

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

UNITED STATES OF AMERICA : CRIMINAL ACTION  
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 v. :  
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 ROCMAN L. SANDERS : NO. 18-431

MEMORANDUM

PRATTER, J.

JANUARY 21, 2020

INTRODUCTION

Rocman Sanders has been charged with the manufacturing of and attempted manufacturing of child pornography in violation of 18 U.S.C. § 2251(a) and (e). Trial is imminent, the case having been commenced September 10, 2018.

Unsatisfied with the attorney most recently appointed to represent him, Todd Fiore, Esq.,<sup>1</sup> Mr. Sanders vocalized his demand to proceed *pro se* at a July 11, 2019 hearing. Mr. Sanders persisted in his decision notwithstanding that the Court conducted a colloquy at length regarding his right to proceed *pro se*. Ultimately, the Court permitted Mr. Sanders to represent himself *pro se*, but appointed Rocco Cipparone, Jr., Esq., a very experienced criminal defense attorney, as stand-by counsel on July 16, 2019.

Mr. Sanders alleges that the Court has shown bias and prejudice toward him and “has been doing everything possible to aid the government’s case” after he decided to proceed *pro se*. Doc.

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<sup>1</sup> Two attorneys from the Federal Community Defender Office initially represented Mr. Sanders. On March 8, 2019, on Mr. Sanders’ demand, the Court authorized withdrawal of the Federal Community Defender as Mr. Sanders’ counsel and appointed Mr. Fiore to represent Mr. Sanders.

No. 107 at 2.<sup>2</sup> Mr. Sanders filed a motion<sup>3</sup> seeking the recusal and disqualification of the Court and an accompanying affidavit and certification. Specifically, Mr. Sanders alleges that the Court's bias, prejudice, partiality, and unethical conduct, demonstrated by the rulings and/or evaluations by the Court as to his motions, inquiries and communications, warrants recusal and disqualification pursuant to 28 U.S.C. §§ 144 and 455(a) and (b).

Since the time Mr. Sanders insisted on proceeding *pro se*, as mentioned above, the Court has addressed various concerns communicated through motions practice and mail correspondence. The Court has addressed these concerns and motions orally at a number of hearings.<sup>4</sup> Issues addressed in these motions, correspondence, and at hearings include the following: (1) the limitation of Mr. Sanders' direct, unmonitored contact with the alleged victim and her mother<sup>5</sup>; (2) the possibility of holding Mr. Sanders in contempt of court for allegedly violating Court orders concerning the limitations on direct or indirect victim contact; (3) Mr. Sanders' grievances concerning his stand-by counsel; (4) Mr. Sanders' various motions to compel discovery and transcripts; (5) the appointment of a guardian *ad litem* for the alleged victim; (6) Mr. Sanders' dissatisfaction concerning the time in which he receives mail while detained at the Federal Detention Center; (7) Mr. Sanders' application for additional Criminal Justice Act funding for

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<sup>2</sup> Docket No. 107 includes Mr. Sanders' motion, memorandum of law in support of his motion, affidavit, and attorney certification. The Court uses the Electronic Case Files system's pagination.

<sup>3</sup> As the docket reflects, Mr. Sanders has filed a host of motions in addition to numerous other communications to the Court, Clerk of Court and others.

<sup>4</sup> After Mr. Sanders decided to represent himself, the Court held hearings on October 15, 2019; October 25, 2019; November 5, 2019; and January 9, 2020. The January 9, 2020 hearing followed Mr. Sanders' recusal submissions and that issue, along with a number of other pending motions filed by him, was on the agenda.

<sup>5</sup> Mr. Sanders refers to the alleged victim's mother as his wife. The Government has disputed that description. A paper which Mr. Sanders contends verifies his marriage in the Islamic religion has been transmitted to the Court on Mr. Sanders' behalf. Mr. Sanders has yet to produce legal documentation of the marriage.

multiple support services he demands; (8) the continuance of filing deadlines and the trial date; and (9) the issuance of a protective order. The Court has made various rulings on the litany of motions filed in this case. The docket reflects this.

