



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
Clifton Kerr,

Debtor.

Case No.: 2:25-bk-14821-NB
Chapter: 7

RECUSAL MEMORANDUM DECISION

Clifton Kerr,

Plaintiff,
v.
State Of California; Jennifer C. Wong;
Melissa Coutts; Jovonne M. Phillips;
Superior Court Judge Leslie Gutierrez;
District Court Bankruptcy Judge Neil Bason;
And Kathy A. Dockery,

Defendants.

File in Adv. No.: 2:25-ap-01356-NB
[Fed. Dist. Ct., Cent. Dist. Cal.
Case No. 2:25-cv-03959-SPG-SSC]

Clifton Kerr,

Plaintiff,
v.
State Of California, Melissa Coutts,
McCarthy & Holthus LLP, Neil Bason, and
Kathy A. Dockery,

Defendants.

File in Adv. No.: 2:25-ap-01341-NB
[LA County Superior Ct.
Case No. 25PSCV01961]

Status Conference:
Date: January 6, 2025
Time: 11:00 a.m.
Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012
(or via Zoomgov per posted procedures)

1 The above-captioned Debtor (“Mr. Kerr”) and his wife have filed multiple
2 bankruptcy cases trying to hold onto their (former) home at 3 Skyview Circle, Pomona,
3 California 91766 (the “Skyview Property”). Having failed to stop a foreclosure sale, and
4 facing eviction, Mr. Kerr has now filed civil actions in both Federal Court and State
5 Court, against what appears to be everyone involved, including the Chapter 13 Trustee,
6 Kathy A. Dockery (“Trustee”) and the undersigned Bankruptcy Judge.

7 Trustee has filed notices of removal as to the actions in both Federal Court and
8 State Court. The case numbers are listed above in the caption, and these actions are
9 referred to herein as the Federal Action (or, on this Bankruptcy Court’s docket, “Adv No.
10 -1356”) and the State Action (or, on this Bankruptcy Court’s docket, “Adv. No. -1341”
11 and, with Adv. No. -1356, the “Adversary Proceedings”).

12 The undersigned Bankruptcy Judge anticipates that, after he issues an order
13 recusing himself, whichever judge is presiding over these matters likely will rule that
14 Trustee’s notice of removal of the Federal Action was ineffective, but that the State
15 Action was effectively removed. Meanwhile, however, the uncertainty over removal of
16 the Federal Action has prompted Magistrate Judge Stephanie S. Christensen to
17 withdraw the Report and Recommendation that she had provided to District Judge
18 Sherilyn Peace Garnett. See Federal Action (District Court, Cent. Dist. Cal., Case No.
19 2:25-cv-03959-SPG-SSC, dkt. 107) (the “Judge Christensen R&R”) *and id.*, dkt. 116
20 (withdrawal).

21 In any event, after Trustee filed her notices of removal this Bankruptcy Court
22 issued identical orders in both Adversary Proceedings setting the above-captioned
23 Status Conference. Appearances are as noted in the record. Mr. Kerr elected not to
24 appear, and accordingly he has waived and forfeited any right to present arguments or
25 evidence contrary to the determinations in this Memorandum Decision. See *Hamer v.*
26 *Neighborhood Housing Serv’s*, 138 S.Ct. 13, 17 n. 1 (2017) (distinguishing waiver and
27 forfeiture).

28

1 At the Status Conference the undersigned Bankruptcy Judge made oral rulings,
2 as supplemented herein. First, Mr. Kerr's claims against the undersigned are
3 completely frivolous; those claims are also barred by judicial immunity; and he has not
4 presented any arguments or evidence that could reasonably call into question the
5 impartiality of the undersigned.

6 Second, however, because Mr. Kerr has named the undersigned as a Defendant
7 in both the Federal Action and the State Action, the undersigned will be disqualified
8 from presiding over the Adversary Proceedings. But that disqualification will only last
9 until Mr. Kerr's claims against the undersigned are dismissed.

10 Identical copies of this Memorandum Decision are being issued in each
11 Adversary Proceeding, and the undersigned will issue separate orders of recusal in
12 each Adversary Proceeding.

13 **A. INTRODUCTION**

14 Whether or not Mr. Kerr has used any so-called "artificial intelligence" tools, the
15 undersigned takes judicial notice that such tools appear be responsible for a surge in
16 paperwork including (as in this case) multiple parallel proceedings in different *fora*. That
17 flood in paperwork and multiplicity of proceedings threaten to grind to a halt the wheels
18 of justice. In the hope of avoiding that outcome, and in the expectation of future matters
19 similar to this one, the undersigned has engaged in a fairly extensive analysis of the
20 disqualification issues.

21 The undersigned notes that statutes, rules, and ethical guidelines should be
22 "construed, administered, and employed" to "secure the just, speedy,[¹] and inexpensive
23 determination" of all matters. See Rule 1001(a) (Fed. R. Bankr. P.). Consistent with
24 that mandate, and preserving all parties' rights, the undersigned seeks to streamline
25 these proceedings in two ways.

26
27
28 ¹ The "speedy" determination of the matters addressed herein has been somewhat impaired by two deaths in
the family and other medical issues. The undersigned anticipates fewer such issues in future.

1 First, this Memorandum Decision summarizes prior proceedings before this
2 Bankruptcy Court, which play a large part in Mr. Kerr's claims. Those summaries are
3 not only relevant to the recusal analysis but may aid any new judge presiding over these
4 proceedings. Second, as part of the recusal analysis, this Memorandum Decision
5 outlines some procedural alternatives that might expedite these matters.

