

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ANTHONY J. SCIRICA
CHIEF JUDGE

22614 UNITED STATES COURTHOUSE
SIXTH AND MARKET STREETS
PHILADELPHIA, PENNSYLVANIA 19106
(215) 597-2399
FAX (215) 597-7373
ascirica@ca3.uscourts.gov

January 6, 2006

Senator Arlen Specter
Chairman, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Senators Specter and Leahy,

I have received a letter from Senator Kennedy dated December 30, 2005, asking for additional information not requested in prior letters from members of the Senate Judiciary Committee, and covering a longer time frame than that covered by Senator Leahy's letter dated November 18, 2005. Question 5 asks me whether there were any communications regarding Judge Alito's Vanguard holdings or possible recusal in Case No. 01-1827 other than his letter to me dated December 10, 2003, and any items on the docket. To the best of my recollection, I spoke with Judge Alito on the telephone prior to his recusal and told him I did not believe it necessary for him to recuse. I have asked Marcia Waldron, the chief clerk of our Court, to respond to Senator Kennedy's other questions, and I enclose her response.

Sincerely,



Anthony J. Scirica

TO: Chief Judge Scirica

FROM: Marcy Waldron, Clerk

DATE: January 6, 2006

As you previously asked me and as I stated in my memorandum of December 13, 2005, Column Seven of Judge Alito's current recusal list indicates the Clerk's Office was informed that Vanguard should appear on his recusal list on December 10, 2003. To the best of my knowledge, we have no information that Vanguard appeared on Judge Alito's recusal list prior to that time.

I enclose the remainder of the non-public docket for Case 01-1827, which was printed on December 30, 2005. The docket we enclosed with the last letter stopped at December 31, 2003, because the Committee's letter asked about records of recusal checks only up to that date.

The docket does not record any "results" of the recusal check done on September 16, 2002, because there was no change from the prior check. Recusal notes are made only if a recusal check produces a new match.

The screen shots of Judge Alito's recusal list were printed in late November in response to your inquiries.

There are no earlier printouts of the non-public docket for Case 01-1827. Although the non-public docket is provided to the panel when the case is submitted for decision, it is not retained.

The docket dated October 31, 2005 shows all entries as they existed at the close of the case. The last entry was made on March 8, 2005. No edits were made after that date.

1/9/04 RECUSAL: SAA, RJA (wab)

1/12/04 ORDER IN OFFICE: Hard copy Order in Office (kkg)

1/12/04 ORDER (Chief Judge Scirica, Authoring Judge, Circuit Judge) considering Appellant's Motion to vacate the July 30, 2002 Judgment, disqualify Judge Alito from this appeal and to order a new appeal to be heard also construed as motion to recall mandate, Unopposed Motion by Appellees Vanguard Group, et al. for extension of time to file response, Response by Appellees Vanguard Group, et al., received not filed unless the Court so directs, Joinder in Response by Appellees John C. Ottenberg, et al. and Unopposed Motion by Appellant for extension of time to file reply. The Vanguard Appellees' motion for an extension of time is granted and the Clerk is directed to file the response as of the date of this Order. Because Judge Alito recused himself from this matter, the mandate will be recalled and the judgment vacated. The appeal will be resubmitted to another panel for whatever action the panel deems appropriate. In light of the foregoing, Appellant's motion for an extension of time is denied as unnecessary, filed. Reopening Case: on 1/12/04. (nmb)

SUBM. 11d
CLOSED

INTERNAL USE ONLY: Proceedings include all events.
01-1827 Monga v. Ottenberg, et al

1/12/04 Certified copy of order to Lower Court. (nmb)

1/16/04 BRIEF LOGGED: Eres/Addendum Br (The Vanguard Group) (ema)

1/16/04 BRIEF LOGGED: Eres Br (Founders Fund) (ema)

1/21/04 APPEARANCE from Attorney John G. S. Flym on behalf of Appellant Shantee Maharaj, filed. (nmb)

2/3/04 APPEARANCE from Attorneys Seth B. Kosto & Gael Mahony on behalf of Appellee Founders Funds Inc, filed. (nmb)
[Entry date 02/04/04]

2/12/04 SUBMITTED Thursday, February 12, 2004 Coram: Scirica, Chief Judge, Stapleton and Cowen, Circuit Judges. (eh)
[Entry date 03/30/04]

4/7/04 NOT FOR PUBLICATION NOT PRECEDENTIAL UNREPORTED PER CURIAM OPINION (Scirica, Chief Judge, Stapleton and Cowen, Circuit Judges), filed. (nmb)

4/7/04 JUDGMENT, Affirmed. Costs are taxed against appellant, filed. (nmb)

4/7/04 Terminated on the Merits after Submission Without Oral Hearing; Affirmed; Written, Unsigned, Unpublished. (nmb)

