No. 24-

IN THE

Supreme Court of the United States

PETER J. STRAUSS,

Petitioner,

v.

UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Must a district court judge recuse himself in a criminal case pursuant to 28 U.S.C. §§144 and 455 when provided a timely and sufficient expert affidavit required by 28 U.S.C. §144 and after the judge had become an adverse witness to the said criminal defendant attorney by wrongfully reporting him to the state's ethics commission for invoking his Fifth Amendment rights in violation of U.S. Supreme Court precedent in a prior civil proceeding, both circumstances of which would lead an objective observer to reasonably question the judge's impartiality?

PARTIES TO THE PROCEEDINGS

All parties to this proceeding are listed on the caption.

RELATED PROCEEDINGS

The following are related proceedings:

In re: Peter J. Strauss, No. 23-2312, United States Court of Appeals for the Fourth Circuit. Judgment entered April 26, 2024.

United States of America v. Peter Strauss, 9:23-cr-00833-RMG-1, U.S. District Court for the District of South Carolina.

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PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

The opinion of the court of appeals is unreported and is reprinted in the Appendix ("App.") beginning at page 1a. The order denying Petitioner's timely petition for rehearing *en banc* is reprinted at 26a.

The district court's order was not reported and is reprinted at App. 2a.

JURISDICTION

The district court denied Petitioner's motion for recusal on December 11, 2023. ECF 32 in case number 9:23-cr-00833-RMG-1. Petitioner then sought a petition for a writ of mandamus in the Fourth Circuit Court of Appeals who denied the petition on April 26, 2024. Doc. 25, Case Number 23-2312. Petitioner then filed a petition for rehearing and rehearing *en banc* on May 7, 2024, Doc. 27, which was denied on July 2, 2024. Doc. 28.

Petitioner sought a motion for an extension from this Court on September 17, 2024, which was granted on September 20, 2024, extending the time to file until November 29, 2024.

This Court has jurisdiction under 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment states, in pertinent part, "No person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

PRELIMINARY STATEMENT

Unless this Court grants certiorari to review the district court's denial of Petitioner's petition for a writ of mandamus, Petitioner is going to be sentenced in his pending criminal case by a district court judge who became an adverse witness against Petitioner by filing an unwarranted ethics grievance against him, in violation of well-established United States Supreme Court precedent, with the South Carolina Office of Disciplinary Counsel (ODC) to have him stripped of his law license after Petitioner asserted the Fifth Amendment at a hastily called prior civil proceeding. This, among other acts, would lead a reasonable person to question the district court's impartiality, including the district court's threat to have Petitioner arrested if he could not make the hastily scheduled hearing, the district court's *ex parte* communications with another judge about the case, the district court's extra-judicial investigations, and the district court's public show of affinity with the federal prosecutor who was present in the courtroom to observe the civil hearing. It strains credulity to imagine how a district court judge's actions could more raise the specter of partiality than by being so convinced of a litigant's wrongful conduct that he would become an adverse witness and initiate disciplinary proceedings against him and then insist on meting out his criminal punishment after denying

a reasonable request, fulfilling the requirements of 28 U.S.C. §144 by including an affidavit by a highly respected ethics expert, for the district court to recuse itself. Such conduct on the part of the district court reasonably calls into doubt his impartiality and his recusal is required under 28 U.S.C. §§144 and 455(a), (b)(1).

This Court should grant certiorari for four reasons. First, the plain language of 28 U.S.C. §§144 and 455 requires recusal. Second, the Fourth Circuit Court of Appeals' order, which leaves the district court's order standing, conflicts with this Court's opinions in *Liljeberg v. Health Svcs. Acq. Corp.*, 486 U.S. 847 (1988) and *Spevack v. Klein*, 385 U.S. 511 (1967). Third, it also places the Fourth Circuit in direct conflict with other circuit courts of appeal that have addressed judicial recusal issues by elevating a district court judge's subjective opinion of the matter regarding recusal over the firmly established legal standard that imposes an objective standard.

Finally, this case raises an issue of exceptional importance as it implicates a foundational principle of our criminal justice system—that a litigant is entitled to a fair and just adjudication of his or her case by an impartial judge, a Federal Constitutional right secured by the Fifth Amendment.

STATEMENT

The issue of the district court's failure to recuse itself arises initially from a civil proceeding held in South Carolina following a criminal investigation of Jeff and Paulette Carpoff in the Eastern District of California. Petitioner had been a civil attorney representing the

Carpoffs mostly on insurance matters at the time. In short, the Carpoffs defrauded a number of investors with a Ponzi investment scheme, "DC Solar." As law enforcement executed a search warrant in California and sought to freeze the Carpoffs' assets, without Petitioner's prior knowledge, the Carpoffs transferred $5,000,000 to his law firm's IOLTA account. Petitioner did not know these funds were illegal and, pursuant to instructions from Skadden Arps and the Carpoffs, he issued checks from these funds for the Carpoffs' legal fees and other expenses.

The complaint in this prior civil suit was filed on April 23, 2019.[1] Plaintiffs were investors who generally alleged that they were the owners of the $5,000,000 that was transferred to Petitioner's IOLTA account on December 18, 2018, without proper authorization. They generally sought return of the money and/or an accounting. An initial hearing was held on May 6, 2019, and a second hearing was held on May 9, 2019. Petitioner attended the second hearing pursuant to the district court's verbal order. The 2018 $5,000,000 transfer was a transaction separate and distinct from the 2019 $3,000,000 transaction which is the subject of the charge against Petitioner.

On October 17, 2023, the government filed a one-count Information alleging Petitioner violated 18 U.S.C. §§2232(a) and 2 with respect to a $3,000,0000 transfer from an account controlled by client Jeff Carpoff to Petitioner's law firm, which occurred on January 15, 2019. On October

1. *See Solar Eclipse Investment Fund XXXV, LLC and East West Bank v. $5,000,000.00 U.S. Dollars Deposited to IOLTA Account of Strauss Law Firm, LLC in rem, and the Strauss Law Firm, LLC, in personam*, C/A No. 9:19-cv-1176-RMG (D.S.C.). This case settled and is no longer pending.

27, 2023, the district court was assigned to this criminal case. ECF 8. Petitioner pleaded guilty to the Information on November 6, 2023. ECF 22. On December 6, 2023, Petitioner filed his Motion for recusal or disqualification and discovery. ECF 26. The district court denied the motion by order filed December 11, 2023. ECF 32.

The acts which form the basis of Petitioner's recusal motion occurred, in large part, at this prior civil proceeding but continued afterward, as the district court, in denying Petitioner's motion to recuse, issued an order that misstated the lower court record, ignored an expert affidavit, and failed to acknowledge his misapprehension of the law with regard to Petitioner's invocation of his Fifth Amendment right against self-incrimination at the civil hearing.