6 **B. BACKGROUND**

7 **1. Bankruptcy cases**

8 Despite owing hundreds of thousands of dollars secured by a deed of trust on the
9 Skyview Property, Mr. Kerr filed a chapter 13 plan in a prior bankruptcy case (the
10 "Plan") that proposed to pay only \$86.00 per month to cover all claims. *See In re Kerr*
11 (Case No. 2:24-bk-15212-NB, Bankr. C.D. Cal.) ("BK Case 2:24-15212"), dkt. 13, 17.
12 The holder of that deed of trust ("Wilmington Trust") objected to the Plan (*id.*, dkt. 17)
13 and filed a motion seeking relief from the automatic stay in that case, including to
14 foreclose on the Skyview Property. *Id.* dkt. 18 (the "R/S Motion"). *See* 11 U.S.C.
15 § 362(a) and (d).

16 The R/S Motion included a request that no future bankruptcy case would stay
17 Wilmington Trust's remedies against the Skyview Property (so-called "*in rem*" relief from
18 the automatic stay). *See* 11 U.S.C. § 362(d)(4). The basis for that relief was an alleged
19 scheme to delay, hinder, or defraud creditors involving at least one prior bankruptcy
20 case (actually six cases, all of which were dismissed), and alternatively involving a
21 transfer of a partial interest in the Skyview Property that violated the loan documents
22 (actually two such transfers): one to Mr. Kerr's wife and one to an individual named
23 Pamela Gayles ("Ms. Gayles") (collectively, the "Unauthorized Transfers"). Mr. Kerr's
24 arguments focus mostly on the deed to Ms. Gayles.

25 Mr. Kerr had no persuasive opposition to Wilmington Trust's R/S Motion. He did
26 not rebut Wilmington Trust's evidence that he owed hundreds of thousands of dollars
27 secured by the Skyview Property; he offered no explanation of how he could pay that
28 debt or otherwise make legitimate use of the bankruptcy system; he admitted to

1 transferring a partial interest in the Skyview Property to his wife; and he admitted to
2 “multiple bankruptcy ... filings” by her. BK Case 2:24-15212, dkt. 21, pp. 5-6.

3 Mr. Kerr did make two main assertions in opposition to the R/S Motion. First, he
4 claimed that the multiple bankruptcy cases that stopped Wilmington Trust’s collection
5 efforts were “attempts to reorganize finances under challenging circumstances, not part
6 of a deliberate scheme to delay, hinder, or defraud [Wilmington Trust].” *Id.*, dkt. 21, pp.
7 5-6. But this Bankruptcy Court views this as a distinction without a difference. Mr.
8 Kerr’s “attempts to reorganize [his and his wife’s] finances” consisted of filing
9 bankruptcy petitions with no proper or feasible proposed use of the bankruptcy system,
10 which did nothing but delay and hinder the foreclosure.

11 Second, Mr. Kerr asserts that he “did not sign, record, or have any knowledge of
12 the Grant Deed [to Ms. Gayles],” which he described as a “fraudulent” grant deed. *Id.*,
13 dkt. 21, p. 6 (emphasis added). There was no evidence that any third party (*i.e.*,
14 someone other than Mr. Kerr or an agent for Mr. Kerr) generated that grant deed –
15 certainly there is no evidence that Wilmington Trust would have forged a grant deed to
16 stop its own foreclosure sale.

17 But, even supposing that the grant deed and the bankruptcy petition by Ms.
18 Gayles had all been some sort of fraud on Mr. Kerr (a supposition unsupported by any
19 evidence), that is irrelevant. Regardless of that deed, Mr. Kerr’s long history of non-
20 payment and his proposed Plan to pay \$86.00 per month to all creditors with no
21 grounds for ignoring his debt to Wilmington Trust were more than sufficient “cause” for
22 relief from the automatic stay (11 U.S.C. § 362(d)(1)).

23 As for “*in rem*” relief (11 U.S.C. § 362(d)(4)), the statute requires only *one*
24 Unauthorized Transfer or, alternatively, *one* prior bankruptcy petition, as part of the
25 “scheme” to delay or hinder the foreclosure sale or defraud creditors. *See id.* As noted
26 above (i) Mr. Kerr admits to the transfer to his wife (and he makes no argument that this
27 transfer was authorized under the loan documents) and, alternatively, (ii) he admits to
28 not just one but “multiple” prior bankruptcy petitions by his wife to stop the foreclosure

1 sale. Those things are not only grounds for “*in rem*” relief but also additional “cause” for
2 relief under 11 U.S.C. § 362(d)(1).

3 Based on Mr. Kerr’s lack of any persuasive response to Wilmington Trust’s R/S
4 Motion, this Bankruptcy Court granted that motion, including “*in rem*” relief. BK Case
5 2:24-15212, dkt. 25. In addition, on September 12, 2024, this Bankruptcy Court held a
6 hearing on whether to confirm Mr. Kerr’s proposed Plan but Mr. Kerr failed to appear or
7 oppose Trustee’s request for dismissal. That request was based primarily on Mr. Kerr’s
8 failure to provide proof of income or identification to Trustee and his failure to propose
9 any proper use of the bankruptcy system. This Bankruptcy Court dismissed that case.
10 *See id.*, dkt. 30.

