

HLD-151

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 08-2964

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IN RE: BERNARD S. LEVI,  
Petitioner

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On a Petition for Writ of Mandamus from the  
United States District Court for the Middle District of Pennsylvania  
(Related to D.C. Civ. No. 07-cv-01839)

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Submitted Under Rule 21, Fed. R. App. P.  
August 29, 2008

Before: SCIRICA, Chief Judge, ALDISERT and GARTH, Circuit Judges.

(Filed: September 17, 2008)

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OPINION OF THE COURT

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PER CURIAM.

Bernard Levi, a prisoner at the Federal Correctional Institution at Allenwood in White Deer, Pennsylvania, asks this Court to issue a writ of mandamus to force the disqualification of the Magistrate Judge and District Court Judge presiding over his case or, in the alternative, to transfer the case to the United States District Court for the District of Columbia.

Mandamus is a drastic remedy available only in the most extraordinary of situations in response to an act amounting to a judicial usurpation of power. In re Nwanze, 242 F.3d 521, 524 (3d Cir. 2001). To justify such a remedy, a petitioner must show that he has (i) no other adequate means of obtaining the desired relief and (ii) a clear and indisputable right to issuance of the writ. Id.

The Magistrate Judge denied Levi's 28 U.S.C. § 455 motion to recuse both the District Court Judge and himself. See In re School Asbestos Litig., 977 F.2d 764, 777-78 (3d Cir. 1992) (mandamus is appropriate to challenge a denial of a § 455 motion). Levi, however, has not alleged any valid reason for removing either the Magistrate or District Court Judge. Levi asserts only that the judges are biased against him because he requested (and received) financial disclosure statements on both judges. As evidence of bias, Levi points to the Magistrate Judge's various rulings against him. The Supreme Court has stated that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion . . . . [They] can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not recusal." Liteky v. United States, 510 U.S. 540, 555 (1994).

Levi has also not established that he has a clear and indisputable right to have the case heard in the District of Columbia. It appears that the plaintiff and at least most of the

defendants reside in Pennsylvania, and that the actions alleged in the complaint occurred in Pennsylvania. See generally 28 U.S.C. § 1391(b).

Accordingly, the mandamus petition will be denied.