4/7/04 AUTHORIZING JUDGE: WKS (nmb)

4/13/04 INTERNAL NOTE: BsOC in office. (nmb) [Entry date 04/15/04]

4/13/04 BILL OF COSTS by Appellees Vanguard Grp Inc, Vanguard Fiduciary, Vanguard Morgan & Inv Fiduciary Trust, filed. Certificate of Service dated 4/12/04. (nmb)
[Entry date 04/15/04]

4/13/04 BILL OF COSTS by Appellee Founders Funds Inc, filed. Certificate of Service dated 4/12/04. (nmb)
[Entry date 04/15/04]

4/21/04 INTERNAL NOTE: PFR in office. (nmb)

4/21/04 RECUSAL CHECK (nmb)

4/21/04 RECUSAL: MTB (nmb)

4/21/04 PETITION by Appellant for rehearing en banc, filed. Certificate of service dated 4/21/04. (nmb)

INTERNAL USE ONLY: Proceedings include all events.
01-1827 Monga v. Ottenberg, et al

4/29/04 MOTION by Appellant for Leave to File Addendum to Petition for Rehearing with request to file an amended petition, which the Court may wish to construe as Errata to Petition for Rehearing, filed. Answer due 5/14/04. Certificate of Service dated 4/29/04. **Construed as Errata to Petition for Rehearing per Court's Order dated 5/3/04.** (nmb) [Entry date 04/30/04] [Edit date 05/03/04]

4/30/04 ORDER IN OFFICE: Order in Office (psd)

5/3/04 ORDER (Stapleton, Authoring Judge, Chief Judge) granting motion by Appellant for leave to file addendum to petition for rehearing with request to file an amended petition construed as Errata to petition for rehearing, filed. (nmb)

5/11/04 ORDER IN OFFICE: Order in Office (kb)

5/11/04 Order (Scirica, Chief Judge, Stapleton, Authoring Judge and Cowen, Circuit Judges) directing Appellees to file a response to appellant's petition for rehearing on or before fourteen (14) days from the entry date of this order. The answer shall not exceed fifteen (15) pages, filed. Answer due to be filed by 5/25/04. (par)

5/11/04 Appellant's Corrected/Amended Petition for Rehearing construed as Erata to Petition for Rehearing filed in accordance with Court Order dated 5/3/04, filed. Certificate of Service dated 5/11/04. (ch) [Entry date 05/12/04]

5/25/04 ANSWER to Appellant's Corrected/Amended Petition for Rehearing received in accordance with the Court's request from Appellees, John C. Ottenberg, and Berry Ottenberg, filed. (lld) [Entry date 05/26/04] [Edit date 06/02/04]

5/26/04 ANSWER to Appellant's Corrected/Amended Petition for Rehearing received in accordance with the Court's request from Appellees, Grp Inc, Vanguard Fiduciary, Vanguard Morgan, Founders Inc, and Inv Fiduciary Trust, filed. (lld) [Edit date 06/02/04]

5/28/04 MOTION by Appellant for leave to file a Reply to Appellees' Responses to Appellant's Corrected/Amended Petition for Rehearing, filed. Answer due 6/14/04. Certificate of Service dated 5/28/04. (lld) [Entry date 06/02/04]

6/23/04 ORDER IN OFFICE: Order in Office (kb)

6/23/04 ORDER IN OFFICE: (Hard copy) Order in Office (kkg)

SUBM. 11d
CLOSED

* INTERNAL USE ONLY: Proceedings include all events.
01-1827 Monga v. Ottenberg, et al

6/23/04 ORDER (Scirica, Chief Judge, Stapleton, Authoring Judge, and Cowen, Circuit Judges) denying motion by Appellant for leave to file a Reply to Appellees' Responses to Appellant's Corrected/Amended Petition for Rehearing, filed. (11d)

6/23/04 ORDER (Scirica, Chief Judge, Nygaard, Roth, McKee, Ambro, Fuentes, Smith, Chertoff, Fisher, Cowen*, and Stapleton*, Authoring Judge, Circuit Judges) denying petition by Appellant for rehearing en banc, filed. *Honorable Walter K. Stapleton, and Honorable Robert E. Cowen, Senior United States Circuit Judges for the Third Circuit, were members of the original panel. Their votes are limited to panel rehearing only. (11d)

7/1/04 MANDATE ISSUED, filed. (11d)

12/20/04 Supreme Court of U.S. notice filed advising petition for writ of certiorari filed by Appellant Shantee Maharaj. Filed in the Supreme Court on 11/22/04 at Supreme Ct. case number: 04-7682. (mgd) [Entry date 12/21/04]
[Edit date 12/28/04]

2/28/05 U.S. Supreme Court order dated 2/22/05, at S.C. number: 04-7682, denying petition for writ of certiorari by Appellant Shantee Maharaj. filed. (jht)
[Entry date 03/08/05]