

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ) CHAPTER 11  
 )  
MAMADOU SYLLA, ) CASE NO. 11-85181 - MHM  
 )  
Debtor. )

**ORDER DENYING MOTION TO RECUSE AND TO REFER**

On May 1, 2012, Debtor's attorney filed a *Request for Recusal* (Doc. No. 67) ("Recusal Motion") and a *Demand for Referral to Chief Judge* (Doc. No. 68) ("Referral Demand"). Debtor seeks disqualification of the undersigned from presiding over proceedings in connection with the suspension of Debtor's attorney, Joel S. Wadsworth. Hearing was held May 2, 2012, on the *Show Cause Order* entered April 24, 2012, directing Debtor's [former] attorneys, Joel S. Wadsworth and Shashank Anand, to show cause why the order approving their employment should not vacated. Mr. Wadsworth and Mr. Anand both appeared for that hearing, at which time the Recusal Motion was orally denied, which in effect rendered the Referral Demand moot.

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).

The act upon which Debtor's attorney bases his Recusal Motion is the scheduling of the hearing on the Show Cause Order at the same time as a hearing on a motion for relief from the automatic stay filing in this case. Debtor's attorney implies that such scheduling was in some way prejudicial, either to Debtor or to Debtor's attorney. Upon assignment of this case to the undersigned, and her discovery that one of Debtor's attorneys was an attorney under suspension from practicing in this court, it was deemed imperative, for the protection of Debtor and all other parties in interest in this case, to resolve the questions about Debtor's attorneys.

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,

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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.

including rulings in the case from which disqualification is sought. *Loranger v. Stierheim*, 10 F.3d 776 (11<sup>th</sup> Cir. 1994); *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). In the instant case, Debtor's attorney alleges no facts to support a conclusion that the undersigned is personally biased against Debtor or Debtor's attorneys or that such bias arose from an extra-judicial source. *See, U.S. v. Beneke*, 449 F.2d 1259 (8th Cir. 1971).


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). Debtor alleged no facts which would support a finding of such pervasive bias or prejudice. Therefore, Debtor's motion to recuse is without merit.

At the hearing held May 2, 2012, the motions for relief from stay by One West Bank, FSB, were continued to allow Debtor to obtain new counsel. Debtor now has new counsel. At the reset hearings on the motions for relief from stay, one was resolved by consent and the other will be reset upon request of the parties. Accordingly, it is hereby

ORDERED that the Recusal Motion and Referral Demand filed by Debtor's attorney are *denied*.

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

IT IS SO ORDERED, this the 11<sup>th</sup> day of July, 2012 .

  
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MARGARET M. MURPHY  
UNITED STATES BANKRUPTCY JUDGE