**UNITED STATES BANKRUPTCY COURT**

**EASTERN DISTRICT OF MICHIGAN**

**SOUTHERN DIVISION**

In re Chapter 9

CITY OF DETROIT, MICHIGAN, Case No. 13-53846

Debtor. Hon. Steven W. Rhodes

**OBJECTION AND REQUEST FOR RECUSAL, with expedited hearing**

 **(addendum to Docket 440)**

***Eligibility objector Mary Diane Bukowski’s objection to continued service by Hon. Steven W. Rhodes in this case without disclosure of his function as chair of the October 10, 2012 Federal Bar Association of Eastern Michigan Bankruptcy Committee Forum, “Between a Rock and a Hard Place—Municipal Entities in Distress;” disclosure of his connections with the parties who participated in that forum, including Charles Moore of Conway McKenzie, a witness in the instant case; and disclosure of the Judge’s comments on the topics discussed in this forum, which include issues regarding the City of Detroit, emergency managers, and bankruptcy.***

On Oct. 10, 2012, Judge Steven W. Rhodes chaired a Federal Bar Association (FBA) of Eastern Michigan Bankruptcy Committee forum, called **“Between a Rock and a Hard Place–Municipal Entities in Distress.”** In its notice of the forum, the FBA said it was “a panel discussion on emergency managers and Chapter 9 bankruptcy.”

Participants in the forum are shown below:



***Left to right, Frederick Headen, Edward Plawecki, Judge Steven Rhodes, Douglas Bernstein, Judy O’Neill, and Charles Moore***

Objector Bukowski has been told by the FBA and the U.S. Trustees’ Office that there are no video or audiotapes of this forum. However, attached as Exhibits 1, 2 and 3 are the FBA notice of the forum, and articles from the Flint-Genesee Legal News and the Oakland Legal News which quote comments from participants in the forum. The comments appear to favorable toward replacing public officials of municipalities with business officials, Michigan’s emergency manager laws, and other opinions consistent with presentations by Jones Day attorneys on behalf of the City of Detroit in the instant case.

Conway McKenzie has a one-year $19.3 million consultant contract on the Detroit bankruptcy case, and has already been paid nearly $3 million. The firm’s Charles Moore, an accountant and participant in the forum, testified on behalf of the City of Detroit at the bankruptcy hearing Oct. 24, 2013.

During the Oct. 10, 2012 forum, the Flint-Genesee Legal News quoted Moore, as follows:

“Why aren’t municipalities addressing these issues?” referring to what had been termed excess numbers of municipal workers in Detroit.

“If this is what is causing financial distress, why aren’t leaders taking more action, as companies would, to address them? . . . .Many times those elected officials have no experience in business at all. . . . No politician ever gets rewarded for solving tomorrow’s problems today. So you have a situation where you see the trends happening, but there’s no incentive to act, even if the leader knew what to do. They’re not equipped with crisis management skills or expertise.”

Judy O’Neill is a partner in the law firm Foley & Lardner. According to their website, she “assisted with drafting Public Act 4 [the predecessor to PA 436] . . . and has assisted at two Emergency Manager training sessions.” She “practices in bankruptcy, insolvency, reorganization, commercial transactions, and corporate law, concentrating on issues arising under the bankruptcy code.”

She is quoted at the forum as follows: “What we’ve heard from everybody here today is that every method of implementation is replete with litigation. Even Chapter 9, which probably has the strongest hold, has this eligibility fight that consumes resources and time.”

Attorney Douglas Bernstein of Plunkett Cooney also helped train candidates for Emergency Manager positions, along with other Plunkett Cooney Associates, according to their website. Plunkett Cooney itself held a similar forum in April of 2012.

Headen said during the forum that he has served on 16 financial review teams, five each under former Michigan Governors John Engler and Jennifer Granholm, and six “so far,” under Snyder.“

“Back in January our review team was in Detroit,” the Flint-Genesee Legal News quotes Headen. “The city at that time had between nine and ten thousand employees. It also had 48 bargaining units, one of which I believe had only one member. The state of Michigan, by contrast, has about 50,000 employees with less than half a dozen bargaining units. In Detroit, 65 people are doing payroll while we have 15 people doing payroll for the entire state of Michigan.”

The Code of Conduct for U.S. Judges is at <http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx>.

It states in pertinent sections:

**CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES**

**Canon 2A**. **An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired**. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

**CANON 4: A JUDGE MAY ENGAGE IN EXTRAJUDICIAL ACTIVITIES THAT ARE CONSISTENT WITH THE OBLIGATIONS OF JUDICIAL OFFICE**

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge’s office, interfere with the performance of the judge’s official duties, **reflect adversely on the judge’s impartiality**, lead to frequent disqualification, or violate the limitations set forth below.

Objector Bukowski states that the Hon. Judge Steven Rhodes neglect to disclose his participation in this forum nearly a year before the instant bankruptcy trial, and to disclose his comments at the forum and his connections with the forum participants, constitutes an “appearanceof impropriety,” and raises questions about his impartiality in the instant case.

I hereby request that the Hon. Judge Steven Rhodes conduct a hearing on this objection and request for recusal forthwith, and before the conclusion of the eligibility trial in Case No. 13-53846.

Respectfully submitted,

(signed) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**PROOF OF SERVICE TO CERTIFICATION FILERS:**

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