In broad strokes, Petitioner asserts the following actions on the district court's part at the civil hearing and in the criminal proceeding would lead an objectively reasonable person to question his impartiality in this, criminal, matter:

(1) The district court's unwarranted conclusion at the civil hearing that Petitioner engaged in unethical conduct, his subsequent filing of a grievance with ODC against Petitioner thereby becoming an adverse witness against him, and his unwarranted admonition that Petitioner should also report himself to the ODC.

(2) That the district court's decision to report the Petitioner to ODC was contrary to controlling United States Supreme Court caselaw, as explicitly identified by an expert affidavit that

refuted the district court's legal conclusion regarding the impropriety of Petitioner's actions in asserting his Fifth Amendment rights, and the district court's refusal to acknowledge that fact.

(3) The district court's prohibition of Petitioner's counsel from advising Petitioner regarding his invocation of his rights under the Fifth Amendment at that civil hearing.

(4) The district court's remarks to the effect that he believed Petitioner had engaged in criminal activity without hearing any evidence or argument at that nascent point in time. For example:

a. "[I]t appears that the $5 million *transfer to the Strauss Law Firm is likely an illegal transfer*, and those recipients [to whom the funds were disbursed] are in receipt of funds that should not have gone to them from this fund. . . . it was certainly done in a way that appears surreptitious to me." (emphasis added)

b. "I will say on the record that these [transactions] are not protected, attorney-client privilege. *These transactions appear to be unlawful.* They would not be protected by privilege, and he appears—it's not quite clear what capacity [Petitioner] actually received these funds since he's taking some of the funds himself and putting them in accounts he controls." (emphasis added)

c. "I think *it's looking pretty dubious that they have a right to those funds*, and *particularly under the circumstances* where Skadden Arps [law firm] apparently particularly is involved and these other criminal defense firms are fully aware of the circumstances here[.]" (emphasis added)

d. The fund was to purchase mobile solar generators. It wasn't to pay all these lawyers and captive funds and all of this, and *it was certainly done in a way that appears surreptitious to me.* It's one day after the Government has seized every asset they can of the Carpoffs. (emphasis added)

(5) The district court's failure to acknowledge that Petitioner's recusal motion and affidavit complied with §144 and that his recusal is required.

(6) The district court's threat to have Petitioner arrested by the Marshals if he did not attend the hastily called hearing and the district court's misstating of the factual record in regard to this threat in the order refusing to recuse.

(7) The district court's denying Petitioner the ability to conduct discovery in this case so Petitioner, to this day, is unaware precisely of the statements made to ODC by him and which may evidence a further basis to demand his recusal.

(8) The district court's *ex parte* communications with the bankruptcy judge who had jurisdiction over

the civil case and with whom the district court was "working closely." It was also clear from the hearing that the district court had independently researched various press accounts of the events that transpired in California including the FBI raid and the SEC's involvement. He additionally investigated Petitioner's website, all in violation of judicial canons.

(9) The district court's remarks, that were, in part, based upon evidence obtained through extra-judicial investigations and *ex parte* communications, that erroneously implicated Petitioner as involved in criminal wrongdoing regarding the $5,000,000 transaction.

(10) And finally, the district court's expressed affinity for the USAO prosecutors who attended the civil hearings.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit's decision to allow the district court's order denying Petitioner's motion for recusal directly conflicts with the controlling statutes, 28 U.S.C. §§144 and 455, and with this Court's opinions in *Liljeberg* and *Spevack*.

To begin with, 28 U.S.C. §144 provides that when "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." So too, 28 U.S.C. §455(a) *requires* recusal "in any proceeding in which his impartiality might reasonably be questioned." Under both statutes, recusal is not discretionary. A judge cannot simply decide not to recuse himself if his impartiality might—applying an objective standard—be reasonably questioned. Neither the court of appeals' decision nor the district court's order addressed Petitioner's claim—supported by affidavits by a highly-regarded ethics expert and Petitioner—whether the facts of this case give rise to believe the district court's impartiality might reasonably and objectively be questioned. As required by §144[2] and submitted to the district court in the motion for recusal, the expert's affidavit expressed her legal opinion that categorically it does. Having met the requirements of §144 (and §455), that should have been the end of the matter, but it was not, as both the court of appeals and district court simply ignored the affidavits.

In the expert's detailed affidavit that was not acknowledged by the lower courts, she found, "to a reasonable degree of professional and legal certainty," that the district court should have recused itself from Petitioner's case. ECF 26-4, p. 5. Further, she detailed:

> b. With regard to [Petitioner], the judge has made statements that would cause an objectively reasonable person to question his impartiality. Before being charged with any

2. Neither the district court nor the court of appeals indicated why it disregarded the plain language of §144 which requires the district court's recusal. There has been no finding the expert's affidavit or Petitioner's affidavit were untimely or insufficient. Instead, it appears they were simply ignored.

> crime, [Petitioner] was compelled to appear before the judge and answer questions related to civil claims to funds processed through his client trust account. This inquiry implicated both [Petitioner's] obligations to protect his clients' confidentiality and privilege and his own interest in avoiding potential self-incrimination. At the May 6, 2019 hearing, the judge ruled (without hearing argument or briefing) that the information related to the transaction was "not protected, attorney-client privilege" based on his conclusion that the "transaction was unlawful." TR1 pg. 13, lines 20-22.
>
> c. [Petitioner] correctly and rightfully asserted Constitutional protections in response to many of the questions posed to him at the hearing. The judge expressed an opinion that a lawyer's assertion of the Fifth Amendment was unethical and required reporting to the disciplinary authorities when he stated that he would be reporting [Petitioner] and when he suggested [Petitioner] report himself. The judge took this position even though he acknowledged the potential criminal implications of the civil proceedings. The judge stated "[L]et's be candid. To the extent [the plaintiff's counsel's] hypothesis is correct, anybody involved in the transaction potentially has criminal implications tied to them . . . [i] f they're actually involved in converting the funds[.] TR2 pg. 68, lines 21-24.

The expert then identified precedent that supported Petitioner's decision to invoke the Fifth Amendment,

specifically citing *Spevack* where this Court held that "the Self-Incrimination Clause of the Fifth Amendment . . . extends its protections to lawyers as well as to other individuals, and [ ] it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it." 385 U.S. 511, 514 (1967). Based on this, the expert concluded, "[g]iven that the law is clear that invoking the privilege against self-incrimination is not professional misconduct the judge's reaction and response to [Petitioner's] refusal to answer certain questions related to his clients' financial transactions would cause a reasonable defendant concern regarding the judge's ability to decide his fate in a fair and impartial manner." ECF 26-4, p. 8.

