**UNITED STATES BANKRUPTCY COURT**
**WESTERN DISTRICT OF TENNESSEE**
**WESTERN DIVISION**

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In re

LARRY PAUL CONWAY, Case No. 02-23559-L
Chapter 11

Debtor.

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**ORDER DENYING MOTION FOR RECUSAL**

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Before the Court is a motion filed by Debtor Larry Conway, through counsel, entitled "Motion for Recusal of Bankruptcy Judge Jeannie [sic] Latta and Affidavit in Support Thereof."

Mr. Conway requests that the Court recuse itself from presiding over Mr. Conway's case pursuant to "28 U.S.C.S 455 and Bankruptcy Rule 11 U.S.C. 5004(a) [sic]." Mr. Conway provides no legal authority for his request, but makes several factual allegations which he believes establish the impression or appearance of lack of impartiality on the part of the court. A review of his motion reveals that Mr. Conway is unhappy as the result of a series of unfavorable rulings by this Court in this case as well as two previous Chapter 11 cases filed by either Mr. Conway individually or by JacMar Enterprises, Inc., a company which Mr. Conway formerly served as president. Mr. Conway asserts that these rulings indicate partiality and bias on the part of the Court in favor of his creditors or their attorneys.

Mr. Conway's motion is thus before the Court pursuant to 28 U.S.C. section 455 which is made expressly applicable to bankruptcy judges by FED. R. BANKR. P. 5004(a). Section 455(a) provides in part: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a) (1998). In addition 28 U.S.C. section 455(b)(1) provides that a judge shall disqualify himself

"where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding . . . ."

Under section 455(a), the test to apply is whether another person with knowledge of all the circumstances might reasonably question the judge's impartiality. *McBeth v. Nissan Motor Corporation U.S.A.* 921 F. Supp. 1473, 1477 (D. S.C. 1996) (citing *In re Beard*, 811 F.2d 818, 827 (4th Cir. 1987), and *United States v. Martorano*, 866 F.2d 62, 67 (3rd Cir. 1989)). *See also United States v. Norton*, 700 F.2d 1072, 1076 (6th Cir. 1983). "This is an objective standard and is not to be construed to require recusal on spurious or loosely based charges of partiality." *Id.* In considering the facts supporting a motion to recuse under section 455(a), the source and the character of the basis of recusal must be taken into account. "The disqualifying bias must stem from an extrajudicial source and result in an opinion on the merits in the instant action based on something other than what was learned during participation in the case." *Id*. *See also Foster Iron Works, Inc.*, 3 B.R. at 718 (Disqualification under section 455 will result only from extra-judicial conduct and not from conduct within a judicial context.); and *Liteky v. United States*, 510 U.S. 540, 553, 114 S. Ct. 1147, 1156, 127 L. Ed. 2d 474 (1994) (the extrajudicial source doctrine governs section 455(a)).

Judicial rulings alone almost never constitute valid basis for a bias or partiality motion. *Id*. at 1478 (*See also Commercial Paper Holders v. R.W. Hine (Matter of Beverly Hills Bancorp)*, 752 F.2d 1334, 1341(9th Cir. 1984)("Unfavorable rulings alone are legally insufficient to require recusal,

even when the number of such unfavorable rulings is extraordinarily high on a statistical basis." (internal citations omitted)). In and of themselves unfavorable rulings cannot demonstrate reliance upon an extrajudicial source and when the alleged source of bias arises in the context of judicial proceedings, recusal requires a showing that the bias arises from knowledge acquired outside such proceedings. *Id.* Thus, it is incumbent that Mr. Conway show that a reasonable person would have doubts concerning the impartiality of the Court based upon some fact or circumstance *outside* the judicial proceeding. Mr. Conway has failed to present the Court with any factual support which would provide a basis for recusal.

Reliance on an extrajudicial source must also be demonstrated under section 455(b)(1). *See Liteky*, 510 U.S. at 553. In *Liteky*, the Court noted that section 455(a) not only expands the protection of section 455(b), but also duplicates some of its protection as well. Thus, much of the analysis employed under section 455(a) applies equally under section 455(b)(1). The issue to be determined under section 455(b)(1) is whether the judge is prejudicial with respect to a particular party or has knowledge of disputed facts. Under section 455(b)(1), as under section 455(a), inferences drawn from prior judicial determination concerning a party in the case in which recusal is sought are insufficient because it is the duty of the judge to rule upon issues of fact and law and questions of conduct which form part of the proceedings before him. *See Martin v. Farley*, 872 F. Supp.551, 555 (N.D. Ind. 1993)(quoting *United States v. Partin*, 312 F. Supp.1355,1358 (E.D. La.

1970). A reasonable person standard applies with regard to bias and prejudice concerning a particular party as well as impartiality in general.

As under section 455(a), Mr. Conway's allegations and reliance on unfavorable rulings are legally insufficient to demonstrate bias or partiality and cannot support a motion for recusal under section 455(b)(1). Mr. Conway has presented this Court with no reason or basis for recusal other than his own subjective displeasure with the rulings in the case. The Court finds here that no conditions exist to warrant recusal. Unfavorable rulings do not in and of themselves indicate a personal bias or prejudice concerning a party such as to justify disqualification. Consequently, Mr. Conway's motion for recusal will be denied.

Based on the foregoing, **IT IS ORDERED** that Mr. Conway's motion for recusal is **DENIED**.

BY THE COURT

_____
JENNIE D. LATTA
United States Bankruptcy Judge

Date: _____

cc: Debtor
Debtor's Attorney
United States Trustee
All Creditors and Interested Parties