UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
MARK EVANS PULLEN and	)	
MARY KAY PULLEN,	)	CASE NO. 07-65415-MHM
	)	
Debtors.	)	

ORDER DENYING MOTION TO RECUSE

On January 2, 2008, Cain Harris ("Harris") filed *Cain Harris's Motion to Recuse Judge Murphy From Further Participation in This Case, For Stay of Further Proceeding and For the Assignment of This Motion to the District Court For a Ruling.* Pursuant to 11 U.S.C. §102, no further notice or hearing is necessary.

Harris seeks disqualification of the undersigned from presiding over Debtors' Chapter 13 case. 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 (9th Cir. 1980); *In re Corrugated Container Antitrust Litigation,* 614 F.2d 958 (5th Cir.), *cert. denied* 449 U.S. 888 (1980); *U.S. v. Battle,* 235 F.Supp.2d 1301 (N.D.Ga. 2001)(J. Evans).

Harris' 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 (5th Cir. 1986); *U.S. v. Phillips,* 664 F.2d 971 (5th Cir. Unit B 1981).[1] 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). The entry of orders of which Harris complains, however, were entered in a judicial capacity and cannot serve as a basis for disqualification. *See, U.S. v. Beneke,* 449 F.2d 1259 (8th Cir. 1971).

Harris complains that orders were entered *ex parté,* specifically the orders entered May 11, 2007, and July 9, 2007. The order entered May 11, 2007, however, was

[1] *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.

entered *after* hearing held May 1, 2007, at which Harris and his counsel were present. Any defects in the order entered May 11, 2007, which was prepared and presented by Debtor's attorney as provided by BLR 9013-2(a)(1), were corrected in the order entered July 9, 2007. The order entered July 9, 2007, was entered following hearings at which Harris and his counsel were present. The July 9, 2007 order was authored by the undersigned. The only order in this case entered in any way approaching *ex parté* was the order entered April 3, 2007, granting Harris' emergency motion for relief from the stay.[2] Therefore, Harris' complaints about so-called *ex parté* orders have no basis in fact.

In rare cases, a judge may be disqualified if the record evidences pervasive bias and prejudice. *Loranger v. Stierheim,* 10 F.3d 776 (11th Cir. 1994). The balance of Harris' pleading may be intended to present a picture of pervasive bias. Those arguments more accurately appear to be arguments that can and should be raised at confirmation. The issues regarding Debtors' duty, or lack thereof, to furnish a copy of their tax returns to Harris was addressed in the order entered July 9, 2007. That order has been appealed by Harris. Therefore, the undersigned lacks jurisdiction to address any of the issues specifically dealt with in that order.

The well-informed observer would perceive no factual basis for Harris' allegations except previous rulings adverse to him based on the matters presented. *See In re Taylor,*

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[2] That order was vacated by the order entered July 9, 2007.

417 F. 3d 649 (7th Cir. 2005); *Loranger v. Stierheim,* 10 F.3d 776 (11th Cir. 1994); *U.S. v. Merkt,* 794 F.2d 950 (5th Cir. 1986); *U.S. v. Phillips,* 664 F.2d 971 (5th Cir. Unit B 1981); *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). Harris' motion to recuse is without merit. Accordingly, it is hereby

ORDERED that Harris' motion to recuse is DENIED.

The Clerk is directed to serve this Order upon Debtors, Debtors' attorney, attorney for Cain Harris, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 3rd day of January, 2008.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE