UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

KIND_YADA, et al.

Plaintiffs,
v.

RAPTURING,

Defendant.

Civil Action No. 4:20-2271

MEMORANDUM OPINION DENYING PLAINTIFF'S MOTION TO RECUSE

Lewis F. Powell, Jr., Senior District Judge,

Federal judges have lately come in fire for apparently not recusing when they are required to. We do not dispute that this is a major issue in general, for "federal judges must maintain the appearance of impartiality" because "[d]eference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges." *United States* v. *Microsoft Corp.*, 346 U.S.App.D.C. 330, 411, 253 F.3d 34, 115 (D.C. Cir. 2001) (*per curiam*) (quoting Code of Conduct Canon 1 cmt.), see also *Planned Parenthood of Southeastern P.A.* v. *Casey,* 505 U. S. 803, 865 (1992) ("The… power [of federal courts] lies… in its legitimacy, a product of substance and perception… in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands").

In this case, plaintiff Kind_Yada has filed an affidavit under 28 U.S.C. § 144, which prohibits a judge from continuing to hear a case after a timely and sufficient affidavit demonstrating "that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party" is filed. In the affidavit, plaintiff Yada alleges that the judge has "a bias towards the Plaintiff and against the Defense." While the standards for accepting a § 144 affidavit are incredibly simple and extraordinarily easy to achieve, plaintiff's affidavits fall extraordinarily short of the standard required to sustain a § 144 affidavit. As such, the presiding judge **DENIES** the plaintiff's motion to recuse.

I. Background

The Court begins with the statutory scheme at issue before proceeding to the allegations asserted in Plaintiffs' Complaint.

A. Recusal

At the heart of the judicial system is two parties and an impartial judge, an axiom in theory, but a utopian statement in actuality. A partial judge, especially one in criminal trials, will imminently result in both constitutional and statutory violations. But to no avail are the attempts to curb these prejudices when adjudicating especially high-profile cases.[1]a

[1] See Litteneker, *Disqualification of Federal Judges for Bias and Prejudice,* 46 U. Chic. L. Rev. 236 (1978) ("That judges must be fair is axiomatic; guaranteeing that fairness is a stubborn and persistent problem").

Two statutes deal with the disqualification of a judge on certain grounds. The first, 28 U.S.C. § 144, states that whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, "such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." *Id.* This section was enacted as the successor to § 21 of the Judicial Code, which also allowed parties to file affidavits along with their motions to disqualify in order to compel a judge to disqualify himself from the proceedings.

Application of § 144 to proceedings was riddled with confusion and instability in the early stages. As the Supreme Court noted, an application of § 144 could be precluded by the fact that the alleged bias to be disqualifying under § 144 must stem from an "extrajudicial source." *Liteky* v. *United States,* 510 U. S. 540, 544 (1994) (citing *United States* v. *Grinnell Corp.*, 384 U. S. 563, 583 (1966)). The Court stated that in *Grinnell,* it clearly meant by "extrajudicial source" "a source outside the judicial proceeding at hand—which would include as extrajudicial sources earlier judicial proceedings conducted by the same judge…" *Id,* at 545. Then it listed a plethora of cases where courts of appeals dithered on the application of the doctrine to review of § 144 affidavits and their sufficiency.

On the other hand, the doubts regarding 28 U.S.C. § 455 were not of how to apply the extrajudicial source doctrine – it was actually whether the extrajudicial source doctrine would apply. The Court was straightforward, however, in declaring that the extrajudicial source doctrine would apply to § 455(a) and § 455(b)(1). *Liteky, supra,* at 550, 554. First, § 455(b)(1)'s application was inevitable because it essentially disqualified the judge by law for bias and prejudice – the reasoning that was applied in every § 144 affidavit. Then, the catch-all provision of § 455(a) allowed judges to infer that bias and prejudice would apply under § 455(a), and therefore we held that the extrajudicial source doctrine applied to both § 455(a) and § 455(b). A majority of § 144 affidavits are also filed based on §§ 455(a) and 455(b)(1), which makes application of the doctrine to the two sections even more fitting.

Recently, however, debate over when a judge is required to recuse under § 144 has risen again, which has led to a judge certifying a question as to determining the sufficiency of a § 144 affidavit. See *Rafellus* v. *Papasbestboy,* 10-08 (D.D.C. certified Sept. 15, 2020). As such, when rendering our decision, we "exercise the utmost care" as to ensure that our findings are not erroneous. *Tools* v. *United States,* 9 U. S. 113, 134 (Bork, J., dissenting).

