COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES, TERMS, AND CONDITIONS OF LOUISVILLE GAS AND ELECTRIC COMPANY	))))	CASE NO. 2003-00433

AND

AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS AND CONDITIONS OF KENTUCKY UTILITIES COMPANY	)))	CASE NO. 2003-00434

ATTORNEY GENERAL'S MOTION TO SET ASIDE RATE DETERMINATIONS

* * *

Comes the Attorney General of the Commonwealth of Kentucky, Gregory D. Stumbo, on behalf of the Kentucky rate payers affected by the above captioned actions, and in support of this Motion would show the Public Service Commission (PSC) as follows:

REQUEST FOR ASSISTANCE FROM THE PSC IN OBTAINING NECESSARY RECORDS FROM L G & E

L G & E and KU have filed a response to the Status Report of the Attorney General arguing that these proceedings should not be "unnecessarily prolonged." L G & E fails to note that it has repeatedly blocked good faith efforts by the Attorney General to conduct its investigation into this matter. Since the PSC held its last informal conference on August 4, 2004, L G & E has failed to fully comply with the Attorney General's first Civil Investigative Demand (C.I.D.), has wrongly sued the Attorney General in Jefferson Circuit Court to avoid compliance with the second C.I.D., has threatened litigation against a third party in possession of relevant documents in an effort to block disclosure of same, and continues to unreasonably delay production of data necessary to resolution of the Attorney General's inquiry.

L G & E claims that the Attorney General does not need additional documents because they "have nothing to do with the Commission or the rate case." This statement is manifestly untrue. In fact, it was not until September 29, 2004, that L G & E finally produced partial documentation establishing various ex parte contacts between L G & E employees and PSC personnel occurring in February, 2003, June, 2003, and July, 2003.

Outstanding demands for this information have been in L G & E's possession since July 12, 2004, but were not produced until the Attorney General filed a motion seeking the imposition of sanctions against L G & E in the Franklin Circuit Court. Rather than being "far beyond the . . . scope of the Attorney General's investigation," these records go to the heart of the case, and L G & E can make no plausible excuse for its failure to promptly divulge relevant documents. The continuing refusal to cooperate on the part of L G & E has unduly extended this action far beyond the time for review contemplated by the Attorney General. No resolution of this matter can be made without prompt and complete compliance by L G & E.

Quite clearly, L G & E has no intention of producing responsive documentation in a timely fashion. Instead, counsel for L G & E has recently stated that the production of documents which are acknowledged to be relevant will be delayed until well into November, 2004. See: Letter from David Kaplan to Todd Leatherman of October 18, 2004, attached hereto as Exhibit A. L G & E flatly refuses to produce other documentation at all, as is documented in the attachments to the Attorney General's Status Report. See Brock v. American Postal Workers Union, AFL-CIO, 815 F.2d 466, (7th Cir. 1987) (holding that equitable tolling of statutory deadlines may occur if an investigation is impeded or delayed).

The Attorney General agrees that the investigation should be expedited, and calls on the PSC to assist it in the timely recovery of relevant documentation from L G & E. Pursuant to KRS 278.230, the PSC is empowered to examine and require the production of any and all records kept by L G & E. Because the PSC is directed by statute and court order to cooperate with the Attorney General in conducting the present investigation, the proper and logical solution to L G & E's intransigence is for the PSC to aid the Attorney General in retrieving the pertinent data. This cooperation will enable the PSC to obtain an expedited report, and will remove the time consuming impediments set up by L G & E in opposing production of these records. The Attorney General will promptly submit a description of records to be produced by L G & E to the PSC so that this matter can be rapidly concluded.

EX PARTE CONTACTS RENDER THE RATE DETERMINATIONS INVALID

Disposition of these rate cases should be guided by the controlling legal authority of L G & E v. Cowan, Ky. App., 862 SW2d 897 (1993). L G & E v. Cowan involved improper contacts between L G & E and the PSC which required "a new hearing on all of the issues [to] clear the air of any

taint which hangs over the previous proceedings." 862 SW2d at 902. The issue to be addressed centers on "agency decision makers . . . insensitive to the compromising potentialities of certain official and social contacts . . . ." 862 SW2d at 901, quoting PATCO v. Federal Labor Relations Authority, 685 F2d 547, 592 (D.C. Cir. 1982). This case makes clear that ex parte contacts render an administrative determination invalid:

> The number of *ex parte* contacts that were disclosed at the remand hearing is appalling, as are the statements by counsel that such contacts were nothing more than what is normal and usual in administrative agencies and even in courts of law. That statement is categorically denied insofar as our courts are concerned. If that ever turns out to be true some very severe penalties are going to be meted out. PATCO, 685 F2d at 622. Finally, lest there be any doubt, we categorically reject any suggestion that *ex parte* contacts in Kentucky are, or should be, the "bread and butter" of administrative proceedings to be tolerated with a knowing wink.

