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IN THE

SUPREME COURT OF THE UNITED STATES

IN RE: DEON D. COLVIN —PETITIONER

vs.

743 FAIRMONT STREET NW LLC —RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

DEON D. COLVIN
(Your Name)

743 FAIRMONT STREET NW #211
(Address)

WASHINGTON, DISTRICT OF COLUMBIA. 20001
(City, State, Zip Code)

216-396-8512
(Phone Number)

QUESTION(S) PRESENTED

Petitioner is a *pro se* litigant. The District of Columbia Court of Appeals DENIED Petitioner's Petition for a Writ of Mandamus. The Questions Presented are as follows:

1. Is the D.C. Court of Appeals "overpowering" standard for determining the indisputability of §455 (a) claims of appearance of bias that do not claim an extrajudicial source too vague and undefined for application, and thus an unfair standard for determining "exceptional circumstances" and a "clear and indisputable right" to mandamus relief?

2. Must the D.C. Court of Appeals employ the "objective observer" and and "favoritism or antagonism" standards in determining whether to issue a writ of mandamus for Appellant's intrajudicial claims of bias that were made pursuant to 28 U.S.C. § 455(a)?

3. Must a judge consider each Motion to Disqualify separately in determining whether a basis exist for disqualification pursuant to 28 U.S.C. § 455(a)?

4. Did Respondent's conduct presented in Petitioner's Amended Opposed Motion to Disqualify Judge Donald W. Tunnage, and Second Opposed Motion to Disqualify Judge Donald W. Tunnage, qualify as conduct that might cause the average person, fully informed to reasonably question the Respondent's partiality, thus requiring Respondent's disqualification from proceedings, pursuant to 28 U.S.C. § 455(a)?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

A. Hon. Donald W. Tunnage, Associate Judge, Superior Court of the District of Columbia (Respondent)

RELATED CASES

- *In re: Deon D. Colvin*, No. 25-OA-0004, District of Columbia Court of Appeals. Judgment entered January, 27th, 2025.

- *In re: Deon D. Colvin*, No. 24-OA-0011, District of Columbia Court of Appeals. Judgment entered June 27th, 2024.

- *Deon D. Colvin v. 743 Fairmont Street NW LLC*, No. 2019-CA-008113-B, Superior Court of the District of Columbia. Judgment entered: Pending.

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AMENDMENTS, STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States District Court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[x] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _A_ to to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The **opinions** of the _District of Columbia Superior Court appear at Appendix _C, and D_ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was SEPTEMBER 17, 2024. A copy of that decision appears at appendix A.

[x] A timely petition for rehearing was thereafter denied on the following date: October 24, 2024, and a copy of the order denying rehearing appears at appendix B.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including MARCH 23RD, 2025 (date) on JANUARY 15TH, 2025 (date) in Application No. 24A682.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This constitutional and statutory provisions involved in the present matter are as follows:

I. THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against itself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

II. UNITED STATES CODE – TITLE 28 – PART I---CHAPTER 21---SECTION 455- Disqualification of justice, judge, or magistrate judge

(28 U.S. CODE § 455)

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which is impartiality might reasonably be questioned.

III. UNITED STATES CODE – TITLE 28 – PART IV---CHAPTER 81---SECTION 1254 – Courts of Appeals; certiorari; certified questions

(28 U.S. CODE § 1257)

Cases in the courts of appeals may be reviewed by the Supreme Court by the by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal or criminal case, before or after rendition of judgment or decree;

IV. UNITED STATES CODE – TITLE 28 – PART V---CHAPTER 111---SECTION 1651- Writs

(28 U.S. CODE § 1651)

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

V. UNITED STATES CODE – TITLE 28 – PART V---CHAPTER 111---SECTION 1654-

Appearance personally or by counsel

(28 U.S. CODE § 1654)

(a) In all courts of the United States the parties may plead and conduct their own cases personally, or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

STATEMENT OF THE CASE

Over 50 years ago, Congress passed 28 U.S.C. § 455 (a), which declared, "Any justice, Judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The purpose of the legislation was to promote confidence in the judiciary by avoiding even the appearance of impropriety by mandating a judge disqualify from a proceeding in which his partiality might reasonably be questioned by the average person. This "average person" requirement was meant to replace the Court's subjective standard with an objective test for disqualification, in hopes that an objective measure for judicial recusal would improve public confidence. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 865, 871-2 (1988).

In Liteky v. United States, this Court explained that bias in a judicial officer can originate from an extrajudicial or intrajudicial source, and ruled that for a 28 U.S.C. § 455 (a) disqualification of a judge based on the latter, the petitioner must present facts and circumstances that show a judge's conduct evinces a "deep-seated favoritism or antagonism as to make fair judgement impossible." Liteky v. United States, 510 U.S. 540, 551, 555-6 (1994).

