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

RAYMOND WOOD	:	CIVIL ACTIONS
	:	
v.	:	
	:	
DAVID L. COHEN, ESQUIRE,	:	NO. 96-3707
et al.	:	NO. 97-1548

MEMORANDUM AND ORDER

BECHTLE, J. FEBRUARY , 1999

Presently before the court in the above two consolidated civil actions are plaintiff Raymond Wood's ("Plaintiff") motions seeking relief on several grounds following the entry of judgment upon a verdict by a jury on June 19, 1998 and defendants David L. Cohen, et al.'s ("Defendants") responses thereto. The combined motions consist of: Plaintiff's Request for a Mistrial; Judgment Under Fed. R. Civ. P. 50(b) as a Matter of Law; a New Trial Under Fed. R. Civ. P. 59; Relief from Judgment under Fed. R. Civ. P. 60(b)(3) and (6); a Motion for Relief from Judgment Procured by Fraud, Misrepresentation and Misconduct by the Defendants and their Attorneys; a Motion to Reconsider, Rescind and Vacate the Rule 50 Order entered on June 19, 1998; and a Motion to Set Aside the Civil Judgment entered on June 19, 1998. For the reasons set forth below, the court will deny Plaintiff's motions.

I. BACKGROUND

Plaintiff filed these two civil actions against the City of Philadelphia ("City") and certain officials alleging a

number of grounds for recovery. Primarily, Plaintiff claimed that he had been denied access to funds from the City in regard to certain community development programs that he is associated with on the ground of his race and in retaliation for a lawsuit he had filed against the City and certain of the individual Defendants in these cases.

At the time these cases were filed in 1996 and 1997, they were assigned to the Honorable John R. Padova of this court. Judge Padova presided over the pre-trial proceedings in these cases, including pre-trial scheduling, disposition of motions and discovery. When that discovery was closed, Judge Padova granted summary judgment in favor of a number of Defendants with respect to many of Plaintiff's claims.[1] In that ruling, Plaintiff's claims regarding the alleged denial of equal protection and the alleged denial of access to federally funded programs on the basis of his race were dismissed against all Defendants. Plaintiff's claim that he had been denied the right to pursue his chosen profession was also dismissed against all Defendants. By then Plaintiff had voluntarily withdrawn his claims against one of the individual Defendants, Barbara Kaplan. Judge Padova had scheduled trial for March 15, 1998, but on that day he recused himself from further participation in the case and the matter was transferred to the undersigned.

[1] On March 2, 1998, Judge Padova granted in part and denied in part Defendants' motion for summary judgment.

Plaintiff filed a Motion for Recusal of the undersigned, and after briefing and argument before the court on April 27, 1998, the court denied recusal and entered its Order to that effect on the same day. (Tr. 4/27/98.) The court scheduled the trial to proceed before a jury and jury selection began on June 15, 1998.

After Plaintiff presented his case, the court ruled on Defendants' motion under Federal Rule of Civil Procedure 50(a). Defendants' motion was granted in part and denied in part. The court allowed Plaintiff's retaliation claim to go forward to the jury against Defendants John Kromer and William Thompson. (Tr. 6/17/98 at 87-96.) The court ruled that jury questions were presented by the evidence in regard to those two remaining Defendants on the retaliation claim, but not to the other Defendants.

During the rendition of the court's ruling on Defendants' Rule 50(a) motion, a troublesome episode took place. While the court was rendering its decision, Plaintiff, without notice, stood up. (Tr. 6/17/98 at 90.) The court requested that he be seated and the court continued to render its ruling. At the completion of the court's delivery of its ruling, the court declared a recess. At the conclusion of that recess counsel for Defendants reported to the court that during the recess Plaintiff crossed the courtroom, confronted Defendant Kromer at Defendants' counsel table and leaned forward in an apparent intent to speak to him. Defendant Kromer's counsel advised Plaintiff's counsel

that this should not take place and Plaintiff made a disparaging remark to Kromer's counsel. Kromer's counsel expressed her concern about this to the court because, following the court's ruling and during the recess, she had witnessed Plaintiff banging on the bench in the last row of seats in the courtroom. (Tr. 6/17/98 at 96-97.)