In his affidavit, Mr. Sanders takes issue with the Court's rulings regarding many of these topics. Mr. Sanders asserts that the Court treats him disrespectfully. He assumes that the Court's allegedly incorrect judicial rulings and disrespectful temperament must be the result of its improper *ex parte* communications with the Government, namely AUSA Michelle Rotella; with his previous lawyer, Mr. Fiore; and with his current stand-by counsel, Mr. Cipparone. Mr. Sanders suggests that the Court's alleged bias and prejudice was exacerbated after the Court saw emails ostensibly criticizing the Court which were submitted with the Government's contempt motion. Mr. Sanders also assumes that the Court shows bias and prejudice against him due to alleged friendships with AUSA Rotella and Mr. Fiore. Finally, Mr. Sanders insists that the Court's failure to docket letters he has sent to the Court also shows bias and prejudice. According to Mr. Sanders, these accusations warrant the Court's recusal under 28 U.S.C. §§ 144 and 455(a) and (b). For the reasons discussed below, Mr. Sanders' motion was denied at the January 9, 2020 hearing, and the reasoning for the denial is further discussed here.

## **DISCUSSION**

### **I. Legal Standards**

#### **A. Recusal Under 28 U.S.C. § 144**

Title 28 of the United States Code, § 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.

28 U.S.C. § 144. Recusal is not automatic. The statute requires the court to determine whether the affidavit (1) alleges legally sufficient facts warranting recusal and (2) was timely filed.<sup>6</sup> *United States v. Townsend*, 478 F.2d 1072, 1073 (3d Cir. 1973). “It is the duty of the judge against whom a § 144 affidavit is filed to pass upon the legal sufficiency of the facts alleged.” *Id.* “It is equally his duty to deny the affidavit on insufficient grounds as to allow it on sufficient allegations.” *Simmons v. United States*, 302 F.2d 71, 75 (3d Cir. 1962).

Where a party filed a motion and supporting affidavit under § 144, all factual allegations contained in the affidavit must be accepted as true. *United States v. Furst*, 886 F.2d 558, 582 (3d Cir. 1989). “Neither the truth of the allegations nor the good faith of the pleader may be questioned, regardless of the judge’s personal knowledge to the contrary.” *Mims v. Shapp*, 541 F.2d 415, 417 (3d Cir. 1976). “Facts including time, place, persons, and circumstances must be set forth[.]” in a § 144 affidavit. *Townsend*, 478 F.2d at 1074; *see Simmons*, 302 F.2d at 76 (noting that statements “couched in generalities and fail to recite specific acts” are insufficient to substantiate “a successful attack upon the qualifications of the Judge to sit in the proceedings”); *United States v. Enigwe*, 155 F. Supp. 2d 265, 380 (E.D. Pa. 2001) (noting that a § 144 affidavit “must state particularized facts and reasons showing why recusal is required”).

“Conclusory statements and opinions, however, need not be credited.” *United States v. Vespe*, 868 F.2d 1328, 1340 (3d Cir. 1989); *see also United States v. Miranne*, 688 F.2d 980, 985 (5th Cir. 1982) (affirming district judge’s determination that a speculation of bias was insufficient to warrant recusal); *Hodgson v. Liquor Salesmen’s Union, Local 2*, 444 F.2d 1344, 1348 (2d Cir. 1971) (“Mere conclusions, opinions, rumors or vague gossip are insufficient.”) (citing *Berger v. United States*, 255 U.S. 22, 34 (1921); *Simmons*, 302 F.2d at 75); *Cooney v. Booth*, 262 F. Supp.

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<sup>6</sup> The timeliness of Mr. Sanders’ affidavit and accompanying motion is not at issue.

2d 494, 502 (E.D. Pa. 2003), *aff'd*, 108 F. App'x 739 (3d Cir. 2004) (“[T]he court may disregard personal opinions and conclusions when determining whether the allegations within the affidavit are sufficient to establish the existence of personal bias on the part of the presiding judge.”); *Bumpus v. Uniroyal Tire Co.*, 385 F. Supp. 711, 715 (E.D. Pa. 1974) (“Subjective conclusions or opinions that bias or the appearance of impropriety may exist are insufficient to require a [j]udge’s disqualification.”). “If the reasons and facts, regardless of their truth or falsity, fairly support the charge of a bent of mind that may prevent or impede impartiality of judgment then it is h[er] duty to allow the affidavit and withdraw.” *Simmons*, 302 F.2d at 75 (citing *Berger*, 255 U.S. at 33).

#### **B. Recusal and Disqualification Under 28 U.S.C. § 455**

Pursuant to 28 U.S.C. § 455(a), a judge “shall disqualify [her]self<sup>7</sup> in any proceeding in which [her] impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). “The test 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.” *In re Kensington Intern. Ltd.*, 368 F.3d 289, 301 (3d Cir. 2004) (citing *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 164 (3d Cir. 1993)). “The judge does not have to be subjectively biased or prejudiced, so long as [she] appears to be so.” *United States v. Ciavarella*, 716 F.3d 705, 718 (3d Cir. 2013) (quoting *Liteky v. United States*, 510 U.S. 540, 533 n.2 (1994)); see *Massachusetts Sch. of Law at Andover, Inc. v. American Bar Ass’n*, 107 F.3d 1026, 1042 (3d Cir. 1997) (“The standard for recusal is whether an objective observer reasonably might question the judge’s impartiality.”). Under 28

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<sup>7</sup> Mr. Sanders showed agitation following the Court’s articulation of its ruling during the January 9, 2020 hearing and insisted that § 455 requires another Court to make this determination instead of this Court. As the language of the statute makes clear, the presiding judge whose impartiality is called into question decides whether disqualification is appropriate. U.S.C. § 455(a) (“Any . . . judge . . . of the United States shall disqualify [her]self . . .”) (emphasis added); *id.* at § 455(b) (“[Sh]e shall also disqualify [her]self . . .”) (emphasis added). No different procedure is required by statute or case law with respect to § 144. See *Simmons*, 302 F.2d at 75.

U.S.C. § 455(b)(1), a judge must recuse herself “[w]here [s]he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b).

“The weight of authority holds that, unlike a Section 144 determination, when deciding a motion for recusal under Section 455[], the court need not accept the Movant’s allegations as true.” *Cooney*, 262 F. Supp. 2d at 504 (collecting cases); *see also* 13A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure*, § 3550 (2d ed. 1984) (noting that a “the court is not required to accept the factual statements [in an affidavit] as true” when assessing a § 455 motion). “Instead, the presiding judge may contradict the Movant’s factual allegations with facts derived from the judge’s knowledge and the record.” *Cooney*, 262 F. Supp. at 504; *see Mass. Sch. of Law at Andover, Inc. v. American Bar Ass’n*, 872 F. Supp. 1346, 1349 (E.D. Pa. 1994).

### C. Consideration of Extrajudicial Sources

Extrajudicial sources are defined as “source[s] outside of the official proceedings[.]” *United States v. Wecht*, 484 F.3d 194, 213 (3d Cir. 2007) (citing *United States v. Bertoli*, 40 F.3d 1384, 1412 (3d Cir. 1994)). In addressing how to analyze extrajudicial sources under §§ 144 and 455(a) and (b), the Supreme Court in *Liteky v. United States*, 510 U.S. 540 (1994), stated that: “[i]t is wrong in theory, though it may not be too far off the mark as a practical matter, to suggest, as many opinions have, that ‘extrajudicial source’ is the *only* basis for establishing disqualifying bias or prejudice.” *Id.* at 551 (emphasis in original). “When a party does not cite to extrajudicial sources, the Judge’s opinions and remarks must reveal a ‘deep-seated’ or ‘high degree’ of ‘favoritism or antagonism that would make fair judgment impossible.’” *Wecht*, 484 F.3d at 213 (quoting *Liteky*, 510 U.S. at 555-56).

## II. Application

Mr. Sanders' allegations fall generally within six categories: (1) incorrect judicial rulings; (2) judicial temperament at hearings; (3) alleged *ex parte* communications; (4) viewing emails in a judicial capacity; (5) alleged friendships with AUSA Rotella and Mr. Fiore; and (6) alleged administrative docketing errors. The Court addresses each category in turn.