L G & E v. Cowan, 862 SW2d at 901.

In the present case, a vast number of ex parte contacts occurred between L G & E employees and PSC personnel, both via telephone and in person, during the pendency of these rate cases. The nature of those contacts is presently being documented by the Attorney General. This documentation is greatly hampered by L G & E's bad faith refusal to promptly provide documentation evidencing the contacts. Belated partial disclosures made by L G & E on September 29, 2004 establish that ex parte contacts occurred at dinners, receptions, conventions, and on golf outings. The Attorney General

is still awaiting additional documentation, which was originally demanded on July 12, 2004, in order to establish the full scope of those contacts. The assistance of the PSC in obtaining this documentation will greatly expedite this process.

It does not matter that the ex parte contacts are alleged to be "authorized or even required by" the statutory duties of the PSC. This contention was firmly rejected in the well reasoned case of Business and Professional People for the Public Interest v. Barnich, 614 NE2d 341 (Ill. App. 1993), appended hereto as Exhibit B. What matters is that the contacts create "the appearance of bias or prejudice [which] can be as damaging to the public confidence as actual bias or prejudice." Id., 614 NE2d at 345.

In Barnich, supra., the defendant Public Service Commissioner made numerous telephone calls to attorneys, officers and lobbyists of a utility with a pending rate case, just as occurred in the present cases. The court properly found that proof of actual bias was not required, and ordered that the Commissioner should be disqualified and the case reheard. 614 NE2d at 345.

The Barnich court reached this conclusion after considering the importance of preserving public confidence in the rate making process. Kentucky law contains the same statement of public policy in the Executive

Branch Code of Ethics, which applies to PSC Commissioners. A Commissioner is directed to consider "[i]n determining whether to abstain from action on an official decision . . . . [t]he effect of his participation on public confidence in the integrity of the executive branch." KRS 11A.030(2). In the present case, the extensive ex parte contacts necessarily have the effect of undermining public confidence in the rate making process, and require that the prior determinations be set aside.

The Barnich court also found that the requirements of the Canons of Judicial Conduct are properly applied to administrative decisionmakers who act as arbiters of questions of law or fact. Kentucky law provides that:

> A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. With regard to a pending or impending proceeding, a judge shall not initiate, permit, or consider ex parte communications with attorneys and shall not initiate, encourage or consider ex parte communications with parties . . . .
>
> Sup. Ct. Rules, Rule 4.300, Code of Judicial Conduct, Canon 3(B)(7).

Here, the extensive ex parte contacts clearly violate this directive, and require that the rate determinations be set aside.

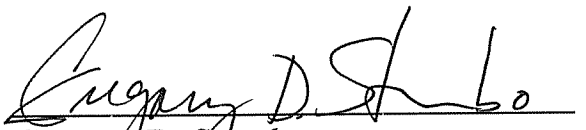
CONCLUSION

For the foregoing reasons, the Attorney General requests that the PSC take the following actions:

1. Cooperate with the Attorney General's investigation by seeking the production of relevant documents from L G & E pursuant to KRS 278.230;
2. Produce documentation of the circumstances and purpose of each ex parte contact with L G & E and KU during the pendency of the rate case;
3. Set aside the rate determination in the above captioned actions in order to restore public confidence in the integrity of the rate making process;
4. Direct L G & E and KU to resubmit applications for any rate increases;
5. Recuse from participation in these rate cases any Commissioners or staff who have engaged in undocumented ex parte contacts with L G & E employees.

Respectfully submitted,

COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

By: 

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion To Set Aside Rate Determinations was served by U.S. mail, postage prepaid, and via hand delivery to those parties present at the hearing held on October 21, 2004 to:

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On this the 21st day of October, 2004.

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ATTORNEYS

KENTUCKY · OHIO · INDIANA · TENNESSEE

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October 18, 2004

VIA FACSIMILE (w/o enclosures)
AND EXPRESS MAIL

Mr. Todd E. Leatherman, Director
Consumer Protection Division
Office of the Attorney General
1024 Capital Center Drive, Suite 200
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Re: Attorney General Civil Subpoena and Investigative Demand issued pursuant to KRS Chapter 367

Dear Todd:

Enclosed with this letter are additional documents responsive to Request No. 7 of the Second Subpoena under the terms set forth in my September 20, 2004 letter to you. These documents are numbered LG&E/AGI-2 1149-1264. As I indicated in my October 11, 2004 letter to you, production of documents under Request No. 7 is still ongoing. We will continue to produce documents responsive to Request No. 7 on a rolling basis until production is complete. We anticipate completing the process in approximately ~~two weeks~~, with the service of a privilege log reasonably soon thereafter.

Please contact me with any questions regarding the production.

Yours truly,

David S. Kaplan

Enclosures
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EXHIBIT
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A

C

Appellate Court of Illinois,
First District, Third Division.

BUSINESS AND PROFESSIONAL PEOPLE FOR the PUBLIC INTEREST, et al., Plaintiff-Appellants,
v.
Terrence BARNICH, Defendant-Appellee.

No. 1-92-2787.

March 31, 1993.

Consumer advocate groups filed a petition for writ of mandamus, and further equitable relief concerning alleged improprieties of commissioner of the Illinois Commerce Commission (ICC) in rate making proceedings with electric company. The Circuit Court, Cook County, Thomas J. O'Brien, J., dismissed the action. Appeal was taken. The Appellate Court, Cerda, J., held that: (1) judicial conduct principles imposed a duty on commissioner to recuse himself after his impartiality had been reasonably questioned on the basis of his friendship with representatives of electric company and allegations of a large number of **ex parte** phone calls; (2) allegations of the appearance of impropriety were sufficient to overcome a motion to dismiss for failure to state a claim; and (3) commissioner's duty to recuse himself was not discretionary and, thus, a writ of mandamus was an appropriate remedy.

Reversed and remanded.

West Headnotes

[1] **Judges** 49(1)
227k49(1) Most Cited Cases
Inherent in Supreme Court rules on judicial conduct is concept that judge who has personal interest in case cannot act fairly in that case.

[2] **Administrative Law and Procedure** 445
15Ak445 Most Cited Cases

[2] **Judges** 49(1)
227k49(1) Most Cited Cases
Principle of jurisprudence that one with personal interest in subject matter of decision in case may not act as judge in that case is applicable not just to judges, but also to administrative agents, commissioners, referees, masters in chancery, and other arbiters of questions of law or fact not holding judicial office.

[3] **Electricity** 11.3(6)
145k11.3(6) Most Cited Cases
Judicial conduct principles imposed duty on commissioner of Illinois Commerce Commission (ICC) to recuse himself after his impartiality had been reasonably questioned on basis of friendship and large number of **ex parte** phone calls with representatives of electric company that was participating in rate making proceedings before ICC. Ill.Rev.Stat.1989, ch. 127, ¶ 1015; Ill.Rev.Stat.1991, ch. 111 2/3 , ¶ 10-103; Sup.Ct.Rules, Rules 62, 63.

[4] **Electricity** 11.3(6)
145k11.3(6) Most Cited Cases
Consumer advocate groups' allegations of appearance of impropriety by commissioner of Illinois Commerce Commission (ICC) were sufficient to overcome motion to dismiss for failure to state a claim in action to compel recusal of commissioner; commissioner had friendship with representatives of electric company and allegedly made **ex parte** phone calls to representatives of electric company during rate making proceedings without documenting substance of conversations. Ill.Rev.Stat.1989, ch. 127, ¶ 1015; Ill.Rev.Stat.1991, ch. 111 2/3 , ¶ 10-103; Sup.Ct.Rules, Rules 62, 63.

[5] **Electricity** 11.3(6)
145k11.3(6) Most Cited Cases

[5] **Mandamus** 81
250k81 Most Cited Cases
Duty of commissioner of Illinois Commerce Commission (ICC) to recuse himself for creating appearance of impropriety from contacts with electric company during rate making proceedings before ICC was not discretionary duty and, thus, writ of mandamus was appropriate remedy to compel performance of commissioner's duty to recuse himself.

****342 *292 ***208** Howard A. Learner, Chicago, for appellants, Business and Professional People for the Public Interest (Patricia M. Logue, of counsel).

Stamos & Trucco, Chicago, for appellee, Terrence Barnich.

Justice CERDA delivered the opinion of the court:

One of plaintiffs, Business and Professional People for the Public Interest (BPI), appeals from an order

denying plaintiffs' motion for preliminary injunction and dismissing with prejudice plaintiffs' first amended verified petition and complaint for writ of *mandamus,* writ of prohibition, injunction, and further equitable relief. BPI argues on appeal that: (1) the complaint stated a cause of action; (2) there was an appearance of impropriety caused by the numerous telephone calls made by defendant, Terrence Barnich, who was a commissioner of the Illinois Commerce Commission (ICC), to Commonwealth Edison (Edison) lawyers, lobbyists and officials; and (3) plaintiffs were entitled to preliminary injunctive relief disqualifying defendant from Edison rate proceedings based on defendant's failure to recuse himself.

The following plaintiffs filed the complaint, along with BPI: Citizens Utility Board, The Labor Coalition on Public Utilities, National Peoples Action Community Action for Fair Utility Practice, South Austin Coalition Community Council, Northwest Austin Council, Action Coalition of Englewood Chicago South Community Development Organization, and Logan Square Neighborhood Organization. The complaint requested that defendant recuse himself from pending rate proceedings involving a proposed Edison rate increase and that he be enjoined from participating further in those rate proceedings.

***293** The complaint alleged the following. Plaintiffs were parties in the Edison rate proceedings. BPI was a not-for-profit organization that represented Northern Illinois electricity consumers in Edison rate proceedings. Plaintiff Citizens Utility Board was a statutorily created organization. The other plaintiffs were not-for-profit organizations. The ICC was a seven member administrative agency that set rates for utilities, including Edison. Defendant was an ICC commissioner since 1989.

The pending Edison remand case was the ICC's third attempt since 1987 to set lawful electricity rates for Edison. Ratemaking proceedings were contested cases requiring the ICC to resolve questions of fact and law. Defendant acted in a judicial or quasi-judicial capacity in these rate proceedings. From December 1989 through the first nine months of 1991, during the pendency of early stages of the Edison remand case, more than 375 telephone calls were placed from defendant's personal office telephone to the telephones of paid Edison representatives. The Edison representatives telephoned included: (1) an attorney for the ****343 ***209** law firm that performed legal and lobbying services for Edison; (2) a registered lobbyist for Edison who was also an attorney at the same law firm; (3) a consulting firm managed by a former ICC chairman; (4) an Edison employee who was Edison's director of regulatory affairs during 1990 and 1991; (5) Edison's chairman of the board; and (6) Edison's vice president.

Petitions for rehearing had been filed by the ICC and Edison seeking to free Edison from a pledge to refund the illegal increase after a December 1989 Illinois Supreme Court opinion. In May 1990, the Illinois Supreme Court issued a modified opinion directing that the refund be paid and remanded the case to the ICC. In April 1990, Edison filed a new rate increase request. During the period from December 1989 through May 1990, 116 telephone calls were made from defendant's personal office telephone to various Edison representatives.

In June 1990, the ICC resumed jurisdiction over the remanded case. Final orders were issued on March 8, 1991. The ICC voted to grant Edison a large rate increase. From June 1990 through March 8, 1991, at least 148 telephone calls were made from defendant's personal office telephone to various Edison representatives.

The complaint further alleged the following. Plaintiffs pursued a stay and appeal of the March 8, 1991, order. Oral argument was heard by the Illinois Supreme Court on April 25, 1991. During this period, at least 28 telephone calls were made from defendant's personal office telephone to various Edison representatives.

***294** On June 25, 1991, the Illinois Supreme Court heard argument on another Edison case, and on July 15, 1991, the appellate court ruled on another contested Edison rate order. From April 26, 1991, through September 12, 1991, at least 97 telephone calls were made from defendant's personal office telephone to various Edison representatives.

The March 8, 1991, orders were reversed by the Illinois Supreme Court on December 16, 1991, and on February 10, 1992, the case was remanded to the ICC. In press stories following the revelation of these telephone records, defendant was quoted as having made these telephone calls and as being best friends with three of the Edison representatives telephoned. Defendant failed in his duty to maintain a favorable public impression of impartiality.