This case presents the questions of whether (1) the D.C. Court of Appeals' "overpowering" standard for issuing a writ of mandamus to a judicial officer to disqualify pursuant to 28 U.S.C. § 455 (a) is too vague and undefined for application; (2) whether the D.C. Court of Appeals was required to employ this Court's "objective observer" and "favoritism or antagonism" standards in ruling on Applicant's petition for writ of mandamus; (3) whether an accused judge must consider each motion to disqualify separately in determining if a basis exists for their disqualification; and (4) whether Respondent's conduct articulated in Applicant's Petition for Writ of mandamus warrants disqualification pursuant to 28 U.S.C. § 455 (a).

1. Events In the Lower Court Leading to Applicant's Filing of a Writ of Mandamus (D.C. Court of Appeals Case #24-OA-0016)

On December 9, 2019, Applicant filed a breach of contract case against 743 Fairmont Street NW LLC ("Respondent II") in D.C. Superior Court (Case # 2019-CA-008113-B). On January 1, 2023, Respondent began presiding over the case due to a judicial caseload transfer. Prior to Respondent presiding, Applicant had filed a Motion to Disqualify the immediate prior judge pursuant to 28 U.S.C. § 455 (a) and Rule 2.11 (A) of the Code of Judicial Conduct for the District of Columbia Courts (2018) for six rulings the previous judge made where the judge allowed Defendant's counsel to disobey the Court's order to respond to Applicant's subpoenas, and refused to sanction him for doing so. Applicant's Motion to Disqualify claimed the judge's refusal to sanction upon his valid motion pursuant to Rule 37 had the appearance of judicial bias and the appearance of racial bias.[1] The judge denied Applicant's Motion to Disqualify and continued presiding over the case, granting Applicant leave to file four discovery motions, which Applicant filed in December 2022, just prior to Respondent presiding. In the order granting Applicant leave to file said discovery motions, Defendant was ordered to file opposition by January 3, 2023 and a pre-trial conference was scheduled for February 16, 2023.

Respondent became judge, and, because the parties were unable to agree on a venue for the required meeting prior to the pre-trial conference and had a standing dispute, ordered the February 16th pre-trial conference converted to a status conference. At the status conference, Respondent resolved the standing dispute over whether Defendant should be allowed to file opposition to Applicant's four discovery motions after the court's January 3rd deadline by pronouncing that his policy is to allow full briefing on *all* contested matters, and ordered Defendant may file oppositions

[1] Applicant is African American, Defendant's attorney is Caucasian, and the immediate prior judge is Caucasian.

by February 27th, 2023.

From February 2023 to October 2023, Respondent issued rulings and directives in the case. During this time, Respondent (1) used the praecipes on punitive damages *that he directed the parties to file only for use in settlement discussions* to rule on punitive damages; (2) issued a ruling on punitive damages before discovery was complete, and before Applicant had all the discovery he was entitled to and could present a full case for punitive damages; (3) asked Applicant to bring his complaint to a conference to discuss so that he could question him on it to understand the issues in the matter; then abruptly stopped Applicant from answering his question of what claims in the complaint involve intentional conduct, and identified for himself what counts involve intentional conduct, thus refusing to give liberal construction to Applicant's *pro se* complaint per Haines v. Kerner, 404, U.S. 519, 520 (1972); (4) *refused to even consider* three of Applicant's Rule 60 motions for relief, which requested review of the former judge's refusal to sanction Defendant's counsel for disobeying the Court's orders to respond to Applicant's subpoenas, which by law he was required to do[2]; (5) retreated from his stated policy of allowing full briefing on contested motions when considering a motion filed by Applicant, and stated he can rule on motions without allowing opposition, which was in direct violation of Superior Court Rule 12-I, and thereafter ruled on Applicant's contested motions without allowing opposition; (6) stated several times he would hold hearings on Plaintiff's Praecipe of Disputed Requests, but did not hold hearings; (7) ordered Defendant to provide responses to Plaintiff's Praecipe of Requests, and when Defendant did not provide responses to numerous Requests, stated he did not want to make any further rulings on discovery until after a hearing on liability.

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[2] The District of Columbia Court of Appeals has ruled the Superior Court must consider Rule 60 (b)(6) motions. *See* Starling v. Jephunneh Lawrence & Associates, 495 A. 2d 1157, 1162 (D.C. 1985)("This Court has long emphasized that the trial court has a responsibility to inquire where matters are raised which might entitle movant to relief under Rule 60 (b)."