### A. Incorrect Judicial Rulings

Mr. Sanders' allegations focus on what he deems is the Court's issuance of "arbitrary and capricious orders, not based upon evidence or facts, without issuing any opinions or fact-findings or applications of law." Doc. No. 107 at 2. Specifically, Mr. Sanders insists that the Court's incorrect judicial determinations have impeded him in the following ways:

Denying the Defendant necessary and required transcripts and expert services, thereby violating his 6th Amendment rights to investigate his case, locate and interview witnesses, challenge the government's evidence, prepare pre-trial motions, present evidence to the court, and to prepare his defense; violating the Defendant's and his wife and business partner's 1st Amendment rights to communicate and visit privately and without government interference of hardships created by unnecessary restrictions. Judge Pratter appointed stand-by counsel Rocco Cipparone, Jr., maliciously, for the sole and agreed upon purpose to aid her in impeding Defendant's defense, and punishing the Defendant for exercising his rights to litigate *pro se*. Judge Pratter refuses to remove stand-by counsel despite the fact that he aids the Defendant in no way, and denies all Defendant's requests.

*Id.*

However, "disagreement with a judge's determinations and rulings cannot be equated with the showing required to so reflect on impartiality as to require recusal." *In re TMI Litig.*, 193 F.3d 613, 728 (3d Cir. 1999); *see also Liteky*, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."); *Wecht*, 484 F.3d at 213 (noting that a judge's rulings generally cannot warrant recusal because they can instead be corrected through the

appellate process); *Jones v. Pittsburg Nat'l Corp.*, 899 F.2d 1350, 1356 (3d Cir. 1990) (holding that a “disagreement with a judge’s determinations and rulings cannot be equated with the showing required to so reflect on impartiality as to require recusal”). *In Ex Parte American Steel Barrel Co.*, 230 U.S. 35 (1913), the Supreme Court made clear that such avenues pursued by Mr. Sanders were “never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise, but to prevent his future action in the pending cause.” *Id.* at 44. Mr. Sanders asserts that the Court made incorrect determinations without alleging any particularized facts showing how the Court revealed its supposed deep-seated favoritism or antagonism in making its judicial determinations.<sup>8</sup> Therefore, Mr. Sanders’ assertions that the Court’s incorrect rulings show its bias and prejudice—or the appearance thereof—fail to provide a legally sufficient basis for recusal under 28 U.S.C. §§ 144 and 455(a) and (b).

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<sup>8</sup> In its effort to thoroughly consider all of Mr. Sanders’ allegations, conclusory though they may be, the Court notes Mr. Sanders’ issue with the timing of one particular judicial determination. Mr. Sanders’ affidavit notes that the Court issued its initial order outlining limitations on Mr. Sanders’ contact with the alleged victim and her mother. One proposed provision of this contact order would permit Mr. Sanders to attend visitations with the alleged victim’s mother if a third-party visitor (knowledgeable of duties of confidentiality) also attended. In a July 16, 2019 court order, the Court stated that all parties could file objections to the proposed selection of Carlos Montoya, Esq. as the third-party visitor by July 26, 2019, and that the Court would rule on the Government’s no contact motion after July 26, 2019. Doc. No. 44. The Court subsequently issued an order outlining limitations of Mr. Sanders’ contact with the alleged victim and her mother on July 17, 2019. Doc. No. 47. Although Mr. Sanders does point out an inconsistency relating to timing, it is unclear how the Court’s earlier issuing of the second order shows bias or prejudice against Mr. Sanders. Indeed, *both* Mr. Sanders’ and the Government’s deadlines for filing objections were cut short by an identical period. Such an administrative scheduling decision of the Court affecting both parties equally cannot “fairly support the charge of a bent of mind that may prevent or impede impartiality of judgment.” *Simmons*, 302 F.2d at 75 (citing *Berger*, 255 U.S. at 33).