The expert's affidavit identified other issues that would cause a reasonable observer to question this judge's impartiality. *See* ECF 26-4 p. 8 (the district court's expressed affinity or affiliation with the U.S. Attorney's Office), ECF 26-4, p. 9 (the district court's independent investigation about the bankruptcy proceedings and pledge to use the civil case to assist in marshalling assets for the debtors' collectors); ECF 26-4, p. 10 (the district court's threat to file a disciplinary complaint against [Petitioner] . . . in direct contravention of established law; his stated opinions in the civil case that the transactions appeared "dubious," "surreptitious," "illegal," and "unlawful;" his language suggesting he is in alliance with the U.S. Attorney; and, the apparent influence of extra-judicial information combine to raise a reasonable question about his impartiality).

The district court and court of appeals' unwillingness to address this expert affidavit, that was timely and

appropriately filed with the motion for the district court to recuse itself, has rendered *Liljeberg* a dead-letter.

Liljeberg makes clear that what matters for purposes of violating §455 is not what is in a judge's mind. The advancement of the purpose of §455, which was to promote public confidence in the integrity of the judicial process, "does not depend on whether or not the judge actually knew of facts creating an appearance of impropriety so long as the public might reasonably believe that he or she knew." *Id.* at 860. "As the language of the statute clearly mandates, judges should employ an objective standard to determine impartiality. That is, a judge should recuse himself or herself whenever a reasonable person, with knowledge of all the facts of the case, would question the judge's impartiality." *United States v. Mikalajunas*, 974 F.2d 1333, 2 (Table) (4th Cir. 1992) (quoting *Liljeberg*); *see also United States v. Mitchell*, 886 F.2d 667, 671 (4th Cir. 1989) (recusal required).

Neither the district court nor the court of appeals addressed the perception—what a reasonable observer would think—of the district court's actions in connection with Petitioner's case. Nor did either lower court express any reason to reject the affidavit provided by the expert which complied with 28 U.S.C. §144.

A. The court of appeals' decision not to address Petitioner's claims on its merits also conflicts with *Spevack v. Klein*, 385 U.S. 511 (1967).

The court of appeals' decision puts it in conflict with this Court's opinion in *Spevack*. The expert affidavit noted the district court had no legal or ethical basis to file a grievance against Petitioner due to his assertion of

the Fifth Amendment. The district court simply ignored the affidavit. Failing to redress that erroneous legal conclusion, the court of appeals has left that error in place.

In addressing Petitioner's claim, the district court found:

> Perhaps Defendant found it uncomfortable to admit that exercising his right to silence required him to acknowledge that his responses to questions regarding transactions to and from his law firm's trust account might tend to incriminate him in the commission of a crime. The Defendant's discomfort with the elements of the Fifth Amendment right to silence is hardly the basis for judicial recusal.

ECF, p. 13.

And then,

> Where a defendant asserts his right to silence under the Fifth Amendment, that fact may not be used against him in a criminal trial. However, the invocation of the Fifth Amendment right against self-incrimination can cast an adverse inference in a civil proceeding. *Michael v. United States*, 526 U.S. 314, 328 (1999) (sic)[3].

Mitchell is not applicable here because Petitioner was a lawyer, and as this Court held in *Spevack*, a lawyer cannot be punished for invoking the right, as noted in the expert affidavit.

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3. The correct case name is *Mitchell v. United States*.

B. Leaving the district court's order to stand puts the Fourth Circuit's jurisprudence in conflict with other circuit courts of appeal.

To the extent the Fourth Circuit's decision to deny mandamus indicates agreement with the district court's order, the Fourth Circuit imposes an unreasonably high burden on litigants to make reasonable requests for judicial recusal. In *Preston v. United States*, 923 F.2d 731 (9th Cir. 1991), the Ninth Circuit found recusal was proper where a judge, who had previously been "of counsel" to a law firm that represented Hughes Aircraft Company, the decedent's employer at the time of his death, and was the defendant in a wrongful death lawsuit. The court of appeals held that "the focus has consistently been on the question whether the relationship between the judge and an interested party was such as to present a risk that the judge's impartiality in the case at bar might reasonably be questioned by the public . . . We believe that the present case generates such a risk." *Id.* at 735.

In *Potashnick v. Port City Const. Co.*, 609 F.2d 1101 (5th Cir. 1980), the Fifth Circuit Court of Appeals found the judge should have recused himself when he was involved in business dealings with the plaintiff 's attorney. There were absolutely no allegations of actual bias or prejudice in the case. Nevertheless, citing to the House Judiciary Committee report regarding the general standard of §455(a)[4], and noting that the standard "was designed to promote the public's confidence in impartiality and integrity of the judicial process by saying, in effect, that if any reasonable factual basis for doubting the judge's

4. 1974 U.S. Cong. & Admin. News, pp. 6351, 6354-55.

impartiality exists, the judge "shall" disqualify himself and let another judge preside" and the district court judge should have stepped aside. *Id*. at 1101.

In *United States v. Cooley*, 1 F.3d 985 (10th Cir. 1993), the Court held the district court was required to recuse itself where the judge appeared on a national television show to discuss an issue before his court. As the Court made clear, "the judge's actual state of mind, purity of heart, incorruptibility, or lack of partiality are not the issue . . . The standard is purely objective. . . ." *Id*. at 993 (internal citations omitted). The Court further held "a reasonable person would harbor a justified doubt as to his impartiality in the case involving these defendants." *Id*. at 994; *see*, *also*, *In re Kensington Intern. Ltd*, 368 F.3d 289 (3rd Cir. 2004) (writ of mandamus granted based on "reasonable person" standard).

The First Circuit Court of Appeals granted mandamus where a district court judge defended her rulings on standing and class certification in a telephone interview with a reporter. *In re Boston's Children First*, 244 F.3d 164 (1st Cir. 2001). Mandamus was granted in *In re International Business Machines Corp*., 45 F.3d 641 (2nd Cir. 1995) (recusal required based on several events including rulings in a related antitrust case but also the judge's interviews concerning IBM's activities in general, and Assistant Attorney General Baxter's role in antitrust actions).

In *U.S. v. Real Property located at 25445 Via Dona Christa, Valencia, Cal*, 959 F.2d 243 (9th Cir. 1992), the Ninth Circuit held recusal was required where, during the course of forfeiture proceedings, the district court judge remarked that Gupta was a "bad apple" even though Gupta

had never appeared before him before. *In United States v. Jordan*, 49 F.3d 152 (5th Cir. 1995), resentencing was required when judge failed to recuse and when the judge had a personal relationship with a person with whom the appellant had a very hostile relationship and the judge imposed a sentence that appeared excessively harsh. In *In re Bulger*, 710 F.3d 42 (1st Cir. 2013), the petitioner was entitled to relief where the defendant could raise a defense that his actions were covered by an immunity agreement and the judge had supervisory role at the federal office during some relevant period of time at issue.[5] In *Clark v. Mcallister*, 3:21-cv-219-RP (N.D. Miss. April 24, 2024), the federal judge recused himself where he was the complainant in a criminal case in which Ms. Clark was the defendant because "a reasonable person with knowledge of the facts would conclude that the judge's impartiality might be questioned." *Id.*[6] *See also Cresci*

5. *See also United States v. Dreyer*, 693 F.3d 803 (9th Cir. 2012) (remand to different judge appropriate because of unusual circumstances); *United States v. Lentz*, 383 F.3d 191 (4th Cir. 2004) (same).