Another unpleasant episode followed on the next day of the trial with a series of events which resulted in the court ultimately making a finding for criminal contempt against Plaintiff under Federal Rule of Criminal Procedure 42(a). (Tr. 6/18/98 at 1-21.) On June 30, 1998, the court filed a Certificate memorializing that occurrence. (Written Cert. of a Finding of Contempt Under Fed. R. Crim. P. 42(a).) The result of this episode was that Plaintiff and his counsel voluntarily withdrew from the proceedings, despite the court's warning that if they voluntarily withdrew from the proceedings that the court would "complete the proceedings" and "have the jury decide the case in absence of the plaintiff." (Tr. 6/18/98 at 18.) After Plaintiff and his counsel voluntarily absented themselves, the trial proceeded to a conclusion by the return of a jury verdict in favor of the only remaining Defendants, John Kromer and William Thompson, on the only remaining claim--retaliation for having filed a lawsuit against the City Defendants.

The reading of Plaintiff's Combined Motion for Post Trial Relief suggests that from the day the case was assigned to the undersigned, following recusal by Judge Padova, Plaintiff

was dissatisfied with the status of his case, and presumably, with the future course it was likely to take. At that time substantial claims and a number of Defendants had been dismissed by Judge Padova. Plaintiff also became dissatisfied with the prospect of the undersigned presiding over the case and filed a Motion for Recusal on March 13, 1998, which was denied by the court on April 27, 1998.[2] With one exception, Plaintiff's brief ("Brief") in support of his Combined Motion for Post Trial Relief is devoid of any legal authority in support of the relief being sought.[3] (Supp. Mem. in Support of Pl.'s Combined Post Trial Mot.) Plaintiff's arguments are primarily personal attacks in conclusory language on Defendants, their counsel and the court.

Plaintiff's Brief contains references to several hundred pages of the record that he relies upon by citing volume and page numbers. The conclusions that those references refer to are plainly neither warranted by the reference, nor accurate in some cases concerning the criticism advanced. One example is Plaintiff's assertion that the court allowed Defendants' counsel to accompany the jurors in the jury box while cross-examining Plaintiff's witness. (Supp. Mem. in Support of Pl.'s Combined

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[2] The grounds offered for recusal primarily focused on the undersigned's prior court rulings, some of which had been filed in district court and some of which had gone through to the United States Supreme Court. (Tr. 4/27/98.) Other grounds were patently remote and never known to be recognized by any authority as grounds for recusal.

[3] Plaintiff's Brief does cite to San Filipo v. Bongiovanni, 30 F.3d 424 (3d Cir. 1994). (Supp. Mem. in Support of Pl.'s Combined Post Trial Mot. at 6.)

Post Trial Mot.) Plaintiff cites the notes of testimony on June 16, 1998 at page 171, lines 5-13 in support of that patently distorted reference to that event. The facts on this contention begin not at page 171 on the June 16, 1998 transcript, but on page 136 of testimony of that day. This shows that Plaintiff's last witness, Lois Fernandez, was physically impaired in respect to her ability to get about and in particular, that she had considerable difficulty in walking or standing. (Tr. 6/16/98 at 136.) As she entered the courtroom, the court observed this difficulty and as an accommodation to her did not require her to sit in the elevated witness chair, but suggested that she take a seat next to Plaintiff's counsel at the end of Plaintiff's counsel's table. This would allow her to be near her counsel yet face the jury while testifying. She finished her direct examination to the jury in that location. When the time came to cross-examine, the court allowed Defendants' counsel to relocate herself so she could face the witness so that the witness could continue to testify to the jury, and at the same time allow the Court Reporter to have a face to face view of both Defendants' counsel and the witness during the examination. (Tr. 6/16/98 at 170-71.) The only convenient place for Defendants' counsel to conduct her cross-examination and still be able to face the witness would be either directly in front of the jury, which would have caused her back to face the jury, or to the right of the jury, which placed her at the opposite end of the jury box. There were six vacant seats in the jury box (this civil case

having proceeded with eight jurors) and there were four empty juror seats between the jury and Defendants' counsel as she questioned the witness. This allowed her to question the witness without her back to the jury. To distort that effort to accommodate the Plaintiff's infirm witness and at the same time allow the jury to hear and observe the witness in the best light for Plaintiff, portrays both an insensitive, as well as desperate level of advocacy. Furthermore, Plaintiff did not object to the procedure.

II. DISCUSSION

With the foregoing synopsis of the events that bring us to this point in the litigation, the court has decided to divide Plaintiff's criticisms as best as it can into two categories. The first category will cover the many overbroad, general and sweeping complaints and objections Plaintiff has leveled on the court, Clerk of Court, Defendants and their counsel. The court will address these under the heading of General Claims. The second category will cover the claims that the court can identify as more specific claims. The court will address these under the heading of Specific Claims.

A. General Claims

Local Rule of Civil Procedure 7.1(c) of the United States District Court for the Eastern District of Pennsylvania requires that every contested motion--except a discovery motion under Local Rule 26.1(g)--be accompanied by a brief containing

the concise statement of the legal contentions and authorities relied upon in support of the motion. None of Plaintiff's claims satisfy this requirement. In support of his criticisms and complaints, Plaintiff has cited singly and repetitiously to over 200 pages throughout the transcript, but almost nowhere is there any legal authority offered to support any perceived legal contention referred to in these criticisms.[4] At best, they are a series of broadside salvos of personal attacks on the court, Clerk of Court,[5] Defendants, defense counsel and witnesses. In a similar circumstance, the Second Circuit, in considering an appeal from a claim of error in the perceived denial of permission to amend the complaint, observed that:

> Whether or not permission was needed, there is no designation in the Brief of where in the record such permission was sought, the precise content of the proposed amendment, or an exposition of the legal theory on which the proposed amendment is based. Appellant's Brief is at best an invitation of the court to scour the record, research any legal theory that comes to mind, and serve generally as an advocate for appellant. We decline the

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[4] In its partial grant of summary judgment dismissing the City from the case, the court relied upon Monell v. Department of Soc. Servs., 436 U.S. 653 (1978) in holding that municipal liability under 42 U.S.C. § 1983 did not attach. (Tr. 6/17/98 at 88.) In opposition, Plaintiff cited to San Filipo v. Bongiovanni, 30 F.3d 424 (3d Cir. 1994) in support of its position that municipal liability under 42 U.S.C. § 1983 could attach in this case. (Tr. 6/17/98 at 93-95; Supp. Mem. in Support of Pl.'s Combined Post Trial Mot. at 6.) The court heard Plaintiff's argument on that point and held that Monell was the more pertinent standard to be applied concerning Plaintiff's retaliation claims against the City. (Tr. 6/17/98 at 93-94.) The court stands by its ruling.

[5] As respects the Clerk of Court, see Tr. 4/27/98 at 46-48.

invitation.

The Ernst Haas Studio, Inc. v. Palm Press, Inc., Nos. 97-9259, 97-9329, 1999 WL 2538, at *3 (2d Cir. Jan. 5, 1999). Also, in Pappan Enterprises, Inc. v. Hardee's Food System, Inc., 143 F.3d 800 (3d Cir. 1998), the Third Circuit considered an argument by the appellant concerning the issue and finding regarding public interest in a preliminary injunction appeal. Id. at 807. The court stated:

> Pappan argues that the public interest does not weigh in favor of granting preliminary injunctive relief. Pappan cites no law in support of its position. In addition, Pappan asserts that the district court did not actually find that the public interest weighed in favor of granting the relief because the order stated that the court was not addressing that issue. The court, did, however, address the issue of public interest. Report and Recommendation, 11 n. 13. Pappan's arguments regarding the public interest do not merit further discussion.

Id. These authorities remind us that there is a minimal obligation on a moving party to present its arguments to the court and to its opponent in clear and concise language and to accompany that argument with the legal authority that supports it. The opposing party cannot be expected to define what the moving party's contentions are, do the necessary research and engage in the accompanying reasoning to establish what the moving party's claim is likely to be, and then do the research and the reasoning to present a position that is contrary to the moving party's likely claims.

Plaintiff's Brief is based entirely upon his interpretation of events and statements identified by date, page and line number of the transcript of the trial and proceedings prior to trial. The court has examined each of these references and has cast them into six different categories. It is the court's position that none of the references in any of the six categories warrant the relief requested. Those categories and the court's response to each is as follows.

1. The following references in Plaintiff's Brief (“Pl/Br”) to the transcript date, page and line number have been examined by the court and the court concludes that the criticisms and/or grounds for relief are unfounded.

Pl/Br.	Tr. Date	Tr. Pg.	Line	To	Page	Line
4	6-17-98	70	13		71	2
4	6-17-98	69	10		70	2
4	6-17-98	5	4		8	1
4	6-17-98	5	4		8	17
5	6-17-98	65	18		66	3
6	6-17-98	78	13		86	22
6	6-17-98	93	10		96	6
8	6-17-98	121	21		126	25
9	6-16-98	147	20		148	5
9	6-17-98	13	20		17	12
10	6-17-98	13	20		15	9
10	6-17-98	101	6		11	
10	6-18-98	120	3		24	
10	6-18-98	131	13		17	

10	6-18-98	133	14		134	23
10	6-18-98	135	4		16	
10	6-18-98	127	8		128	2
10	6-18-98	131	7		15	
11	6-16-98	181	10		22	
11	6-16-98	118	22		119	17
Pl/Br	Tr. Date	Tr.Pg.	Line	To	Page	Line
12	6-16-98	121	16		122	6
12	6-16-98	120	2		7	
12	6-16-98	26	11		27	2
12	6-16-98	131	21		132	22
13	6-16-98	49	9		51	20
13	6-15-98	134	18		137	20
13	6-15-98	207	12		208	15
13	6-15-98	133	1		134	17
14	6-18-98	83	10		84	1
15	6-15-98	169	11		171	2
21	6-16-98	176	24		178	17

2. The following references in Plaintiff's Brief cover substantial quantities of testimony numbering multiple pages, or in some instances, an entire day's testimony. Accordingly, the court is both unable and unwilling to attempt to discern the nature of Plaintiff's ground for relief by resorting to these references.

Pl/Br	Tr. Date	Tr. Pg.	Line	To	Page	Line
2	6-15-98	132	18		228	5

5	6-17-98	49	3		72	16
5	6-17-98	72	16		86	22
5	6-17-98	72	17			
6	6-17-98	ENTIRE	TRANS.			
6	6-18-98	ENTIRE	TRANS.			
9	6-16-98	2	6		26	10
Pl/Br.	Tr. Date	Tr.Pg.	Line	To	Page	Line
10	6-18-98	120	3			
12	6-16-98	60	4		67	81
12	6-16-98	37	17		53	12
12	6-16-98	32	17		41	9
13	6-15-98	137	21		144	15
13	6-15-98	146	1		186	13
13	6-16-98	2	6		26	10
13	6-15-98	116	1		123	19
21	6-17-98	ENTIRE	TRANS.			
21	6-18-98	ENTIRE	TRANS.			

3. The following references in Plaintiff's Brief to the transcript have been examined by the court and the court stands on the record and concludes that Plaintiff is entitled to no relief by reason of the cited references.

Pl/Br	Tr.Date	Tr. Pg.	Line	To	Page	Line
3	6-17-98	80	5		96	6
4	6-17-98	76	10		77	23
4	6-17-98	83	8		17	
6	6-17-98	87	1		90	11
6	6-17-98	90	18		93	9

14	6-15-98	110	4		15	

4. The following references in Plaintiff's Brief to the transcript have been examined by the court and the court concludes that while Plaintiff is disappointed in the ruling or other references cited to the court, the court believes that the rulings were correct and that the references do not otherwise warrant relief to Plaintiff.

Pl/Br	Tr.Date	Tr. Pg.	Line	To	Page	Line
7	6-17-98	122	ENTIRE	PAGE		
11	6-16-98	171	5		13	
11	6-16-98	168	10		169	12
11	6-15-98	95	3		97	15
11	6-15-98	96	2		20	
11	6-15-98	97	9		15	
11	6-16-98	170	9		16	
11	6-16-98	181	10		22	
11	6-16-98	93	2		25	
12	6-16-98	133	6		135	14
13	6-15-98	145	12		20	
13	6-15-98	129	5		11	
14	6-15-98	56	17		57	14
14	6-15-98	83	10		84	1

5. The following references in Plaintiff's Brief to the transcript relate to the episode described in the Certificate filed by the court on June 30, 1998, in accordance with Federal

Rule of Criminal Procedure 42(a). The court does not believe there is any material difference between its Certificate and the subsequently prepared transcript to the extent that both the Certificate and the transcript record the same events. Accordingly, by reliance upon the transcript and the court's Certificate, Plaintiff is not entitled to any relief based upon the references to the transcript made in the Brief as shown below.

Pl/Br	Tr.Date	Tr. Pg.	Line	To	Page	Line
16	6-17-98	96	8		103	25
17	6-17-98	99	22		101	11
18	6-18-98	21	1		25	

6. The following references to the transcript in Plaintiff's Brief have been examined by the court and the court concludes that there is no basis for Plaintiff's prayer for relief inasmuch as it is not self-evident from the references what Plaintiff is complaining about. Accordingly, no relief is warranted.

Pl/Br	Tr.Date	Tr. Pg.	Line	To	Page	Line
2	6-15-98	5	19		23	
7	6-17-98	49	ENTIRE PAGE			
7	6-17-98	122	ENTIRE PAGE			
12	6-15-98	95	3		97	15
12	6-15-98	96	2		20	
12	6-15-98	97	9		15	

12	6-16-98	116	24		118	11
12	6-18-98	41	5		13	
15	6-15-98	173	12		23	

B. Specific Claims

1. The Court's Prejudice and Bias Concerning Instruction to the Jury.[6]

To the extent that it is covered by the court's response to Plaintiff's General Claims, the court has already addressed Plaintiff's claim of bias and prejudice. In addition to a denial on that ground, Plaintiff's contention concerning error related to the jury instruction must fail on three grounds. First, Federal Rule of Civil Procedure 51 states in pertinent part that "no party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection." Fed. R. Civ. P. 51. As related elsewhere in this opinion, Plaintiff and his counsel voluntarily withdrew from the proceedings prior to their opportunity to discuss with the court the proposed jury instructions. Consequently, no objections were made to the court's proposed jury instructions. In addition, no objections were made to the court's actual charge to the jury before they retired to consider their verdict.

Second, "the absence of counsel, while the court is in session, at any time between the impaneling of the jury and the

[6] See Pl.'s Combined Mot. for Post Trail Relief ¶ A3.

return of the verdict, cannot limit the power and duty of the judge to instruct the jury in open court on the law of the case as occasion may require, nor dispense with the necessity of seasonably excepting to his rulings and instructions, nor give jurisdiction to a court of error to decide questions not appearing of record." Stewart v. Wyoming Cattle Ranche Co., 128 U.S. 383, 390 (1888); see also Arrington v. Robertson, 114 F.2d 821, 823 (3d Cir. 1949) ("The due process clause of the fifth Amendment to the Constitution requires that a defendant be accorded the right to be present in person or by counsel at every stage of his trial. . . . Orderly procedure requires that a plaintiff be accorded the same right. A party or his counsel may waive this right expressly. He may also waive it by voluntarily absenting himself from the courtroom in which the trial is being conducted, and in that case the trial judge may proceed with the trial in his absence even to the extent of recalling the jury from their deliberations for such additional instructions on the law as occasion may require. . . . Consequently, a party or his counsel who voluntarily absents himself from the courtroom consents to such proceedings."). The transcript and the court's Written Certification suggest that the court made it plain that both Plaintiff and his counsel were welcome to continue to participate in the case despite their declarations or conduct that warranted the court's action in removing Plaintiff under Federal Rule of Criminal Procedure 42(a) and in advising Plaintiff's counsel that the court considered her expression that

she was leaving as a voluntary withdrawal. (Tr. 6/18/98 at 18; Written Cert. of a Finding of Contempt Under Fed. R. Crim. P. 42(a) at 8.) The court advised Plaintiff's counsel that the court would consider such withdrawal voluntary and that if she did not continue to participate the trial would nevertheless go on in her absence. After hearing this recitation of the standards in which the proceedings should go forward, Plaintiff's counsel then gathered up her belongings and withdrew from the courtroom and the trial proceeded. She later advised the court that she and Plaintiff preferred to leave the courthouse, and at her request, the court advised the marshal to release Plaintiff so that event could occur. Plaintiff and his counsel left the courthouse at approximately 11:05 A.M. and did not return. (Written Cert. of a Finding of Contempt Under Fed. R. Crim. P. 42(a) at 8-9; Tr. 6/18/98 at 50.) In sum, Plaintiff's voluntary absence from the courtroom cannot form a valid basis for challenging the court's instructions to the jury.

Third, Plaintiff has afforded the court no authority upon which it claims that its instructions were erroneous. In reviewing the charge the court believes that the instructions were complete, accurate and in accordance with the law as it applied to the issues to be considered by the jury.

2. Plaintiff's Motion for Judgment as a Matter of Law Under Fed. R. Civ. P. 50(b).[7]

This motion cannot be granted for the reason that

[7] See Pl.'s Combined Mot. for Post Trial Relief ¶ C.

Plaintiff did not make a motion at the close of all the evidence for judgment in Plaintiff's favor under Rule 50. Plaintiff's request here is, and must be, a request under Rule 50(b) inasmuch as it is being made after trial, in which event it can only be recognized by the court as renewing a motion made under Rule 50(a), which must be made after the court has heard all the evidence by the party against whom the relief is sought, which in this instance would mean at the close of all of the Defendants' evidence. Plaintiff and his counsel had voluntarily withdrawn from the case at that stage as heretofore related, and thus no motion was made. Plaintiff is not eligible to make a post trial motion under Rule 50(b) for that reason.

3. Motion of Plaintiff to Reconsider and Enter an Order Rescinding the Court's Rule 50(a) Order Entered Against Plaintiff on Certain Claims and Certain Defendants on June 18, 1998.[8]

At the close of Plaintiff's evidence, Defendants moved under Rule 50(a) for judgment as a matter of law on the claims that had been presented against Defendants. The court heard argument and thereafter issued its ruling, granting in part and denying in part Defendants' motion. (Tr. 6/17/98 at 87-93.) Under the Federal Rules of Civil Procedure:

> [i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the

[8] See Pl.'s Combined Mot. for Post Trial Relief ¶ D.

> issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

Fed. R. Civ. P. 50(a). A court may grant a motion for judgment as a matter of law "if, viewing the evidence in the light most favorable to the non-movant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability. In determining whether the evidence is sufficient to sustain liability, the court may not weigh the evidence, determine the credibility of witnesses, or substitute its version of the facts for the jury's version." McDaniels v. Flick, 59 F.3d 446, 453 (3d Cir. 1995) (citing Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993)).

In consideration of the briefs in support of and in opposition to Plaintiff's motion here, and after review of the pertinent portions of the transcript, the court concludes that its rulings and the reasoning supporting those rulings at the close of Plaintiff's case are in accordance with the standards of Rule 50(a) as set forth in the Rule and by controlling precedent. Plaintiff has offered no grounds to cause the court to conclude that any of its rulings here challenged should be changed.[9]

[9] For example, the court stands by its ruling that Monell v. Department of Soc. Servs., 463 U.S. 653 (1978), was the

4. Plaintiff's Requested Relief from the Previous Trial Judge's Rulings Resulting in the Entry of a Partial Summary Judgment in Favor of Defendants.[10]

This claim addresses the court's ability to re-examine the entry of summary judgment by the Honorable John R. Padova on March 2, 1998. Under the "law of the case" doctrine, the Third Circuit has held that "judges of co-ordinate jurisdiction sitting in the same court and in the same case should not overrule the decisions of each other." TCM Film Corp. v. Gourley, 240 F.2d 711, 713 (3d Cir. 1957). The purpose of this "rule of judicial comity is to preserve the orderly functioning of the judicial process." Id. at 714. Nevertheless, several recognized exceptions to this rule "permit reconsideration of an issue previously decided in the same case." Hayman v. Cash Register Co. v. Sarokin, 669 F.2d 162, 169 (3d Cir. 1982). First, "where a successor judge is asked by timely and proper motion to reconsider the legal conclusions of an unavailable predecessor, he or she is empowered to reconsider these issues to the same extent that his or her predecessor could have." United States Gypsum Co. v. Schiavo Bros., Inc., 668 F.2d 172, 176 (3d Cir. 1981). A second exception "exists if new evidence is available to the second judge when hearing the issue." Hayman, 669 F.2d at

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correct standard to apply concerning Plaintiff's retaliation claims against the City. See supra note 4.

[10] See Pl.'s Combined Mot. for Post Trial Relief ¶ G.

169; see United States v. Wheeler, 256 F.2d 745, 747-48 (3d Cir. 1958). A third exception "is that every court 'has a duty to apply a supervening rule of law despite its prior decisions to the contrary when the new legal rule is valid and applicable to the issues in the case.'" Hayman, 669 F.2d at 169 (quoting Zichy v. City of Philadelphia, 590 F.2d 503, 508 (3d Cir. 1979)). Last, a fourth exception exists if the decision "is clearly erroneous and would work a manifest injustice." Arizona v. California, 460 U.S. 605, 619 n.8 (1983); see Schultz v. Onan Corp., 737 F.2d 339, 345 (3d Cir. 1984).

Plaintiff cannot prevail under any of these exceptions. Under the first exception to the "law of the case doctrine," the undersigned, acting as successor judge, can revisit the predecessor judge's ruling only to the extent that the predecessor judge could have. Here, Plaintiff failed to bring a motion for reconsideration within ten (10) days after Judge Padova's summary judgment ruling as required by Federal Rule of Civil Procedure 59(e). Thus, Judge Padova could not have entertained such a motion. Because this court, as successor judge, is bound by the same limits as Judge Padova, the predecessor judge, it may not revisit his summary judgment ruling. Plaintiff's motion for reconsideration does not meet any of the other recognized exceptions, and accordingly, the motion must be denied.