In this same vein, Mr. Sanders’ affidavit also focuses on the Court’s decision to hear particular motions at particular times. Again, it is unclear how the administrative scheduling decisions made by the Court pursuant to balancing overall calendaring demands and challenges constitute a legally sufficient basis for recusal. Moreover, the record in this case demonstrates clearly that Mr. Sanders has not been denied the freely exercised opportunities to bring up at any and all times matters previously addressed.

## B. Judicial Temperament

Mr. Sanders raises issue with the Court's temperament at hearings, namely asserting that the Court speaks to him disrespectfully and with anger.<sup>9</sup> In his memorandum of law in support of his motion, Mr. Sanders insists that the Court "overtalks, yells at, and speaks disrespectfully to the Defendant in Court." Doc. No. 107 at 2. Again, the Supreme Court's guidance is instructive on this point:

[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible. An example of the latter (and perhaps of the former as well) is the statement that was alleged to have been made by the District Judge in *Berger v. United States*, 255 U.S. 22 (1921), a World War I espionage case against German-American defendants: "One must have a very judicial mind, indeed, not [to be] prejudiced against the German Americans" because their "hearts are reeking with disloyalty." *Id.* at 28 (internal quotation marks omitted). *Not* establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune.

*Id.* at 555-56. Even taking Mr. Sanders' assertions as true (as is required for immediate purposes), the Court's alleged demeanor does not lead a reasonable observer to conclude that the appearance

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<sup>9</sup> Mr. Sanders includes the following quotes in his affidavit: (1) "On what ground?" when Mr. Sanders objected to the Government's no contact motion, Doc. No. 107 at 13 ¶ 10; (2) "I'm not hiring a paralegal just to make copies for you" when Mr. Sanders questioned why the Court had not approved Mr. Sanders' incorrectly filed Criminal Justice Act funding application, *id.* at 30 ¶ 36; (3) "the Defendant insists upon continuing to represent himself *pro se*," *id.* at 30 ¶ 37; and stating that *ex parte* hearings "are disliked," *id.* at 34 ¶ 44.

of (much less actual) bias or prejudice, or an otherwise legally sufficient basis, exists to warrant recusal under 28 U.S.C. §§ 144 and 455(a) and (b).

**C. Alleged *Ex Parte* Communications**

Mr. Sanders alleges that the Court has been communicating *ex parte* with the Government, stand-by counsel Mr. Cipparone, and prior defense counsel Mr. Fiore. Indeed, the Court catalogs Mr. Sanders' allegations concerning *ex parte* communications in the accompanying Addendum.

The Court notes that legally sufficient allegations of improper *ex parte* communications can certainly support disqualification. See *In re Kensington*, 368 F.3d at 293, 309 (holding disqualification proper after judge had “extensive *ex parte* communications” with parties and “consulting Advisors which [the judge] had appointed”). Although *ex parte* communications are “strongly disfavored[,]” they are necessary “where related to non-merits issues, for administrative matters, and in emergency circumstances.” *In re School Asbestos Litig.*, 977 F.2d 764, 789 (3d Cir. 1992). Thus, *ex parte* communications requiring recusal include “prejudicial *ex parte* advocacy, as opposed to administratively necessary *ex parte* communication.” *Id.* at 789.

Acknowledging that the Court must take any *facts* alleged in Mr. Sanders' affidavit as true under § 144, the Court should not approve its disqualification if based on purely speculative conclusions. *Enigwe*, 155 F. Supp. 2d at 372 (finding recusal improper where the criminal defendants' assertions that the presiding judge engaged in *ex parte* communications with the defendant's attorneys were “based on hearsay statements, opinions, inference and conclusory assertions—not particularized facts”). As noted, “[o]pinions and subjective conclusions, whether well intentioned or not, based on suspicion, innuendo, speculation or conjecture are legally insufficient to warrant recusal under Section 144.” *Cooney*, 262 F. Supp. 2d at 502 (citing *Vespe*, 868 F.2d at 1340). For instance, speculative conclusions that the Court must be engaging in *ex*

*parte* communications with the Government because the Court “clearly gives direct eye contact” to AUSA Rotella do not constitute statements of particularized facts establishing even remotely a legally sufficient basis for recusal. Doc. No. 107 at 22 ¶ 25. Accordingly, Mr. Sanders’ purely speculative conclusions concerning the Court’s alleged *ex parte* communications (via eye contact or otherwise) cannot provide a legally sufficient basis for recusal under § 144.