6. Much like the judge in *Clark*, who was a complainant against defendant Clark in her criminal case, the district judge here was a complainant against Petitioner, a lawyer, to the state bar's Office of Disciplinary Counsel (ODC), wrongfully alleging unethical and/or illegal conduct by Petitioner for asserting his Fifth Amendment rights in a prior civil proceeding. The ODC did not consider an attorney's invocation of Fifth Amendment rights an ethical violation, and, under *Spevack*, Petitioner could not be punished by the bar for such invocation. The district judge clearly became an adverse witness against Petitioner with respect to the ODC, violated Petitioner's rights under *Spevack*, and appeared to wrongly conclude that Petitioner had criminally violated the law in the matters pertaining to the civil proceeding. Petitioner is just as deserving of recusal as defendant Clark.

v. McNamara, 13cv4695 (EP)(AME), 18cv16207(EP) (JSA) (D. N.J. October 28, 2024) (district court recused itself pursuant to §455(a) because of "conceivable chance" that an appearance of partiality may result from certain connections to the case).

What all these cases in other circuits have in common is their clear assessment of the recusal issue through the eyes of a reasonable person. Neither the court of appeals nor the district court's order apply the correct standard to the facts of this case, where the district court took affirmative actions calculated to strip Petitioner of his law license based on his erroneous legal assessment that Petitioner had engaged in some sort of "unethical" conduct by invoking his rights under the Fifth Amendment at a hastily called civil proceeding where the judge disallowed Petitioner from even discussing the issue with his lawyer. The judge violated Petitioner's constitutional rights by trying to have Petitioner disciplined for asserting the Fifth Amendment, and then violated the Petitioner's Fifth Amendment rights again by simply ignoring the fact that Petitioner's affidavits met the elements of §144. A reasonable, objective person with knowledge of the facts of this case would conclude the district court objectively appears to harbor a bias against Petitioner. In light of the compelling and unambiguous affidavit by the expert attesting to the lack of appearance of impartiality, and the district court's persistent efforts to mete out Petitioner's criminal sentence, recusal is required.

CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED APRIL 26, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2312
(9:23-cr-00833-RMG-1)

In re: PETER J. STRAUSS

Petitioner

ORDER

Upon review of submissions relative to the petition for writ of mandamus, the court denies the petition.

Entered at the direction of Judge Quattlebaum with the concurrence of Judge King and Judge Agee.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA, BEAUFORT DIVISION, FILED DECEMBER 11, 2023

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Criminal No. 9:23-833-RMG

UNITED STATES OF AMERICA,

vs.

PETER J. STRAUSS,

Defendant.

ORDER

This matter comes before the Court on Defendant's motion to recuse. (Dkt. No. 26). Defendant asserts that the Court's findings and comments made on the record in an earlier, related civil proceeding mandate the Court's voluntary recusal or disqualification. The motion is made pursuant to 28 U.S.C. §§ 144 and 455 and the Due Process Clause of the Fifth Amendment. The criminal case before the Court involves a charge that the defendant, Peter J. Strauss ("Strauss"), knowingly transferred and aided and abetted the transfer of funds on behalf of clients to avoid lawful seizure orders of the United States. The previous civil case involved allegations that these same clients had converted funds provided by an investor to their own

personal use and then passed those funds through the trust account of Strauss' law firm to be distributed to other persons and entities for the clients' benefit. Defendant pled guilty before the Court to the pending criminal charge on November 6, 2023, and he moved to recuse on December 6, 2023. For reasons set forth below, the motion is denied.

Factual Background

It is important at the outset to understand the complex factual setting of the original civil action that came before the Court involving Defendant's law firm and the alleged use of its trust account to facilitate the transfer of funds converted by clients of the firm, Jeff and Paulette Carpoff, (the "Carpoffs"). The Carpoffs were principals of a company, DC Solar, which manufactured and promoted as investments solar powered generators that could provide emergency power on an environmentally sustainable basis. Most notably, purchasers of the solar powered generators qualified for a generous tax credit, and DC Solar generated hundreds of millions of dollars in investments. Among these investors was East West Bank, a California state-chartered bank.

On December 17, 2018, the East West Bank transferred $13 million to Solar Eclipse Investment Fund XXXV ("the Fund"), which was an entity used to purchase solar powered generators from DC Solar. The Fund was one of many related entities under the control of the Carpoffs. Unknown to the East West Bank, DC Solar and the Carpoffs were at that time under federal criminal investigation for operating a Ponzi scheme

and money laundering operation. One day after the East West Bank made its $13 million dollar payment to the Fund, December 18, 2018, federal agents executed search warrants on the Carpoffs' residence and business operations. The Government also issued seizure orders seeking to take control of all accounts associated with DC Solar and the Carpoffs. These law enforcement activities were widely reported in the press.

The day after law enforcement searched their residence and businesses, December 19, 2018, the Carpoffs wired $5 million from the Fund's bank account to the trust account of Strauss Law Firm. A day later, on December 20, 2019, $2 million of those funds were transferred out of the Strauss Law Firm trust account to another law firm to pay for the Carpoffs' future legal services. By December 28, 2019, another $2 million of those funds were transferred out of the trust fund of Defendant's law firm, again for the personal use and benefit of the Carpoffs. By February 1, 2019, all of the $5 million transferred by the Carpoffs to the Strauss Law Firm trust account on December 19, 2018 had been wired to others for the personal benefit of the Carpoffs.

DC Solar filed for bankruptcy in Nevada on February 3, 2019, and the Carpoffs were removed from control over many of the investment accounts related to DC Solar, including the Fund, where the East West Bank had transferred its $13 million. On March 13, 2019, the Chief Restructuring Officer of DC Solar informed the East West Bank that $5 million of its investment funds had been improperly transferred by the Carpoffs to the trust

account of the Strauss Law Firm. (C.A. No. 9:19-1176, Dkt. No. 9-2 at 4).[1] Counsel for East West Bank communicated with Strauss by letter dated March 22, 2019, informing him that the funds which the Carpoffs had transferred to his trust account had been "fraudulently obtained and disbursed." (*Id.* at 8-9). Counsel for East West Bank asked Strauss for an accounting of these funds and details about disbursements and authorizations provided. Strauss responded by email on March 25, 2019, claiming that the funds transferred into his accounts were the lawful property of DC Solar and that further details should be sought from the bankruptcy trustee for DC Solar. (*Id.* at 10). On March 26, 2019, East West Bank counsel requested from Strauss information concerning his law firm's role in these illicitly obtained funds. (*Id.* at 11). Strauss provided no response to this second letter.

