UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE	)	**CASE NO. 93-50634**
	)	[Previous Case No. 93-40107],
MARGARET M. STYCHNO,	)	Transferred From Youngstown, Ohio]
	)	
DEBTOR.	)	CHAPTER 7
	)	
	)	**JUDGE MARILYN SHEA-STONUM**

ORDER DENYING REQUEST FOR RECUSAL

On December 30, 2004, Margaret M. Stychno ("Debtor"), by and through her counsel Kenneth Shaw, filed an unsigned and unserved motion to recuse [docket #275] accompanied by the Affidavits of Connie Cera, Kenneth Shaw and the Debtor (the "Motion to Recuse"). In addition, the Debtor filed an unsigned motion to reopen her bankruptcy case (which was closed on July 30, 2004) [docket #274] (the "Debtor's Motion to Reopen"). The Court issued several notices of deficiency given the unsigned nature of the pleadings and the Debtor's failure to pay the filing fee for a motion to reopen a case [docket ##277-282]. On January 7, 2005, the Debtor filed , as one document, a signed copy of the Motion to Recuse, signed Affidavits in support of the Motion to Recuse, a signed copy of the Debtor's Motion to Reopen and a Motion to Waive the Filing Fee [docket #283].

This Order deals only with the Motion to Recuse, albeit in a closed case. Through her Motion to Recuse and the Affidavits in support the Debtor alleges that I am biased and

prejudiced against her. To date the Debtor has not submitted a memorandum in support citing appropriate legal authority as required by Local Rule of Bankruptcy Procedure 9013-1. Despite that failure, I will nonetheless rule on the Debtor's Motion to Recuse.

Section 455(b)(1) of Title 28 provides that a judge should recuse himself "[w]here he has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." *See* 28 U.S.C. § 455(b)(1). In *Litekey v. United States*, the Supreme Court explained the significance of the words "bias or prejudice" in 28 U.S.C. § 455:

> Not all unfavorable disposition towards an individual (or his case) is properly described by those terms. . . . The words connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess (for example, a criminal juror who has been biased or prejudiced by receipt of inadmissible evidence concerning the defendant's prior criminal activities), or because it is excessive in degree (for example, a criminal juror who is so inflamed by properly admitted evidence of a defendant's prior criminal activities that he will vote guilty regardless of the facts).

Litekey v. United States, 510 U.S. 540, 550 (1993). I have no personal bias or prejudice toward the Debtor and personally do not hold a "favorable or unfavorable predisposition," . . . let alone one which "is so extreme as to display clear inability to render fair judgment." *See Litekey*, 510 U.S. at 551.[1]

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[1] Several attorneys have entered appearances in this bankruptcy case on behalf of the Debtor, including Guy Fustine, John Hollister, Kenneth Shaw, Mark Colucci, Michael Partlow, Sara Harper and Sara Thomas-Kovoor. However, at times, the Debtor has proceeded in her case without counsel. As is my policy with all cases involving *pro se* debtors, any proceeding dealing with a substantive matter in the case is held in the courtroom and on the record. Accordingly, the

A judge's rulings or expressions of opinion generally fail to justify recusal. Obviously judges hold and express attitudes about the litigants and issues that they have formed during the trial. As the Supreme Court noted:

> Opinions 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 v. United States, 510 U.S. at 555. The record in this case demonstrates that I have only made decisions based on the record facts as developed in the proceedings pending before me.

The first hearing over which I presided in the bankruptcy case was held on May 17, 1996. Judge White and I jointly presided over that hearing.[2] During the hearing regarding

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record in this case speaks for itself regarding allegations in the Affidavit of improper conduct during official court proceedings. Among other matters, that record demonstrates that I have on numerous occasions allowed the Debtor, either through her counsel or *pro se*, to be heard in full and have attempted to make sure that the Debtor understands my rulings.

As to allegations of specific conduct by me that go outside record matters, those allegations are simply not true. I have conducted several telephonic pre-hearing conferences in this bankruptcy case related to the Motion of the United States Trustee to Reopen this Bankruptcy Case, but the Debtor was represented by counsel during those pre-hearing conferences and the Debtor's counsel, not the Debtor, participated in the telephonic conferences.

Moreover, some of the allegations refer to conduct by me in the 1993-1994 time frame. I was not appointed to the bench until the fall of 1994 and did not hold a hearing in this Debtor's bankruptcy case until May 17, 1996.

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This bankruptcy case was originally filed in Youngstown, Ohio and was assigned to Judge Bodoh. In April 1993, Judge Bodoh entered an order transferring this case to the Chief Judge for reassignment pursuant to 28 U.S.C. § 455. As a result the case was reassigned to Judge White and renumbered as case no. 93-50634. This case, along with all of the other chapter 7 bankruptcy cases pending in Akron, was transferred to my docket in 1994, that is, shortly after I became the active bankruptcy judge in Akron.

the opposition of Mary Ellen Hughes to the Debtor's attempt to amend her schedules, I allowed the Debtor, who appeared *pro se*, a full opportunity to be heard and attempted no less than four times to make sure that the Debtor fully understood the my ruling. Shortly after I entered my ruling, the Debtor's bankruptcy case was closed.

