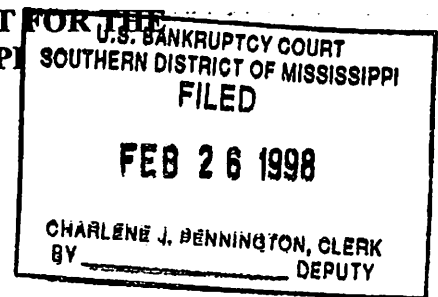


IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



IN RE:

CHAPTER 11

N. HANEY HUDSON

CASE NO. 9001464MC

**OPINION ON REQUEST FOR RECUSAL OF
JUDGE AND REQUEST FOR CONTINUANCE OF TRIAL**

I have before me the *Demand for Rehearing and For Other Relief* filed by N. Haney Hudson (Debtor), *pro se*, on February 23, 1998. Two of the requests in the Debtor's demand are for me to recuse myself and for a continuance of the trial set on March 4, 1998. The other issues raised in the Debtor's *Demand for Rehearing and For Other Relief* will be addressed at a later time. After considering the matter, I hold that recusal is not mandated by 28 U.S.C. § 455 and that the request for a continuance should be denied.

DISCUSSION

A.

The Debtor cites "28 V.S.C (sic) Section 455 or 455(d)(1)" as his grounds for my recusal. Demand For Rehearing And Other Relief, ¶ II, p. 1 (February 23, 1998). Although the

Debtor cites 28 U.S.C. § 455(d)(1), I am proceeding under the assumption that he is relying on 28 U.S.C. § 455(a) and (b) which provides in pertinent parts:

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate 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;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of 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:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

.
(d) For purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.

After reviewing § 455, the only two possible grounds for which the Debtor could base his request for recusal would be under either § 455(a) or § 455(b)(1). Both of these subsections pertain to bias or prejudice of a judge in a proceeding before him.

Although both § 455(a) and § 455(b)(1) require disqualification of a judge who holds a bias or prejudice in a case over which he is presiding, the two subsections differ in scope. Section 455(a) concerns the objective appearance of partiality. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 860, 108 S.Ct. 2194, 2203, 100 L.Ed.2d 855 (1988). "(W)hat matters is not the reality of bias or prejudice but its appearance." Liteky v. United States, 510 U.S. 540, 548, 114 S.Ct 1147, 1154, 127 L.Ed.2d 474, 486 (1994). Whereas, § 455(b)(1) addresses actual bias or prejudice of a judge. United States v. York, 888 F.2d 1050, 1053 (5th Cir. 1989). Section 455(b)(1) is narrower in scope than subsection (a) because it deals specifically with bias or prejudice that can only be

determined subjectively. In fact, much of the protection afforded by § 455(b)(1) is duplicated and expanded by § 455(a). Liteky, 114 S.Ct. at 1153.

In one of its opinions in the Continental Airlines bankruptcy case, the Fifth Circuit Court of Appeals defined the objective standard of § 455(a) as follows: "The standard for recusal is an objective one, that if a 'reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality.'" A.L.P.A. v. Continental Airlines (In re Continental Airlines), 901 F.2d 1259, 1262 (5th Cir. 1990), *reh'g denied*, 918 F.2d 177 (1990), *cert. denied*, 50 U.S. 828 (1992)(citation omitted). *See also U. S. v. Mizell*, 88 F.3d 288 (5th Cir. 1996).

In reference to § 455(b)(1), the United States Supreme Court stated:

(O)pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

Liteky, 510 U.S. at 555.

In his Demand For Rehearing and Other Relief (Demand), the Debtor does not state or allege anything which would make a "reasonable man . . . (to) harbor doubts about (my) impartiality" Continental Airlines, 901 F.2d at 1262, as required by the Fifth Circuit in order for recusal to be proper pursuant to § 455(a). Nor does the Debtor state or allege any actual bias or prejudice on my account as required for recusal pursuant to § 455(b)(1). Rather, in his Demand, the Debtor appears to be requesting my recusal because I dismissed, without prejudice, the Debtor's pleading styled *Demand For Rule NISI* on February 11, 1998. I dismissed the Debtor's *Demand For Rule NISI* because it was filed in violation of my February 4, 1998, order in which I set a matter for trial and prohibited the filing of any further pleadings until further order of the Court. It appears from his

Demand that the Debtor simply does not agree with the course of action I am following in an effort to try to conclude the pending litigation in this case before the opposing parties are required to respond to new pleadings. I do not believe that these reasons meet the requirements for my recusal pursuant to § 455(a) and § 455(b)(1).

Even in the absence of a motion brought by a party involved in a proceeding before the Court, I have the obligation to recuse myself from a proceeding where I perceive the existence of any of the situations set forth in § 455. Liteky, 510 U.S. at 546. I am unaware of any facts or opinions that I may have obtained either outside of or during the course of this bankruptcy case that would render me biased or prejudiced in the performance of my duties as the bankruptcy judge in the present case. I also do not hold any bias or prejudice against Mr. Hudson because he filed a request for my recusal. Therefore, in accordance with § 455 and as mandated by the United States Supreme Court in its opinion in Liteky, I have examined myself to the best of my ability, and I do not believe that I should recuse myself in the present case.

B.

As I have found no grounds for my recusal, I find that the request to continue the trial set for Wednesday, March 4, 1998, at 1:30 P.M. on the *Motion To Dismiss or Convert To Chapter 7* filed by N. Alex Shields should be denied.

CONCLUSION

After examining myself to the best of my ability in accordance with § 455 and the case law interpreting § 455, I find no reason for my recusal in the above styled bankruptcy proceeding.

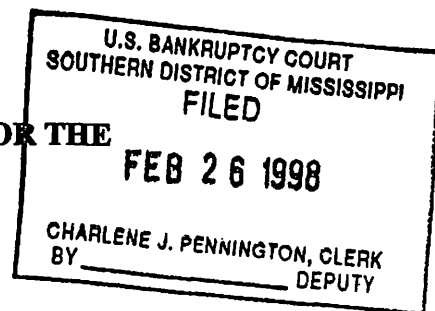
Consequently, the trial scheduled for Wednesday, March 4, 1998, at 1:30 P.M. on the *Motion To Dismiss or Convert To Chapter 7* filed by N. Alex Shields will not be continued.

A separate order consistent with this opinion will be entered in accordance with the ruling of the Court as stated above.

THIS the 26th day of February, 1998.


UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



IN RE:

CHAPTER 11

N. HANEY HUDSON

CASE NO. 9001464MC

**ORDER ON REQUEST FOR RECUSAL
OF JUDGE AND REQUEST FOR CONTINUANCE OF TRIAL**

Consistent with the opinion dated contemporaneously herewith:

IT IS HEREBY ORDERED that the Debtor's request for my recusal which is contained in his February 23, 1998, *Demand for Rehearing and For Other Relief* is hereby denied.

IT IS FURTHER ORDERED that the Debtor's request for a continuance of the trial set for Wednesday, March 4, 1998, at 1:30 P.M. on the *Motion To Dismiss or Convert To Chapter 7* filed by N. Alex Shields is hereby denied.

SO ORDERED this the 26th day of February, 1998.


UNITED STATES BANKRUPTCY JUDGE