Strauss received additional correspondence from the newly appointed manager of the Fund, Curtis Jung, on April 9, 2019, stating that it appeared that the transfer of the funds to his law firm's trust account was improper. Jung asked for further details of the circumstances under which the law firm's trust fund received the funds and demanded the return of the $5 million. Noting that "time is of the essence," Jung demanded a response by April 12, 2019. (C.A. No. 9:19-1176, Dkt. No. 9-3 at 6). Strauss responded by email on April 10, 2019, without providing any details regarding the circumstances surrounding the receipt or disbursement of the $5 million and referred

1. Citations to the civil case docket will be identified by reference to the civil action number, 9:19-1176. All references to the criminal case docket will simply refer to the docket number.

all communications to the DC Solar bankruptcy trustee. (*Id.* at 7).

East West Bank and the Fund filed suit against the Strauss Law Firm on April 23, 2019, seeking an accounting and return of the $5 million and the issuance of a preliminary injunction and temporary restraining order ("TRO") relating to any funds still in the Strauss Law Firm's trust account. (C.A. No. 9:19-1176, Dkt. No. 1). Plaintiffs attached supporting documents to their motion. (C.A. No. 9:19-1176, Dkt. Nos. 9-2, 9-3). The Court issued a TRO on April 30, 2019, directing that none of the funds related to the $5 million be transferred from the Strauss Law Firm trust account and prohibiting the destruction of any relevant records. In granting the TRO, the Court noted the highly "fungible" nature of funds transferred to the law firm's trust account and made a finding that Plaintiffs "are likely to succeed on the merits" of their claims that the Carpoffs had improperly transferred the funds one day after they "became the target of a federal raid related to a money laundering investigation." The Court set a hearing on Plaintiffs' motion for a preliminary injunction for May 6, 2019. (C.A. No. 9:19-1176, Dkt. No. 14 at 6). The Strauss Law Firm filed a response to the motion for preliminary injunction indicating the $5 million at issue had already been transferred out of the firm's trust account. The Strauss Law Firm further asserted that the "subject funds implicate[]" the DC Solar bankruptcy, which, if true, would require a stay of the current civil action before the Court. (C.A. No. 9:19-1176, Dkt. No. 21 at 2).

Appendix B

Immediately before the May 6, 2019 hearing, counsel for the Strauss Law Firm produced records detailing the wire transfer of the $5 million into the law firm's trust account and nine separate wire transfers out to persons and entities for the personal benefit of the Carpoffs. Counsel for the Strauss Law Firm appeared at the hearing but informed the Court he lacked knowledge regarding many of the critical details related to the receipt and disbursement of the $5 million. (Dkt. No. 26-1 at 3-4, 6-7). The Court advised the parties that it would schedule another hearing three days hence, on May 9, 2019, and directed that Strauss appear at that time and "produce all the documents related to the instructions he received for these transfers." (*Id*. at 11). The Court asked the Strauss Law Firm's counsel whether he anticipated any problem having Strauss appear for the May 9, 2019 hearing. The law firm's counsel responded by indicating he would "call him when we walk out of the courtroom," which the Court viewed as an equivocal response. The Court, making it clear its directive for Defendant to appear was an order, not a suggestion, stated: "Let him know that if he seems to have difficulty getting here, I'm glad to have him escorted by the marshals." (*Id*. at 13).

The Court addressed at the May 6, 2019 hearing the Strauss Law Firm's assertion in its May 3, 2019 response that this dispute was subject to the DC Solar bankruptcy action and, thus, to the automatic stay issued by the Nevada Bankruptcy Court. The Court informed counsel that it had checked the publicly available filings of the DC Solar bankruptcy action on the ECF and did not see any listing for the $5 million transferred to the Strauss

Law Firm. To show proper respect for the jurisdiction of the bankruptcy court, the Court made contact with the presiding bankruptcy judge to determine whether there might be a claim that these apparently converted funds by the Carpoffs were part of the DC Solar bankruptcy estate. The bankruptcy judge indicated that further factual development on the issue might be necessary but for now the Court was encouraged to continue its efforts to repatriate the funds and then sort out later their relationship, if any, to the bankruptcy estate. The Court fully disclosed these discussions with the Nevada bankruptcy court at the May 6, 2019 hearing and indicated the Court would continue to consider the issue of whether the Court's action was subject to the bankruptcy court's stay. (*Id.* at 11-12).

Following the conclusion of the May 6, 2019 hearing, the Court extended the TRO to the nine recipients of the funds transferred from the Strauss Law Firm trust account and ordered that they not disburse or expend any of these funds until further order of the Court. The Court further ordered Strauss to appear at a hearing on May 9, 2019. (C.A. No. 9:19-1176, Dkt. No. 25).

Strauss appeared at the May 9, 2019 hearing. By this time, the Court had received sufficient documentary evidence to support the conclusion that the Carpoffs had unlawfully seized investment funds from the Fund that had been provided by East West Bank and that the Strauss Law Firm's trust account had been utilized to transfer these converted funds to nine different persons or entities for the benefit of the Carpoffs. Many details regarding these transfers were then unknown, and it appeared that

Strauss was the most promising source of information to bring clarity to this situation.

The Court initially sought to question Strauss about the receipt and disbursement of the funds transferred to his law firm's trust account by the Carpoffs. Strauss declined to answer any of the Court's questions relating to these funds on Fifth Amendment grounds, indicating that his responses might tend to incriminate him. (Dkt. No. 26-2 at 9-10). Plaintiffs' counsel requested the Court allow her to question Strauss in more detail, noting that in a civil proceeding the assertion of the Fifth Amendment right against self-incrimination by a witness casts a negative inference. The Court allowed Plaintiffs' counsel to ask additional questions and Strauss repeatedly asserted his Fifth Amendment right against self-incrimination. (*Id.* at 11-32).

The record at this point provided strong support for Plaintiffs' claims that the Carpoffs had unlawfully seized and converted investment funds, and the trust account of the Strauss Law Firm had been used to improperly transfer these converted funds to others for the benefit of the Carpoffs. The quick sequence of the arrival and dispersal of these funds through the Strauss Law Firm trust account shortly after the federal law enforcement seizure operation cast further suspicion regarding these transactions. Thus, when Strauss appeared at the May 9, 2019 hearing and asserted his Fifth Amendment right against self-incrimination, a substantial question was raised from the totality of facts before the Court concerning whether Strauss, a member of the South Carolina Bar, had engaged in professional misconduct.