Prior to the hearing on liability, Applicant filed a motion to disqualify pursuant to 28 U.S.C. § 455 (a) and Rule 2.11 (A) of the Code of Judicial Conduct, District of Columbia Courts (2018) on the grounds Respondent's above conduct had the appearance of bias and racial bias. Respondent denied the motion without prejudice on the grounds the motion was above Respondent's page limit for motions. Applicant filed an Amended Motion to Disqualify which was within Respondent's page limit, and a Rule 60 Motion for Relief from the Court's January 10th Order requesting reinstatement of the original motion to disqualify on the ground it was within Respondent's page limit for motions. Defendant filed opposition to the Motion for Relief and Amended Motion to Disqualify. Respondent refused to allow Applicant to file a reply brief to Defendant's opposition to the Motion for Relief and then denied the motion.

When Respondent did not rule on Applicant's Amended Motion to Disqualify after more than four months, Applicant filed a Second Motion to Disqualify Judge Donald W. Tunnage pursuant to 28 U.S.C. § 455 (a), claiming appearance of bias and appearance of racial bias that had different claims than the Applicant's first motion for disqualification.[3] A few weeks later, Applicant filed a Motion for Immediate Disqualification and Notice of Additional Code violations wherein he requested Respondent disqualify based on his

[3] Specifically, Applicant claimed, *inter alia*, that Respondent (1) refused to allow him to file a reply brief on a Rule 60 motion; (2) did not consider his alternate claim for relief in a Rule 60 motion; (3) refused to apply case law (controlling authority) on a Rule 60 motion; (4) did not schedule motions hearings for Applicant's twenty-three (23) motions and instead heard the motions at status conferences prior to full briefing, when Respondent knew Applicant did not have the motion in his possession, and thus could not reasonably discuss it; (5) failed to issue a timely ruling on Plaintiff's Amended Motion to Disqualify so that the case could go forward, after being on the Court's docket for over four years; (6) failed to consider numerous claims of appearance of racial bias in Applicant's Rule 60 motions;(7) offered a faulty reason for not allowing full briefing on Applicant's motions; and (8) threatened Applicant with concession if he refused to discuss his motion prior to full briefing, thus coercing a premature discussion, consideration, and ruling.

ethical duty to disqualify when the facts and circumstances show his impartiality might reasonably be questioned[4], and that his failure to rule on the motions to disqualify and allow proceedings to continue was leading to additional federal code violations, including Applicant's statutory right to prosecute his case *pro se* in the D.C. Superior Court pursuant to 28 U.S.C. § 1654.

Respondent denied Applicant's motions to disqualify, reasoning that he had not shown Respondent has a personal bias arising from an external source, and that Applicant's six claims of bias were *all based on Respondent's prior rulings*, which cannot be the basis of a personal bias motion. *See* App. D. Applicant filed a Rule 60 motion for relief, requesting the court vacate its denial of the motions to disqualify on the grounds: (1) Respondent employed the wrong standard of review to his motions to disqualify, which was an abuse of discretion[5]; (2) Respondent used the six (6) claims of appearance of bias in Applicant's first motion to disqualify to deny the eight (8) claims of appearance of bias in Applicant's second motion; (3) Applicant's motions are not based solely on Respondent's rulings; and (4) Applicant's claims of apparent bias meet the "objective observer" standard and display favoritism toward Defendant or an antagonism toward Plaintiff that makes fair judgment impossible, as required per Liteky v. United States, 501, U.S. 551, 555-6 (1994).[6]

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[4] Rule 2.11, cmt. [2] of the Code of Judicial Conduct, District of Columbia Courts (2018) states: "A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion is filed."

[5] Respondent applied the standard for personal bias motions filed pursuant to Super. Ct. Rule 63-I or 28 U.S.C. § 144, which requires the movant file an affidavit and show personal bias arising from an extrajudicial source. *See* Appendix D at 2.

[6] With respect to the latter, Applicant observed that Respondent's (1) willingness to be dishonest and premature in ruling on punitive damages, (2) refusal to give his *pro se* complaint liberal construction, (3) refusal to give Applicant 5th Amendment procedural due process and consider his Rule 60 motions, (4) refusal to allow Applicant to file a reply brief on a Rule 60 motion, (5) not considering an alternate request in his Rule 60 motion, and (6) refusal to use

Respondent denied, citing Liteky that motions to disqualify based on "judicial rulings alone almost never constitute a valid basis for bias or partiality motion," but are grounds for appeal. *See* App. C.