B. Factual History

Plaintiffs Kind_Yada and kyle_racks filed this suit alleging harassment from defendant Rapturing. Plaintiff Yada indicated that he would have two attorneys on the record, Turkished and Spanished, after which he filed a motion for the presiding judge to recuse due to an alleged relationship with both counsel.

II. Legal Standard

Contrary to popular belief, a § 144 motion to disqualify and an accompanying affidavit "does not automatically result in the challenged judge's disqualification." *Jordan* v. *United States Dep't*

of Justice, 315 F.Supp.3d 584, 590 (D.D.C. 2018). The decision whether to grant or deny a recusal motion—i.e., whether the affidavit is legally sufficient—is a matter confided to the district court's discretion. *Apple* v. *Jewish Hosp. & Medical Center,* 829 F.2d 326, 333 (2d Cir. 1987), see also *Wolfson* v. *Palmieri*, 396 F.2d 121, 124 (2d. Cir. 1968) (*per curiam*) (holding judge whose disqualification is sought has legal obligation to determine the legal sufficiency of the supporting affidavit in the first instance). The judge is able to "review [the affidavit] for legal sufficiency... and construe [it] strictly against the movant to prevent abuse." *United States* v. *Haldeman,* 559 F.2d 31, 135 (D.C.Cir.1976). This is to enable the judge the affidavit is targeted at to ensure that he is not deprived of his ability to hear the case willy-nilly. Conversely, "[i]n order to prevent a truly biased judge from blocking an attempt to recuse, the judge, in deciding whether to grant the recusal motion, must accept the affidavit's factual allegations as true even if the judge knows them to be false." *SEC* v. *Loving Spirit Found.*, 364 U.S.App.D.C. 116, 126, 392 F.3d 486, 496 (D.C.Cir.2004). An affidavit is sufficient as a matter of law when it states material facts with particularity, it would convince a reasonable person that a bias exists, and the alleged bias is personal in nature and stems from an extrajudicial source. *Liberty Lobby, Inc.*, v. *Dow Jones & Co.*, 838 F.2d 1287, 1301 (D.C.Cir. 1988), *Jordan* v. *U.S. Dep't of Justice,* 315 F.Supp.3d 584, 591 (D.D.C. 2018). Especially here, the standards for determining the sufficiency of an affidavit is "exacting." *Haldeman,* 559 F.2d at 134. Assertions merely of a conclusionary nature are not enough, nor are opinions or rumors. And the affidavit "must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." *Id.*

In confronting the motion to recuse, "the Court must begin its analysis of the allegations supporting such a request with a presumption against disqualification," *United States* v. *Nixon,* 267 F.Supp.3d 140, 147 (D.D.C. 2017) (quoting *Cobell* v. *Norton*, 237 F.Supp.2d 71, 78 (D.D.C. 2003), because judges are "presumed to be impartial." *S.E.C.* v. *Bilzerian,* 729 F.Supp.2d 19, 22 (D.D.C. 2010).

III. Analysis

The standard for accepting a § 144 affidavit is fairly simple, yet plaintiffs are unable to meet it for the most insipid reasons. Plaintiff's affidavit merely states the following:

"Counsel for the defendant motions for the presiding judge, LewisFPowellJr, to recuse on the grounds of bias towards the Plaintiff and against the Defense. This bias will be detailed in the following writings.

He has cussed at me in the case chat, has worked with me on the bench and has personal bias. He has a DISLIKE FOR BOTH MY ATTORNEYS.

I, Kind_Yada, declare state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 29th, 2020."[2]

Apart from the obvious lack of a signature, the reasoning behind the affidavit is equally baseless for a judge to recuse. The presiding judge will now explain why each statement is insufficient in alleging personal bias and prejudice to either prejudice.

A. "Cussed at me in the Case Chat"

[2] No electronic signature was included with the affidavit.

While no facts supplement this claim, the presiding judge assumes that the plaintiff is attacking statements made by him in the course of the case, as plaintiff clearly refers to the case at hand with the words "the case chat." We also assume that "cussed" is to state some sort of negative term against the plaintiff. These are insufficient.