Consequently, the Court placed Strauss on notice that "I intend to advise the South Carolina Supreme Court that you took the Fifth Amendment today in a matter involving potential criminal activity" and suggested that Strauss self-report his actions to the South Carolina Supreme Court.

The Court issued an order on May 13, 2019, finding that Plaintiffs had demonstrated a likelihood of success on the merits that the $5 million investment had been unlawfully converted by the Carpoffs for their personal use after they became the target of a federal raid related to a money laundering investigation. The Court enjoined all recipients of the transfers from the Strauss Law Firm trust account from transferring or expending these funds until further order of the Court. (C.A. No. 9:19-1176, Dkt. No. 36). The Court also issued a text order on June 20, 2019 inviting the parties and the DC Solar bankruptcy trustee to brief the issue of whether the pending civil action was stayed by the Nevada bankruptcy court's automatic stay. (C.A. 9:19-1176, Dkt. No. 47).

The Court addressed in an order dated July 3, 2019 the issue of whether the $5 million converted by the Carpoffs was part of the DC Solar bankruptcy estate and, thus, subject to the bankruptcy court's stay. The Court noted that the DC Solar filing of unsecured creditors did not list the $5 million transferred to the Strauss Law Firm, and the DC Solar bankruptcy trustee had concluded that the funds were not part of the DC Solar bankruptcy estate. The Court, after reviewing the full record in this matter, concluded that "the $5,000,000 wire transfer of December

19, 2018, made one day after the federal government seized all known accounts of the Carpoffs and related entities, was an unlawful conversion of the Fund's assets for the personal use of the Carpoffs and was not an asset of the DC Solar bankruptcy estate." (C.A. No. 9:19-1176, Dkt. No. 56 at 4).

After the flurry of activity surrounding the issue of preliminary injunctive relief, the Court's civil action progressed at a less intense pace.[2] Meanwhile, the conduct of the Carpoffs and Strauss became the subject of formal criminal proceedings. On January 22, 2020, the United States Attorney for the Eastern District of California filed a Felony Information charging Jeff and Paulette Carpoff with various financial crimes. Two days later, on January 24, 2020, both Carpoffs pled guilty. Jeff Carpoff was sentenced on November 9, 2021 to 30 years in prison and was ordered to pay restitution in excess of $790 million. (C.A. No. 2:20-17, Dkt. Nos. 11, 53 (E.D. Cal.)). Paulette Carpoff was sentenced on June 28, 2022 to a little over 11 years in prison and was ordered to pay over $660 million in restitution. (C.A. No. 2:20-18, Dkt. Nos. 11, 51 (E.D. Cal.)).

Strauss was charged under a Felony Information on October 17, 2023 related to the transfer of funds from Jeff Carpoff for the purpose of preventing or impairing the Government's efforts to seize the Carpoffs' assets. Strauss pled guilty before the Court on November 6, 2023 and agreed as part of a plea agreement to pay $2.7 million in

2. The parties in the civil action ultimately reached a negotiated settlement and the case was dismissed.

restitution. Defendant filed his motion to recuse a month later, on December 6, 2023. (Dkt. Nos. 2, 5, 24, 26).

Legal Standard

Two federal statues address the recusal or disqualification of a federal district judge. 28 U.S.C. § 144 prohibits a district judge from presiding in a case where the judge "has a personal bias or prejudice" against a party. 28 U.S.C. § 455 provides for the disqualification of a judge "in which his impartiality might reasonably be questioned" or where a judge has a "personal bias or prejudice concerning a party." § 455(a), (b)(1). Any disqualification of a judge based on an appearance of impartiality must be considered from the perspective of a reasonable person fully informed of all the "surrounding facts and circumstances." *Microsoft v. United States*, 530 U.S. 1301, 1302 (2000) (Rehnquist, CJ).

Federal district judges routinely handle criminal cases in which the judge may have previously handled related criminal or civil proceedings. These previous civil or criminal proceedings often result in judicial findings and statements related to the facts presented in the pending criminal case before the court The United States Supreme Court squarely addressed in *Liteky v. United States*, 510 U.S. 540 (1994), the very limited circumstances in which previous judicial findings or statements by a trial judge in related civil or criminal cases can be the basis for judicial recusal or disqualification. The *Liteky* court stated that prior judicial rulings "almost never constitute a valid basis for a bias or partiality motion." *Id.* at 555. The Court went on to state:

> [O]pinions formed by a judge on the basis of facts introduced, or events occurring in the course of current proceedings, or 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. Thus, judicial 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 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.

Id.

The Fourth Circuit addressed the issue of judicial disqualification based on a judge's involvement in a prior civil or criminal proceeding in *Belue v. Leventhal*, 640 F.3d 567 (4th Cir. 2011). The Fourth Circuit stated that the case law firmly established that "parties would have to meet a high bar" to achieve recusal based on comments by a trial judge in the current or previous proceeding. To meet that high bar, the judge's comments must involve "singular and startling facts" that reflect "particularly egregious conduct." *Id.* at 573. To allow any other rule, the Fourth Circuit noted, would produce "limitless gamesmanship" and would invite "a form of brushback pitch for litigants to hurl at judges who do not rule in their favor." This would make litigation "even more time-consuming and costly

than it is and do lasting damage to the independence and impartiality of the judiciary." *Id*. at 574.

Discussion

Defendant asserts in an affidavit that "I believe in good faith that Judge Gergel has a personal bias against me and in favor of the U.S. Attorney's Office, and that Judge Gergel's impartiality might reasonably be questioned." (Dkt. No. 26-3 at 1). Defendant referenced various findings and statements by the Court in the previous civil case to support his personal belief of judicial bias. The Court addresses these challenged statements and findings below.

A. Defendant's objection to the Court's comments at the May 6, 2019 hearing that the transfer of funds by the Carpoffs to his law firm's trust account was "likely an illegal transfer" and "these transactions appear to be unlawful."

The Court conducted a hearing on Plaintiffs' motion for a preliminary injunction on May 6, 2019, following the receipt of records that indicated that one day after federal law enforcement officers raided the Carpoffs' home and business sites they transferred to the trust account of Strauss' law firm $5 million dollars that had been deposited in an investment fund by the East West Bank to purchase solar generators. The record indicated that these funds were quickly wired to others for the personal benefit of the Carpoffs. (C.A. No. 9:19-1176, Dkt. No. 25 at 2-3). The manager of the investment fund from which these monies were seized and transferred by the Carpoffs had advised Strauss that the transfers were

unauthorized and demanded their prompt return to the Fund. Based on these facts and many others, the Court made the following statement:

> From the information I have, it appears that the $5 million transfer to the Strauss Law Firm is likely an illegal transfer, and those recipients are in receipt of funds that should not have gone to them from this fund. The fund was to purchase mobile solar generators. It wasn't to pay all these lawyers and captive funds and all of this, and it was certainly done in a way that appears surreptitious to me. It's one day after the Government has seized every asset they can of the Carpoffs.

