

Mr. Bernard Fensterwald
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Arlington, Va. 22209

3/6/85

Dear Bud,

Every so often, although less often since the break in the weather, which permitted so outside activity, there are days on which I can barely drag myself around. For no apparent reason today is such a day and, as on other such days, I've been sitting and thinking. I think I mentioned recently that this is a luxury too many lawyers either do not have or do not permit themselves. I do not have all that much choice these days. I tend to think more and more, with the passing of time and the silence of the appeals court, of the next step. For my present thinking this is in terms of two possibilities, and for the moment I limit myself to the one that, if it comes to pass, for my own and probably un-lawyerlike reasons I'd like to do that as rapidly as possible - and I mean this regardless of how much time there may be.

If Jim were not so far behind and engaged in moving and setting up the new office I'd ask him. And, if you do not have the time and can't ask anyone else to perform the simple chore I request, you can, please, buck it to him.

The possibility ~~farther~~ I want to be thinking about and perhaps even preparing a draft of what I want to do immediately is a remand. With that, and even if it is merely to determine how many fairies can dance on the point of a needle, I want to move Smith's recusal before he can take that step himself. And I want to get the reasons on records before he can eliminate the need.

I have my own reasons, they are not lawyer reasons, but I want them to be within the rules. So, what I'd appreciate, is merely a copy of the rule or rules governing motions to recuse. In this I presume that what is necessary or what entitles a litigant to make such a motion, the recognized grounds, are included.

There also are times when I'm feeling better, as I have in recent days, when I have to rest from outside activity, and although I cannot explain it, it then seems that the simple exercise of typing helps restore upper-body circulation. Once I have the rule(s) and can think a bit I can then prepare a draft while resting and then, with luck, might be able to go over it with a lawyer.

And have it typed and ready to mail the minute I hear that a remand has been ordered.

If it isn't the time I've wasted would have been wasted anyway, so no loss.

I hope this requires no more of you than that you ask someone to xerox Rules X, Y, and Z.

Thanks and best wishes,

P.S. anything else would require knowledge of what the appeals court finally does. Time enough then. But I think this would entail knowing what is required and is prohibited and can be asked (like number of copies) relating to a petition cert.