

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DOCKET NUMBER: 2201CR002384
BMC TRIAL COURT 5
COMMONWEALTH vs. Nicholas J. Fiorillo

EMERGENCY MOTION TO RECUSE OR DISQUALIFY JUDGE DENISE CASPER

Defendant Nicholas Fiorillo, upon notice of assignment of this matter to Hon. Denise Casper, respectfully moves for the immediate recusal and disqualification of Judge Casper. This recusal is compelled since Judge Casper' "impartiality might reasonably be questioned," 28 U.S.C. § 455, given the inherent conflict of interest between her spouse, Marc N. Casper, President and CEO of Thermo Fisher Scientific, and the law firm of one of the Defendants in this instant action, Kevin T. Peters, the Gesmer Updegrave Firm. Upon information and belief, employees of the Gesmer firm in MA now work for Thermo Fisher Scientific, and former employees of Thermo Fisher now work for the Gesmer firm.

Under Rule 211 A (3), recusal is mandated when "the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding."

Under Rule 211 6 B), "a judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household. Plaintiff by no means implies any prior awareness by Judge Casper of the inherent conflict of interest with her spouse, and maintain the good faith belief that based upon the appraisal of the same, by way of this motion, recusal will be automatic. There clearly remains

a nepotistic hold over our entire Judicial System in the Commonwealth, and recusal will serve to set a positive example of change.

There remain too many Judicial Officers who continue to violate numerous canons of their respected appointments, and a “secret court” conspiracy to “intimidate” this pro se litigant. These Grand Corruption schemes have decimated Nicholas Fiorillo’s civil rights to fair and prudent judicial proceedings, under the color of Federal law, and this Motion relates to the cases captioned as GF FUNDING SWANSEA, LLC et als v. NICHOLAS FIORILLO, et al, SAMUEL SPITALNY et als v. NICHOLAS FIORILLO, et al, BSI 254 Westfield, LLC, et al. v. Fiorillo, No. 22-1820, and the many other vexatious inextricably related “debt collection” cases now pending in our Judicial System.

The Due Process Clause of the Fifth Amendment of the U.S. Constitution requires recusal under circumstances which raise a troubling “appearance,” as the circumstances at hand most certainly do. Unethical judicial conduct must be stemmed immediately by recusal, as the secret courts of the Commonwealth are further exposed as “NO SECRET.” It is crystal clear that quid pro quo nepotism, not unlike what has been deemed in our great state a “judicial corruption phenomenon” the likes of the Roman Catholic Priest Abuse Scandal, continues.

The aftermath of the “Wall Report” has exposed this state's entire, 100 year systemic pattern of nepotism a/k/a (QUID) “judicial favors” for (PRO) “political donations” for (QUO) “job security, tenure, tender” as the way our court system has always operated. These unsavory practices have emboldened those who have had their “death grip” on the devil’s strings of “Powers,” and they no longer hide behind any curtain or disguise, since this is the “Justice Business as Usual”.

Judges like Judge Casper and like minded judicial officers continue to take orders from above, in what has long been considered throughout this land as the most corrupt and scandalous Judicial System in our Country, the Secret Courts of Massachusetts. Our systemic judicial

corruption disease will continue to engulf this state's legal system in a political quagmire, which carries poisonous consequences for the perceived independence and integrity of the judiciary and rights of every man, woman and child in this great country of the United States.

FACTUAL BACKGROUND

The present circumstances mirror those in the matter of a prominent pro se litigant, who has garnered attention on the National stage and now finds himself at the SJC, where he has exposed the "usual suspects" including the very same Judges and judicial officers in this and all related actions involving Nicholas Fiorillo and the Plaintiffs, and the "kangaroo court" type nepotism which continues against this litigant.

As we all know, without QUESTION or DOUBT, this litigant is just another victim of the Secret Courts, who has had many of the same deprivations of his civil rights, obstructions of due process, unlawful prosecutions, systemic criminal assaults and threats of losses of property, life, liberty and his family home, all of which are hanging by the despicable strings of the Secret Courts.

Judge Casper must recuse herself at the outset, upon realization that she is in a position in which disqualification is mandated. Judge Casper, Judge Kelley, Judge Casper and Judge Boal, are aligned with Judge Burroughs, and without question prejudicially biased against Nicholas Fiorillo.

ARGUMENT

29 CFR § 2200.68 - Recusal of the Judge.

(a) Discretionary recusal. A Judge may recuse themselves from a proceeding whenever the Judge deems it appropriate.

(b) Mandatory recusal. A Judge shall recuse themselves under circumstances that would require disqualification of a Federal judge under Canon 3(C) of the Code of Conduct for United States

Judges, except that the required recusal may be set aside under the conditions specified by Canon 3(D).