11 About nine months later, on June 6, 2025, Mr. Kerr filed his bankruptcy petition
12 commencing this current bankruptcy case. *In re Kerr* (Case No. 2:25-bk-14821-NB,
13 Bankr. C.D. Cal.) dkt. 1. In both this case and his prior bankruptcy case he has filed
14 numerous papers repeating his assertions summarized above, and also seeking to
15 disqualify the undersigned Bankruptcy Judge for having granted the R/S Motion and
16 dismissed the prior bankruptcy case despite the “fraudulent” deed to Ms. Gayles. This
17 Court denied all of these requests. *See In re Kerr* (BK Case 2:24-15212-NB) dkt.
18 35&38, 52-53&54-55, 61-63&66-68 and *In re Kerr* (Case No. 2:25-bk-14821-NB, Bankr.
19 C.D. Cal.) dkt. 9&10, 13&54, 14&53, 15&19, 26&28, 37&66, 39&67, 61-62&64 (paired
20 motions and orders denying same).

21 **2. The Federal Action, notice of removal, and Adv. No. -1356**

22 The following summary of the Federal Action is provided for purposes of
23 assessing the recusal issues, including showing the similarity between the State Action
24 and the Federal Action, and to provide background for Trustee’s “*Barton doctrine*”
25 defense. On May 2, 2025 – *i.e.*, between the dismissal of his prior bankruptcy case and
26 the commencement of his current bankruptcy case – Mr. Kerr filed the Federal Action.
27 His First Amended Complaint (“FAC”) seeks damages of \$30 million jointly and
28 severally as against (A) the undersigned Bankruptcy Judge, (B) Trustee, (C) the State

1 of California, (D) Superior Court Judge Leslie Gutierrez, (E) the law firm McCarthy &
2 Holthus, LLP, counsel for Wilmington Trust in Mr. Kerr's bankruptcy cases and in an
3 unlawful detainer action against him, and (F) three attorneys with that firm: Melissa
4 Coutts, Jennifer C. Wong, and "JoVonne [sic]" M. Phillips (whose first name is actually
5 JaVonne) (collectively, with their law firm, the "Law Firm Defendants"). See Complaint
6 in Federal Action (Ex. D to Record of all Documents, Adv No. -1356, adv. dkt. 4, at PDF
7 pp. 19-57 of 526).

8 As summarized by Trustee, the FAC "essentially alleges deprivation of civil
9 rights, violation of due process, conspiracy to commit real estate fraud, forgery, wrongful
10 foreclosure, breach of contract and obstruction of the administration of justice." Notice
11 of Removal (Adv No. -1356, adv. dkt. 1) p. 3:1-2. The allegations in the FAC are difficult
12 to decipher, and it is not clear what Mr. Kerr alleges was wrongful about any act or
13 omission by Trustee, but the FAC focuses largely on the allegedly fraudulent grant deed
14 to Ms. Gayles.

15 The docket in the Federal Action reflects dozens of subsequent documents filed
16 by Mr. Kerr, including, for example, many attempts to correct deficiencies in service, as
17 well as, for example, a "Fourth Supplemental Complaint." Federal Action (dkt. 87). It
18 appears that all amended or "supplemental" complaints after the FAC were ineffective
19 because they were filed without authorization from the District Court. See, e.g., Notice
20 to Filer of Deficiencies (Federal Action, dkt. 88) (Ex. MM to Record of All Docs. (Adv.No.
21 -1356, adv. dkt. 4) at PDF p. 526 of 526).

22 In any event, on September 15, 2025, Trustee filed in this Bankruptcy Court a
23 Notice of Removal of the Federal Action. See Notice of Removal (Adv No. -1356, adv.
24 dkt. 1) *and see also* Federal Action dkt. 89. In that notice she asserts that Mr. Kerr's
25 claims against her are barred by the "*Barton* doctrine." As she summarizes that
26 doctrine, it has been held to bar suits against a trustee in bankruptcy absent leave of the
27 bankruptcy court, failing which "the other forum lacked subject matter jurisdiction over
28

1 the suit.” *Id.* p. 4:5-6 (quoting *In re Crown Vantage, Inc.*, 421 F.3d 963, 971 (9th Cir.
2 2005), citing *Barton v. Barbour*, 104 U.S. 126, 127 (1881)).

3 On October 24, 2025, the Judge Christensen R&R was issued (Federal Action,
4 dkt. 107). It includes the following proposed rulings. First, “[t]he [District] Court lacks
5 jurisdiction over the claim(s) against the State of California,” both under the Eleventh
6 Amendment to the Constitution and under 42 U.S.C. § 1983. *Id.* p. 5:14-26. Second,
7 “[t]he judges [both the State Court judge and the undersigned Bankruptcy Court judge]
8 have absolute judicial immunity and the bankruptcy trustee has absolute quasi-judicial
9 immunity.” *Id.* pp. 6:2-7:7. Third, “[t]he [District] Court lacks jurisdiction to disrupt the
10 outcome of the unlawful detainer action under the Rooker-Feldman doctrine.” *Id.*, pp.
11 7:8-8:2. Fourth, “[t]he Law Firm Defendants are entitled to have the FAC stricken under
12 California’s anti-SLAPP statute as the claim(s) against them are improper.” *Id.*
13 pp. 8:3-11:19. Fifth, the FAC “suffers from further flaws” such as failing to plead
14 compliance with the California Government Claims Act and purported claims against the
15 Law Firm Defendants that can only be brought against government actors. *Id.*
16 pp. 11:20-13:16. Sixth, because the foregoing issues cannot be cured, dismissal of the
17 FAC without leave to amend is proper. *Id.* p. 13:17-25.

