

**FILED & ENTERED**

**JUN 12 2014**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY Remy DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re:

Avram Moshe Perry

Debtor(s).

Avram Moshe Perry

Plaintiff(s),

v.

Chase Auto Finance, Does 1-100,  
JPMorgan Chase Bank, N.A., Key Auto  
Recovery

Defendant(s).

CHAPTER 7

Case No.: 1:09-bk-11476-GM

Adv No: 1:10-ap-01043-GM

**MEMORANDUM OF DECISION RE:  
DEBTOR'S MOTION TO RECUSE THE  
HONORABLE GERALDINE MUND**

Date: May 28, 2014  
Time: 10:00 a.m.  
Courtroom: 302

**Facts**

On February 11, 2009, Avram Moshe Perry ("Perry" or the "Movant") filed a voluntary petition under chapter 7 of the bankruptcy code. The case was assigned to the Honorable Geraldine Mund. (Bankruptcy Petition no. 1:09-bk-11476-GM).

1 On April 23, 2009, the Court granted the Motion for Relief from the Automatic Stay filed  
2 by JP Morgan Chase Bank (“Chase”) and denied Perry’s request for an injunction to prohibit  
3 Chase from selling movant’s 2001 Nissan Pathfinder.

4 On February 5, 2010, Perry filed this adversary proceeding against Chase Auto Finance  
5 and Key Auto Recovery (the “Defendants”) for fraud, abuse of process, quiet title, and injunctive  
6 relief concerning late fees and repossession of the car. On April 28, 2010, the court abstained,  
7 but stayed the adversary proceeding pending the outcome of state court action.

8 On May 9, 2014, Perry filed a motion to recuse the Honorable Geraldine Mund (the  
9 “Motion to Recuse”) (Doc. No. 122). This Motion to Recuse stems from Movant’s displeasure  
10 with Judge Mund’s adverse rulings in a Chapter 7 repossession dispute between Movant and  
11 Chase and Key Auto Recovery. Movant asserts that Judge Mund “‘engaged in conduct  
12 prejudicial to effective and expeditious administration of the business of the courts, [and alleged]  
13 that such judge is unable to discharge all the duties of office’ by being biased.” Memorandum in  
14 Support of Debtor, Avram Moshe Perry’s Motion to Recuse the Honorable Geraldine Mund  
15 “Movant’s Memorandum” 3:13-15, May 9, 2014.

16 On May 15, 2014, the Motion to Recuse was assigned to the Honorable Maureen Tighe.  
17 Oral argument on the Motion to Recuse was held on May 28, 2014. For the reasons stated below,  
18 the Motion to Recuse is DENIED.

19  
20 **Standard**

21 Recusal refers to the act of abstaining from a legal proceeding due to a conflict of interest  
22 of the presiding court official. Bankruptcy court judges are subject to the recusal statute under  
23 28 U.S.C. § 455. Smith v. Edwards & Hale, 317 F.3d 918, 932 (9th Cir. 2002). The rule broadly  
24 states that “[a]ny justice, judge or magistrate of the United States shall disqualify himself in any  
25 proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455.

26 However, a party cannot “attack a judge’s impartiality on the basis of information and  
27 beliefs acquired while acting in his or her judicial capacity.” United States v. Frias-Ramirez, 670  
28 F.2d 849, 853 n.6 (9th Cir. 1982). In effect, in order to warrant recusal, the judge’s opinion

1 regarding the merits of the case must be derived from a source outside of the case. The United  
2 States Supreme Court opined extensively on this so called, “extra-judicial source rule.” Liteky v.  
3 United States, 510 U.S. 540, 555 (1994). In Liteky, the Supreme Court found that the “extra-  
4 judicial source rule” to be only presumptuous and not per se, but that “[j]udicial rulings alone  
5 almost never constitute a valid bias or partiality [recusal] motion.” Id. at 550-551.

6 For opinions formed by the judge based on facts introduced or events that occurred in the  
7 current case or in a prior case, recusal is only warranted if the rulings are “so extreme as to  
8 display clear inability to render a fair judgment.” Id. However, the standard is analyzed from  
9 the view of a reasonable person, not someone that is “‘hypersensitive or unduly suspicious’ ”  
10 Blixseth v. Yellowstone Mt. Club, LLC, 742 F.3d 1215, 1218 (9th Cir. 2014) (quoting United  
11 States v. Holland, 519 F.3d 909, 913 (9th Cir. 2008).

12 Movant’s accusations of Judge Mund’s favoritism towards Defendants and extreme bias  
13 against Perry must be assessed within this legal framework.

## 14 15 **Discussion**

### 16 I. Favoritism towards Defendants

17 Movant alleges that Judge Mund has a “deep-seated favoritism” towards Defendants,  
18 “twisting the facts” in Defendants’ favor, and “antagonizing all of Perry’s efforts.” Movant’s  
19 Memorandum at 4:18. In consideration of the very lengthy record here, Movant’s arguments are  
20 unsubstantiated.

