

CERTIFICATE OF SERVICE

LAMBROS vs. U.S.A., CIVIL NO. 99-CV-28 (Judge Rosenbaum): Criminal No.  
4-89-CR-82(5)

FOR FILING:

I hereby state under the penalty of perjury that a true and correct copy of the following:

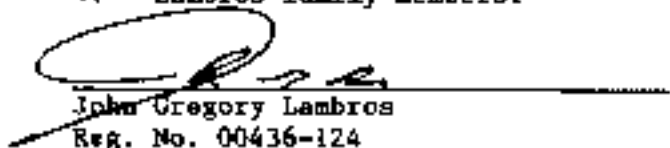
- a. PETITIONER LAMBROS REQUESTS PERMISSION FROM THE COURT TO AMEND THIS ACTION UNDER RULE 15(a) & 19(a), FRCP. Dated: November 2, 2001.
- b. MOTION FOR THE APPOINTMENT OF COUNSEL. Dated: November 2, 2001.

was served on the following this 2<sup>nd</sup> day of NOVEMBER, 2001, via U.S. Mail through the U.S. Penitentiary Leavenworth mailroom/legal mailbox, to:

1. CLERK OF THE COURT  
District of Minnesota  
U.S. Federal Courthouse  
316 North Robert Street  
St. Paul, Minnesota 55101  
U.S. CERTIFIED MAIL NO. 7001-0320-0003-3596-6650

One (1) original and one (1) copy for FILING.

2. U.S. Attorney's Office  
District of Minnesota  
U.S. Federal Courthouse, Suite 600  
300 South 4th Street  
Minneapolis, Minnesota 55415
3. INTERNET RELEASE TO ALL "BOYCOTT BRAZIL" SUPPORTERS AND HUMAN RIGHTS GROUPS GLOBALLY FOR REVIEW, COMMENT, AND RELEASE. Web site: [www.brazilboycott.org](http://www.brazilboycott.org)
4. Lambros family members.

  
John Gregory Lambros  
Reg. No. 00436-124  
U.S. Penitentiary Leavenworth  
P.O. Box 1000  
Leavenworth, Kansas 66048-1000 USA  
Web site: [www.brazilboycott.org](http://www.brazilboycott.org)

1. 012  
FILE

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS,           \*  
  \*           CIVIL FILE NO. 99-28 (RGR)  
  \*           Criminal File No. 4-89-82(05)  
vs.                                    \*  
  \*           AFFIDAVIT FORM  
UNITED STATES OF AMERICA,       \*  
  \*           JAMES N. ROSENBAUM, U.S. District Chief Judge  
  \*           Respondent.

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PETITIONER LAMBROS REQUESTS PERMISSION FROM THE  
COURT TO AMEND THIS ACTION UNDER RULE 15(a) & 19(a), FRCP.

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Petitioner JOHN GREGORY LAMBROS, pro se, (hereinafter Movant) requests permission from this Court to amend this action under Rule 15(a) and 19(a), as the Government/Respondent has filed an answer and/or challenge in this action. The United States Supreme Court has stated that permission to amend a complaint should be, and usually is, "FREELY GIVEN." See, POMAN vs. DAVIS, 371 US 178, 182-184 (1962) (Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded.)

Since the filing of Movant's April 13, 2001, "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 USCA § 455," Movant has been researching § 455 and discovered that the The Honorable Franklin L. Noel, United States Magistrate Judge for the District of Minnesota was employed as an Assistant United States Attorney ("AUSA") in the United States Attorney's Office for the District of Minnesota. See, KENDRICK vs. CARLSON, 995 F.2d 1440, 1442-43, & fn. 2 (8th Cir. 1993). Movant requested the St. Paul library system to forward a copy of "WHO'S WHO IN THE MIDWEST, 2000-2001," on FRANKLIN LINWOOD NOEL which states Honorable Federal Chief Magistrate Judge NOEL was an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Minnesota, MINNEAPOLIS OFFICE, from 1983 thru 1989. Movant received a copy of "WHO'S WHO IN THE MIDWEST,

2. *of file*

2000-2001, Ed., Page 435 on October 31, 2001. The St. Paul Library faxed the information to Movant's parents on October 22, 2001, from Telephone number (651) 632-5134. See, EXHIBIT A.

By order dated October 30, 1992, Magistrate Judge Franklin Noel judged Movant LAMBROS' competent to stand trial after conducting a hearing.

On February 10, 1997, the Honorable Robert G. Remmer resentenced Movant LAMBROS and referred to the ORDER dated October 30, 1992, by Magistrate Noel. See, Page 1 and 6 of transcripts dated February 10, 1997 as to RESENTENCING. EXHIBIT B.

Therefore, Movant is offering his request to amend this action in an orderly fashion as to ~~the~~ his discovery and verification of information.