18 On November 14, 2025, Mr. Kerr filed in Adv No. -1356 an objection to the Judge
19 Christensen R&R. See Objection to Magistrate Judge’s Order [etc.] (Adv No. -1356,
20 adv. dkt. 11). He asserts that it is void due to his lack of consent to a Magistrate Judge
21 presiding over that action. *Id.*, p. 5, ¶ 4. He also asserts that the Chapter 13 Trustee’s
22 notice of removal to this Bankruptcy Court, “occurring after conversion of the underlying
23 bankruptcy case to chapter 7, was an ultra vires act by a party who no longer held
24 statutory authority” and that this “void removal” created a “jurisdictional conflict” between
25 the “dockets” in the Federal Action and in the Adversary Proceeding (Adv No. -1356).
26 *Id.*, p. 5, ¶ 3. In addition, on November 17, 2025, Mr. Kerr filed in Adv No. -1356 a
27 “Demand for Default” against the Chapter 13 Trustee. See Demand for Default [etc.]
28 (Adv No. -1356, adv. dkt. 14).

1 On November 24, 2025, Trustee filed her motion to dismiss (Adv. No. -1356, adv.
2 dkt. 15). Trustee reiterates that Mr. Kerr's claims against her are barred by the *Barton*
3 doctrine and adds that they are also barred by quasi-judicial immunity and failure to
4 state a claim on which relief can be granted. *Id.* See also *In re Gilman*, 656 B.R. 639
5 (C.D. Cal. 2024), *en banc review granted*, 158 F.4th 1082 (9th Cir. 2025) (trustees'
6 quasi-judicial immunity).

7 The Federal Action includes a purported proof of service of the summons and
8 complaint on the undersigned Bankruptcy Judge via U.S. mail addressed to the "U.S.
9 Attorney General" in Washington, D.C. See Proof of Service (Ex. E to Record of all
10 Documents, Adv. No. -1356, adv. dkt. 4, at PDF pp. 58-60 of 526). There is no
11 evidence that the Attorney General of the United States was authorized to accept such
12 service. In any event, on October 6, 2025, attorneys with the local office of the United
13 States Attorney filed a motion, in Adv. No. -1356 and on behalf of the undersigned
14 Bankruptcy Judge, to dismiss Mr. Kerr's claims (the "MTD") based on judicial immunity.
15 See MTD (Adv. No. -1356, adv. dkt. 2).

16 **3. The State Action, notice of removal, and Adv. No. -1341**

17 On May 29, 2025 – *i.e.*, between the dismissal of his prior bankruptcy case and
18 the commencement of this current bankruptcy case – Mr. Kerr filed the State Action. He
19 seeks damages of \$60 million jointly and severally as against (A) the undersigned
20 Bankruptcy Judge, (B) Trustee, (C) the State of California, (D) Wilmington Trust's
21 counsel McCarthy & Holthus, LLP, and (E) one of its attorneys: Melissa Coutts. See
22 Complaint in State Action (Ex. A to Record of all Documents, Adv. No. -1341, adv. dkt.
23 7, at PDF pp. 6-23).

24 As summarized by Trustee, the Complaint parallels the FAC in the Federal
25 Action: it "essentially alleges deprivation of civil rights, violation of due process,
26 conspiracy to commit real estate fraud, forgery, wrongful foreclosure and breach of
27 contract." Notice (Adv. No. -1341, adv. dkt. 1) p. 2:20-21. As with the Federal Action,
28 the specific allegations in the Complaint are difficult to decipher, and it is not clear what

1 Mr. Kerr alleges was wrongful about any act or omission by Trustee, but the Complaint
2 focuses largely on the allegedly fraudulent grant deed to Ms. Gayles.

3 On August 15, 2025, Trustee filed in this Court a Notice of Removal of the State
4 Action. See Notice (Adv. No. -1341, adv. dkt. 1). In that notice she asserts that, as with
5 the Federal Action, Mr. Kerr's claims are barred by the *Barton* doctrine. *Id.* p. 3:21-23
6 (quoting *In re Crown Vantage, Inc.*, 421 F.3d 963, 971 (9th Cir. 2005), citing *Barton v.*
7 *Barbour*, 104 U.S. 126, 127 (1881)).

8 On September 8, 2025, Mr. Kerr filed a notice in Adv. No. -1341 (the State
9 Action) that "removal is proper" and "divested" the State Court of jurisdiction. See
10 Notice (Adv. No. -1341) adv. dkt. 2. The next day in the same action Mr. Kerr filed a
11 "Notice of Recusal of Magistrate [sic] Judge [possibly meaning the undersigned
12 Bankruptcy Judge?] Pursuant to 28 [U.S.C.] Sec. 455," which asserts that the
13 "magistrate [sic] judge" must not preside over the action. *Id.*, adv. dkt. 3. On
14 September 24, 2025, Mr. Kerr filed a document asserting, among other things, that "the
15 money the bank is claiming was a loan" was "generated by Pamela Gayle[s]/Doe's
16 signature" and this "fatal flaw robbed the court of jurisdiction." Motion for 9 Million in
17 Sanction Pursuant to Rule 11 (*id.*, dkt. 10) p. 3. The same day he filed a "Demand to
18 Strike Trustee Kathy A. Dockery, Staff Attorneys, 'Notice of Appearance' from the
19 Record, A Corporation Cannot Represent It's Self In Court." Demand to Strike (*id.*, dkt.
20 11).