21 Movant claims that Judge Mund gave preferential treatment to Defendants by allowing  
22 them to submit late motions in response to Movant’s adversary complaint. A review of the  
23 filings shows that multiple occasions where Judge Mund also allowed Perry to submit late  
24 motions. For example, Judge Mund approved Perry’s motion for extension of time to file the  
25 memorandum (May 20, 2014) and Supplemental Complaint (May 30, 2014). Judge Mund’s  
26 treatment of late motions suggests leniency and fairness to both sides – contrary to Perry’s claim  
27 of bias and discriminatory treatment. Here, not only is there no sign of antagonism requiring  
28 recusal, there's not even any evidence of a general negative disposition towards Perry. This is

1 not the type of behavior the statute contemplates where “impartiality might be reasonably  
2 questioned.” Moreover, it is in the interest of Movant, Defendants, and the Court to assess the  
3 issues on the merits, rather than on a technicality.

4 Many of Movant’s claims of favoritism are exaggerated and unfounded. For example, he  
5 alleges that Judge Mund “may have personal and fiduciary financial interests” with Defendants  
6 and with JP Morgan Bank” – which Perry advises the court to investigate further. Movant’s  
7 Memorandum at 4:7-8. Yet, Perry only points to Judge Mund’s adverse rulings in proving this  
8 point. Such a severe accusation needs to be supported by the evidence. Perry however, fails to  
9 corroborate this claim with any proof.

## 10 II. Bias Towards Perry

11 Movant’s claims that Judge Mund’s refusal on April 16, 2014 to allow exhibits attached  
12 to item #3 is another example of bias. Putting aside the question of whether the order was  
13 actually materially injurious to Perry, the order also barred Defendants from attaching exhibits.  
14 The court showed no preference or bias in extending this order. It is in the Court’s discretion to  
15 manage and control court filings, especially in a case of this longevity. The Court’s decision to  
16 instruct *both* parties in memorandum filings does not implicate bias or impartiality.

17 Movant claims that Judge Mund’s arbitrary disregard of arguments in Perry’s memoranda  
18 further exemplifies bias. The Court has detailed its reasoning in lengthy rulings. In fact, the  
19 judge explains that Perry’s memoranda utilized a “scattergun approach” that was disorganized,  
20 difficult to comprehend, and irrelevant to the issues at hand. Movant’s Memorandum at 15:5-8;  
21 Memorandum of Opinion on Central Issues 8:21-24, Apr. 16, 2014. Judicial rulings alone almost  
22 never constitute a valid basis for a bias or partiality recusal motion; Judge Mund’s ruling should  
23 not be an exception. Recusal is only warranted if rulings are based on extrajudicial knowledge  
24 that the judge ought not to possess, or reveal such a high degree of favoritism or antagonism as  
25 to make fair judgment impossible. Blixseth v. Yellowstone Mt. Club, LLC, 742 F.3d 1215, 1218  
26 (9th Cir. 2014). It is within the judge’s purview to assess the validity of a party’s arguments and  
27 rule accordingly. Furthermore, Perry’s discord concerns the merits of the case; yet Judge Mund’s  
28 rulings have been upheld on appeal.

1 Lastly, Perry attributes Judge Mund's decision to abstain from state issues to the judge's  
2 "resentment that Perry might receive some damages against Defendants." Movant's  
3 Memorandum at 16:18-19. Citing 28 U.S.C. § 1334(c), Perry argues that mandatory abstention  
4 is not required in the case because it does not fit into the categories set out in the statute. Id. at  
5 18:7-9. The statute, however, also provides the court with the discretion to abstain. Section  
6 1334(c)(1) explicitly provides a district court with the power to abstain from a hearing or  
7 proceeding under title 11, "in the interest of justice, or in the interest of comity with state courts,  
8 or respect for State law." 28 U.S.C. § 1334(c)(1). The encroachment of state law jurisdiction is  
9 a legitimate issue in this case. Since a number of the causes of action are state law and private  
10 causes of actions, the bankruptcy court may not have the authority to adjudicate these issues.  
11 Stern v. Marshall, 131 S. Ct. 2594 (2001). Again, Movant is still contesting the merits of the  
12 decision and not claiming bias and impartiality emanating from an extraneous source. Even if  
13 Movant subjectively feels that the judgment is biased, under the facts of this case, analyzed  
14 under the objective reasonable person standard set forth in Blixseth, the judgment was certainly  
15 not "so extreme as to display a clear inability to render a fair judgment."

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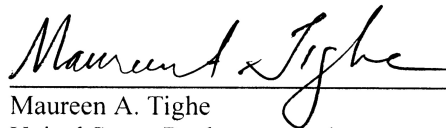
1 **Conclusion**

2 The record demonstrates that Judge Mund's rulings throughout the case have been based  
3 solely on the merits of the case and the appropriate exercise of discretion. A reasonable person  
4 would not find that Judge Mund has acted in such a way as to display a deep-seated favoritism or  
5 antagonism that would make a fair judgment impossible or has, in any way, displayed a clear  
6 inability to render a fair judgment in this case. Moreover, it would be prejudicial to all parties to  
7 change judges where Judge Mund has the experience and knowledge of the history of this  
8 lengthy case. Perry's proper recourse is simply to raise his disagreement on appeal in the proper  
9 forum.<sup>i</sup>

10 Accordingly, the Motion to Recuse is DENIED.

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25 Date: June 12, 2014

  
Maureen A. Tighe  
United States Bankruptcy Judge

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28 <sup>i</sup> As stated at the hearing on May 28, 2014, the dates from Judge Mund's rulings were not suspended. The deadlines set by Judge Mind are still in effect.