For one, personal bias and prejudice from 28 U.S.C. § 144 or its counterpart § 455 requires that "the alleged bias and prejudice to be disqualifying… stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States* v. *Grinnell Corp.,* 384 U. S. 563, 583 (1966). Corroborating this is the fact that judges are not required to recuse due to emotional remarks made in the course of the case. See *Liteky* v. *United States,* 510 U. S. 510, 555-556 (1994) ("Not establishing bias or partiality… are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women… sometimes display. A judge's ordinary efforts at courtroom administration… remain immune"). So even if plaintiff had added enough factual allegations to seemingly introduce bias, accepting that a bias existed on this claim would be precluded by *Liteky's* emotional remark reasoning.

Plaintiff's first claim is therefore insufficient in establishing bias whatsoever.

B. "Has Worked with me on the Bench"

Coincidentally, plaintiff denied a request from the presiding judge to recuse when a frivolous suit was filed against the presiding judge. We do not find any reason to delve from that line of reasoning, and based on the analysis from a reasonable person's view, the claims alleged are insufficient to establish that a valid bias exists.

Either way, alleging that simply being a fellow judge is a basis for recusal would be "utterly disabling" to our judiciary, considering that only one District Court has been established. *Cheney* v. *United States Dist. Court,* 541 U. S. 913, 916 (2004) (Scalia, J., respecting recusal). Allowing precedent to dictate that an entire court recuse from a single case solely because one of the parties to a case is a colleague of theirs prevents us from executing justice when we are required to, and abstain from it when we are not.

C. "Has a Dislike Towards Both of My Attorneys"

Plaintiff's argument here has the potential of being fruitful, but due to his irresponsibility in drafting the affidavit ultimately fails to prove that the presiding judge truly has an extrajudicial bias and prejudice.

As we referred above, an affidavit is sufficient as a matter of law when it states material facts with particularity, it would convince a reasonable person that a bias exists, and the alleged bias is personal in nature and stems from an extrajudicial source. *Infra,* at *5. No material facts are stated with particularity,[3] and simply concluding that the judge dislikes the plaintiff's attorney is insufficient to establish bias. Where the movant presents nothing but "bald allegations of bias or prejudice," a district court's denial of a motion for disqualification "is appropriate." *Karim–Panahi*

[3] It would be fairer to say that no material facts were stated at ALL, because stating that one has a dislike for individuals is a "legal conclusion couched as a factual allegation." *Trudeau* v. *Fed. Trade Comm'n,* 456 F.3d 178, 193 (D.C. Cir. 2006) (quoting *Papasan* v. *Allain,* 478 U.S. 265, 286 (1986)).

v. *U.S. Cong., Senate & House of Representatives*, 105 F. App'x 270, 275 (D.C. Cir. 2004), *Ellis* v. *Jackson*, 319 F.Supp.3d 23, 34 (D.D.C. 2018). Here, plaintiff's claims are just those, bald allegations with no supplementary facts that would lead to an inference of bias by a reasonable person.

* * *

The judicial power created by Article III, §1, of the Constitution is not whatever judges choose to do, or even whatever Congress chooses to assign them. It is the power to act in the manner traditional for English and American courts. One of the most obvious limitations imposed by that requirement is that judicial action must be governed by *standard*, by *rule*. *United States* v. *Incels Union*, 10 U. S. ___, ___ (2020) (slip op. at 15) (emphasis added). Part of this power is to ensure impartiality, for the legitimacy of the Judicial Branch "ultimately depends on its reputation for impartiality and nonpartisanship." *In re Four Circuit Judges*, 9 U. S. 197, 199 (2020) (*per curiam*) (quoting *Mistretta* v. *United States*, 488 U. S. 361, 407 (1989)).

Yet there will always be a judge that is found to have a personal interest in the case or a bias or prejudice against either party. It was for these unfortunate incidents that 28 U.S.C. § 144 and § 455 were designed for. Fearing abuse of this system, however, we devised standards that prevented these statutes from being unlimited. Plaintiffs obviously attempted to abuse the system that § 144 provides, for it did not meet the standards required for a sufficient affidavit under § 144.

IV. Conclusion

For the foregoing reasons the Court **DENIES** plaintiff's motion to recuse.

Dated: October 29, 2020

Lewis F. Powell, Jr.

LEWIS FRANKLIN POWELL, JR.
UNITED STATES DISTRICT JUDGE