In assessing Mr. Sanders’ assertions under § 455, the Court takes the opportunity to rely on “facts derived from the judge’s knowledge and the record.” *Cooney*, 262 F. Supp. 2d at 504; *see Mass. Sch. of Law at Andover, Inc.*, 872 F. Supp. at 1349. As the Court already made clear at the hearing held on January 9, 2020, and as confirmed by Mr. Cipaarone, for example, it has not engaged in any substantive *ex parte* communications with any individual regarding this case. The Court has only engaged in permissible *ex parte* administrative conversations (such as for scheduling hearings and the like), none of which appear to be the basis for Mr. Sanders’ assertions. A reasonable person with knowledge of all of the facts or appreciation of the case management demands of any case would not conclude that the Court’s impartiality might reasonably be questioned by partaking in such administrative communications.

#### **D. Viewing Emails Sent Between Mr. Sanders and the Alleged Victim’s Mother**

Mr. Sanders insists that the Court shows bias and prejudice against him because it saw various emails that he and the alleged victim’s mother sent to each other. The Court, the Courtroom Deputy, and the Government arguably are criticized in these emails. The Government included these emails in its motion seeking to hold Mr. Sanders in contempt of court for allegedly violating the Court’s ‘no contact’ order. Because these emails are not extrajudicial, the Court searches for any particularized facts in the affidavit revealing that the Court showed a deep-seated or high degree of favoritism or antagonism that would make fair judgment impossible in

conjunction with its viewing of these emails. The Court finds no such facts in Mr. Sanders' affidavit. Moreover, a reasonable observer, after reviewing all facts, would conclude that there is no basis to question the judge's impartiality concerning or arising from her viewing of the emails. The Court therefore finds recusal and disqualification under either §§ 144 or 455(a) and (b) on this basis improper.

**E. Alleged Friendships with AUSA Rotella and Mr. Fiore**

Mr. Sanders asserts that the Court's alleged friendships with AUSA Rotella and Mr. Fiore demonstrate her bias and prejudice. Mr. Sanders' affidavit erroneously provides:

Judge Pratter is a former AUSA. The relationship between her and AUSA Rotella is very friendly, overly favorite, and extremely cooperative. They may have worked together prior to Judge Pratter's appointment as a judge, and/or they are friends outside of work. As it also appears is the case with Todd Fiore whom Defendant removed as counsel; which Defendant believes is another reason Judge Pratter is prejudice [sic] against him. [The alleged victim's mother] witnessed this friendship and mentioned it in her emails (Doc. 71 exhibits).

Doc. No. 107 at 33 ¶ 43. Again, the Court "may disregard personal opinions and conclusions when determining whether the allegations within the affidavit are sufficient to establish the existence of personal bias on the part of the presiding judge." *Cooney*, 262 F. Supp at 502. Mr. Sanders' belief that the Court's relationships with AUSA Rotella and Mr. Fiore are "friendly" is an opinion that the Court need not entertain. Moreover, Mr. Sanders again fails to allege any particularized facts concerning these alleged friendships. As a part of its § 455 inquiry, the Court also takes the opportunity to confirm that the Court has never been employed as an Assistant U.S. Attorney, a matter easily documented by publicly available records. Likewise, the Court has no relationship outside of court proceedings with Mr. Cipparone, AUSA Rotella or Mr. Fiore. Mr. Sanders' guesswork to the contrary does not support his motion.

