

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,)	
)	Case No. 4:15cr50
Plaintiff,)	(4:12cr101)
)	
v.)	
)	
JEFFREY A. MARTINOVICH,)	
)	
Defendant.)	

MOTION FOR DISQUALIFICATION AND RECUSAL OF DISTRICT COURT JUDGE
PURSUANT TO 28 U.S.C. § 144 AND § 455 IN PARI MATERIA

NOW HERE COMES Jeffrey A. Martinovich, proceeding pro se, in a Motion for Disqualification and Recusal of District Court Judge Pursuant to 28 U.S.C. § 144 and § in Pari Materia.

On June 13, 2019, the Fourth Circuit Court of Appeals vacated in part the judgment of this District Court which denied Mr. Martinovich's § 2255. The Fourth Circuit remanded to the District Court for further proceedings consistent with the court's decision which vacated the judgment on three separate Grounds in which the genesis of the violations were the errors of this District Court. These separate violations were presented to this District Court for remedy, yet this Court summarily dismissed these Grounds without an evidentiary hearing or even ordering the Government to provide a Response.

Now, as these Grounds are back before this Honorable Court, with Mr. Martinovich's liberty at stake, Mr. Martinovich respectfully requests this Court recuse and disqualify itself from these proceedings congruent with 28 U.S.C. § 455 guidance, to include:

1. "shall disqualify (herself) in any proceeding in which (her)

impartiality might reasonably be questioned." [§ 455(a)].

2. "where (she) has a personal bias or prejudice concerning a party." [§ 455(b)(1)].

3. "a lawyer with whom (she) previously practiced law served during such association as a lawyer concerning the matter." [§ 455(b)(2)].

LEGAL STANDARD

"The standard for recusal under 144 [and pari materia § 455] requires the plaintiff's affidavit in support of his Motion to establish adequately that this Court has a 'personal bias or prejudice either against [the plaintiffs] or in favor of the adverse party.'" [Mua v. Maryland, US Dist. LEXIS 50999 (4th Cir. 2017); citing Sine v. Local 992 Int'l Bd. of Teamsters, 882 F. 2d 913 (4th Cir. 1989) emp. add.].

"(O)pinions formed by the judge...do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." [Liteky v. U.S., 510 U.S. 440, 114 S. Ct. 1147 (1994) emp. add.].

"In determining whether a judge has a disqualifying bias the alleged bias must derive from an extra-judicial source. It must result in an opinion on the merits on a basis other than that learned by the judge from his participation in the matter." [U.S. v. Gibson, 328 Fed. Appx. 860 (4th Cir. 2009)].

SUPPORTING EVIDENCE FOR DISQUALIFICATION - RECUSAL

1. Judge Wright Allen's partiality against Mr. Martinovich caused her to repeatedly insist that Mr. Martinovich was lying about his good work and volunteer activities while incarcerated. Instead of granting positive consideration for his exemplary efforts, Judge Wright Allen demonstrably proclaimed, "You're inflating what you're doing in the BOP," repeatedly rebuked Mr. Martinovich for lying to the Court, and summarily dismissed his detailed evidence of proof and supporting

affidavits from third parties without even ordering the government to respond. The Appeals Court countered this unexplained partiality by asserting that "Martinovich has made a credible showing that his proffer regarding his volunteer and employment work in prison was truthful." [§ 455(a), Order 6/13/19].

2. Judge Wright Allen's partiality against Mr. Martinovich bubbled over again when she refused to consider "any of the positive things [Martinovich] did with the community," as Mr. Martinovich's extraordinary civic and charitable participation should have been another substantial, positive consideration. Judge Wright Allen again dismissed this issue without permitting the government to respond. The Appeals Court again countered this partiality, stating "the court's explicit statement that it would not consider Martinovich's positive work in the community while sentencing him is troubling...(c)onsidering how strongly this factor favored Martinovich." [§ 455(a), Order 6/13/19].

3. Judge Wright Allen stated that Mr. Martinovich's counsel had agreed to sentencing Martinovich to the high end of the Guidelines range, when in fact counsel had done no such thing, and Mr. Martinovich had certainly not authorized such a strange request. Judge Wright Allen again summarily dismissed this issue without ordering the government to respond, yet the Appeals Court countered her actions by stating "the district court's reasoning is illogical...the sentencing court's determination that counsel had agreed to the top of the Guidelines was obvious and clear error." [§ 455(a), Order 6/13/19].

4. Judge Wright Allen could not conceal her "personal bias" in support of attorneys Mr. James Broccoletti and Mr. Lawrence Woodward, the very adverse parties for this instant proceeding, of which this bias could

only be explained as extra-judicial as this bubbled over on her first day of proceedings in this instant case. Judge Wright Allen proclaimed to the packed courtroom, "For those of you who don't know Mr. Broccoletti, if he's not the best attorney in Virginia, he's one of the best -- Mr. Woodward is right there shoulder to shoulder, toe to toe -- and I would venture to say across the United States of America." This pronouncement, clearly meant to dissuade and deter Mr. Martinovich's § 2255 proceedings for ineffective assistance, the merits of his current case, and is "an opinion on the merits on a basis other than that learned by the judge from (her) participation in the matter." [U.S. v. Gibson, 328 Fed. Appx 860 (4th Cir. 2009)]. Textbook. [§ 455(b)(1), Sent. Tr. 92-93].

5. Distinctively emblematic of § 455(b)(2)'s requirement for disqualification, counsel Mr. Woodward, this instant proceeding's adverse party, asserted that Judge Wright Allen had actually worked as an attorney under Mr. Woodward and assisted him on cases. As documented in the presented Affidavit and Exhibits recording the contemporary communications, Mr. Woodward claimed that he was going "to play hardball" to move the sentencing to Judge Wright Allen's court because he has "known her 25 years, she assisted him on cases - she is #1, Jackson is #1A, and the rest are 10 levels down." [Atchs. 27, 29, Aff. #71][§ 455(b)(2)].

