

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

Case No. SA CV12-01092 DMG (JCx)

Date August 13, 2012

Title Orly Taitz v. Kathleen Sebelius, et al.

Present: The Honorable JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) ORDER DENYING PLAINTIFF'S MOTION FOR JUDGE GEE TO RECUSE HERSELF AND HAVE THE CASE REASSIGNED TO A JUDGE, WHO WAS NOT APPOINTED BY BARACK OBAMA AND WHO IS LOCATED IN THE SOUTHERN DIVISION OF THE CENTRAL DISTRICT OF CA (Dkt. 6)

I. Introduction

On July 13, 2012, Plaintiff, Dr. Orly Taitz ("Taitz"), who is self-represented and an attorney, filed a "Motion for Judge Gee to Recuse Herself and Have the Case Reassigned to a Judge, Who Was Not Appointed by [President] Barack Obama and Who Is Located in the Southern Division of the Central District of C[alifornia]" (the "Motion"). Dkt. 6. In the Motion, Taitz contends that, because: (i) Judge Gee was appointed by President Obama; and (ii) the action seeks to raise challenges to, *inter alia*, President Obama's eligibility to be President, Judge Gee should be disqualified from presiding over this matter pursuant to 28 U.S.C. §§ 455(a), 455(b)(1) and 455(b)(5)(iii). Mot., p.3, Dkt. 6. The Motion also objects to the assignment of the case to Judge Gee, who sits in the Western Division of the Central District of California, because Taitz filed it in the Southern Division of this District, which is closer to her office.

The Motion was referred to this Court for decision pursuant to General Order 08-05, ¶ 4.0 ("If a motion is made to disqualify a judge in any civil case, the motion shall be referred to the Clerk for random assignment to another judge."). For the reasons stated in this Order, the Motion is DENIED.

II. The Complaint

In her Complaint, Dkt. 1, Taitz seeks to advance several claims against 10 Defendants, including: President Obama; Secretary of Health and Human Services Kathleen Sebelius; Representative Nancy Pelosi; Social Security Commissioner Michael Astrue; Attorney General Eric Holder; former Selective Service Director William Chatfield; Hawaii Health Department Registrar Alvin Onaka; and certain persons identified as officials of the Democratic Party. The Complaint, which lacks clarity and precision, appears to advance putative class action claims to the effect that, *inter alia*, the Patient Protection and Affordable Care Act (the "Act"), Pub. L. No. 111-148, 124 Stat. 119 (2010),

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violates the Free Exercise and Establishment Clauses of the First Amendment, and the Due Process Clauses of the Fifth and Fourteenth Amendments. The Complaint also refers to Article II, Section 1 of the Constitution, and apparently seeks to contest the Act based on the claim that President Obama is not “a lawful US [sic] President.” Compl. ¶ 17. The Complaint also contains summary references to the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.*, and contains certain summary allegations that mention alleged fraud and mail fraud by certain Defendants; these allegations may be seen as related to those with respect to President Obama’s qualifications to serve as President.

III. Governing Legal Standards

As noted, Taitz brings this motion pursuant to 28 U.S.C. §§ 455(a), 455(b)(1) and 455(b)(5)(iii). The referenced provisions of § 455 provide:

- (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;
 - ...
 - (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - ...
 - (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding

A recusal motion under § 455 is committed to the discretion of the district court. *See Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991). The standard for recusal under § 455(a) is, “whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986). Thus,

[b]ecause 28 U.S.C. § 455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street. Use of the word “might” in the statute was intended to indicate that disqualification should follow if the reasonable man, were he to know all the circumstances, would harbor doubts about the judge’s impartiality.

Potashnick v. Port City Constr. Co., 609 F.2d 1101 (5th Cir. 1980); *Hamid v. Price Waterhouse*, 51 F.3d 1411, 1416 (9th Cir. 1995) (the test is “whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned”).