Even if the Court were to accept as true Mr. Sanders' speculative conclusion that the Court must have been friends with AUSA Rotella and Mr. Fiore, "[m]any courts . . . have held that a judge need not disqualify himself just because a friend—even a close friend—appears as a lawyer." *United States v. Murphy*, 768 F.2d 1518, 1537 (7th Cir. 1985) (citing *In re United States*, 666 F.2d 690 (1st Cir. 1981); *Parrish v. Bd. of Comm'rs of the Ala. State Bar*, 524 F.2d 98 (5th Cir. 1975) (en banc); *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 680 (7th Cir. 1983), *cert. denied*, 464 U.S. 1009 (1983)). These cases suggest that a reasonable question about a judge's impartiality may be raised only "when the association exceeds 'what might reasonably be expected' in light of the associational activities of an ordinary judge." *Id.* (citing *Parrish*, 524 F.2d at 104). Mr. Sanders has not alleged any facts that suggest that these alleged friendships as he supposed them to be exceed what is reasonably expected in modern legal culture. Therefore, such alleged friendships also fail to raise a legally sufficient basis requiring recusal under §§ 144 or 455(a) and (b).

#### **F. Alleged Administrative Docketing Delays or Errors**

In his affidavit, Mr. Sanders asserts that some filings and letters he submitted to the Court have not been docketed. In his memorandum of law in support of his motion, Mr. Sanders writes that the Court<sup>10</sup> "is manipulating the docket by preventing Defendants' pleading from being filed on the docket, intentionally to deprive Defendant of his 1st Amendment Right to access to the courts, 6th Amendment right to prepare and put forth an effective and complete defense, Right to Due Process of law, and appellate review." Doc. No. 107 at 2-3. Because this concern pertains to judicial sources, the Court again searches for any signs of deep-seated or high degrees of favoritism or antagonism associated with such assertions and finds none. The Court notes that *both* parties

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<sup>10</sup> In this regard, it is unclear whether Mr. Sanders means to accuse the presiding judge on this point, or the whole of the district court, including the Clerk's staff that undertakes docketing duties.

maintain an interest in ensuring that the docket remains comprehensively documented. A clerical delay, or even error, in timely docketing all of Mr. Sanders' submissions fails to show even the appearance of the Court's bias or prejudice. Suffice it to say, the Court (as opposed to the Clerk's office) has no involvement in docketing as to this or any other case.

In assessing this assertion under § 455, the Court notes that the docket includes 26 motions,<sup>11</sup> 11 letters, and 10 other filings Mr. Sanders has submitted *pro se* as of the filing of this memorandum. The record also shows that Mr. Sanders' motions and letters have been discussed at length during the numerous hearings held in this case. After taking all facts into consideration, a reasonable observer would not question the Court's bias and prejudice on this basis. Again, Mr. Sanders' allegations fail to warrant recusal under either §§ 144 or 455(a) and (b).

**CONCLUSION**

For the foregoing reasons, the Court denies Mr. Sanders' motion. An appropriate order follows.

**BY THE COURT:**

  
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**GENE E.K. PRATTER**  
**UNITED STATES DISTRICT JUDGE**

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<sup>11</sup> Some of these motions are duplicative. Others have been construed as other filings.

# **ADDENDUM**

***United States v. Sanders, Cr. No. 18-431: ADDENDUM***

Mr. Sanders' affidavit includes the following assertions regarding the Court's alleged *ex parte* communications with the Government, Mr. Cipparone, and Mr. Fiore:

