

KENNETH MEDENBACH
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PRO SE DEFENDANT

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**UNITED STATES OF AMERICA,
Plaintiff,**

vs.

Case No. 3:16-CR-00051-16-BR

**MOTION TO DISMISS BASED
ON UNLAWFUL OATH OF
OFFICE**

**KENNETH MEDENBACH,
Defendant(s).**

Pro se defendant, Kenneth Medenbach, moves this Court to dismiss the Indictment now pending against him and co-defendants for lack of jurisdiction because the judge's oath of office, as set out at 28 USC 453, is unlawful and therefore, the judge cannot lawfully preside over this matter.

On October 27, 1999 Anna J. Brown took this oath of office:

"OATH OF OFFICE FOR UNITED STATES JUDGES

(Title 28, Sec. 453¹ and Title 5, Sec. 3331, United States Code)

I, ANNA J. BROWN, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and

¹ 28 USC § 453 was originally 1 Stat. 73 Sec 8 of the Judiciary Act of 1789.

that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a United States District Judge, according to the best to my abilities and understanding, agreeably to the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.” *See Oath of Office of, Anna J. Brown October 27, 1999* attached as Exhibit 1.

On December 1, 1990, in Amended Public Law 101-650, effective 90 days after its adoption, a different oath of office was required for justices and judges of the United States, as follows:

“Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his/her office: I, XXX XXX do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a XXX under the Constitution and laws of United States. So help me God.”

See 28 USC § 453 as amended in 1990.

This statute sets forth the required amended oath of office for Judge Anna J. Brown, which she has never taken.

For a contrasting example please see Exhibit 2, which is the statutorily correct combination oath taken by United States District Court Judge David Carter on January 5, 1999. That oath Judge Carter took reads as follows:

I, David O. Carter, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a United States District Judge, under the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.”

See Exhibit 2.

Unlike Judge Anna Brown’s oath, Judge Carter has utilized the correct language concerning under the Constitution.

. Defendant Kenneth Medenbach, and co-defendants are charged with violating 18 USC § 372, and have been in jail for approximately 6 months, with

possible fines and more jail time if convicted. Judge Anna J. Brown, is not in jail, is not yet subjected to any fines, and remains in the very job that 28 USC § 453 as amended, says she cannot have without taking the proper oath. There is an inherent hypocrisy in a system that excuses the judge's failures to comply with the law and punishes the defendants.

If Kenneth Medenbach and co-defendants can be prosecuted for failing to obey the United States Code, there is no credible argument that Judge Anna J. Brown is somehow exempt. Consistent application of the law is a requirement of due process. In failing to adopt the proper oath and ignoring the tenants of 28 USC §453 as amended, the Court is subjecting Mr. Medenbach and his co-defendants to punishment in violation of equal protection and due process.

There is no question but that the requirement of the oath is fundamental to any public official's exercise of their official duties. That was made perfectly clear during the inauguration of President Obama in 2013. The oath was administered by the Chief Justice of the Supreme Court, Justice Roberts. During the recitation of the oath, both men appeared to fumble with the proper language of the oath. While the media treated it as a funny outtake, obviously both men understood the significance because later media reports revealed the President retaking the oath with the Chief Justice.

If in fact the oath is merely a symbolic gesture, there would have been no reason for President Obama to retake his oath. This Court has repeatedly

emphasized to the defendant in hearings that it takes its responsibilities in regards to its oath seriously. From defendant's perspective that is not possible when the Court refuses to take an oath that is consistent with statutory requirements. Because the Court refuses to comply with the United States Code, the Indictment should be dismissed.

Respectfully submitted on July 21, 2016,

Kenneth Medenbach
Pro Se Defendant.

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**MOTION TO DISMISS
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OATH OF OFFICE**

EXHIBIT 1

Exhibit 1 to defendant's Motion to Dismiss

OATH OF OFFICE FOR UNITED STATES JUDGES

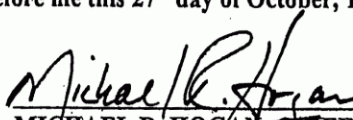
(Title 28, Sec. 453 and Title 5, Sec. 3331, United States Code)


I, ANNA J. BROWN, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a United States District Judge, according to the best of my abilities and understanding; agreeably to the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.


ANNA J. BROWN

Subscribed and sworn to (or affirmed) before me this 27th day of October, 1999.

FOIA EXEMPTION (b)(6)


MICHAEL R. HOGAN, CHIEF JUDGE

Actual abode: 
Official station*: Portland, Oregon
Date of birth: July 26, 1952
Date of entry on duty: October 27, 1999

Note--The Act of May 1, 1876 (Title 48, sec. 1466, United States Code) provides that the oaths of *Territorial Officers* shall be administered in the Territory in which the office is held.

*Title 28, sec. 456, United States Code, as amended.

Certified to be a true and correct
copy of original. 9-99
Dated 11-9-99
By Donald M. Cinnamond, Clerk
C. duPlessis Deputy

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EXHIBIT 2

Exhibit 2 to defendant's Motion to Dismiss

OATH OF OFFICE FOR UNITED STATES JUDGES

(Title 28, Sec. 453 and Title 5, Sec. 3331, United States Code)

I, DAVID O. CARTER, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as United States District Judge under the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter.

SO HELP ME GOD.

David O. Carter

Subscribed and sworn to (or affirmed) before me this 5th day
of January, 19 99.

FOIA EXEMPTION b6

Actual abode

Official station*

Date of birth

Date of entry on duty

Santa Ana, CA

March 28, 1944

January 5, 1999

Terry J. Hatten
Chief United States District Judge

*Title 28, sec. 456 United States Code, as amended.