5. Motion for New Trial Under Federal Rule of Civil Procedure 59 for the Court's Refusal to Recuse.[11]

Plaintiff claims the right to a new trial on the ground that the court refused to recuse itself. On April 27, 1998, the court convened a hearing on that motion, and following that hearing, entered an Order denying Plaintiff's motion for recusal. Plaintiff's assertion that a new trial is in order because the court refused to recuse itself is unfounded. A federal judge shall disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455.[12] "The standard for recusal is whether an objective observer

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[11] See Pl.'s Combined Mot. for Post Trial Relief ¶ H. Plaintiff also seeks a new trial on a number of other grounds, such as prejudice, bias, fraud of the defense counsel, etcetera. (Pl.'s Combined Mot. for Post Trial Relief ¶¶ A1, A2, A3 and B.) These other grounds set forth in Plaintiff's motion are addressed in other portions of this memorandum either explicitly or implicitly.

[12] Section 144 of Title 28 of the United States Code also provides grounds for a federal judge's recusal. However, Plaintiff's motion did not appear to request recusal under that statute, nor did it meet the procedural requirements of 28 U.S.C. § 144. For example, the Amended Memorandum of Law in Support of the Plaintiff's Motion for Recusal of the Reassigned Judge Louis C. Bechtle was not accompanied by an affidavit, as required. See 28 U.S.C. § 144. In addition, although Plaintiff's reply brief was accompanied by an affidavit, the affidavit was not "accompanied by a certificate of counsel of record stating that it was made in good faith." Id. In addition, Plaintiffs memorandum supporting the motion for recusal only refers to 28 U.S.C. § 455 as a ground for recusal. Thus, the court will conduct its analysis of Plaintiff's motion in accordance with the legal standard for recusal under 28 U.S.C. § 455.

reasonably might question the judge's impartiality." MSL at Andover, Inc. v. American Bar Ass'n, 107 F.3d 1026, 1042 (3d Cir. 1997). In addition to the motions and briefs by the parties, on April 27, 1998, the court conducted a hearing on the recusal issue. After that hearing, the court denied Plaintiff's recusal motion for the reasons as stated in the hearing. (Tr. 4/27/98 at 57-59.) The court has reviewed the reasons for its refusal to recuse and stands by them. None of the grounds for recusal asserted by Plaintiff would reasonably cause an objective observer to question the court's impartiality. See id.

6. Plaintiff's Motion to Have This Case Assigned to a New District Judge.[13]

The assignment of court business is governed by Local Rule of Civil Procedure 40.1 of the United States District Court for the Eastern District of Pennsylvania. Assigning cases from one judge to another is a two step process. The judge that has been assigned the case in accordance with Local Rule 40.1 remains on the case until the case is closed. If during that period of time the judge cannot continue to administer that case for any reason (death, illness, recusal, resignation or other unavailability) the case is returned to the Clerk's Office and the Clerk enters an Order reassigning the case through the court's random selection system. The assigned judge under this local rule has no authority to reassign cases to another judge. All that the judge can do is to withdraw for one of the above

[13] See Pl.'s Combined Mot. for Post Trial Relief ¶ I.

enumerated reasons and advise the Clerk of that event. When Civil Action No. 96-3707 was first filed on May 15, 1996, it was assigned to Judge Padova. Thereafter, when Civil Action No. 97-1548 was filed on March 3, 1997, it was designated as a related case and under Local Rule 40.1(b)(3) it was assigned to Judge Padova. On March 16, 1998, the day specially set for this case to commence trial, Judge Padova granted Plaintiff's motion to recuse and the case was reassigned by the Clerk to Judge Marvin Katz on the same day. On that day, Judge Katz returned the case to the Clerk advising that he was to recuse. The Clerk reassigned the case under Local Rule 40.1 to the undersigned on the same day. The practice followed in this case was a practice governed by our Local Rule 40.1 and corresponding practice in the Eastern District of Pennsylvania. For those reasons, this court has no authority to reassign this case to any other judge. Plaintiff's motion seeking relief on this ground must be denied.

7. Plaintiff's Motion Concerning an Allegedly Fraudulently Prepared Document.[14]

After Plaintiff's counsel had finished direct examination of his witness, Lois Fernandez, she was cross-examined by Defendants' counsel. (Tr. 6/16/98 at 171-182.) During that cross-examination, Defendants' counsel asked the witness whether she ever knew that Defendants' counsel had sent a letter to Plaintiff's counsel expressing concern about a meeting

[14] See Supp. Mem. in Support of Pl.'s Combined Mot. for Post Trial Relief at 6-9.

that was desired by the witness (Lois Fernandez, President of the ODUNDE Organization) and one of Defendants then on trial (John Kromer, Executive Director of a pertinent city agency, OHCD) due to the fact that the trial was then scheduled to begin, could last five to seven days and could implicate issues that would be coming up at the trial involving Lois Fernandez's organization (ODUNDE), John Kromer's city agency (OHCD) and the Plaintiff, who was affiliated with ODUNDE and had made claims against John Kromer that were to be tried. The letter made one or two suggestions to Plaintiff's counsel as to how a meeting between Lois Fernandez and John Kromer could be arranged with counsel present.