21 Meanwhile the documents filed in the State Court raise essentially the same
22 issues addressed in the Judge Christensen R&R, including a motion to strike (anti-
23 SLAPP motion under Cal. Code Civ. P. § 425.16) filed by Defendants McCarthy &
24 Holthus, LLP and Melissa R. Coutts (Ex. F to Record of all Documents, Adv. No. -1341,
25 adv. dkt. 7, at PDF pp. 89-100 of 272) and a demurrer filed by the State of California
26 (*id.*, Ex. J, at PDF pp. 222-248 of 272). On September 9, 2025, the State Court issued
27 a minute order noting Trustee's notice of removal, ordering all proceedings in State
28 Court stayed, and setting a status conference in State Court regarding the "Status of

1 Bankruptcy” for January 14, 2026, at 9:00 a.m. See Minute Order (Ex. L to Record of all
2 Documents, Adv. No. -1341, adv. dkt. 7, at PDF pp. 269 of 272).

3 On November 24, 2025, Trustee filed her motion to dismiss (Adv. No. -1341, adv.
4 dkt. 14). As in the Federal Action, Trustee argues that Mr. Kerr’s claims against her are
5 barred by the *Barton* doctrine, quasi-judicial immunity, and failure to state a claim on
6 which relief can be granted. *Id.*

7 Also like the Federal Action, there is no proof of service on the undersigned
8 Bankruptcy Judge of the summons and complaint in the State Action or in Adv.
9 No. -1341. *Cf., e.g.,* Proofs of Service (Ex. D to Record of all Documents, Adv. No. -
10 1341, adv. dkt. 7, at PDF pp. 79-86 of 272) (purporting to show service on other named
11 defendants but not Bankruptcy Judge). On October 6, 2025, attorneys with the United
12 States Attorney filed, on behalf of the undersigned Bankruptcy Judge, a motion to
13 dismiss Mr. Kerr’s claims against him (“MTD”) based on judicial immunity. MTD (*id.*,
14 dkt. 13).

15 **C. JURISDICTION AND AUTHORITY**

16 **1. The effect of the notices of removal**

17 The undersigned Bankruptcy Judge believes that the notice of removal of the
18 Federal Action was a legal nullity because any action pending in a federal District Court
19 cannot be removed to a Bankruptcy Court. See Norton Bankr. Law and Practice 3d
20 § 4:38 (current through Oct. 2025 update); *In re Halvorson*, 2018 WL 6728484, at *7–9
21 (C.D. Cal., Case No. No. 8:18-cv-00525 JVS, Dec. 21, 2018); *In re Curtis*, 571 B.R. 441
22 (9th Cir. BAP 2017); *Thomas Steel Corp. v. Bethlehem Rebar Indus.*, 101 B.R. 16, 19-
23 20 (Bankr. ND Ill. 1989).²

24 _____
25 ² Any removal of an action pending in the District Court to this Bankruptcy Court would raise Constitutional
26 problems. First, as explained in *Thomas Steel*, if any litigant could remove a matter from a District Court at will –
27 “presumably even [a matter] as to which the reference had been withdrawn” – with no prior review by any District
28 Court, that would “severely undermine the Article III supervision that Congress intended as a remedy for the defects
found by the Supreme Court in [*Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)].”
Thomas Steel, 101 B.R. 16, 20. Second, because the removal statute provides that the court to which the action is
removed has complete discretion whether or not to remand the matter, any Bankruptcy Court to which an action was
removed would have discretion that is apparently “unreviewable” (*id.*) by an Article III Court (at least unless and until

1 But for two reasons the undersigned is not making any final ruling on that issue.
2 First, it is not necessary to decide the issue: whether or not Trustee's notice of removal
3 was effective, at the very least it commenced Adv No. -1356, so the undersigned still
4 has to address the recusal issues as to that Adversary Proceeding.

5 Second, once the undersigned has decided that recusal is required, the
6 undersigned should not make rulings on substantive issues. Therefore, it appears
7 appropriate to leave any decision about the effectiveness of Trustee's notice of removal
8 to whichever judge(s) are presiding in future over the Federal Action and over Adv.
9 No. -1356. Of course, if two different judges end up presiding over those two distinct

10 _____
11 an appeal from the Bankruptcy Court's final judgment to the District Court or the Court of Appeals). For both reasons,
12 Trustee's attempted removal of the Federal Action was ineffective as a matter of Constitutional law.

13 *Note:* As an alternative to the Constitutional arguments, *Thomas Steel* and other authorities state that the
14 "plain meaning" of the statute does not permit removal from a District Court to a Bankruptcy Court. They reason that
15 the statute provides for removal to the "district court" (28 U.S.C. § 1452(a)) and, as one decision puts it, it "is illogical
16 to interpret the bankruptcy removal statute to authorize removal **from** a district court **to** the district court." *Curtis*, 571
17 B.R. 441, 445 (emphasis in original, citation omitted); *and see Thomas Steel*, 101 B.R. 16, 19.

18 The undersigned respectfully disagrees. First, the statute states that "any" civil action (with inapplicable
19 exceptions) may be removed (28 U.S.C. § 1452(a), emphasis added), and it is contrary to the plain meaning to say
20 that "any" does not mean "any." True, § 1452 appears in a chapter of title 28 that partially refers to "state"
21 proceedings. But the full title of Title 28, Chapter 89, is "District Courts; Removal of Cases from State Courts"
22 (emphasis added), and the emphasized language shows that the chapter is broader than just removal of State Court
23 cases. In addition, § 1452 itself refers to proceedings pending before the "United States Tax Court" (emphasis
24 added), so clearly the specific provisions of § 1452 were intended to cover federal proceedings, as acknowledged by
25 *Curtis*. See *Curtis*, 571 B.R. 441, 444 n. 2 (citing authorities so holding).

