

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARMAN WILLIAMS-MURRAY,
Plaintiff,

v.

ANTHROPOLOGIE, INC., et al.,
Defendants.

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CIVIL ACTION
No. 05-5749

MEMORANDUM OPINION AND ORDER

RUFE, J.

March 13, 2007

The Court herein incorporates by reference its December 11, 2006 Memorandum Opinion and Order [Document No. 42] which cites pro se Plaintiff Carman Williams-Murray's allegations of specific racial bias set forth in her first Affidavit of Bias and Prejudice [Document No. 37] and the Court's thorough discussion of same. Now before the Court is Plaintiff's second Affidavit of Bias and Prejudice [Document No. 45] received after the close of this case,¹ again claiming the Court is biased and requesting recusal from this matter. Accordingly, the issue that this Court will again address is whether the record demonstrates a racial bias and prejudice towards Plaintiff such that a reasonable person would conclude that there is a valid basis for Plaintiff's allegations.

I. FACTUAL AND PROCEDURAL HISTORY

The December 11 Order sets forth a detailed account of the factual and procedural histories of this case. Since issuance of the December 11 Order, Plaintiff filed a Motion to Compel

¹ This case was closed pursuant to the Court's February 27, 2007 Order [Document No. 44] granting Defendant's Motion to Dismiss [Document No. 10]. After the case was closed, the Court received Plaintiff's second Affidavit of Bias [Document No. 45] on March 7, 2007. Plaintiff subsequently filed a Notice of Appeal [Document No. 46] on March 9, 2007, appealing the Court's February 27 Order.

[Document No. 43] on February 23, 2007, and the Court issued its Memorandum Opinion and Order [Document No. 44] granting Defendant's Motion to Dismiss [Document No. 10]² on February 27, 2007. There has been no activity in this case between the filing of the December 11 and February 27 Orders that warrants Plaintiff's re-allegation of bias by the Court. Only after the Court issued its Order granting Defendant's Motion to Dismiss did Plaintiff file her second Affidavit of Bias and Prejudice now before the Court.

II. LEGAL STANDARD

The Court's December 11 Order sets forth the procedural requirements dictating the filing of an affidavit of bias under 28 U.S.C. § 144 and the disqualification procedures under 28 U.S.C. § 455. While § 144 is aimed exclusively at actual bias or prejudice, § 455 deals not only with actual bias and other specific conflicts of interest, but also with the appearance of partiality.

Section 144 provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

The filing of a § 144 motion does not automatically require a judge to recuse himself; the judge

² Because the Court issued its Memorandum Opinion and Order denying Plaintiff's first Affidavit of Bias and Prejudice on December 11, 2006, the Court delayed ruling on Defendant's Motion to Dismiss to allow Plaintiff the opportunity to file an appeal. Plaintiff did not appeal the December 11 Order, however, and the Court subsequently resumed ruling on Defendant's Motion to Dismiss.

“must first pass on the . . . sufficiency of the motion.”³ Procedurally, § 144 first requires the filing of an affidavit. Second, § 144 requires a certificate of good faith to accompany the affidavit and that, in the case of a pro se movant, the certificate of good faith be signed by any member of the bar of the court.⁴ Beyond the procedural requirements, although the court must accept a § 144 affidavit’s factual allegations as true, the court need not accept conclusory statements or opinions.⁵ The only test is whether, assuming the truth of the facts alleged, a reasonable person would conclude that a personal bias, as distinguished from a judicial bias, exists.⁶

Section 455 provides in part:

(a) Any justice, judge, or magistrate judge 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

Unlike § 144, § 455 requires no motion or affidavit. A judge is obligated to recuse himself whenever any of the circumstances described in § 455 arises. Mirroring § 144, the standard for determining disqualification under § 455 is whether a reasonable person would be convinced that the judge was

³ Schreiber v. Kellogg, 838 F. Supp. 998, 1003 (E.D. Pa. 1993).

⁴ See Smith v. Danyo, 585 F.2d 83, 85 (3d Cir. 1978) (“The requirements of § 144 are explicit: an affidavit by a party and a certificate by counsel stating that it is filed in good faith.”); see also Thompson v. Mattleman, Greenberg, Schmerelson, Weinroth & Miller, No. Civ. A. 93-2290, 1995 WL 318793, at *1 (E.D. Pa. May 25, 1995) (holding that pro se movant satisfies § 144 provision requiring certificate of counsel of record if certificate is signed by any member of the bar of the court).

