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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 FOUR DIRECTIONS, INDIAN
12 PEOPLE'S ACTIONS, SARA
13 PLAINS FEATHER,

Petitioners,

v.

15 COMMITTEE ON JUDICIAL
16 CONDUCT AND DISABILITY OF
17 THE JUDICIAL CONFERENCE OF
18 THE UNITED STATES. The Office of
19 the Circuit Executive Cathv A.
20 Catterson. Circuit and Court of Appeals
21 Executive, U.S. Courts for the Ninth
22 Circuit.

Respondents.

Case No.:

**PRE-COMPLAINT PETITION
TO PRESERVE EVIDENCE**

When someone talks to their attorney, then that is a confidential event. When a branch of our government takes a public official's less-than-honorable conduct on a public computer and makes it a secret - we should all be concerned.

1 COMES NOW, the Petitioners, INDIAN PEOPLE'S ACTIONS, FOUR
2 DIRECTIONS AND SARA PLAINS FEATHER, and hereby files their Pre-Complaint
3 Petition to Preserve Evidence pursuant to Federal Rule of Civil Procedure 27(a)(1). The
4 Petitioners herein move this Court for entry of an order directing the Respondents to
5 preserve physical evidence, preserve related materials, and identify parties relating to the
6 Committee on Judicial Conduct and Disability's investigation(s) of Judge Richard
7 Cebull (Exhibit 1 to attached Declaration of Lawrence Organ).

8 Plaintiffs require adequate assurance that relevant information is not being
9 destroyed,

10 However, as noted, regardless of whether or not plaintiffs eventually get to see such
11 information,

12 the Court itself, may need to examine it. *United States v. Reynolds*, 345 U.S. 1. 10
13 (1953); 50

14 U.S.C. § 1806(f). Plaintiffs, therefore, have sought a modest initial agreement, asking
15 defendants to acknowledge that they will abide by their duty to preserve what they know,
16 or reasonably should know, will be relevant evidence in this pending lawsuit.

17 In support of this Petition, Petitioners provide the following memorandum of law,
18 and the accompanying declaration of Counsel, Lawrence Organ which respectfully
19 shows this Honorable Court the following:

20 **I. PETITIONERS' MOTION TO PRESERVE EVIDENCE**

21 1. Petitioners are informed and believe that for years Judge Richard F. Cebull
22 issued, read, commented on, and/or forwarded hundreds upon hundreds of racist,
23 bigoted, homophobic and misogynist emails.

24 2. After an investigation into Judge Cebull's conduct, the Committee on
25 Judicial Conduct and Disability issued its decision January 17, 2014. (The notes,
26 records, interviews, subject emails, etc, are hereinafter referred to as "The File").
27 (Exhibit 1)

1 9. Petitioner, Indian People’s Action, is a credentialed advocacy program for
2 Native Americans, of which some members may have habeas or other 28 U.S.C. § 2255
3 claims that are running. The Executive Director for Indian People’s Action is Lita
4 Pepion, a resident of Billings, Montana and an enrolled member of the Cheyenne Tribe.

5 10. Petitioner, Sara Plains Feather, is a resident of Pryor, Montana and an
6 enrolled member of the Crow Tribe and a former litigant before Judge Cebull.

7 11. Several other entities and persons, who may have been or are currently
8 being affected are considering joining this contemplated action.

9 12. Respondent is the Committee on Judicial Conduct and Disability of the
10 Judicial Conference of the United States.

11 13. Respondent, the Office of the Circuit Executive Cathy A. Catterson, is, or
12 was recently in possession of The File, and has personal knowledge of the persons and
13 or entities that worked on The File.

14 **IV. SUBJECT MATTER OF THE EXPECTED ACTION AND THE**
15 **PETITIONER'S INTEREST**

16 14. The Petitioners have a significant interest in The File as each is either:

17 a. A person affected by the unconscious or conscious racism and or
18 partiality of Judge Cebull and therefore maintain due process claims;

19 b. An advocacy organization whose members have been affected by
20 racism for decades, if not a lifetime, and therefore maintain due process claims.