Legal Standard

The law has long understood “the universally recognized legal maxim, *nemo iudex in causa sua*, [‘no one may be his own judge’].” *Criss v. Union Sec. Ins. Co.*, 26 F. Supp. 3d 1161, 1163 (N.D. Ala. 2014). The Judicial Code which governs the conduct of federal judges and justices is quite clear: Any justice, judge or magistrate of the United States shall disqualify himself [or herself] in any proceeding in which his [or her] impartiality might reasonably be questioned. 28 U.S.C. § 455(a). Title 28, United States Code, Section 455 provides, in pertinent part, that:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned. “The goal of section 455(a) is to avoid even the appearance of partiality....[R]ecusal is required even when a judge lacks actual knowledge of the facts indicating [her] interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge.” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860-61 (1988).

To determine whether a judge’s “impartiality might be reasonably questioned,” the inquiry is: whether a reasonable person with knowledge of all the facts would conclude that the

judge's impartiality might reasonably be questioned The reasonable person is not someone who is hypersensitive or unduly suspicious, but rather is a well informed, thoughtful observer. The standard must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice. *United States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008).

“Bias or prejudice” refers to a disposition that is wrongful or inappropriate, either because it is based upon an improper source or is excessive. A recusal based on bias or prejudice must show a deep-seated favoritism or antagonism that would make fair judgment impossible, as

would be the case where a spouse has a perceived or actual common interest with a party to an action. There is without question, therefore, a prejudicial bias based upon spousal conflict of interest, and clear grounds for disqualification, as “when it is shown to be of such nature, and to such extent, as to deny the defendant due process of law.” Kemp v. State, 846 S.W.2d 289, 305 (Tex. Crim. App. 1992). Failure to recuse rises to the level of disqualification when it impacts a litigant’s right to due process.

As Justice Scalia wrote in Liteky v. United States, 510 U.S. 540, 548 (1994), recusal questions posed under § 455 are “to be evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its appearance. Quite simply and quite universally, recusal was required whenever ‘impartiality might reasonably be questioned.’” (emphasis in original). The unambiguous patterns of corrupt conduct of certain members of the Federal Judiciary, mirrors similar patterns of corrupt conduct evidenced by related judgments in the lower courts of the Commonwealth.

Judge Casper has historically accelerated remands without appearing to have reviewed pleadings before issuing orders favorable to Plaintiffs against this pro se litigant. Judge Casper artfully enters decisions calculated to be “right on time” while lacking sufficient notice, clearly violating the standard 30 day harbors of remand protection. Judges Casper, Casper, Kelley, Talwani and Boal, have continued to systemically jockey the system and ride side saddle to the BMC/SSC.

The many Federal questions posed in these related matters have only increased tenfold in significance, in the aftermath of the discovery of a Racketeering Criminal Enterprise a/k/a the RGPSQ/NE EDGE loan sharking ring, and their use of the “Pegasus Cyber Spying” technology, which is now “blacklisted” by the United States Federal Government.

This unlawful cyber spying, electronic eavesdropping, data breach, theft of intellectual property, geo location tracking, and “garden variety” wiretapping involving Plaintiffs in that

action and all Defendants in this Instant Action, led by Samuel B. Spitalny and party to this instant action, Kevin Peters, result in this matter being properly removed to Federal Court, based upon the Federal issues raised by the criminal wiretapping.

Nicholas Fiorillo has less than zero faith that Judge Casper, or Judge Burroughs, Kelley, Talwani and Boal, and their judicial aides, for that matter, are able to act impartially and in accordance with the Judicial Oath of Office, based on the systemic judicial abuses which have already been shown on the record. "Once a judge whose impartiality toward a particular case may reasonably be questioned presides over that case, the damage to the integrity of the system is done." *Durhan v. Neopolitan*, 875 F.2d 91, 97 (7th Cir. 1989). That must not be permitted to happen with the cases involving this pro se litigant, as the implications would be something from which the Court would not soon recover.

CONCLUSION

For the reasons stated within, Defendant Nicholas Fiorillo calls for Judge Denise Casper to hereby disqualify herself in this proceeding before any more unjust rulings can be rendered due to an interest conflict resulting in bias, pursuant to 28 U.S.C. §§ 455 (a), so that the case may be redrawn to another district judge in the Eastern Division, who harbors no preconceived bias against this pro se litigant, or has no inherent conflict of interest with their spouses business interests.

Date: December 22, 2022

Respectfully submitted,

/s/Nicholas Fiorillo
Nicholas Fiorillo

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2022, a true copy of the above document was provided by U.S. mail, to all counsel of record.

/s/Nicholas Fiorillo

Nicholas Fiorillo