⁵ See United States v. Vespe, 868 F.2d 1328, 1340 (3d Cir. 1989).

⁶ Mims v. Shapp, 541 F.2d 415, 417 (3d Cir. 1976).

biased.⁷

III. DISCUSSION

Section 144 requires timely filing of an affidavit of bias. Here, Plaintiff's Affidavit is not timely because Plaintiff filed her Affidavit after this case was closed by the Court's February 27 Order granting Defendant's Motion to Dismiss. Accordingly, Plaintiff's Affidavit must be dismissed as moot.

Moreover, while not a basis for the Court's dismissal of Plaintiff's Affidavit, the Court notes that Plaintiff has ignored two procedural requirements under § 144 clearly discussed in the December 11 Order. First, this is Plaintiff's second Affidavit of Bias. Because § 144 allows a party to file only one such affidavit in any case, the second Affidavit filed by Plaintiff violates this procedural requirement. Second, while the Court generously considered Plaintiff's first Affidavit of Bias even though she failed to include a certificate of good faith signed by a member of the bar of the Court, the Court cannot ignore that Plaintiff's filing of a second Affidavit fails to adhere to the certificate-of-good-faith requirements set forth in § 144. Although the Court is generally lenient in construing pro se filings, the Court does not appreciate Plaintiff's blatant failure to adhere to the rule of law clearly outlined for her in the December 11 Order.

Finally, even if the Court decided to rule on the merits of Plaintiff's Affidavit, Plaintiff's arguments, which are based upon the Court's alleged unwillingness to extend Plaintiff's time to respond to Defendant's Motion to Dismiss, are neither a basis for recusal, nor are they accurate. First, the Supreme Court has held that "the alleged bias and prejudice to be disqualifying

⁷ See, e.g., Bey v. Philadelphia Passport Agency-M, Civ. A. No. 86-4906, 1986 WL 14733, at *2 (E.D. Pa. Dec. 24, 1986).

must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.”⁸ The Third Circuit has repeatedly stated that a party’s displeasure with legal rulings does not form an adequate basis for recusal.⁹ Here, Plaintiff has provided no extrajudicial bases to require recusal and has limited her Affidavit solely to this Court’s prior rulings. “Prior rulings of the Court cannot provide such a factual basis [so as to require recusal].”¹⁰

Second, the Court rulings which Plaintiff disputes are no longer at issue. The Court ordered Plaintiff to respond to Defendant’s Motion to Dismiss by November 3, 2007. Plaintiff failed to respond by the Court-ordered deadline but did ultimately file a Declaration in Opposition to Defendant’s Motion to Dismiss on November 13, 2006. Although Plaintiff failed to respond by the Court-ordered deadline, the Court considered Plaintiff’s untimely response to be timely nunc pro tunc in its February 27 Order.¹¹ Accordingly, each of Plaintiff’s responsive arguments were considered in assessing Defendant’s Motion to Dismiss and, therefore, any allegation that the Court failed to consider Plaintiff’s responsive arguments is moot and inaccurate.

IV. CONCLUSION

Because Plaintiff filed her second Affidavit of Bias and Prejudice after this case was closed by the Court’s February 27 Order, the Court dismisses Plaintiff’s Affidavit as moot. Moreover, the Court finds no factual support in Plaintiff’s second Affidavit that would lead a

⁸ United States v. Grinnell Corp., 384 U.S. 563, 583 (1966).

⁹ See Jones v. Pittsburgh Nat’l Corp., 899 F.2d 1350, 1356 (3d Cir. 1990).

¹⁰ Bumpus v. Uniroyal Tire Co., 385 F.Supp. 711, 713 (E.D. Pa. 1974).

¹¹ See Mem. Op. & Order [Document No. 44], at 1 n.1 (Feb. 27, 2007).

reasonable person to believe that this judge is prejudiced against any race in general or Plaintiff's African-American race in particular. Nor is this Court aware of any other facts or circumstances that would warrant an obligatory recusal under § 455. An appropriate Order follows.

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ORDER

AND NOW, this 13th day of March 2007, upon consideration of Plaintiff's second Affidavit of Bias/Prejudice [Document No. 45] seeking the Court's recusal from this matter, it is hereby

ORDERED that Plaintiff's Affidavit is **DISMISSED** as **MOOT** in accordance with the attached Memorandum Opinion.

This case remains **CLOSED**.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe
CYNTHIA M. RUFÉ, J.