

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CORNELL HESTER,)	
)	
Plaintiff,)	
)	
v.)	ID No. 0912010604
)	
STATE OF DELAWARE,)	
)	
Defendant.)	

Date Submitted: August 15, 2012
Date Decided: November 26, 2012

OPINION

Upon Motion of Defendant for Recusal: DENIED

Cornell Hester, *pro se*, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna DE, 19977, Plaintiff.

Phyllis R. Scully, Esquire, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 North French Street, Wilmington, DE 19801, Attorney for Defendant State of Delaware.

JURDEN, J.

I. INTRODUCTION

Cornell Hester (hereinafter, “Hester”) moves to have this judge recuse herself from further participation in this case. Hester argues that this judge’s impartiality is suspect because this judge is named as a defendant in a federal civil lawsuit filed by Hester. After examination, this judge is satisfied that she can and will proceed impartially, free from bias, and without appearance of bias sufficient to cause doubt as to this judge’s impartiality. Consequently, the motion is **DENIED**.

II. DISCUSSION

Rule 2.11 in Canon 2 of the Delaware Judge’s Code of Judicial Conduct (the “Code”) codifies the standards of judicial disqualification: “A judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where: (1) The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.”¹ In the case at hand, Hester asserts that this judge’s involvement as a named defendant in Hester’s own federal civil lawsuit creates a personal bias on the part of this judge.² *Los v. Los* speaks directly to this issue.³

In *Los*, the Delaware Supreme Court held that a Family Court judge did not abuse his discretion when he declined to recuse himself from a case involving a defendant that had named the judge as a defendant in a separate federal civil lawsuit.⁴ There, the judge found that he could act impartially and without bias despite the pending action.⁵ The Court agreed, stating that “[t]he mere fact that a judge is an adverse party in another proceeding will not, by itself, result in

¹ Delaware Judge’s Code of Judicial Conduct 2.11(A)(1).

² Notice of Motion, *Cornell Hester v. State of Delaware*, I.D. No. 00591963 (Del. Super. Aug. 15, 2012).

³ 595 A.2d 381 (Del. 1991).

⁴ *Id.* at 385.

automatic disqualification.”⁶ In fact, said the Court, “there is a compelling policy reason for a judge not to disqualify himself at the behest of a party who initiates litigation against a judge. In the absence of genuine bias, a litigant should not be permitted to ‘judge shop’ through the disqualification process.”⁷ The Court in *Los* sets forth the standard by which legitimate disqualification resulting from genuine bias is to be determined.

According to *Los*, “[w]hen faced with a claim of personal bias or prejudice under [the Code] the judge is required to engage in a two-part analysis.”⁸ First, the judge must “as a matter of subjective belief, be satisfied that [she] can proceed to hear the cause free of bias or prejudice concerning [the] party.”⁹ Second, the judge must be satisfied that her conduct will not *appear* biased or partial because, “even if the judge believes that [she] has no bias, situations may arise where, actual bias aside, there is the appearance of bias sufficient to cause doubt as to the judge’s impartiality.”¹⁰ Here, there is neither real nor potentially-perceived bias.

This judge has no bias against Hester. She “bears no ill-will or harbors any animosity” toward him.¹¹ Subjectively, she believes she can and will judge impartially. Also, the record fails to establish “bias or prejudice as a matter of law.”¹² Hester’s motion contains only conclusory accusations, offering no support in fact.¹³ Delaware Courts take great pride in their pursuit of professionalism. This judge honors the Delaware Courts’ reputation in this regard and is committed to following suit. Thus, this judge believes that all future proceedings will be

⁵ *Id.* at 384.

⁶ *Id.* at 385.

⁷ *Id.*

⁸ *Id.* at 384.

⁹ *Id.* at 384-85.

¹⁰ *Id.* at 385.

¹¹ *Id.*

¹² *Id.*

¹³ Notice of Motion, *Cornell Hester v. State of Delaware*, I.D. No. 00591963 (Del. Super. Aug. 15, 2012).

actually unbiased and have the outward appearance of impartiality. As a result, this judge declines to recuse herself from Hester's future post-conviction relief proceedings.

III. CONCLUSION

Because this judge is satisfied that she is in fact unbiased and that all future proceedings will actually be impartial as well as appear impartial, Hester's motion for recusal is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

cc: Prothonotary