26 Second, there is nothing illogical about removing a proceeding pending before (District) Judge X to a
27 different proceeding, with different parties, pending before (Bankruptcy) Judge Y (to whom the bankruptcy case has
28 been referred). That is how the statutory scheme works as a whole: the removal "to the district court" really means
removal to "the bankruptcy judges [that] constitute a unit of the district court" and who are collectively "known as the
bankruptcy court." 28 U.S.C. § 151. See also 28 U.S.C. §§ 157(a), 1452(a).

Third, it makes logical and practical sense to recognize that the authority to remove "any" civil proceeding
includes federal actions, because removal of a civil action pending in Federal Court could be just as important as
removal of a civil action pending in State Court. For example, "Congress's purpose of centralizing bankruptcy
litigation" (*Curtis*, 571 B.R. 441, 445, citation omitted) could be served by permitting the Bankruptcy Court to
temporarily stay a very expensive removed civil action (in which the parties are arguing over how to divide assets of a
bankrupt entity) until it is known whether there are any unencumbered assets to be divided. True, a party to the
bankruptcy case could ask the District Court to stay the federal action, but it is not clear that such a party would even
have standing to be heard in that federal action, so it is logical for Congress to have provided a mechanism by which
bankruptcy-related litigation could be removed and such issues could be addressed.

To be clear, the undersigned Bankruptcy Judge still believes that an action cannot be removed from a
District Court to the Bankruptcy Court for Constitutional reasons. It is only the "plain meaning" analysis with which the
undersigned respectfully disagrees.

1 matters (or, worse yet, if different judges preside over the Federal Action, Adv.
2 No. -1356, the State Action, and Adv. No. -1341) then there is a risk of inconsistent
3 rulings, which is one reason why this Memorandum Decision later recommends to the
4 District Court that it withdraw the reference and consolidate all matters before it.

5 In any event, turning to the State Action, the notice of removal was effective, and
6 this Bankruptcy Court has “arising under” and “arising in” jurisdiction, or at least “related
7 to” jurisdiction (28 U.S.C. § 1334(b)), on multiple alternative grounds: (i) under the
8 *Barton* doctrine, alternatively (ii) based on Trustee’s assertion of quasi-judicial immunity,
9 and alternatively (iii) because Mr. Kerr’s claims in the State Action are inextricably
10 intertwined with his bankruptcy cases. *See Crown Vantage*, 421 F.3d 963, 971
11 (jurisdictional effect of *Barton* doctrine as applied to bankruptcy trustees); *and see*
12 *generally In re AWTR Liquidation, Inc.*, 547 B.R. 831 (Bankr. C.D. Cal. 2016) (Bason,
13 J.) (general examination of bankruptcy courts’ jurisdiction and authority).

14 In sum, the undersigned Bankruptcy Judge has jurisdiction and authority to
15 address the disqualification issues in these proceedings. That is true regardless of
16 whether Trustee’s notice of removal of the Federal Action was effective.

17 **2. Disqualification: whether the undersigned has authority to continue**
18 **presiding over these Adversary Proceedings**

19 A judge who is named as a defendant generally cannot preside over that specific
20 lawsuit. 28 U.S.C. § 455(b)(5)(i). Although there are some exceptions, the undersigned
21 Bankruptcy Judge is not persuaded that he can preside over the two Adversary
22 Proceedings as long as they include claims against him (even though such claims are
23 entirely frivolous, they are completely barred by judicial immunity, and there are no
24 reasonable questions about the impartiality of the undersigned).

25 A different analysis applies to all *other* proceedings. The undersigned
26 Bankruptcy Judge has already determined that he is *not* disqualified from presiding over
27 matters other than the Adversary Proceedings, including Mr. Kerr’s present bankruptcy
28

1 case and any future bankruptcy cases.³ In addition, in the opinion of the undersigned,
2 after Mr. Kerr's claims against the undersigned are dismissed, any new judge presiding
3 over the Adversary Proceedings may transfer them back to the undersigned, in whole or
4 in part, or may decide to retain those matters or take other action, all as further
5 explained below.

6 **a. Overview of disqualification**

7 Some sources use "recusal" to mean withdrawal on the judge's own initiative,
8 and "disqualification" to mean withdrawal on the motion of a party, but the two terms
9 commonly are used interchangeably, and "disqualification" is often used as the more
10 general term encompassing both concepts. This Bankruptcy Court will do likewise,
11 except when citing others who have used the term "recusal." See Geyh & Kimberling,
12 *Judicial Disqualification, An Analysis of Federal Law* (Fed. Judicial Center, 3d Ed.,
13 2020, Markarian Ex.) ("Geyh & Kimberling, *Judicial Disqualification*"), Introduction at
14 p. 2.

15 Two sections within Title 28 of the United States Code are relevant: § 144 and
16 § 455. The ethical cannons parallel the latter statute.⁴

17 _____
18 ³ In papers filed in his bankruptcy case-in-chief, Mr. Kerr repeatedly has taken the position that the
19 undersigned Bankruptcy Judge is disqualified from presiding over any matters involving him. See, e.g.,
20 Mandatory Notice and Demand for Disqualification and Recusal of Bankruptcy Judge Neil W. Bason and
21 Trustee Kathy A. Dockery Pursuant to 28 U.S.C. § 455(a), (b)(1), and (b)(5)(i) (Case No. 2:25-bk-14821-
NB, dkt. 15); Notice of Recusal of Magistrate [sic] Judge Pursuant to 28 USC Sec. 455, 28 USC Sec. 144
(*id.*, dkt. 62).