21 **V. MEMORANDUM OF LAW**

22 15. Notwithstanding the plain language of Federal Rule 27, as well as the case
23 law applying it, a few courts have nevertheless expanded the scope of Rule 27
24 discovery. See, e.g., *In re Alfa Industries, Inc.*, 159 F.R.D. 456 (S.D.N.Y. 1995)
25 (focusing on Rule 27 language “prevent a failure or delay of justice,” the court permitted
26 pre-suit factual discovery because petitioner showed that, absent such information, suit
27 would be delayed, although no evidence or testimony would be lost); *Lubrin v. Hess Oil*

1 *Virgin Islands Corp.*, 109 F.R.D. 403 (D. Virgin Islands 1986) (site inspection and
2 deposition permitted because court believed the Federal Rules of Civil Procedure do not
3 preclude separate equitable actions for the purpose of discovery”); *Reints v. Sheppard*,
4 90 F.R.D. 346 (M.D. Pa. 1981) (although denying plaintiff’s Rule 27 petition requesting
5 pre-complaint discovery in order to file a more detailed complaint, the court specifically
6 stated it “would be willing to grant such a request in a situation where plaintiff truly did
7 not have knowledge of sufficient facts to plead his case”).

8 Petitioners respectfully request that the Court in the instant case expand the scope
9 of Rule 27 to permit pre-complaint discovery of the File in order to permit them to
10 determine whether or not a due process complaint may be filed. It is in the interests of
11 justice for the Court to grant this request because no judgment or decision that is
12 rendered as the result of bias comports with American ideas of justice and fairness.

13 16. Within the Ninth Circuit, there is a recent call to cure the spoliation or
14 withholding of materials relevant to actions in *Brady violations*. As Chief Judge Alex
15 Kozinski wrote in his dissent in *USA v. Olsen*, No. 9th Circuit Case No.10-36063:

16 *There is an epidemic of Brady violations abroad in the land. Only judges*
17 *can put a stop to it.”*

18 Judge Kozinski went on in detail addressing the acts of an employee of The United
19 States Department of Justice (USDOJ):

20 *“I wish I could say that the prosecutor’s unprofessionalism here is the*
21 *exception, that his propensity for shortcuts and indifference to his ethical*
22 *and legal responsibilities is a rare blemish and source of embarrassment*
23 *to an otherwise diligent and scrupulous corps of attorneys staffing*
24 *prosecutors’ offices across the country. But it wouldn’t be true. Brady*
25 *violations have reached epidemic proportions in recent years, and the*
 federal and state reporters bear testament to this unsettling trend.¹

26 ¹ See, e.g., *Smith v. Cain*, 132 S. Ct. 627 (2012); *United States v. Sedaghaty*, No. 11-30342 (9th Cir.
27 Aug. 23, 2013); *Aguilar v. Woodford*, No. 09-55575 (9th Cir. July 29, 2013); *United States v. Kohring*,
28 637 F.3d 895 (9th Cir. 2010); *Simmons v. Beard*, 590 F.3d 223 (3d Cir. 2009); *Douglas v. Workman*,
560 F.3d 1156 (10th Cir. 2009); *Harris v. Lafler*, 553 F.3d 1028 (6th Cir. 2009); *United States v.*

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V. CONCLUSION

We certainly hope that Judge’s lead the way to transparency and preservation of The File. It is not a stretch to assert, maybe more USDOJ employees, might withhold vital parts of The File in our contemplated action. We are plainly and simply asking that The File be found (Returned to San Francisco if archived), that all its notes, and materials be preserved and a list of the persons who worked on The File be disclosed to Petitioners. This is not an intrusion into the Court’s budget, or time, and should certainly not be construed as an inconvenience to them.

IV. PRAYER FOR RELIEF

WHEREFORE, PETITIONERS respectfully ask this Court to enter an Order directing the Respondents to preserve all of The File and disclose a list of all persons who worked on The File to prevent a failure of Justice.

Dated: June 23rd, 2014



Verified Petition
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Zomber, 299 F. App’x. 130 (3d Cir. 2008); *United States v. Triumph Capital Grp., Inc.*, 544 F.3d 149 (2d Cir. 2008); *United States v. Aviles-Colon*, 536 F.3d 1 (1st Cir. 2008); *Horton v. Mayle*, 408 F.3d 570 (9th Cir. 2004); *United States v. Sipe*, 388 F.3d 471 (5th Cir. 2004); *Monroe v. Angelone*, 323 F.3d 286 (4th Cir. 2003); *United States v. Lyons*, 352 F. Supp. 2d 1231 (M.D. Fla. 2004); *Watkins v. Miller*, 92 F. Supp. 2d 824 (S.D. Ind. 2000); *United States v. Dollar*, 25 F. Supp. 2d 1320 (N.D. Ala. 1998); *People v. Uribe*, 76 Cal. Rptr. 3d 829 (Cal. Ct. App. 2008); *Miller v. United States*, 14 A.3d 1094 (D.C. 2011); *Deren v. State*, 15 So. 3d 723 (Fla. Dist. Ct. App. 2009); *Walker v. Johnson*, 646 S.E.2d