20 Misc.3d 1108(A)
Unreported Disposition
NOTE: THIS OPINION WILL NOT BE PUBLISHED IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.
Supreme Court, Albany County, New York.

Kimberly HURRELL–HARRING, et al, Plaintiffs
v.
The STATE of New York, Defendant.

No. 8866–07.
|
May 16, 2008.

Attorneys and Law Firms

New York Civil Liberties Union Foundation by Corey Stoughton, Arthur Eisenberg, Christopher Dunn, Daniel Freeman, Schulte Roth & Zabel LLP by Gary Stein, Danny Greenberg, Sena KimReuter, New York, for Plaintiffs.

Hon. Andrew M. Cuomo, Attorney General of the State of New York by David Cochran, Adrienne Kerwin, Victor Paladino, Albany, for Defendant.

Opinion

EUGENE P. DEVINE, J.

***1** Plaintiffs are allegedly indigent individuals with criminal charges pending and/or disposed of in Onondaga, Ontario, Schuyler, Suffolk and Washington Counties. Plaintiffs commenced this action to declare the State's system of providing a defense to indigent individuals unconstitutional and to have the Court, among other relief, direct the state to overhaul the system in accordance with the recommendations of a commission. Currently before this Court is defendant's motion to dismiss the complaint, plaintiff's motion for a preliminary injunction, defendants motion to stay the motion for a preliminary injunction and defendants motion requesting I recuse myself from this matter. Plaintiff has submitted a memorandum in opposition to the motion for recusal, and that is the subject of the decision herein.

The Court heard oral arguments on the recusal issue on May 15, 2008.

The defendant's basis for the recusal motion consists of two articles from a local weekly paper the *Metroland.* Defendant offers quotes from a January 22, 2004 article and a December 11, 2003 article.[1] In my capacity as Albany County Public Defender, I expressed my views, as part of an interview, regarding whether there was a need for additional funding and if there was a burden inflicted on my office by the size of our case load. Defendant also points out that I met with the New York Civil Liberties Union in 2003 regarding public defense services in Albany County.

Since defendant does not assert grounds for mandatory recusal, Judiciary Law § 14 setting forth the provision for mandatory recusal is inapplicable.

In a situation where there are no statutory grounds mandating disqualification, a trial judge is the sole arbiter of recusal and the decision in that regard will not be overturned absent an abuse of discretion.[2] A judge has an "obligation not to recuse himself ... unless he or she is satisfied that he or she in unable to serve with complete impartiality, in fact or appearance."[3] A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, including instances where the judge has a personal bias or prejudice concerning a party, or the judge has personal knowledge of disputed evidentiary facts concerning the proceeding.[4]

In order to be disqualifying, alleged bias and prejudice, must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what is learned from participation in the case. Neither the formation of an opinion on a question of law nor judicial rulings in a litigation constitute grounds for a claim of bias or prejudice on the part of a judge.[5] The phrase "personal knowledge of disputed evidentiary facts" as set forth in the Court Rules refers to knowledge extrajudicially obtained rather than knowledge obtained in my official capacity during the course of the proceeding.[6]

The statements made by me, in 2003 and 2004, were made in my capacity as the Albany County Public Defender. These comments were made years before this action was commenced and Albany County is *not* a party to this action. Although the relief requested could result in statewide reform, these statements simply reflect this Court's general knowledge of the indigent defense

system. My prior statements do not show that I have knowledge of evidentiary facts, and in fact in my letter of April 11, 2008 to Attorney Kerwin, I acknowledge not recalling the contents of a meeting between myself and an individual from the NYCLU.[7] As I do not believe I have any personal knowledge of the disputed facts of this case, this Court concludes that the crux of defendant's argument is that this Court is biased.

***2** Defendant asserts that my previous public comments about what I perceived, as the Albany County Public Defender, as the problems facing that office renders me impartial or that my impartiality may be questioned.[8] Defendant asserts that my involvement with this case would impose a "lingering taint."[9]

"The law will not suppose a possibility of bias or favor in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea. As a result of this presumption of honesty and integrity, a moving party has the burden of proving that the judge is unqualified, actually biased and prejudiced, or appears to be partial."[10] "Courts have uniformly rejected the notion that a judge's previous advocacy for a legal, constitutional, or policy position is a bar to adjudicating a case, even when that position is directly implicated in the case before the court."[11] In this instance, the statement made as part of the 2004 article expressed equivocal feelings about the creation of a state-wide run defenders office and whether that would solve anything.[12] This statement did not directly address the services provided in the counties involved in this action, nor did it express an absolute opinion as to the best way to offer indigent defense in this state. Accordingly, this Court does not believe that these statements alone offer proof of bias by this Court.

