

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)	
)	
<i>v.</i>)	Docket No. MISC-97-113-P-H
)	
SHERI ANN MITCHELL (WILSON),)	
)	
Defendant)	

**MEMORANDUM DECISION ON DEFENDANT’S
MOTION FOR RECUSAL**

The defendant moves pursuant to 28 U.S.C. § 455(a) to disqualify me from this matter in which the government seeks revocation of the defendant’s supervised release. The motion is based on the fact that the defendant is a plaintiff in the civil matter pending in this court entitled *Xanh Thi Pyle, et al. v. City of Saco, et al.*, Docket No. 97-99-P-H. The defendant asserts that she “does not want any further delay of her trial in the civil action,” Defendant’s Motion for Recusal (Docket No. 4) at 2 ¶ 7, and that

if the Judge who hears contested evidence on the pending Petition for Revocation also would be reviewing the anticipated disputed Motions for Summary Judgment anticipated in the *City of Saco* action, or participate in settlement discussions in that action, or sit at trial, at that point a reasonable person could question a Judge’s impartiality given that disputed evidentiary facts in the *Saco* action will include the honesty and credibility of Ms. Wilson — which are the subject of attack and question in the Revocation proceeding. *Moreover*, of significant concern is that evidence generated in the criminal proceeding may well be inadmissible in the civil proceeding.

Id. at 3 ¶ 10 (emphasis in original). The defendant relies on *United States v. Chantal*, 902 F.2d 1018 (1st Cir. 1990), to support her argument that disqualification is required under section 455 where the

judge's personal knowledge of disputed facts arises from judicial proceedings and not just from extra-judicial sources. *Id.* at 1023.

Section 455(a) provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The defendant seeks my disqualification in *this* proceeding based on a claim that my impartiality *might* be questioned in a *separate* proceeding, depending upon what evidence might be presented in this proceeding. The statute provides no basis for such a motion. The defendant identifies no reason why my impartiality could be questioned in this proceeding, and the motion therefore is premature at best. There is no statutory basis for the disqualification sought by the defendant.

Even if it were possible for the court to entertain the defendant's motion in this proceeding, her reliance on *Chantal* is misplaced. The Supreme Court has subsequently upheld, in *Liteky v. United States*, 510 U. S. 540 (1994), the limitation of section 455(a) disqualification to *extrajudicial* knowledge or motives, essentially overruling *Chantal* on the point for which it is cited by the defendant. *Id.* at 554-55.

First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (*i.e.*, apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

Id. at 555 (citation omitted). The defendant in *Liteky* sought disqualification of the judge presiding at his trial on charges brought in 1991 on the basis of remarks made by that judge at his trial on

different charges in 1983. *Id.* at 542. The Supreme Court affirmed the denial of that motion. *Id.* at 556.

Thus, the grounds presented by the defendant for disqualification in the civil action are unlikely to support the relief she implies that she would seek there. *See also United States v. \$292,888.04 in U. S. Currency*, 54 F.3d 564, 566 (9th Cir. 1995) (upholding denial of motion of claimant, who had been convicted of underlying criminal charge connected to this civil forfeiture proceeding, to disqualify judge who had presided at criminal trial); *United States v. Morris*, 988 F.2d 1335, 1337 (4th Cir. 1993) (“[T]he source of the appearance of partiality [under § 455(a)] must arise from some source other than the judge’s previous involvement with cases that concerned the parties or witnesses in the present case.”).

For the foregoing reasons, the defendant’s motion for my recusal is **DENIED**.

Dated this 25th day of November, 1997.

David M. Cohen
United States Magistrate Judge