Novant LAMBROS respectfully requests to amend this action with the following issue:

ISSUE TWO (2):

MOOTION TO VACATE ALL JUDGMENTS AND ORDERS BY  
UNITED STATES CHIEF MAGISTRATE JUDGE FRANKLIN  
LINWOOD NOEL, PURSUANT TO RULE 60(b)(6) OF THE  
FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS  
OF TITLE 28 U.S.C.A. §§ 455(a) and 455(b)(3)

Now comes the Petitioner/Movant, JOHN GREGORY LAMBROS and moves this court pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure to vacate ALL JUDGMENTS and ORDERS by United States Chief Magistrate Judge Franklin Linwood Noel for violations of Title 28 U.S.C.A. §§ 455(a) and 455(b)(3). See, LILJEBERG vs. HEALTH SERVICES ACQUISITION CORP., 100 L.Ed.2d 855 (1988) (Conclusion that federal judge should have known disqualifying facts held sufficient to disqualify judge, under 28 USCS § 455(a), on ground that judge's impartiality MIGHT REASONABLY HAVE BEEN QUESTIONED.) (emphasis added)

FACTS:

1. Honorable Federal Chief Magistrate Judge Franklin Linwood Noel was an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Minnesota,

MINNEAPOLIS OFFICE, from 1983 thru 1989. See, EXHIBIT A.

2. Movant LAMBROS was indicted on May 17, 1989, in this action by the United States Grand Jury, District of Minnesota, Criminal File No. 4-89-82(05), as to a conspiracy from on or about the 1st day of January, 1983, to on or about the 27th day of February, 1988. Therefore, all investigations and Grand Jury hearing were held between 1983 and 1989 by the MINNEAPOLIS OFFICE of the U.S. Attorney's Office for the District of Minnesota, as to the indictment of Movant.

3. Magistrate Chief Judge Noel held either one or two hearings as to Movant LAMBROS' competency to stand trial, Movant's torture in Brazil that included the testimony of DEA Agent Terryl Anderson who arrested Movant in Rio de Janeiro, Brazil, and the testimony of the Doctors and x-ray technician who x-rayed Movant on July 17, 1992 at the U.S. Bureau of Prisons Medical Center, Rochester, Minnesota, that reported the "CLUSTERS OF PUNCTATE RADIOPAQUE FOREIGN BODIES" in Movant's lateral view skull X-ray. Magistrate Noel issued at least one (1) ORDER dated October 30, 1992, as to Movant Lambros' competency to stand trial after conducting either one or two hearings. See, EXHIBIT B.

LAW:

4. Title 28 USCS § 455: Defines the circumstances that MANDATE the disqualification of federal judges, in particular, Title 28 USCS § 455(a) disqualifies a federal judge from acting in any proceeding in which the judge's IMPARTIALITY "MIGHT REASONABLY BE QUESTIONED." See, LILJEBERG, 100 L.Ed.2d 855 (1988)(§ 455(a) can be applied RETROACTIVELY to the time the judge heard the case and entered judgment. "The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. . . . Thus, it is critically important in a case of this kind to identify the facts that might reasonably cause an objective observer to question Judge Collins' impartiality." Id. at 875).

5. Violations of Title 28 U.S.C.A. § 455 DOES NOT REQUIRE SCIENTER,

as SCIENTER is not an element of a violation of § 455(a). The judge's lack of KNOWLEDGE of a disqualifying circumstance may bear on the question of remedy, but it does not eliminate the risk that "his impartiality might reasonably be questioned" by other persons. See, LILJEBERG, at 872.

CONCLUSION:

6. Movant LAMBROS is requesting this Court to ORDER Magistrate Chief Judge Noel to read and respond to this motion as to all facts relating to any alleged appearance of impartiality that "MIGHT REASONABLY BE QUESTIONED" as to violations of Title 28 U.S.C.A. §§ 455(a) and 455(b)(3), as a Judge must document the reasons for his decision so that the decision may be reviewed, if necessary, by an Appellate Court. See, U.S. vs. GREENSPAN, 26 F.3d 1001 (10th Cir. 1994).

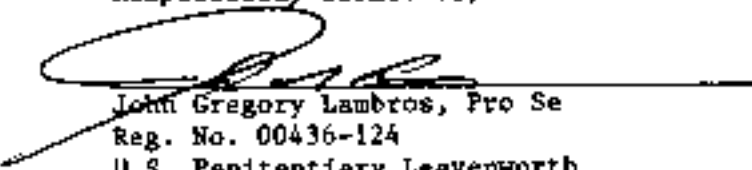
7. Movant LAMBROS is requesting Magistrate Chief Judge Noel to recuse himself from all past, current, and future legal actions regarding Movant LAMBROS.

8. Movant LAMBROS is requesting Magistrate Chief Judge Noel, after review of this motion, to VACATE ALL JUDGMENTS AND ORDERS he has entered into as to all legal proceedings involving Movant LAMBROS. Therefore, RESTORING Movant LAMBROS to the point - BUT NOT FURTHER - where Magistrate Chief Judge Noel issued ORDERS and/or JUDGMENTS against Movant LAMBROS. Movant believes the word RESTORING also means RECALLING ALL JUDGMENTS and/or ORDER issued by Magistrate Chief Judge Noel.