(Dkt. No. 26-1 at 10).

The Court issued orders on April 30, 2019 and May 13, 2019 which included findings consistent with the challenged statement. These statements and findings are exactly the type of prior judicial actions that are not a proper basis for a judicial recusal motion. Further, later developments in this and other cases have validated the accuracy of the Court's challenged statements and findings.

B. The Court's reference to the local United State's Attorney's Office staff as "my U.S. Attorney's Office."

During the May 6, 2019 hearing, counsel for the Strauss Law Firm sought to characterize the transfers into the firm's trust account as ordinary transactions

involving clients of the law firm, the Carpoffs. The inference was that the Plaintiffs were overreacting and that there was nothing particularly remarkable about these fund transfers into and out of the Strauss Law Firm trust account. The Court noted the intensive law enforcement interest in these transactions, with numerous federal law enforcement officers sitting in the courtroom. This suggested to the Court that close scrutiny of these transactions was appropriate. The reference to "my U.S. Attorney's Office" was simply a shorthand reference to the fact that these particular transactions were receiving scrutiny from the United States Attorney's Office for the District of South Carolina and did not reflect any endorsement of actions of the United States Attorney's office.

C. The Court's statement that it would, if necessary, send the United States Marshal to escort Defendant to the May 9, 2019 hearing.

Prior to the morning of the May 6, 2019 hearing, Plaintiffs had repeatedly attempted, without success, to obtain from Strauss an accounting of the $5 million that the Carpoffs had transferred to his law firm's trust account. On the morning of the May 6, 2019 hearing, Plaintiffs were provided by the Strauss Law Firm's counsel a listing of the persons and entities which had been the recipients of the $5 million from the firm's trust account. Plaintiffs still had no details regarding who had authorized the transfers of investment funds to persons and entities for the personal benefit of the Carpoffs. During the May 6, 2019 hearing, it was apparent that counsel for the Strauss Law Firm had little knowledge concerning these missing details. The

Court noted the need to summon Strauss to a hearing on May 9, 2019 to address these unanswered questions. The Court asked counsel for the Strauss Law Firm whether he anticipated any problem having Strauss appear at the May 9, 2019 hearing. Rather than assure the Court his client would be present, the law firm's counsel indicated he would have to call his client to determine his availability. The Court interpreted this response as equivocating on whether Mr. Strauss would appear as directed by the Court, which prompted the Court's statement to the law firm's counsel: "Let him know that if he seems to have any difficulty getting here, I'm glad to have him escorted by the marshals." (Dkt. No. 26-1 at 13). This statement was for the purpose of making it clear that the command to be present on May 9, 2019 was an order, not a suggestion.

The Court regards this statement, while perhaps stern, as an unambiguous assertion of the Court's authority to compel the attendance of a witness, an essential element of the orderly administration of justice. This statement reflected no personal hostility toward Strauss, only the Court's resolve that he was to appear on May 9, 2019. The challenged statement is the very type of a "judge's ordinary efforts at courtroom administration" that is not a proper basis for judicial recusal. *Liteky*, 510 U.S. at 556.

D. The Court's statement that Defendant needed to state that his assertion of his Fifth Amendment right was based on the fact that his answers might tend to incriminate him.

The Court initially questioned Strauss at the May 9, 2019 hearing. He promptly attempted to invoke his right

to silence by stating that "[o]n advice of counsel, I have to invoke my Fifth Amendment privilege." (Dkt. No. 26-2 at 9). Since the Defendant appeared unfamiliar with how to assert the privilege, the Court explained that the basis of the assertion of the right to silence under the Fifth Amendment was that the witness's responses may tend to incriminate him. It was not sufficient to invoke the privilege simply because his attorney told him to do this. After explaining the full scope of the rule, the Court asked the Defendant whether he was "asserting the Fifth Amendment right because your response may tend to incriminate you." The Defendant then responded "[y]es, your honor."

The Court provided Strauss an accurate explanation of the elements necessary to assert the right to silence under the Fifth Amendment. Perhaps Defendant found it uncomfortable to admit that exercising his right to silence required him to acknowledge that his responses to questions regarding transactions to and from his law firm's trust account might tend to incriminate him in the commission of a crime. The Defendant's discomfort with the elements of the assertion of his Fifth Amendment right to silence is hardly the basis for judicial recusal.

E. The Court's statement that "I intend to advise the South Carolina Supreme Court that you took the Fifth Amendment today in a matter involving potential criminal activity . . . ."

Defendant objects to the Court's statement that it intended to report to the South Carolina Supreme Court

his invocation of his Fifth Amendment right against self-incrimination "in a matter involving potential criminal activity." (Dkt. No. 26-2 at 33). The Court's statement followed significant record evidence that Defendant's law firm had received $5 million dollars from the Carpoffs one day after their home and offices had been raided by federal law enforcement officials and these funds were rapidly transferred from the trust account of the Strauss Law Firm to third parties for the benefit of the Carpoffs. When asked under oath by the Court of his knowledge regarding the details of these transactions, Strauss invoked his Fifth Amendment rights on the grounds that his responses might incriminate him.

After considering the totality of circumstances in the record then before the Court, there was a substantial question whether Defendant had engaged in professional misconduct in violation of the South Carolina Rules of Professional Conduct. South Carolina Appellate Court Rule 407, Rule 8.3(c) imposes a duty on every licensed attorney to report actions by an attorney that raise a substantial question concerning another attorney's professional misconduct.

Defendant appears to argue that his invocation of his right against self-incrimination immunized him from a judge reporting to the South Carolina Supreme Court facts that raised a substantial question of professional misconduct. This misapprehends the application of the assertion of the right against self-incrimination. Where a defendant asserts his right to silence under the Fifth Amendment, that fact may not be used against him in

a criminal trial. However, the invocation of the Fifth Amendment right against self-incrimination can cast an adverse inference in a civil proceeding. *Michael v. United States*, 526 U.S. 314, 328 (1999).