The next hearing I conducted related to the Motion of the United States Trustee to Reopen the Debtor's bankruptcy case [docket # 54] (the "UST Motion to Reopen") seeking to reopen the case so that an unlisted and unscheduled pre-petition asset could be administered by the bankruptcy estate. During the April 16, 1997 preliminary hearing on the UST Motion to Reopen, the Debtor was represented by counsel. I gave the Debtor's counsel an ample opportunity to fully express the Debtor's position regarding the UST Motion to Reopen. As the April 16, 1997 hearing was a preliminary hearing, I heard the position of each of the parties, but reserved judgment on the matter, and scheduled a subsequent evidentiary hearing date.[3] I granted extensions of the deadlines and the hearing

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[3]A review of the transcript from the April 16, 1997 hearing shows that I reserved final judgment and provided the parties with my initial assessment of the matter. For instance, I noted that without the testimony of Mr. Houser, the former panel trustee in this case, regarding the value of the unlisted asset, the hearing would need to be adjourned. See Transcript p. 6 [docket # 106 and 107]. In addition, I said:

> There have been – there were other malpractice claims of Ms. Stychno that were – have been addressed in this Court, and they weren't valuable assets. That's – I mean, there are a number of issues and a failure to disclose is not to be taken lightly.
> But an assertion as to the value of a pending litigation claim, and I will say this on the record, by somebody who has had, as I understand it, over twenty (20) lawyers with whom she has had a series of disputes, I am going to want to have very clear and strong evidence about – I mean if the issue in this case is, has value been lost for creditors, and that's the reason for reopening the case, the Court is aware of the credibility issues with respect to some of the claims that Mrs. Stychno has thought that she has had.
> Now I don't - with respect to this particular one, what I am saying to you is I am not going to assume anything. A record will be made...

Transcript p. 7-8.

date at the request of, *inter alia,* the Debtor. Eventually, based on the stipulations submitted

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Similarly, the following exchange between me and the Debtor's counsel:

The Court: I agree that there are a lot of papers that might shed some light on this.

Ms. Belfance: Yes.

The Court: And again they may not. The one thing I will say in – through a bankruptcy, you can sometimes get – you feel that you come to know certain aspects of the Debtor's personality.

Ms. Stychno has a tremendous fascination with courts apparently. She's had all sorts of lawyers, and she's sued lots of her lawyers, and again, I have no idea what the merits of this particular action are. Ms. Stychno, you're represented by counsel, and if you want something to be said, you can speak with your counsel in a minute, but you're represented by counsel.

So I – in terms of whether the – I see two very separate issues. I see the issue of whether this claim was viewed as being potentially valuable in Ms. Stychno's eyes, and not scheduled, serious matter. Then I see a separate issue, what its actual value is, and I'm saying this with – I myself need to do work on this case, but I am identifying for the people here today, two very basic questions I have. One is, was there a failure to disclose an asset which the Debtor believed to have value, and the implications of that. And the second is, does that asset really have any value, and does it warrant any further utilization of the resources of the bankruptcy process that have to do with the collection and liquidation of assets for creditors' interests. Two very distinct, perhaps not wholly separate, but very distinct issues, and that, I wish to have an evidentiary hearing with respect to the matters raised by the U.S. Trustee's motion and in my reading of the motion, I see both of those issues. ...

Transcript, pp. 15 -17.

And finally at the close of the preliminary hearing, I noted for the record:

> I will be very clear. I take each matter on its own bottom. ... I believe that it is appropriate to articulate that a review of this file, the bankruptcy file, suggests that Ms. Stychno has retained at least a dozen, perhaps approaching two dozen lawyers. And that's – you know, if that's not the case, then I have done everybody the service of trying to make it clear that that is one of my perceptions, and I'll put that right out. But this case the issues raised by this motion will be determined upon the record evidence in an evidentiary hearing, at which point if Ms. Stychno chooses to testify, she'll be heard....
> But that's – the evidence will be whatever it will be in the evidentiary hearing. Sit down, Ms. Stychno. You will be heard in the evidentiary hearing...

Transcript, p.21-23.

to the Court and other matters of record in this case, I issued an opinion, from which the Debtor did not appeal.

Subsequently, I held several pre-hearing conferences and evidentiary hearings related to the resolution of the malpractice claim (the previously unscheduled asset). See, e.g., Order Authorizing Trustee to Accept Settlement Proposal [docket #] and Order Granting Trustee's Motion to Compromise and Settle Dispute [docket # 173 affirmed on appeal see docket #239]. During those conferences and related hearings, I again made sure that the Debtor had a complete opportunity to be heard and attempted to make sure that the Debtor understood my ruling.

A judge has a duty to decide assigned matters unless disqualified. *See* Canon 3A(2) of the Code of Conduct for United States Judges. "[T]here is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is." *See Easley v. University of Mich. Bd. Of Regents*, 853 F.2d 1351, 1356 (6th Cir. 1988). I have reviewed the file in this case and my opinions with respect thereto. Based on that review, I believe that I do not bear any extrajudicial bias or prejudice towards the Debtor. Because the Court's impartiality in this matter cannot reasonably be questioned, the Court cannot and will not recuse itself from this case. Accordingly, the Debtor's request that the Court recuse itself from this case is hereby denied.

IT IS SO ORDERED.

MARILYN SHEA-STONUM
Bankruptcy Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of FEBRUARY, 2005, the foregoing "Order Denying Request for Recusal" was sent via regular U.S. Mail to the following:

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