6. Unfortunately, Judge Wright Allen's partiality and bias repeatedly infected the previous proceedings and, as the Fourth Circuit has confirmed, violated Mr. Martinovich's right of due process. Further actions included:

a. Judge Wright Allen proclaimed ten times that Mr. Martinovich suffered from a "deep and complex" mental problem which required "mental health treatment," yet the Court never halted proceedings or

implemented the mandatory procedures of 18 U.S.C. § 4241, or the rest of the long list of applicable statutes and Sentencing Guidelines directives, and of course years later has never provided Mr. Martinovich a minute of "mental health treatment," as it was merely for theater. [§ 2255 Gr. 1 (4:15cr50), § 2255 Gr. 4 (4:12cr101)].

b. In response to Mr. Martinovich's discovery and submission of prosecutor fraud in sealing a superseding indictment and judge-shopping three separate magistrate judges to re-seal the indictment after expiration and unsealing, all to conceal the expired statute of limitations, Judge Wright Allen summarily dismissed this Ground without even ordering the government to respond to this well-documented claim, to include "FOIA-EXEMPT" memorandums and emails obtained by Mr. Martinovich. Yet, to further exacerbate the prosecutors' fraud, Judge Wright Allen, herself, replaced the statute of limitations with a new statute, one separate from the court record claiming the original statute was the driving necessity for obtaining the indictment, illegally-sealing the indictment, and for illegally re-sealing the indictment. [§ 2255 Gr. 6 (4:15cr50), § 2255 Gr. 10 (4:12cr101)].

c. Mr. Martinovich has submitted multiple shareholder restitution proposals to the Court, to include multiple new employers paying restitution directly in order to restore victims, as the restitution is merely 5% of Mr. Martinovich's previously-created equity and income. Yet, in order to achieve the government's objectives of extended incarceration at the expense of citizen taxpayers over the restoration and needs of citizens, Judge Wright Allen's bias and partiality caused her to discard this objective and proclaim that "the amount of restitution in both cases is to the sky, almost. So, absent a miracle, nobody is getting paid," and then she extended the years of incarceration

further. [Sent. Tr. p. 98].

CONCLUSION AND REMEDY

Mr. Martinovich herein reiterates his great respect for Judge Wright Allen and her long list of accomplishments and service to the country, as well as great respect for the position of United States District Judge in the Eastern District of Virginia. And, unfortunately, in this specific instance it is clear and obvious to this Court that Judge Wright Allen's partiality, bias, favoritism and previous professional relationships have repeatedly violated Mr. Martinovich's rights and caused these proceedings to be replete with substantive and procedural errors, prejudicial to Mr. Martinovich as confirmed by the Fourth Circuit. Beyond this, "(t)he inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial." [In re Beard, 811 F. 2d 818 (4th Cir. 1987)].

Even the "judicial remarks during the course of the (proceedings) that are critical or disapproving of, or even hostile to," Mr. Martinovich are disqualifying by the definition of the statute as "they display a deep-seated favoritism or antagonism that would make fair judgment impossible," most certainly in a further proceeding addressing Judge Wright Allen's own violations, with her as both violator and judge simultaneously.

Mr. Martinovich's fears of further misadventures following the bizarre previous negotiations and resentencing were more than realized as Case 4:15cr50's ten Grounds were summarily dismissed with avoidance or irrelevant brief responses without even allowing the government to respond, and in Case 4:12cr101 the Court, in violation of Rule 4's immediate directive, postponed ordering the government to respond

for over ten months simply to prolong Mr. Martinovich's incarceration, as the Court is well aware of numerous violations requiring substantial remedy. All of these proceedings follow Mr. Martinovich's first experience with judicial misconduct by trial Judge Robert A. Doumar, of which the Fourth Circuit asserted that "interference in this case went beyond the pale...such conduct challenges the fairness of the proceedings...(a)t its core, such conduct tends to undermine the public's confidence in the integrity of the judiciary." [U.S. v. Martinovich, 810 F. 3d 232 (4th Cir. 2016)].

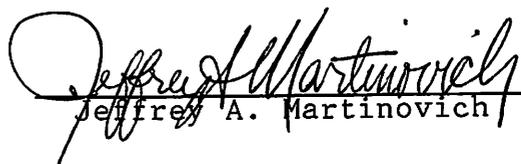
"(A)n objective, disinterested lay observer fully informed of the facts would entertain a significant doubt about the judge's impartiality." [Parker v. Connors Steel, 855 F. 2d 1510 (11th Cir. 1988)].

Mr. Martinovich respectfully asserts that the ubiquitous partiality and bias satisfies both the statutes' technical requirements for disqualification and recusal, as well as any objective observer's simple eye-test. To not reassign this case to an impartial judge would be a clear miscarriage of justice. Taking a last cue from the Fourth Circuit, when this panel replaced Judge Doumar it stated, "Reassignment to another judge may be advisable in order to avoid 'an exercise in futility [in which] the Court is merely marching up the hill only to march right down again'...accordingly, assigning a new judge will 'wipe[] the slate clean,' but in light of what transpired in the original trial, '[w]e do not believe that any waste or duplication would be out of proportion to the appearance of fairness a reassignment will preserve.'" [Martinovich; quoting U.S. v. Robin, 553 F. 2d 8 (2nd Cir. 1977); citing U.S. v. Lentz, 383 F. 3d 191 (4th Cir. 2004)].

With great respect,

Date: July 2, 2019

Atch. 1: Affidavit
cc: Chief Judge Davis


Jeffrey A. Martinovich