22 ⁴ The Code of Conduct for United States Judges states, in part:

23 (C) Disqualification.

24 (1) A judge shall disqualify himself or herself in a proceeding in which the judge's
25 impartiality might reasonably be questioned, including but not limited to instances in
26 which: ...

(d) the judge or the judge's spouse, or a person related to either within the third
27 degree of relationship, or the spouse of such a person is:

(i) a party to the proceeding, or an officer, director, or trustee of a party; ...

(3) For the purposes of this section: ...

(d) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.
[Cannon 3C, Code of Conduct for United States Judges]

28 The analysis set forth in the remainder of the text is equally applicable under the ethical cannons
as it is under the statutes.

1 Under both statutory sections, the Court of Appeals for the Ninth Circuit has “held
2 repeatedly that the challenged judge himself should rule on the legal sufficiency of a
3 recusal motion in the first instance.” *United States v. Studley*, 783 F.2d 934, 940 (9th
4 Cir. 1986) (citations omitted). The Ninth Circuit has expressly rejected arguments that
5 someone else, such as the “Chief Judge or a committee of disinterested judges from the
6 District” should rule on a recusal motion. *Id.*

7 There are good reasons for this process. First, a litigant should not be able
8 instantly to disqualify a judge simply by uttering the words “recuse” or “disqualify.”
9 Second, the judge whose disqualification is being sought knows the most about the
10 purported reasons for disqualification, so it makes sense for that judge to address the
11 issues in the first instance (subject to appellate review). Third, any assessment of
12 proposed disqualification is a balancing act: “there is as much obligation for a judge *not*
13 to recuse when there is no occasion for [the judge] to do so as there is for [the judge] to
14 do so when there is.” *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987) (citations
15 omitted, emphasis added). *See also* Canon 3A(2), Code of Conduct for United States
16 Judges (“A judge should hear and decide matters assigned, unless disqualified ...”).

17 The statutes, and the decisions interpreting them, reflect this balancing act. On
18 the one hand, appropriate disqualification promotes fairness to litigants, public
19 perception of the courts’ legitimacy, and promotion of civic virtue by judges. *See* Geyh
20 & Kimberling, *Judicial Disqualification*, Part I.B., at pp. 7-8. On the other hand, “unduly
21 rigorous disqualification” would have several negative consequences.

22 First, it would “enable litigants and their lawyers to game the system” – *e.g.*,
23 judge shopping and causing undue delays and increased expense. *Id.* at p. 9. Second,
24 instead of bolstering public confidence in the judiciary it could undermine that
25 confidence because “a system in which judges are forever being challenged and
26 removed could engender the [inaccurate] perception that the judiciary is awash with
27 bias.” *Id.*, p. 8. Third, disqualifying judges too readily would “put a strain on the judicial
28 workforce that jeopardizes the expeditious administration of justice.” *Id.*

1 For all of these reasons, this Bankruptcy Court must be neither too hasty nor too
2 reluctant to determine that disqualification is required in these Adversary Proceedings.

3 **b. Disqualification is not appropriate under 28 U.S.C. § 144**

4 Mr. Kerr has not established any grounds for disqualification under 28 U.S.C.
5 § 144:

6 § 144. Bias or prejudice of judge

7 Whenever a party to any proceeding in a district court makes and
8 files a timely and sufficient affidavit that the judge before whom the matter
9 is pending has a personal bias or prejudice either against him or in favor
10 of any adverse party, such judge shall proceed no further therein, but
11 another judge shall be assigned to hear such proceeding.

12 The affidavit shall state the facts and the reasons for the belief that
13 bias or prejudice exists, and shall be filed not less than ten days before
14 the beginning of the term at which the proceeding is to be heard, or good
15 cause shall be shown for failure to file it within such time. A party may file
16 only one such affidavit in any case. It shall be accompanied by a
17 certificate of counsel of record stating that it is made in good faith. [28
18 U.S.C. § 144 (emphasis added).

19 The test for disqualification is “whether a reasonable person with knowledge of all
20 the facts would conclude that the judge's impartiality might reasonably be questioned.”
21 *Ronwin v. State Bar of Arizona*, 686 F.2d 692, 700-01 (9th Cir. 1981) (citation and
22 internal quotation marks omitted), *rev'd on other grounds*, *Hoover v. Ronwin*, 466 U.S.
23 558, 566 n. 14 (1984). Mr. Kerr has not filed any affidavit, let alone a “sufficient”
24 affidavit, nor has he presented any other evidence that could conceivably meet this
25 standard.

26 Mr. Kerr's sole allegation and argument is that the undersigned Bankruptcy
27 Judge should have decided the merits differently. He appears to believe that failure to
28 rule in his favor establishes some sort of complicity in the vaguely alleged fraud on him
involving the deed to Ms. Gayles.