On March 3, 1992, plaintiffs filed a motion to have

defendant recuse himself and refrain from participating in the rate proceedings. Defendant never responded to the motion and continued to participate in ICC meetings. Therefore, he constructively denied the motion. On March 27, 1992, plaintiffs filed a motion to have the ICC recuse defendant from participating in the proceedings. The ICC issued an order denying the motion on the ground of lack of jurisdiction to recuse a fellow commissioner.

The ICC stated its intention to issue a final order in the remand case on or before January 11, 1993. Recusal was required because of the appearance of impropriety and bias if not actual impropriety and bias arising from the telephone calls. Recusal was further required because of defendant's admitted close personal relationship with Edison representatives to whom telephone calls were placed. Recusal was further required because of defendant's failure to put on the record the substance of the conversations, in violation of section 10-103 of the Public Utilities Act (Ill.Rev.Stat.1991, ch. 111 2/3 , par. 10-103). Plaintiffs were prejudiced by defendant's participation in the proceedings. Plaintiffs sought a writ of *mandamus* compelling defendant to recuse himself from the Edison remand case.

Count II sought a writ of prohibition prohibiting defendant from continuing to participate in the Edison remand case. Count III sought injunctive relief against defendant's continued participation.

Plaintiffs filed an emergency motion for a temporary restraining order to enjoin defendant from participating in a scheduled June 24, 1992, ruling by the ICC and in any other deliberations in connection with two ICC dockets. The motion was denied on June 23, 1992.

****344 ***210** Plaintiffs filed a first amended verified petition and complaint. Among the new allegations was that defendant's recusal was required ***295** by the ICC's regulations that set forth standards of behavior for commissioners.

Pursuant to defendant's motion to dismiss, the trial court dismissed the complaint with prejudice on the basis that plaintiffs failed to state a cause of action.

BPI first argues on appeal that the complaint stated a cause of action because defendant had the duty to recuse himself based on his conduct that caused at least an appearance of impropriety. Specifically, BPI argues that: (1) judicial conduct principles on avoiding impropriety governed defendant's conduct as a commissioner; (2) a prime objective of the Public Utilities Act (Ill.Rev.Stat.1991, ch. 111 2/3 , par. 1-101 *et seq.*) was to instill consumer confidence in the ratemaking process; (3) defendant placed numerous telephone calls to attorneys, officers, and lobbyists of a litigant during the pendency of a case; (4) defendant failed to disclose these ***ex parte*** communications in violation of the Public Utilities Act (Ill.Rev.Stat.1991, ch. 111 2/3 , par. 10-103) and the Administrative Procedure Act (Ill.Rev.Stat.1989, ch. 127, par. 1015); (5) defendant's conduct violated the ICC's regulations on standards of behavior (83 Ill.Adm.Code § § 100.10 through 100.40 (1985)); and (6) actual bias did not have to be shown before disqualification was ordered.

Defendant argues the following in response. His position was not analogous to a judge because the ICC becomes a party opponent of one party and a co-appellee of another party when its decisions are appealed so that the ICC was Edison's co-litigant against plaintiffs on appeal. BPI failed to cite any civil authority that authorized recusal for the alleged appearance of partiality, for alleged ***ex parte*** communications, or for actual bias, prior to appeal from the adjudicative officer's decision. Cases on which BPI relied on were distinguishable on the basis that they involved situations of personal interest of agency members in the outcome of proceedings. Prejudice must be shown before reversing an agency's decision because of improper ***ex parte*** contacts. It was possible that all defendant's telephone calls were authorized or even required by the Public Utilities Act (Ill.Rev.Stat.1991, ch. 111 2/3 , par. 4-101 (ICC is to have general supervision of public utilities)).

In addition to case law, BPI relies upon the following authority. Supreme Court Rule 62 directs that a judge should avoid both impropriety and the appearance of impropriety. (134 Ill.2d R. 62.) Supreme Court Rule 63 obligates a judge to disqualify himself in a proceeding in which his impartiality might reasonably be questioned. (134 Ill.2d R. 63.) Supreme Court Rule 63 prohibits ***ex parte*** communications ***296** concerning a pending or impending proceeding. 134 Ill.2d R. 63.