9. All declarations within this document and exhibits attached are true and correct and submitted under the penalty of perjury, as per Title 28 USC §1746.

EXECUTED ON: ~~November~~ 2, 2001

Respectfully submitted,

  
John Gregory Lambros, Pro Se  
Reg. No. 00436-124  
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P.O. Box 1000  
Leavenworth, Kansas 66048-1000 USA  
Web site: [www.brazilboycott.org](http://www.brazilboycott.org)



UNITED STATES FEDERAL COURT  
FOR THE DISTRICT OF MINNESOTA

United States of America,  
Plaintiff,

-vs-  
John G. Barbros,  
Defendant.

File No. CR-4-89-01 (OS)  
COPY

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1 hearing and/or the request that his family  
2 members and associates be permitted to testify  
3 as to his competency is denied. As United  
4 States Code, Section 4207, requires that a  
5 hearing be held only when the court finds  
6 there is a reasonable cause to believe that  
7 the defendant may be suffering from a mental  
8 disease or defect which renders him unable to  
9 understand the nature of the proceedings  
10 against him or to assist properly in his  
11 defense. By order dated October 30, 1993,  
12 Magistrate Judge Franklin Noel judged  
13 defendant competent to stand trial after  
14 conducting a hearing. By order dated  
15 January 19, 1994, Judge Murphy decided the  
16 defendant's motion for a second competency  
17 hearing finding that his behavior at trial  
18 displayed incompetence. These findings were  
19 affirmed by the Eighth Circuit Court of  
20 Appeals which noted how defendant had lucidly  
21 and ably argued precisely how his delusional  
22 condition affected his behavior. The  
23 proceedings were delayed by several months to  
24 permit the defendant's examination by a second  
25 expert. This expert also concluded that the

RAY J. LEBESCHER & ASSOCIATES

APPEARED BY:  
BARBARA J. ROBERTS, P.F.Z.

EXHIBIT A.

RAY J. LEBESCHER & ASSOCIATES

EXHIBIT

7.

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

JOHN GREGORY LAMEROS, \*  
Petitioner, \* CIVIL FILE NO. 99-28 (RCH)  
vs. \* Criminal File No. 4-89-82(05)  
\* AFFIDAVIT FOR  
UNITED STATES OF AMERICA, \*  
Respondent. \* JAMES M. ROSENBAUM, U.S. District Chief Judge

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MOTION FOR THE APPOINTMENT OF COUNSEL

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Petitioner JOHN GREGORY LAMEROS, pro se, (hereinafter Movant), pursuant to the forma pauperis statute, Title 28 U.S.C. § 1915(d), requests this court to appoint counsel to represent him in this case for the following reasons:

1. Movant is unable to afford counsel.
2. The issues involved in this action are complex.
3. The Movant has a limited knowledge of the law and is not licensed to practice law.
4. The case will require discovery of documents and depositions of a number of U.S. Attorneys', Assistant U.S. Attorneys', U.S. Marshals, U.S. DEA Agents and administrative staff within the offices of of those agencies from 1983 thru 1989. See, TUCKER vs. DICKEY, 613 F.Supp. 1124, 1133-34 (W.D.Wis. 1985)(need for discovery supported appointment of counsel).

ARGUMENT

THE COURT SHOULD APPOINT COUNSEL FOR PETITIONER

5. In deciding whether to appoint counsel for an indigent litigant, the court should consider "the factual complexity of the case, the ability of the indigent to INVESTIGATE THE FACTS, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues." See, ABDULLAH



vs. GUNTER, 949 F.2d 1032, 1035 (8th Cir. 1991)(citation omitted), cert. denied, 112 S.Ct. 1995 (1992). In addition, courts have suggested that the most important factor is whether the case appears to have merit, COOPER vs. A. SARGENTI CO., INC., 877 F.2d 170, 173 (2nd Cir. 1989). Each of those factors weighs in favor of appointment of counsel.

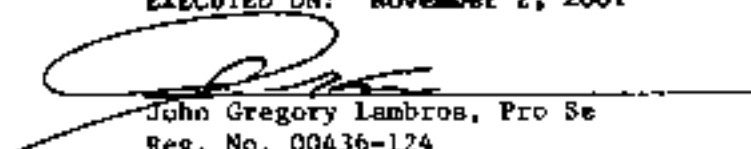
6. MERITS OF THE CASE. Novant's allegations, if proved, clearly would establish concerns of constitutional dimensions. Movant concludes that Judge Kenner and Magistrate Judge Noels' participation in this case violated Novant Lambros' due process rights. The Due Process Clause 'may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, "justice must satisfy the appearance of justice." Quoting, LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed.2d 855, 875 fn. 12 (1988). On its face, then, this is a meritorious case.

#### CONCLUSION

7. For the foregoing reasons, the court should grant this Movant's motion and appoint counsel in this case.

8. All declarations within this document are true and correct and submitted under the penalty of perjury, as per Title 28 U.S.C.A. § 1746.

EXECUTED ON: November 2, 2001

  
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