2. Proceedings at the D. C. Court of Appeals

Applicant filed a petition for writ of mandamus with the D.C. Court of Appeals, based on and incorporating his motions to disqualify and Rule 60 motion. The D.C. Court of Appeals denied the petition, reasoning that Applicant had not shown Respondent has an "overpowering" bias, a "most exacting standard." *See* App. A. Applicant filed a motion for extension of time to file a petition for rehearing en banc and petition for rehearing by the division. The Court of Appeals granted the motion. Applicant filed a petition for rehearing en banc and petition for rehearing by the division, arguing, *inter alia*, that (1) the Court's "overpowering" standard is too undefined for application, (2) the Court is *required* to employ the "objective observer" and "favoritism and antagonism" standards to his petition per Litecky v. United States, and (3) his petition is not based solely on Respondent's rulings. The D.C. Court of Appeals denied both petitions without providing a reason. *See* App. B. Applicant filed a motion to stay the mandate and a motion for a stay of proceedings pending filing and disposition of a writ of certiorari with this Court. The D.C. Court of Appeals denied the motion to stay the mandate on the ground it does not issue mandates on a petition for writ of mandamus; and denied the motion for stay of proceedings, reasoning that Applicant did not meet the criteria for a stay.

REASONS FOR GRANTING THE PETITION

A. To Invalidate An Unfair Standard For Granting A Writ of Mandamus for § 455 (a) Cases Based On Intra-Judicial Claims of Appearance of Bias That Interferes With This Court's Standard for Disqualification

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controlling authority to decide a Rule 60 motion, etc. are claims that might cause the average person to reasonably question Respondent's impartiality, and show a deep-seated antagonism toward him or a favoritism toward Defendant that makes fair judgment impossible.

In Liteky v. United States, 510 U.S. 540 (1994), this Court articulated the standard for a motion to disqualify pursuant to 28 U.S.C. § 455 (a) for intra-judicial claims of appearance of bias (*i.e.* apparent bias that does not rise from an extrajudicial source). In order to satisfy the statute, a movant must state facts and circumstances that might cause the average person, fully informed to reasonably question a judge's impartiality (the "objective observer" standard) *and* "show a deep-seated favoritism or antagonism that would make fair judgment impossible" (the "favoritism or antagonism" standard). If a movant shows the above, he has fulfilled the criteria and the accused judge must disqualify from the proceeding.

In this matter, Applicant displayed the above in his motions to disqualify but he was denied the requested writ for mandamus from the D.C. Court of Appeals because, according to the Court, he did not show "exceptional circumstances" and a "clear and indisputable" right to the relief sought; as the petition was based on "legal rulings" and did not display "circumstances... so extreme that a judge's bias appears to have become overpowering" (the "overpowering" standard).

The Court should grant the petition because Applicant's petition was not based solely on "legal rulings" (which Applicant clearly pointed out to the Court in his petition) and the D. C. Court of Appeals' "overpowering" standard is vague and undefined, and thus unsuitable for application as a criterion for determining mandamus relief. Specifically, what constitutes "circumstances...so extreme that a judge's bias appears to have become overpowering" is not defined, explained or illustrated in the Court's order. *See* App. A. Nor is it defined, explained, or illustrated in Plummer v. United States, 870 A. 2d 539, 547 (D.C. 2005), the case the Court cites in its Order. Nor is it illustrated in Whitaker v. McClean, 118 F. 2d 596 (1941), which is cited in Plummer, as it is not even stated what the judge's remarks were that met the standard.

Thus, the D. C. Court of Appeals employed an undefined, unelaborated, unillustrated and thus unclear, subjective and unfair standard to deny my petition for writ of mandamus. By employing the standard, and making mandamus relief dependent upon it, the D.C. Court of Appeals' decision denying Applicant mandamus conflicts with this Court's standards established in Liteky v. United States for § 455 (a) motions for disqualification. The Court of Appeals' decision is essentially saying that even if Applicant has met the federal standard for disqualification, he has not met its "overpowering" standard for issuing the writ, so the judge will not be disqualified. This Court grants certiorari when a state high court's decision conflicts with a precedent of this Court. *See* S. Ct. Rule 10 (c).

B. The Case Has National Importance, Thus Certiorari Should Be Granted

State high courts and U.S. Courts of Appeals have adopted their own standards for writ of mandamus relief. Like the D.C. Court of Appeals, some of these standards for mandamus relief may conflict with federal standards for disqualification for 28 U.S.C. § 455 (a) motions. This can result in judges that should be disqualified remaining on cases and irreparably tainting the proceedings. Thus, practically speaking, the public has great interest in § 455 (a) motions *actually working* to remove judicial officers when there is the appearance of bias. As the U.S. Circuit Court of Appeals for the District of Columbia aptly notes, public confidence in the judiciary is tied to the *prompt* removal of judges who have the appearance of bias, and removal after "normal appellate review" of a case is insufficient to maintain public confidence. *See* In re: Khalid Shaikh Mohammed, 866 F. 3d 473, 475 (D.C. Cir 2017.) Thus, the Court should grant certiorari to use this case to send a message to all Courts that writ of mandamus standards cannot be such that they interfere with federal standards for disqualification of the nation's judges.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Deon D. Colvin

Date: March 22nd 2025