

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

UNITED STATES OF AMERICA

v.

ELENA RUTH SASSOWER,

Defendant.

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**Criminal No. M-4113-03
Judge Holeman
Misdemeanor Calendar I**

ORDER

This matter comes before the Court as Defendant's repeat Motion for the Disqualification of Judge Brian F. Holeman and related Motion to Vacate Orders, contained within Defendant's Notice of Motion to Vacate Orders of Judge Brian F. Holeman for Violation of D.C. Superior Court Civil Procedure Rule 63-I Pertaining to "Bias or Prejudice" & for Removal/Transfer of this Case to the U.S. District Court for the District of Columbia pursuant to D.C. Code §10-503.18, filed March 22, 2004. Should the instant Motion be denied, Defendant has further requested a stay of the trial pending appeal of said ruling.

The record of this case reflects that Defendant previously filed a Motion for Disqualification pursuant to Canon 3E of the American Bar Association Code of Judicial Conduct on February 24, 2004. The Court denied this Motion by written Order on February 25, 2004. Defendant now seeks disqualification of this Court pursuant to Rule 63-I of the D.C. Superior Court Rules of Civil Procedure (2004), made applicable to criminal cases by Rule 57(a) of the D.C. Superior Court Rules of Criminal Procedure (2004).

Rule 63-I of the D.C. Superior Court Rules of Civil Procedure governs disqualification of a trial judge for bias or prejudice. It requires that the alleged bias or prejudice against a party be personal, rather than judicial, and have originated from sources *outside of court proceedings* in either the pending case or prior cases. *Baylor v. United States*, 360 A.2d 42, 44 (D.C. App. 1976), *cert. denied*, 429 U.S. 1024 (1976). *See also In re Bell*, 373 A.2d 232, 233 (D.C. App.

1977); *In re Thompson*, 419 A.2d 993, 995 (D.C. App. 1980). The certification of the movant's allegations is established by submission of a sufficient affidavit and certificate of counsel of record.

Subsection (b) of Rule 63-I sets forth the procedural requirements for the affidavit and certificate of counsel of record. It states:

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for failure to file by such time.

Here, Defendant's affidavit is not accompanied by a certificate of counsel of record, Defendant *pro se*, stating that the affidavit is made in good faith. This fact alone indicates that Defendant's instant Motion is, on its face, procedurally deficient. *York v. United States*, 785 A.2d 651, 653-54 (D.C. App. 2001). Further, the affidavit is insufficient in that it fails to state with particularity material facts that, if true, would convince a fair and reasonable mind that bias exists. *In re Evans*, 411 A.2d 984, 994 (D.C. App. 1980) (citing *In re Bell*, 373 A.2d at 234). Indeed, the facts as stated must be strong enough to overcome the presumption in favor of a trial judge's impartiality. *In re Evans*, 411 A.2d at 996.

Defendant bases her request for disqualification on grounds that the Orders of this Trial Judge denying Defendant's Motion for Disqualification, Defendant's Motion for a Continuance of the Trial Date and Defendant's Motion for Change of Venue were all based on "conclusory claims," and that the Order granting the Government's Motion *In Limine* did not state reasons therefore. While Defendant's meaning of the term "conclusory claims" in the context of the instant Motion is unclear, further clarity is unnecessary to disposition of the pending question. None of the grounds asserted by Defendant even remotely assert prejudice from an extrajudicial source. Rather, they simply reflect Defendant's dissatisfaction with this Court's Orders.

Plaintiff has previously demonstrated such dissatisfaction, and this Court reiterates that prior adverse rulings do not reflect bias nor justify recusal. *See, e.g.,* Eilperin Memorandum Order (September 3, 2003); *In re Evans*, 411 A.2d at 996 (citing *Barkan v. United States*, 362 F.2d 158 (7th Cir.), *cert. denied*, 385 U.S. 882 (1966) (prior adverse rulings do not reflect bias)); *see also In re Bell*, 373 A.2d at 234; *Baylor v. United States*, 360 A.2d at 44; *In re Thompson*, 419 A.2d at 995.

This Trial Judge became aware of Defendant's existence solely consequent to the assignment of the instant case (Criminal No.: M-4113-03) and Defendant has failed to establish *any* facts to support the required showing that the Court's alleged bias stems from a source outside the scope of official judicial conduct in the instant or a prior case. *In re Evans*, 411 A.2d at 995; *see also In re Thompson*, 419 A.2d at 995.

Accordingly, upon consideration of Defendant's repeat Motion to Disqualify and related Motion to Vacate Orders, and the Government's Opposition thereto, Defendant having failed to establish that the alleged bias and prejudice stems from an extrajudicial source unrelated to those made known to this Court through participation in the instant or a prior case and having further failed to cite any legal authority for the requested relief, it is this 6th day of April, 2004 hereby

ORDERED, that Defendant's Motion to Disqualify Judge Brian F. Holeman and related Motion to Vacate Orders are **DENIED**; and it is further

ORDERED, that Defendant's request for a stay of the trial date pending appeal of this ruling is **DENIED**.


BRIAN F. HOLEMAN
JUDGE

SIGNED IN CHAMBERS

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