The standard for recusal under § 455(b)(1) requires a showing that the alleged bias or prejudice be “personal,” as opposed to “judicial.” *See King v. U.S. Dist. Court for Cent. Dist. of Cal.*, 16 F.3d 992,

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993 (9th Cir. 1994). A personal bias has been defined as “an attitude toward petitioner that is significantly different from and more particularized than the normal, general feelings of society at large.” *Mims v. Shapp*, 541 F.2d 415, 417 (3d Cir. 1976). The words “bias or prejudice” have been described as those that “connote a favorable or unfavorable disposition or opinion that is somehow *wrongful or inappropriate*.” *Liteky v. United States*, 510 U.S. 540, 550 (1994) (italics in original). The opinion can be wrongful or inappropriate either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess, or because it is excessive in degree. *Id.*¹

The standard for recusal under § 455(b)(5)(iii) follows the same approach described with respect to § 455(b)(1):

courts appear to weigh two factors in deciding whether to recuse under this provision: the remoteness of the interest and its extent or degree. Thus if a judge is a stockholder in a company, and a decision in a case against another company in the same industry will have a substantial effect on all companies in the industry, the judge should recuse. If a judge, or a corporation in which the judge owns stock, has a business relation with a party to a case, disqualification will turn on whether that business relation will be affected by the case. Similar questions will arise if a judge is a ratepayer to a party to a proceeding.

13D WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 3547 (3d ed.) (footnotes omitted).

IV. Analysis

A. Plaintiff’s Claim of Bias Is Without Merit

Taitz has failed to show a basis for recusal under any of the foregoing standards. The Motion depends on a single theory for disqualification: That because Judge Gee was nominated and appointed by President Obama, she is disqualified to consider the issues in this case because they relate to his Presidency and could in some manner bring into question the validity of her appointment as a district judge. Taitz cites no authority in support of these positions and the Court has found none. Every federal district judge holds office for a term of good behavior. U.S. CONST. art. III, § 1. This provision is designed to ensure an independent judiciary. *United States v. Hatter*, 532 U.S. 557, 567-68 (2001); THE FEDERALIST NO. 78 (Alexander Hamilton). Since the establishment of the doctrine of judicial review in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), members of the federal judiciary have presided over many cases in which an issue presented has been whether an action of the Legislative or Executive Branch violated the Constitution. *E.g.*, *Youngstown Sheet & Tube Co. v. Sawyer (Steel Seizure)*, 343

¹ In *Liteky*, the Supreme Court equated the bias or prejudice tests of 28 U.S.C. § 144 and § 455(b)(1). Justice Scalia, speaking for the Court, explained that § 455(b)(1) “entirely duplicated the grounds of recusal set forth in § 144 (‘bias or prejudice’) but (1) made them applicable to all justices, judges, and magistrates (and not just district judges), and (2) placed the obligation to identify the existence of those grounds on the judge himself, rather than requiring recusal only in response to a party affidavit.” *Liteky*, 510 U.S. at 548.

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U.S. 579 (1952) (addressing whether the President had authority to seize privately owned steel mills); *Nat'l Fed'n of Indep. Bus. v. Sibelius*, 567 U.S. ___, 132 S. Ct. 2566 (2012) (addressing challenges to the Patient Protection and Affordable Care Act).

The present case is no different; Taitz apparently seeks to challenge the actions of the Legislative and Executive Branches. That Judge Gee was appointed by President Obama does not demonstrate that her impartiality could be "reasonably questioned." Nor does her appointment by President Obama support any claim that Judge Gee has any personal bias or interest in the outcome of this matter. The suggestion that Judge Gee's tenure as a federal judge could be affected by a determination of some of the vague claims advanced in the Complaint is meritless. Thus, "where an interest is not direct, but is remote, contingent, or speculative, it is not the kind of interest which reasonably brings into question a judge's impartiality." *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1313 (2d Cir. 1988).

For all of the foregoing reasons, the Court cannot find that any reasonable person would conclude that Judge Gee's impartiality might reasonably be questioned in this matter. For all of these same reasons, this bench officer, also an appointee of President Obama, has the capacity to consider the present motion to recuse Judge Gee.

B. Plaintiff's Objection to the Assignment of This Matter to the Western District Is Procedurally Defective

The only issue properly raised in a motion to disqualify a district judge is whether the challenge is meritorious. Other issues, including an objection to the division of the Central District to which a case has been assigned, are not properly presented as an adjunct to such a challenge. Nonetheless, the Court notes that, pursuant to General Order 08-05, ¶ 1.2, civil actions filed in the Central District are randomly assigned ("The assignment of civil cases shall be completely at random through the Automated Case Assignment System (ACAS). The assignments shall be such that each active judge of the Court, over a period of time, shall be assigned an equal number of cases."). This matter was randomly assigned to Judge Gee upon its filing. The random assignment process does not consider in which Division of the Central District a party chose to file the complaint.

V. Disposition

For all of the foregoing reasons, the Motion is DENIED.

IT IS SO ORDERED.

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