When Defendants' counsel inquired of this witness on cross-examination at the trial whether the witness knew that such a letter had passed between the attorney for the City and the attorney for the Plaintiff the witness did not remember such a letter. At that time Plaintiff's counsel objected and asked to see a copy of the letter. Defendants' counsel did not have one. Defendants' counsel stated that she had not been expecting to use it on cross-examination and simply did not have it with her.

Following the trial, on July 15, 1998, Defendants filed copies of this letter dated March 17, 1998. (Defs.' Opp. to Combined Mot. for Post Trial Relief, Exs. C and D.) Exhibit C is a computer version of a letter which contains verbatim, the contents of a file copy of the letter which contained the letterhead of the City. The explanation of the two different

forms of this letter is set forth in an affidavit of Tammye Watson, defense counsel's secretary, accompanying Defendants' memorandum and it explains the circumstances associated with the preparation, the filing and the mailing of the letter. (Defs.' Opp. to Combined Mot. for Post Trial Relief, Ex. E.) There is no contradictory evidence that anything was fraudulently prepared or misrepresented in the manner in which the letter was referred to in the questioning of either Plaintiff's witness Lois Fernandez or Defendants' witness Councilwoman Anna Verna. (Tr. 6/17/98.) A subsequently filed affidavit with Defendants' memorandum of December 17, 1998, has an affidavit of John Creevey describing the computer system employed by the City that produced these two verbatim versions of the letter. (Defs.' Opp. to Combined Mot. for Post Trial Relief, Ex. F.) In any event, the letter, in the court's view, is not material to the principal issues in the case. It has two main topics. First, the letter describes quite accurately the fact about which there is no dispute--that there is litigation going on between Plaintiff and the City Defendants, including John Kromer. The letter accurately suggests that meeting on the eve of trial regarding business matters between a non-party witness in the litigation (Lois Fernandez) and one of Defendants (John Kromer) could bring up subjects and topics that could be part of the litigation, inasmuch as Plaintiff was closely affiliated with the non-party witness who desired the meeting with City officials (Lois Fernandez). There is no dispute about any of that. The second topic the letter covers is

a suggestion by Defendants' counsel that if the meeting was to take place between her client (John Kromer) and the non-party witness (Lois Fernandez) that either: it would be appropriate for counsel to be present; or that Ms. Fernandez could meet with someone else in John Kromer's agency (OHCD) to discuss what she had in mind; or that Plaintiff's counsel could contact Defendants' counsel to decide how to proceed.

In a nutshell, we have the City Defendants' counsel, who is about ready to go to trial, communicating with Plaintiff's counsel, who is also about to proceed with that same trial, about how the City counsel's client should address the request to meet with someone who might have some connection with the matters that are about to arise in the trial. The court sees nothing regarding the letter in respect to its content or the manner in which it has been produced to suggest there is any ground for relief by Plaintiff in regard to any event that took place at the trial even if the letter is not authentic. Thus, Plaintiff's motion seeking relief on this ground must be denied.

III. CONCLUSION

For the foregoing reasons, the court will deny Plaintiff's motions.

An appropriate Order follows.

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

RAYMOND WOOD	:	CIVIL ACTIONS
	:	
v.	:	
	:	
DAVID L. COHEN, ESQUIRE,	:	NO. 96-3707
et al.	:	NO. 97-1548

ORDER

AND NOW, TO WIT, this day of February, 1999, upon consideration of plaintiff Raymond Wood's combined motions for post trial relief consisting of Plaintiff's Request for a Mistrial, Judgment Under Fed. R. Civ. P. 50(b) as a Matter of Law, a New Trial Under Fed. R. Civ. P. 59, Relief from Judgment under Fed. R. Civ. P. 60(b)(3) and (6), a Motion for Relief from Judgment Procured by Fraud, Misrepresentation and Misconduct by the Defendants and their Attorneys, a Motion to Reconsider, Rescind and Vacate the Rule 50 Order entered on June 19, 1998 and a Motion to Set Aside the Civil Judgment entered on June 19, 1998 and defendants David L. Cohen, et al.'s responses thereto, IT IS ORDERED that said motions are DENIED.

LOUIS C. BECHTLE, J.