The Defendant's objection to the Court's statement appears to based on the misguided conclusion that his simple invocation of the his right to silence prompted the Court's decision to make a report to the South Carolina Supreme Court. The complete statement of the Court was that Strauss was put on notice that "I intend to advise the South Carolina Supreme Court that you took the Fifth Amendment today *in a matter involving potential criminal activity*." (Dkt. No. 26-2 at 33) (emphasis added). This "potential criminal activity" raised a substantial question of whether Strauss had committed professional misconduct regarding the operation of his law firm's trust account. The fact that Struss asserted his Fifth Amendment right against self-incrimination did not immunize him from a judicial report of possible professional misconduct.[3]

Strauss was not the first attorney that the Court has reported to the South Carolina Supreme Court where a substantial question has been raised whether the attorney has engaged in professional misconduct. Judges have an important duty, as do all licensed attorneys, to uphold the

3. The Court has not reached a conclusion at this time concerning whether Strauss committed professional misconduct regarding transactions made on behalf of the Carpoffs from his law firm's trust account. This is a matter that should first be addressed by the South Carolina Supreme Court.

integrity and professionalism of the Bar. Such a report is not a valid basis for judicial recusal.

F. Defendant's contention that the Court's review of the public docket in the DC Solar bankruptcy case and communication with the Nevada bankruptcy judge constituted an *ex parte* communication and an independent investigation by the Court.

The defense asserted in the civil case that the Plaintiffs' suit was stayed by the pending bankruptcy proceeding of DC Solar. Since this matter went to the jurisdiction of the Court over this pending matter, the Court took the assertion seriously to determine whether the bankruptcy court's stay applied to the funds transferred from the Fund, an entity separate and independent from DC Solar. As is routine when such bankruptcy related matters arise on the Court's docket, the Court inspected the public filings in the Nevada bankruptcy proceeding, which were available a few clicks away on the ECF. The Court found no reference to the $5 million transfer from the investment fund on the unsecured creditors listed in the DC Solar bankruptcy.

The Court was, however, sensitive to the prerogatives of a sister court and reached out to the Nevada bankruptcy court to avoid any unnecessary conflict or miscommunication regarding the scope of the DC Solar bankruptcy estate. Such communications are commonly made by the Court and received from other federal and state judges. Indeed, the Manual for Complex Litigation published by the Federal Judicial Center recommends communications between courts in complex litigation

to promote judicial efficiency and to avoid unnecessary duplication. *See* Manual for Complex Litigation §§ 10.12, 20.2 (Federal Judicial Center 2004).

The Court's review of the publicly available records of the DC Solar bankruptcy docket was part of routine federal court practice, as were the communications with the Nevada bankruptcy court. The Court fully disclosed these communications to counsel and there was no suggestion or concern expressed at that time that such communications were anything but routine. Court to court communications or inspection of publicly available court records are not a valid basis for judicial recusal.

G. The Court's reference to widespread news reports of the federal government's law enforcement activities at the Carpoffs' residence and businesses.

When the civil action was filed in April 2019, there had been months earlier a great deal of news coverage concerning the FBI's raid of the residence and businesses of the Carpoffs on December 18, 2018.[4] The substance of the news coverage from the past December was well known to the parties, the Court, and anyone else who had a passing interest in current affairs. The record before

4. *E.g.*, "FBI Raids Home of DC Solar CEO," ESPN Website (December 20, 2018); "FBI Conducts Raid on DC Solar's Headquarters, CEO's Home," NBC Sports Website (December 20, 2018); "How an FBI Raid Indirectly Led to a NASCAR Team Shutting Down," USA Today Website (January 5, 2019). The Carpoffs prominent role as a sponsor of a NASCAR team generated a great deal of media interest in the federal government's enforcement activities.

the Court contained the critical details relevant to the civil case and was far more detailed that the cursory news reports that had been made around the time of the federal government's enforcement action. What was relevant regarding the news reports was not the substance of the reports but whether they had provided notice to the Strauss Law Firm of the federal enforcement action before the $5 million was wired out of the law firm's trust account to others for the benefit of the Carpoffs.

No party to the civil action questioned the accuracy of the Court's reference to the earlier national media reports or requested evidence to be placed in the record to confirm such reports. Had such a request been made, the Court would have taken judicial notice of the earlier news reports because they could be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Federal Rule of Evidence 201(b)(2). The late complaint about the Court's reference to the previously undisputed news reports does not provide a basis for recusal.

Defendant, in his affidavit, does not dispute the widespread national news reports concerning the raid on the Carpoff's home, but complains that the Court failed to quote statements by Carpoff's lawyers that the raid was merely a "tax dispute" and the Carpoffs "planned to grow their business." (Dkt. No. 26-3 at 5). By the time the case was filed in April 2019, DC Solar was in bankruptcy and it was apparent that this was far more than a "tax dispute." The Court's failure to quote a statement of the Carpoffs' lawyer in December 2018 during the hearings in May 2019 would certainly not be a basis for recusal.

H. The Defendant is mistaken in his belief that the Court harbors any personal bias or animosity toward him or favors the Government in his pending criminal case.

The Defendant, perhaps due to his personal inexperience in the federal judicial arena, has misinterpreted certain routine court statements, actions, and judicial findings in the prior civil case as some form of personal animosity towards him. The pending criminal case before the Court, in which Defendant has pled to a single felony count, is a fairly routine matter on the Court's docket. The Court's statements and orders in the prior civil case reflected a determination, first, to determine the facts, and then, upon determining that there had most probably been an improper conversion of funds by the Carpoffs, to move expeditiously to repatriate the funds so that the Plaintiffs might have an effective remedy for the wrong they had suffered. The Court will approach Defendant's sentencing, as it does in every sentencing, with a careful review of the presentence report, including the calculation of the sentencing guidelines, and consideration of all objections, arguments of counsel, and evidence offered in mitigation. The Court's goal is to impose a sentence with is "sufficient but not greater than necessary" to accomplish the purposes of the law. The Court's prior handling of the related civil case or consideration of this motion to recuse will have no bearing on the Court's sentencing decision.

Appendix B

Conclusion

After a careful view of the full record in the prior civil proceeding and in this pending criminal matter, consideration of the motion for recusal and attachments, and the applicable case law, the Court finds that there is no reasonable basis to question the impartiality of the Court based upon a reasonable person standard with full knowledge of all facts and circumstances. 28 U.S.C. § 455(a). The Court further finds that, applying the same standard, there is no valid basis for recusal or disqualification on the grounds of personal bias. 28 U.S.C. §§ 144, 455(b)(1). Consequently, the Defendant's motion to recuse or disqualify (Dkt. No. 26) is denied.[5]

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

December 11, 2023
Charleston, South Carolina

5. The Defendant's motion also contained a request to conduct discovery. The Court finds no basis or need to conduct discovery and that motion is also denied.

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JULY 2, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2312
(9:23-cr-00833-RMG-1)

In re: PETER J. STRAUSS

Petitioner

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under *Fed. R. App. P. 35* on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Agee, and Judge Quattlebaum.

For the Court

/s/ Nwamaka Anowi, Clerk