- “The government, closely monitoring I and my wife’s communications, obviously informed Judge Pratter of the Defendant’s efforts [to prepare a response to the government’s no contact motion] . . . Judge Pratter . . . stated that she would rule on the government’s “No Contact” motion “following” July 26, 2019. But, after *ex parte* communications with the government, Judge Pratter issued an order the very next day on July 17, 2019, prohibiting any contact via phone or visits between the Defendant and his wife, while she considers the “No Contact” motion, (Doc. No. 45). After further *ex parte* communications with the government, Judge Pratter issued a final order the very next day (Doc. No. 47) on July 18, 2019, prohibiting various forms of contact between the married couple. . . . Judge Pratter’s erratic, rushed, and contradictory behavior and multiple orders clearly show that her decisions were influenced by unauthorized, unethical, out-of-court *ex-parte* communications with the government, and possibly appointed stand-by counsel.” Doc. No. 107 at 14 ¶ 11.
- “The prejudicial and untrustworthy position taken on by Judge Pratter, is a result of the prejudicial and inflammatory exhibits intentionally submitted by the government, and *ex parte* communications between the government and Judge Pratter.” *Id.* at 17 ¶ 16.
- “It has become apparent that Judge Pratter intentionally appointed stand-by counsel for these unconstitutional and unethical purposes, and refuses to remove stand-by counsel despite his intentional deprivation of any assistance to the Defendant. Which supports the conclusion that stand-by counsel has been directed not to aid the Defendant in any way by Judge Pratter in out-of-court, *ex parte* communications.” *Id.* at 18 ¶ 19.
- “Judge Pratter falsely accused the Defendant of receiving a ‘package’ from his wife, which the Defendant honestly denied. This false information the Judge repeats and easily believes is the result of *ex parte* communications between Judge Pratter and AUSA Rotella. When Judge Pratter utters such, she clearly gives direct eye contact to Rotella, as if seeking her approval or acknowledgement. Judge Pratter does this obvious and often. Clearly indicating her source of information via *ex parte* and/or out-of-court communications. Judge Pratter always questions the Defendant with regards to the information she is ‘fed’, which is usually false. And, while questioning the Defendant to test his response against this information, she always gives direct eye contact to her source for the information. She did such on July 11th, 2019, when she asked me If I received letters from then appointed counsel Todd Fiore, which Defendant did not respond to. It was clear that Judge Pratter and Mr. Fiore had a conversation outside of the Defendants’ presence, where Fiore put her on false alert that I would deny receiving his letters.” *Id.* at 22 ¶ 25.
- “On October 18, 2019, Judge Pratter issued a revised and more restrictive order which now includes a ban on email and mail contact. Judge Pratter was made aware of these modes of contact which was not banned by her July 18, 2019 order, via *ex-parte* communications with the government.” *Id.* at 26 ¶ 28.

***United States v. Sanders, Cr. No. 18-431: ADDENDUM***

- “Judge Pratter falsely accused the Defendant of claiming he had not received any motions from the government in court on October 15, 2019, right in front of her, and referred to Defendant’s letter (Doc. No. 79). Which shows that Judge Pratter did not read Defendants’ letter, but was relying on *ex-parte* communications with the government, and false information provided to her by her clerk (M. Coyle), who is also biased against the Defendant due to him also being criticized in the email communications between Defendant and his wife (see Doc. No. 71, exhibits). *Id.* at 28 ¶ 35.
- “A hearing was held for the Contempt Motion (Doc. No. 71) on November 5, 2019. The defendant stood outside the courtroom door and heard conversations between Judge Pratter, the government, and possibly, stand-by counsel, outside Defendant’s presence. This is a regular occurrence in Judge Pratter’s courtroom, as Defendant’s wife witnessed communications between Judge Pratter and previously-removed counsel Todd Fiore, on July 11, 2019, outside of Defendant’s presence. Judge Pratter leaves the bench and retreats to her chambers before the Defendant enters the courtroom to create the false impression that no unethical and prejudicial discussions took place. . . . Proof of *ex-parte* communications outside of Defendant’s presence, Judge Pratter and the government already were in agreement to grant the government an ‘unlimited’ continuance of the Contempt hearing until whenever the government chose to pursue such.” *Id.* at 29 ¶ 36.

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
ROCMAN L. SANDERS	:	NO. 18-431

**ORDER**

AND NOW, this 21st day of January, 2020, upon consideration of Mr. Sanders' (Pro Se) Joint<sup>1</sup> Motion for Recusal and Disqualification of U.S.D.C. Judge Gene Pratter Due to Bias, Prejudice, Partiality and Unethical Conduct Pursuant to Title 28 U.S.C. Sections 455 and 144 (the identical document was filed as Doc. Nos. 107 and 113), the Motion's accompanying affidavit and certification, the submissions of the litigants, and the hearing and oral argument held on January 9, 2020, it is **ORDERED** that the Motion (Doc. Nos. 107, 113) is **DENIED**.

BY THE COURT:

  
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GENE E.K. PRATTER  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The Government did not join Mr. Sanders in filing this Motion.