Section 1015 of the Administrative Procedure Act prohibited agency members, employees and hearing examiners, after notice of hearing in a contested case, from communicating with any person or party in connection with any issue of fact or with any party or

his representative in connection with any other issue, except upon notice and opportunity for all parties to participate. (Ill.Rev.Stat.1989, ch. 127, par. 1015.) Section 10-103 of the Public Utilities Act states that section 15 of the Administrative Procedure Act (Ill.Rev.Stat.1989, ch. 127, par. 1015) applies to ICC proceedings, with an exception for certain ICC employees and functions. (Ill.Rev.Stat.1991, ch. 111 2/3 , par. 10-103.) The section further provides that a commissioner, who is involved in the decisional process of a proceeding and who makes a prohibited communication shall place on the public record any such written communication and memoranda stating the substance of any such oral communication. (Ill.Rev.Stat.1991, ch. 111 2/3 , par. 10-103.) In the event of a violation, the ICC or a presiding commissioner was to ensure that the violation did not prejudice any party or adversely affect the fairness of the proceedings. Ill.Rev.Stat.1991, ch. 111 2/3 , par. 10-103.

ICC regulations require ICC employees to avoid situations that might result in ****345 ***211** actual or apparent misconduct or conflict of interest and to avoid actions that might result in or create the appearance of giving preferential treatment to any interested party, of losing complete impartiality, of discussing impending decisions outside office channels, and of affecting adversely the confidence of the public in the ICC's integrity. 83 Ill.Adm.Code § 100.20 (1985).

[1][2] In interpreting the Supreme Court rules on judicial conduct, one court has held that the appearance of bias or prejudice can be as damaging to the public confidence as actual bias or prejudice. (*People v. Bradshaw* (1988), 171 Ill.App.3d 971, 976, 121 Ill.Dec. 791, 525 N.E.2d 1098.) Inherent in the rules is the concept that a judge who has a personal interest in a case cannot act fairly in that case. The principle of jurisprudence that one with a personal interest in the subject matter of decision in a case may not act as judge in that case is applicable not just to judges but to administrative agents, commissioners, referees, masters in chancery, or other arbiters of questions of law or fact not holding judicial office. (*In re Heirich* (1956), 10 Ill.2d 357, 384, 140 N.E.2d 825.) A duty to recuse oneself has been applied to an arbiter of facts or law in an adversary proceeding who had a financial interest in the subject matter. *Heirich*, 10 Ill.2d at 385, 140 N.E.2d 825.

297** [3][4] On the basis that defendant was a commissioner whose duties were similar to those of a judge, we hold that the judicial conduct principles applied to him resulting in a duty to recuse himself when his impartiality was reasonably questioned. We also hold that plaintiffs' complaint stated a cause of action because it sufficiently alleged the appearance of impropriety by defendant, who as a commissioner, was required to avoid such an appearance and was statutorily prohibited from making ***ex parte communications.

[5] The next issue is whether plaintiffs could therefore seek defendant's recusal via a writ of *mandamus,* a writ of prohibition, or an injunction. BPI argues that a writ of *mandamus* is the appropriate remedy to compel performance of an official duty and that defendant had a clear non-discretionary duty to recuse himself. BPI also argues that a writ of *mandamus* would prevent damage to public confidence in the ratemaking proceedings. Defendant argues that plaintiffs were not entitled to a writ of *mandamus* because his constructive denial of the motion to recuse was a discretionary act within his legitimate authority.

We hold that defendant's duty to recuse was not discretionary and that, therefore, the trial court erred in not granting a writ of *mandamus.* See *U.S. v. Balistrieri* (7th Cir.1985), 779 F.2d 1191, 1205 (writ of *mandamus* was the remedy against a judge who refused to recuse himself when required); *Crump v. Illinois Prisoner Review Board* (1989), 181 Ill.App.3d 58, 60, 129 Ill.Dec. 825, 536 N.E.2d 875 (*mandamus* is a remedy used to direct a public official to perform a duty which plaintiff has a clear right to have performed and which does not involve the exercise of judgment or discretion).

The judgment of the trial court is reversed, and the cause is remanded.

REVERSED AND REMANDED.

RIZZI and GREIMAN, JJ., concur.

244 Ill.App.3d 291, 614 N.E.2d 341, 185 Ill.Dec. 207

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