It appears to further defendant's claim of this Court's bias, the defendant outlines the correspondence exchange between this Court and defendant in what can only be seen as an attempt to categorize these exchanges as unfair to the defendant. Defendant asserts that this court denied its requests for a conference on the order to show cause.[13] It should be noted that defendant's request (in a letter dated April 28, 2008) for an immediate conference on these issues was made to this Court during an assigned trial term in Ulster County. My reply to the defendant dated April 28, 2008 merely questioned the need for an *immediate* conference and asked for a detailed explanation of the urgency. Upon receipt of defendant's more detailed request for a conference this Court issued the April 29, 2008 letter. Defendant alleges that the fax of this Court dated April 29, 2008 declined a request for a conference, when in fact that very letter set up a conference for May 15, 2008 where *all* issues in this case would be discussed, including defendant's, then informal, request for my recusal and the motion to stay the motion for a preliminary injunction. Accordingly, defendant did not offer this Court an explanation as to the urgency that warranted an immediate conference and therefore a delay of a few weeks seemed reasonable.

Additionally, defendant argues that the Court frustrated their attempt to stay the pending motion for a preliminary injunction by making the return date on defendant's motion after the preliminary injunction motion was fully submitted, however, this Court's letter of April 29, 2008 stated that "this Court will not decide any motions until after *all* the currently pending motions are fully submitted. This should alleviate your concern that your motion ... is returnable after plaintiff's motion is fully submitted." In essence, this Court's letter of April 29th granted defendant's motion for a stay until May 15th, and at the close of oral argument on May 15th the parties consented to adjourn the motion for a preliminary injunction for a period of five months, in order to allow the plaintiff time to investigate the claims of the named plaintiffs.

***3** By placing all issues before this Court on the same day, it should be obvious that it is a more efficient use of judicial time and resources to address these issues at once, since, should the motion to dismiss be granted all the other pending motions would be moot. The defendant's attempt to "spin" the letters of this Court as a denial is feeble, at best, and cannot, when examined, be used to paint this court as biased.

In conclusion, there are no grounds for mandatory disqualification, and therefore it is within this Court's discretion whether or not to recuse. I did serve as the Albany County Public Defender and in this capacity I obtained knowledge and skills that I carry with me as a jurist. My previous employment and the opinions expressed in that role do not preclude me from hearing cases residing in that realm.I have examined the defendant's claims and my own conscience and find that I am able to preside over this matter in a fair and unbiased manner. I appreciate defendant's concern for the appearance of partiality, however, my general knowledge of the indigent defense system does not render me partial but rather makes me engaged and ready to proceed expeditiously with the case at hand.

Accordingly, defendant's motion for recusal is denied.

This memorandum constitutes both the DECISION and ORDER of the Court. This Original DECISION/ORDER is being sent to the plaintiffs' attorney. The signing of this DECISION/ORDER shall not constitute entry or filing under CPLR 2220. Counsel for the plaintiffs is not relived from the applicable provision of that section with respect to filing, entry and notice of entry.

SO ORDERED.

All Citations

20 Misc.3d 1108(A), 866 N.Y.S.2d 92 (Table), 2008 WL 2522360, 2008 N.Y. Slip Op. 51276(U)

Footnotes

1 *See* Affirmation of Attorney Cochran, dated May 7, 2008, Exhibit I, for the two articles in their entirety.

2 *People v. Marrero* 30 AD3d 637 (3d Dept.,2006).

3 *Robert Marini Builder, Inc., v. Rao,* 263 A.D.2d 846 (848 (3d Dept.1999).

4 22 NYCRR § 100.3

5 *see* NYJUR Courts § 409 (internal citations omitted)

6 AMJUR Judges § 151 (internal citation omitted)

7 Affirmation of Attorney Cochran, dated May 7, 2008, exhibit F.

8 Defendant cites *Leombruno v. Leombruno* 150 A.D.2d 902 (3d Dept.1989)

9 Defendant's Memorandum in Support of Motion for Recusal at ¶ 16.

10 *Appearance of Impropriety: Deciding When a Judge's Impartiality* "*Might Reasonably be Questioned,*" Abramson, 14 GEOJLE 55, Georgetown Journal of Legal Ethics (Fall, 2000).

11 *Carter v. West Publ'g Co.,* 1999 WL 994997 (11th Cir. No. 1, 1999).

12 *See In Defense of the Defense: Should New York Create a State Agency to Oversee Public Defnse Service?* Metroland, Jan. 22, 2004 attached to Affirmation of Atty Cochran as Exhibit G.

13 Affirmation of Attorney Cochran ¶ 12.