

ENTERED ON

MAR 05 2004

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ) CHAPTER 11  
)  
KYMBERLY COAN ) CASE NO. 04-91403-MHM  
)  
Debtor )

**O R D E R**

On March 1, 2004, Debtor filed a pleading "In the Nature of a 'Writ of Prohibition' 'as an Interlocutory Injunctive Relief.'" Debtor seeks disqualification of the undersigned from presiding over Debtor's second Chapter 11 case. The factual grounds of Debtor's motion, although somewhat obscured by Debtor's rambling and antiquated, pseudo-legal prose, appear to arise from this court's dismissal of her prior case for failure to pay the filing fee.

Bankruptcy Rule 5004(a) provides that disqualification of a bankruptcy judge is governed by 28 U.S.C. §455, which provides:

- (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
  - (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding...[.]

Section 455 includes no provision for referral of the question of recusal to another judge; if the judge sitting on a case is aware of grounds for recusal under this section, the judge has a duty to recuse himself or herself. *U. S. v. Sibla*, 624 F.2d 864 (9<sup>th</sup> Cir. 1980); *In re*

*Corrugated Container Antitrust Litigation*, 614 F.2d 958 (5<sup>th</sup> Cir.), *cert. denied* 449 U.S. 888 (1980); *U.S. v. Battle*, 235 F.Supp.2d 1301 (N.D.Ga. 2001)(J. Evans). Under §455, a bankruptcy judge need not accept all the allegations by the moving party as true and, in fact, no motion at all is required. *Phillips v. Joint Legislative Committee on Performance and Expenditure Review of State of Miss.*, 637 F.2d 1014 (5<sup>th</sup> Cir.) *cert. denied* 456 U.S. 960, *rehearing denied* 457 U.S. 1140, *rehearing denied* 457 U.S. 1140, *cert. denied* 456 U.S. 971, *rehearing denied* 458 U.S. 1116(1981). A judge has the obligation to recuse *sua sponte* if legal grounds exist. *U.S. v. Garrudo*, 869 F.Supp. 1574 (S.D.Fla.) *affirmed* 139 F.3d 847 (11<sup>th</sup> Cir. 1994), *rehearing granted and vacated* 161 F.3d 652 (1998), *on rehearing* 172 F.3d 806, *cert. denied* 528 U.S. 985 (1999). The standard to be applied is an objective standard. *Id.*

Debtor's motion to recuse is legally insufficient to support disqualification. Alleged bias must be personal and it must stem from an **extra-judicial** source. *Loranger v. Stierheim*, 10 F.3d 776 (11th Cir. 1994); *U.S. v. Merkt*, 794 F.2d 950 (5<sup>th</sup> Cir. 1986); *U.S. v. Phillips*, 664 F.2d 971 (5th Cir. Unit B 1981).<sup>1</sup> A motion for disqualification may not rely upon conduct or facts learned by a judge in the judge's judicial capacity, including rulings in the case from which disqualification is sought. *Loranger v. Stierheim*, 10 F.3d 776; *Hale v. Firestone Tire & Rubber Co.*, 756 F.2d 1322 (8th Cir. 1985); *U.S. v. Bond*, 847 F.2d 1233 (7th Cir. 1988); *King v. U.S.*, 576 F.2d 432 (2d Cir.), *cert. denied*, 439 U.S. 850 (1978). Debtor alleged no facts which would support a finding of bias or prejudice requiring recusal

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<sup>1</sup>*Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981), renders decisions of the Fifth Circuit issued prior to September 30, 1981, binding precedent for the Eleventh Circuit.

by the undersigned. Therefore, Debtor's motion to recuse is without merit. Accordingly, it is hereby

ORDERED that Debtor's motion to recuse is DENIED.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, all creditors and the U.S. Trustee.**

IT IS SO ORDERED, this the 5<sup>th</sup> day of March, 2004.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE