Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
June 03, 2013

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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In re:	BK-S-10-14813-BAM
JODY MARIE CUOMO,	Chapter 7
Debtor.	
GREGORY KELLY,	Adversary No. 12-01124-BAM
Plaintiff,	Date: May 29, 2013
v.	Time: 2:30 p.m.
JODY MARIE CUOMO,	
Defendant.	

MEMORANDUM DECISION ON MOTION TO RECUSE BANKRUPTCY JUDGE MARKELL

On April 9, 2013, in connection with an adversary proceeding styled as Dignity Health, etc. v. Wayne A. Seare, Adversary No. 12-01108-BAM, the Honorable Bruce A. Markell ("Judge Markell") entered the "Opinion Sanctioning Attorney Anthony J. DeLuca for Failing to Represent Wayne A. Seare in this Adversary Proceeding." Based on the findings and conclusions set forth in that decision ("Seare Opinion"), attorney Anthony J. DeLuca, Esq. ("Attorney DeLuca") alleges that Judge Markell is biased and prejudiced against him.[1]

[1] The Seare Opinion arose out of a voluntary Chapter 7 proceeding that was commenced by Wayne A. Seare and Marinette Tedoco, denominated Case No. 12-12173-BAM. The bankruptcy case was filed on the debtors' behalf by Attorney DeLuca and was assigned to Judge Markell. In this Memorandum Decision, the debtor or debtors and that proceeding, will be

On May 23, 2013, in the above-captioned separate bankruptcy case, Attorney DeLuca filed a motion seeking to recuse Judge Markell from issuing a ruling on another matter involving Attorney DeLuca. Attorney DuLuca's present motion ("Recusal Motion") was heard by the above-signed judge on May 29, 2013.

BACKGROUND[2]

On March 23, 2010, Jody Marie Cuomo ("Debtor") filed a voluntary Chapter 7 petition. Her bankruptcy counsel was DeLuca & Associates, whose principal is Attorney DeLuca.[3] On May 12, 2010, the Chapter 7 trustee submitted a no asset report, i.e., that there are no funds available for distribution to creditors. (Dkt# 22). Debtor received her discharge on July 1, 2010. (Dkt#28). A final decree closing the bankruptcy case was entered on July 6, 2010. (Dkt#30).

On October 17, 2011, Gregory Kelly ("Kelly") commenced a collection action against the Debtor in the Eighth Judicial District Court, Clark County, Nevada, denominated Case No.

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referred to as the Seare debtors or Seare case.

[2] In the text and footnotes of this Memorandum Decision, all references to "Section" shall be to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRCP" shall be to the Federal Rules of Civil Procedure. All references to "FRBP" shall be to the Federal Rules of Bankruptcy Procedure. "LR" refers to the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Nevada. All references to "Dkt#" are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of the court. All references to "Adkt#" are to the numbers assigned to the documents filed in the above-captioned adversary proceeding.

[3] On April 27, 2009, Debtor filed a prior Chapter 7 proceeding, Case No. 09-16409-BAM. Debtor was represented in that case by counsel with the Nevada Law Group, Ltd. On June 18, 2009, that case was dismissed pursuant to Section 521(i) because the Debtor had failed to timely file her schedules and other documents required by Section 521(a)(1). On July 9, 2009, Debtor filed a second Chapter 7 proceeding, Case No. 09-22203-BAM, again through the Nevada Law Group. Both cases were assigned to Judge Markell. On July 30, 2009, Debtor filed an amended unsecured Schedule "F" that listed Pat Ritchie as a creditor owed $100,000 based on a 2006 personal loan. On August 27, 2009, Judge Markell issued an order requiring counsel with the Nevada Law Group to show cause why they should not be sanctioned for their conduct in connection with both bankruptcy cases. On October 15, 2009, Judge Markell issued an order requiring the Debtor to show cause why the case should not be dismissed due to the Debtor's failure to obtain a credit counseling certificate required by Section 109(h)(1). On October 28, 2009, the second case also was dismissed due to the Debtor's failure to obtain a credit counseling certificate.

A-11-649989-C. The collection action was based on a $96,000 personal loan that the Debtor had obtained from Pat Ritchie ("Ritchie") in November 2006. The obligation ("Ritchie Obligation") was not listed in the schedule of liabilities filed in the Debtor's bankruptcy case. Ritchie subsequently assigned the obligation to Kelly.

On April 12, 2012, Attorney DeLuca filed a motion to reopen the Debtor's bankruptcy case to seek sanctions against Kelly under Section 362(k) for allegedly violating the automatic stay.[4] (Dkt#32). On April 26, 2012, Attorney DeLuca filed an amended unsecured creditor Schedule "F" that added the Ritchie Obligation. (Dkt#37). On May 14, 2012, an order was entered reopening the Chapter 7 case without prejudice to Kelly commencing an action to determine dischargeability of the Ritchie Obligation. (Dkt#41).

On June 15, 2012, Kelly commenced the above-captioned adversary proceeding ("Adversary Proceeding"). The complaint alleges, *inter alia*, that the Ritchie Obligation is excepted from discharge under Section 523(a)(2) based on fraud. (Adkt#1). On October 24, 2012, Debtor, *in pro se*, filed an answer to the complaint. (Adkt#10). Trial of the Adversary Proceeding is scheduled for June 12, 2013. (Adkt#75).

On March 11, 2013, Judge Markell issued an order requiring Attorney DeLuca to show cause ("OSC") why he should not be sanctioned for failing to list the Ritchie Obligation on the Debtor's original schedules and his failure to represent the Debtor in the Adversary Proceeding. (Adkt# 31). On March 25, 2013, Attorney DeLuca filed a written response to the OSC. (Adkt#45). On March 27, 2013, an amended order to show cause was issued (Dkt# 53; Adkt#47) to which Attorney DeLuca filed a response. (Dkt# 55; Adkt#49). The OSC was heard by Judge Markell on April 2, 2013, and was taken under submission.

On April 9, 2013, Judge Markell entered the Seare Opinion.

On May 7, 2013, Kelly filed a list of witnesses in anticipation of the trial of the Adversary Proceeding. (Adkt#70). Included in the witness list is Attorney DeLuca.

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[4] As a matter of law, however, there was no automatic stay in effect when Kelly filed his collection action because the Debtor had received her discharge and the case had been closed. See 11 U.S.C. § 362(c). The proper inquiry was whether Kelly's collection action was in violation of the discharge injunction. See 11 U.S.C. § 524(a)(2).

On May 23, 2013, Attorney DeLuca filed the instant Recusal Motion (Adkt# 72) seeking to remove Judge Markell from the case pursuant to 28 U.S.C. § 455(a). In particular, Attorney DeLuca seeks to remove Judge Markell from the Debtor's bankruptcy case before he can issue a ruling on the OSC. The Recusal Motion was accompanied by a motion seeking an order shortening time ("OST Motion") (Adkt# 73) to which was attached an Affidavit of Attorney DeLuca attesting that all of "the facts contained in the attached motion are true and accurate to the best of his knowledge." By the OST Motion, Attorney DeLuca sought to have the Recusal Motion heard earlier than the usual 28 days notice required by LR 9014(a)(1) "due to Judge Markell retiring June 10, 2013, [and] Movant fears further reprisal based upon this Court's prejudice and bias demonstrated towards Movant [for which Movant] seeks this Court recuse itself or be disqualified immediately."

On May 23, 2013, the court entered an order granting Attorney DeLuca's request to shorten time so that the Recusal Motion could be heard on an expedited basis by the above-signed bankruptcy judge. (Adkt#76). On May 27, 2013, opposition to the Recusal Motion was filed by Kelly. (Adkt#81). The hearing was conducted on May 29, 2013, at which Attorney DeLuca, Kelly and the Debtor appeared. After the hearing, the Recusal Motion was taken under submission.

APPLICABLE LEGAL STANDARD

FRBP 5004(a) provides that "a bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall be disqualified from presiding over the case."

28 U.S.C. § 455(a) provides that "any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." An objective standard is applied for recusal under this provision: "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." United States v. Nelson, 718 F.2d 315, 321 (9th Cir. 1983). Recusal under 28 U.S.C. § 455(a) generally does not apply to conduct of the judge occurring

within the judicial proceeding, but only to asserted bias or prejudice derived from an extrajudicial source. See Liteky v. United States, 510 U.S. 540, 555, 114 S.Ct. 1147, 1157 (1994); Ryan v. Corey (In re Corey), 892 F.2d 829, 839 (9th Cir. 1989). That is, the alleged bias or prejudice must arise from an extrajudicial source and cannot be based solely on information gained in the course of the proceedings. See Hasbrouck v. Texaco, Inc., 842 F.2d 1034, 1045-46 (9th Cir. 1987), aff'd sub nom. Texaco, Inc. v. Hasbrouck, 446 U.S. 543 (1990). A judge's rulings while presiding over a case do not constitute extrajudicial conduct. See Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydroelec, 854 F.2d 1538, 1548 (9th Cir. 1988).[5]

Recusal motions should be heard and decided by the judge assigned to the case. See Berry v. Deutsche Bank Trust Co. Americas, 2007 WL 2363366 at *3 (D.Haw. Aug. 13, 2007), citing Bernard v. Coyne (In re Bernard), 31 F.3d 842, 843 (9th Cir. 1994).[6] Recusal of the assigned judge must be sought on a timely basis and at the earliest moment when the moving party obtains knowledge of facts that form the basis for disqualification. See, e.g., In re Abijoe Realty Corp., 943 F.2d 121, 126-27 (1st Cir. 1991)(attempt on appeal to invalidate adverse ruling based on alleged bias of the bankruptcy judge). Recusal requests made only after receipt of an adverse ruling are untimely. See Medrano Diaz v. Vazquez Botet (In re Medrano Diaz), 182 B.R. 654, 658 (Bankr.D.P.R. 1995). Conclusory allegations are not sufficient and recusal motions are seldom granted because a litigant can use recusal motions to shop for another judge. See In re Alpern, 246 B.R. 578, 581 (Bankr.N.D.Ill. 2000); In re Chandler's Cove Inn, Inc., 74 B.R. 772, 773 (Bankr.E.D.N.Y. 1987). The burden of proof rests upon the party seeking disqualification. See In re Spirtos, 298 B.R. 425, 431 (Bankr. C.D. Cal. 2003). See also Perry v. Schwarzenegger, 790 F. Supp. 2d 1119, 1129 (N.D. Cal. 2011) aff'd sub nom. Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012), cert. granted, 133 S. Ct. 786 (2012) ("Since a federal judge is

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[5] 28 U.S.C. § 144 also provides for disqualification based on judicial bias or prejudice, but that provision does not apply to bankruptcy judges. See Seidel v. Durkin (In re Goodwin), 194 B.R. 214, 221 (B.A.P. 9th Cir. 1996).

[6] Judge Markell consented to have Attorney DeLuca's request heard by a different judge.

presumed to be impartial, the party seeking disqualification bears a substantial burden to show that the judge is biased.") (Citations omitted).

DISCUSSION

In the instant case, Judge Markell heard the OSC on April 2, 2013, and took the matter under submission. Judge Markell entered the Seare Opinion on April 9, 2013, after he had conducted an evidentiary hearing at which Attorney DeLuca and debtor Seare testified.[7] Based on the testimony and record presented, Judge Markell concluded in the Seare Opinion that Attorney DeLuca had violated Rules 1.1, 1.2(c), 1.4, and 1.5 of the Nevada Rules of Professional Conduct, as well as Sections 707(b)(4)(C), 526 and 528 of the Bankruptcy Code.[8] Various sanctions were ordered, including the disgorgement of fees and other non-monetary elements.

On April 22, 2013, Attorney DeLuca appealed the Seare Opinion. Prior to filing the notice of appeal, he also filed a motion seeking to stay the effectiveness of the Seare Opinion while his appeal was pending. On April 29, 2013, Judge Markell entered an order ("Stay Order")[9] staying certain elements of the sanctions set forth in the Seare Opinion.

By his Recusal Motion in the instant case, Attorney DeLuca now seeks to prevent Judge Markell from entering a ruling on the OSC in light of the adverse ruling Attorney DeLuca

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[7] The Seare Opinion is a matter of public record and appears as document number 59 on the docket for the Seare bankruptcy proceeding.

[8] The Seare Opinion is a detailed decision that discusses the practice of "unbundling" services in a consumer bankruptcy case, the necessity of determining the particular needs of the specific debtor, the risks imposed when consumer debtors must represent themselves, and the attendant ethical obligations of counsel when agreeing to provide legal services.

[9] One of the non-monetary elements of the sanctions was to publish the Seare Opinion. The Stay Order granted Attorney DeLuca's request to delay publication of the Seare Opinion while the appeal was pending. Because Attorney DeLuca did not request that the Seare Opinion be placed under seal, i.e., shielded from access by non-parties, it remains available for review by the public. Even though the Stay Order was entered on April 29, 2013, the docket in the Seare case still does not reflect that Attorney DeLuca has sought to seal the Seare Opinion from public access. Ironically, Attorney DeLuca's instant motion would seem to bring more attention to the same opinion.

received through the Seare Opinion.[10] Among other things, Attorney DeLuca asserts that Judge Markell is "specifically targeting Anthony J. DeLuca, Esq. and DeLuca and Associates" rather than acting impartially. See Recusal Motion at 8:11 through 10:8. In his motion, Attorney DeLuca quotes numerous passages from portions of his response to the OSC under submission before Judge Markell. Compare Recusal Motion at 8:11 through 10:8 with Anthony J. DeLuca's Esq.'s Reply to Amended Order to Show Cause (Adkt# 49) at 4:11-28, 5:1-5, 5:5-14, 6:14-20, and 7:13-22. He also challenges Judge Markell's analysis and conclusions in the Seare Opinion, arguing that they can "only be the product of bias and prejudice" towards Attorney DeLuca. See Recusal Motion at 13:5.[11] See also Recusal Motion at 11:19, 15:18, and 16:28 ("bias and prejudice"). Finally, Attorney DeLuca refers to having to "respond publicly" to the Seare Opinion and quotes what appears to be a press release about himself, his law firm and various charities to which he contributes. See Recusal Motion at 15:23 through 16:9.[12]

In opposition to the Recusal Motion, Kelly vehemently opposes removing Judge Markell from presiding over the trial of the Adversary Proceeding. He argues that Attorney DeLuca is not a party to the Adversary Proceeding and therefore does not have standing to seek recusal. See Opposition at 1:26 and 5:15-21.[13] At the hearing, Attorney DeLuca argued that he does

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[10] Attorney DeLuca cites no legal authority permitting recusal of a judge under 28 U.S.C. § 455(a) from deciding a matter that already has been heard and taken under submission.

[11] Attorney DeLuca specifically argues as follows: "To suggest that a law firm that has successfully represented roughly 20,000 clients has dragged down the practice of bankruptcy law generally by citing one instance in which the Court believes it acted imperfectly out of 20,000 client matters is so fundamentally unjust that it may only be the product of bias and prejudice." Recusal Motion at 13:1-5. The Seare Opinion, however, focuses on Attorney DeLuca's practice of unbundling services in all of his cases, not just the one case of the Seare debtors. Attorney DeLuca's frequent reference to his previous 20,000 clients, without mention of whether their individual client needs were ever determined, seems to bolster the concerns expressed by Judge Markell in the Seare Opinion.

[12] Attorney DeLuca does not identify where his public response appears, although he indicates that the Seare Opinion was mentioned in a local newspaper. See Recusal Motion at 12:12-13.

[13] A substantial portion of the written materials outlines bad blood between Kelly and Attorney DeLuca that is immaterial to issue of recusal. Compare Recusal Motion at 3:1 through

have standing because he is still counsel of record in the Adversary Proceeding inasmuch as Judge Markell has not granted him permission to withdraw.[14]

The court having considered the Recusal Motion and the Opposition, as well as the arguments and representations made by Attorney DeLuca and Kelly at the hearing, concludes that the Recusal Motion must be denied.

As an initial matter, it is clear that the Recusal Motion is replete with factual assertions and conjecture by Attorney DeLuca that are not supported by any admissible evidence. At the hearing, the court specifically asked Attorney DeLuca whether an affidavit or declaration providing evidence in support of the Recusal Motion had been filed. He stated that he was "positive" that such an affidavit was filed and that it could be found on the docket. In spite of Attorney DeLuca's assurances, there is no such affidavit.[15] Perhaps Attorney DeLuca was referring to the affidavit that was attached to the OST Motion, but there is no affidavit attached or accompanying the Recusal Motion. Absent admissible evidence, the Recusal Motion is easily disposed of given that Attorney DeLuca bears the burden of proof under 28 U.S.C. § 455(a). However, even if the court considers the same affidavit as being in support of the Recusal Motion, the same result is required.

The suggestion that Attorney DeLuca is being "specifically targeted" by Judge Markell is belied both by the history of this Debtor's efforts to obtain bankruptcy relief and the history of practice in this judicial district. As previously indicated at note 3, Debtor filed two prior

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4:18 with Opposition at 2:19 through 3:3.

[14] This is curious because even though Attorney DeLuca asserts that he is still the attorney of record in the Adversary Proceeding, he acknowledged at the hearing that he is providing no assistance to the Debtor in preparing for the trial.

[15] As previously indicated, the OST Motion sought an expedited hearing on the Recusal Motion "due to Judge Markell retiring June 10, 2013." At the hearing, the court asked Attorney DeLuca where he had gotten such a date because it is wrong: Judge Markell has announced that his last day on the bench will be July 10, 2013. Attorney DeLuca explained that he got the erroneous date "from one of the papers." In the Recusal Motion and at the hearing, Attorney DeLuca also referred to comments made at the OSC hearing conducted on April 2, 2013. Unfortunately, Attorney DeLuca did not include a copy of the hearing transcript as part of the record.

bankruptcy cases before retaining Attorney DeLuca to represent her in the current case. In the Debtor's second case, Judge Markell issued an order to show cause regarding the conduct of attorneys with the Nevada Law Group in their handling of the Debtor's two bankruptcy cases. Those attorneys did not get a "free pass" from Judge Markell. Clearly Attorney DeLuca is not being singled out for special scrutiny even in another case involving the same Debtor. Whoever the attorney is that represents the Debtor, the professional expectations have been the same.

Moreover, it is puzzling that counsel of Attorney DeLuca's experience would be unaware of the numerous other instances where members of the bankruptcy bar in this district have been required by Judge Markell and other judges to explain or otherwise conform their practices to the standards of the legal profession. As Attorney DeLuca should be aware, Judge Markell previously sanctioned other attorneys to ensure that their clients are competently and ethically represented. See In re Spickelmier, 469 B.R. 903 (Bankr. D. Nev. 2012); In re Smith, 462 B.R. 783 (Bankr. D. Nev. 2011); In re Schivo, 462 B.R. 765 (Bankr. D. Nev. 2011); In re Blue Pine Group, Inc., 448 B.R. 267 (Bankr. D. Nev. 2010), aff'd, 457 B.R. 64 (B.A.P. 9th Cir. 2011), aff'd in part, vacated in part, 2013 WL 2151387 (9th Cir. May 20, 2013); In re Sattiewhite, 2009 WL 971597 (Bankr. D. Nev. 2009) (sanctioning bankruptcy petition preparer); In re Sanford, 403 B.R. 831 (Bankr. D. Nev. 2009); In re Rossana, 395 B.R. 697 (Bankr. D. Nev. 2008); In re Martinez, 393 B.R. 27 (Bankr. D. Nev. 2008). See also In re Sponhouse, 477 B.R. 147 (Bankr. D. Nev. 2012); In re Goodman, Case No. 08-19036-MKN (order on motion for sanctions, Docket No. 232); In re Smith, Case No. 11-10568-MKN (order to show cause re fee disgorgement and sanctions, Docket No. 92); In re Mislang, Case No. 12-13976-LBR (order re fee disgorgement and sanctions against attorney and bankruptcy petition preparer, Docket No. 50). In short, there is nothing evident from the practice in this district or with respect to this particular Debtor to suggest that Judge Markell is singling out Attorney DeLuca.

As to the analysis and conclusions reached in the Seare Opinion, that matter is on appeal and Attorney DeLuca's fear of a similar adverse ruling with respect to the pending OSC smacks only of judge shopping rather than a basis for recusal. As previously mentioned, the Seare Opinion was entered after an evidentiary hearing in which both Attorney DeLuca and debtor

Seare testified under oath. Whether the findings and conclusions reached by Judge Markell were unsupported by the record or unsupported by law is for the appellate court to decide. In connection with this Recusal Motion, Attorney DeLuca instead is asking another judge in the same court to second guess Judge Markell's findings and conclusions. As an experienced attorney, bankruptcy or nonbankruptcy, Attorney DeLuca should know that such a request is inappropriate.[16]

More important, Attorney DeLuca does not even allege a bias or prejudice arising from an extrajudicial source: whatever may be the findings and conclusions reached by Judge Markell, they are clearly based only on Attorney DeLuca's conduct in the bankruptcy cases before the court. No evidence has been offered from any source of a bias or prejudice arising from activities or events outside of the judicial process.[17] The suggestion that the findings and conclusions in the Seare Opinion can only have been the product of Judge Markell's personal bias and prejudice against Attorney DeLuca is not laughable[18], but is simply unsustainable.

Finally, it is difficult to fathom the relevance to the Recusal Motion of Attorney DeLuca's efforts to improve his public perception. His apparent contributions to charities and other public causes are laudable and certainly should be encouraged. But what Attorney DeLuca

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[16] It appears from the docket that Attorney DeLuca never sought relief from the Seare Opinion by bringing a motion under FRBP 9024 and FRCP 60(b) or FRBP 9023 and FRCP 59(e). He apparently chose not to attempt to convince Judge Markell that the factual findings were erroneous or that his legal analysis was incorrect.

[17] Attorney DeLuca goes so far as to suggest an effort by Judge Markell to "leak" the Seare Opinion to a New York reporter while promising not to publish the decision pending the outcome of the appeal. See Recusal Motion at 14:1 through 15:16. While Attorney DeLuca refers to a telephone conversation he allegedly had with the reporter, he has presented no affidavit from the reporter attesting that the Seare Opinion was obtained from any source other than the public record. Attorney DeLuca apparently is unaware that other opinions by Judge Markell addressing attorney misconduct, e.g., In re Spickelmier, 469 B.R. 903 (Bankr. D. Nev. 2012) and In re Schivo, 462 B.R. 765 (Bankr. D. Nev. 2011), previously received national attention. Moreover, Attorney DeLuca seems to ignore his failure to request that the Seare Opinion be sealed. See discussion at note 8.

[18] Recusal motions, like sanction orders, are never taken lightly. If attorneys, including Attorney DeLuca, merely brush off the Seare Opinion as the musings of a departing jurist, it would demonstrate precisely why judicial supervision of the bar is so desperately needed.

does with his fees is irrelevant to determining the propriety of his conduct in earning his fees. The rules of professional conduct apply to all attorneys, even those attorneys who charge no fees for their services, i.e., pro bono counsel. Having represented thousands of clients for more than a decade, Attorney DeLuca should know this.[19]

In short, the Recusal Motion must be denied because it is not supported by admissible evidence. Even if the court considers that factual assertions set forth in the Recusal Motion, they do not support the conclusions asserted by Attorney DeLuca as the moving party.[20]

Disqualification under 28 U.S.C. § 455(a) therefore is not appropriate.

CONCLUSION

For the reasons set forth above, the Recusal Motion will be denied. A separate order has been entered concurrently herewith.

Notice and Copies sent through:

CM/ECF ELECTRONIC NOTICING AND/OR
BNC MAILING MATRIX

and sent via FIRST CLASS MAIL BY THE COURT AND/OR BNC to:

JODY MARIE CUOMO
1725 S. RAINBOW BLVD. #16-80
LAS VEGAS, NV 89146

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[19] Attorney DeLuca represented himself in bringing the Recusal Motion. At the hearing, he indicated that when he sought a stay pending appeal of the Seare Opinion, he was represented by separate counsel. With his Recusal Motion, Attorney DeLuca has exhibited none of the professional detachment expected of an attorney representing a client. Instead, he lashes out at Judge Markell as the source of bad news with respect to his practice of treating consumer clients on a non-individual basis. As the Seare Opinion discussed the dangers of consumer debtors having to represent themselves as a result of Attorney DeLuca's standard practice of unbundling legal services, it is ironic that Attorney DeLuca voluntarily placed himself in the same position with similar effect. Separate counsel undoubtedly would have advised Attorney DeLuca of the evidentiary and substantive requirements for recusal under 28 U.S.C. § 455(a), and likely would have advised against bringing the Recusal Motion.

[20] Because Attorney DeLuca seeks only to recuse Judge Markell from deciding the OSC, but not with respect to trial of the Adversary Proceeding, the court does not need to separately address Kelly's objection.