted to file Amended Answers.*”
- Yet, to date no permission exists on the record granting said permission.
- Thereafter, Counsel made three frivolous arguments based on technicalities that are of no moment.
- Defense counsel is also guilty of intentional misapplication of the statutes as well as misquoting and distorting the *FRCP*.
- Most importantly, once again, his submittals failed to answer or disprove a single allegation. That failure mandates forfeiture!

On September 29, 2015, Petitioner submitted an 11-page *Opposition to (Municipal) Defendants* which was an untimely and procedural infirm letter/memorandum. (Part of Official Record)

Please Take Special Judicial Notice: The ongoing behavior throughout these protracted proceedings mandates an investigation into the actions of the District Court (Trenton) in the State of New Jersey. Both Defense teams have attempted to set forth illusionary and frivolous technicalities, that are of no moment, endeavoring to avoid having to legally (as mandated by law) respond to the allegations of Constitutional violations as laid out in the Petition.

Both Teams of Defense attorneys have repeatedly ignored the regulations of the *FRCP*. It is doubtful that this Honorable Court is poised to conclude that the Constitution and Bill of Rights can be ignored! If it is not so poised, an order must be issued mandating a decision be rendered on both the *Motion to Default and the Motion for a Summary Judgment*.

The unnecessary protraction of this effort, by any legal authority having oversight, could be construed as “aiding and abetting” in the continued usurpation of the United States Constitution.

There is further evidence of additional questionable behavior which warrants the attention of this Honorable Court. The Clerk or someone in the Clerk’s Office, without a Court Order or the Presiding Judge’s directive, took it upon him or herself, to prematurely close this case. There was a standing Court Order at the time, which gave the Petitioner 14 days to pay a filing fee.

That standing Court Order by the way, was held by the Clerk’s office and was not delivered to the Petitioner, nor was he notified of it. Only after the Petitioner discovered, by way of inquiries at the Clerk’s office, did the Court then endeavor to notify the Petitioner. A not so very complicated extrapolation of this might lead one to believe the Clerk’s office closed this case before the 14 day allowance had expired because they were pretty sure that complying with an order one does not know of, would be virtually impossible. Note: The case was quickly but quietly reopened subsequent to the fee payment.

Then there is the likelihood that important and time sensitive correspondence was subjected to delayed filings as a result of being *misplaced*. This Petitioner has proof that certain correspondence was received by the Clerk’s Office and then falsely claimed that Judge Shipp had been given the correspondence. Inquiries made of the Judge Shipp’s Clerk discovered that no such correspondence was ever forwarded to him. After the Clerk’s office was notified of the untrue information they had disseminated upon the Petitioner, the document was finally docketed. There can be no other reasonable explanation as to why this important and time sensitive correspondence was delayed, except that someone and possibly in collusion with outside entities, did not want the Judge to have this information prior to any ruling.

Petitioner notes herein, that he has contacted the Chief Judge of the District Court to investigate these and other problematic activities. See; letter (EXHIBIT C). Petitioner at this time is still awaiting a reply from the Chief Judge. How this Honorable Court handles this information, I leave to this tribunals charge.

It is unfortunate that this *Writ of Mandamus* has to be filed but it appears to be necessary to require the District Court to do its fiduciary duty by ruling without this endless protractive (non) activity. All Petitioner wants or requires is that these rulings be made consistent with *FRCP*, Federalism, and our Constitution.

CONCLUSION

The behavior of the ever expanding Defense teams and the Clerk's office of the District Court, and others not named herein, appear to be operating illegally in concert. If this is so, it runs conversely to the tenets established by the U.S. Constitution and the United States Supreme Court.

It is without argument, the integrity of the Federal Judicial system in general and those assigned to New Jersey in particular, which encompasses the Third Circuit Court of Appeals, hangs in the balance.

Is it not the sworn duty of anyone entrusted to positions of authority and legal determinations to do so based on established law, as opposed to ideology? Will those in powerful political positions be allowed to continue to stand beyond and above the Constitution?

Respectfully, your fiduciary duty is to mandate that the District Court specified herein, rule without further delay, on the *Motions* before it. Thereafter, this Third Circuit Court of Appeals will be the next in line to rule on the viability and continuance of the Constitution as it was intended by our Founding Fathers.

REQUEST FOR RELIEF

(i) Petitioner prays this Circuit Court order Clerk of the District Court, William T. Walsh, to immediately and without any further delay, in compliance with the rules of procedure, docket a *Judgment for Default* against Governor Christie et al, in the matter of *Purpura v. Christie et al.*, as mandated by the *FRCP*.

(ii) Petitioner prays this Circuit Court will mandate an immediate response to this *Writ of Mandamus* and issue a directive which also requires that a date be scheduled for the presentation of oral arguments.

(iii) Petitioner prays this Circuit Court will order the District Court and presiding Judge Michael Shipp, to without further delay, issue a decision and an order on the *Motion for Default Judgment* and the *Motion for Summary Judgment*. Petitioner is not requesting interference in the outcome of these requested rulings. He requests only that they be delayed no longer. Petitioner is confident that the Honorable Judge Shipp will rule in accordance with the Constitution and the *FRCP*.

(iv) Thereafter, if *Petitioner's Motion(s)* are denied, the District Court is to set a date within two weeks of this Circuit Court's Order for a trial on the Constitutional challenges as set forth in the Petition; and such other further relief this Honorable Court may deem just and proper.

Respectfully submitted,

Chaplain Nicholas E. Purpura