That assertion is frivolous and no reasonable person would question the
impartiality of the undersigned Bankruptcy Judge. There are no proper grounds for
disqualification under § 144. See, e.g., *Pesnell v. Arsenault*, 543 F.3d 1038, 1044 (9th
Cir. 2008) (judicial rulings alone are almost never a valid basis to disqualify a judge, and

1 broad allegations of bias failed to demonstrate improper favoritism); *United States v.*
2 *Wilkerson*, 208 F.3d 794, 797 (9th Cir. 2000) (judge’s views on legal issues may not
3 serve as basis for motions to disqualify). *See also Hinman v. Rogers*, 831 F.2d 937,
4 939 (in assessing sufficiency of affidavits under 28 U.S.C. § 144, “the judge may not
5 consider the truth of the facts alleged” but “conclusions” and “opinions” are not sufficient
6 to form a basis for disqualification; facts must be stated with “particularity” and without
7 “incorporation by reference”; affidavit “is strictly construed against the affiant”; and
8 “there is a substantial burden on the moving party to demonstrate the judge is not
9 impartial.”) (citations omitted). *See also* Advisory Opinion No. 103 (reproduced in 2B
10 *Guide to Judiciary Policy*, § 220).

11 Moreover, the Ninth Circuit has held that a judge is “not disqualified” under § 144
12 “merely because a litigant sues or threatens to sue him.” *Ronwin v. State Bar of*
13 *Arizona*, 686 F.2d 692, 701 (citation omitted). “Such an easy method for obtaining
14 disqualification should not be encouraged or allowed.” *Id.* *See also Studley*, 783 F.2d
15 934, 940 (following *Ronwin*); *Gabor v. Seligmann*, 222 Fed.Appx. 577, 578 (9th Cir.
16 2007) (following *Ronwin* and *Studley*).

17 The proper remedy for any party who believes that the judge’s factual findings or
18 legal rulings are incorrect is to appeal. The remedy is not to sue the judge or seek the
19 judge’s disqualification.

20 **c. Disqualification is not appropriate under 28 U.S.C. § 455(a) or**
21 **(b)(1)**

22 The above analysis under § 144 applies equally to subsections “(a)” and “(b)(1)”
23 of 28 U.S.C. § 455:

24 § 455. Disqualification of justice, judge, or magistrate judge

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

27 (b) [The judge] shall also disqualify himself in the following circumstances:

28 (1) Where he has a *personal bias or prejudice* concerning a party ...;
[28 U.S.C. § 455(a) & (b)(1).]

1 Again, Mr. Kerr has not alleged sufficient facts to show any lack of impartiality,
2 nor any personal bias or prejudice against him. Rulings against him are insufficient to
3 meet his burden of proof. See *Pesnell*, 543 F.3d 1038, 1043-44 (decided under both
4 § 144 and § 455). Nor are Mr. Kerr's lawsuits against the undersigned Bankruptcy
5 Judge sufficient to establish any "reasonabl[e]" question of any lack of impartiality, nor
6 to establish any "personal bias or prejudice."

7 In other words, any reasonable person with knowledge of all the facts would
8 conclude that these statutory tests were not met just because Mr. Kerr disagrees with
9 some of the rulings of the undersigned and has used that as a ground to bring claims
10 against him, especially when those claims on their face are both frivolous and
11 absolutely barred by judicial immunity. Thus, Mr. Kerr's lawsuits do not require
12 disqualification under § 455(a) or (b)(1). See *Ronwin*, 686 F.2d 692, 700-01; *Studley*,
13 783 F.2d 934, 940; *Gabor*, 222 Fed.Appx. 577, 578.

14 **d. Disqualification is required by 28 U.S.C. § 455(b)(5)(i)**

15 Subsection "(b)(5)" of 28 U.S.C. § 455 provides:

16 (b) [The judge] shall also disqualify himself in the following circumstances:

17 ...
18 (5) He [or a relative]:

19 (i) Is a party to the proceeding ...;
[28 U.S.C. § 455(b)(5)(i) (emphasis added).]

20 As noted by District Judge Dale S. Fischer (Central District of California),
21 although the language of § 455 appears to be dispositive, there may be some
22 exceptions:

23 [Section 455] bars a judge from presiding over a proceeding if she [or he]
24 is a party to the proceeding. See 28 U.S.C. § 455(b)(5)(i). Although this
25 ... provision would seem to be dispositive, courts have not read it to be so.
[*Raiser v. City of Murrieta*, 2019 WL 11556743 at *2 (C.D. Cal. 2019)
(citing Ninth Circuit's decisions in *Ronwin* and *Gabor*) (emphasis added).]

26 Nevertheless, the undersigned is not persuaded that any of the exceptions to
27 § 455(b)(5)(i) apply in the circumstances of these Adversary Proceedings. First,
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1 decisions cited in *Raiser* state broad principles and do not quote or analyze the specific
2 language of § 455(b)(5)(i).

3 Second, *Raiser* itself involved a litigant who had also sued every judge in two
4 divisions of the district. *Id.* In that situation it appears that the “rule of necessity” could
5 be applied, because if all judges in the venue are subject to disqualification then one of
6 them must hear the matter or “the case cannot be heard otherwise.” *Ignacio v. Judges*
7 *[etc.]*, 453 F.3d 1160, 1163 (9th Cir. 2006); *and see also United States v. Will*, 449 U.S.
8 200 (1980). But Mr. Kerr has not sued every Bankruptcy Judge in this division or district
9 (so far as the undersigned is aware).

10 Third, although the “rule of necessity” might apply if Mr. Kerr had a sufficient
11 track record of suing judges who ruled against him, or alternatively there might be some
12 other implicit limits on the seemingly dispositive language of § 455(b)(5)(i), the
13 undersigned is not persuaded that Mr. Kerr has quite reached those limits. *Cf. Raiser*,
14 2019 WL 11556743 at *2 (“even if there were other judges in this district available to
15 preside over this matter, the Court finds that 28 U.S.C. § 455 does not mandate
16 disqualification here”). Unlike *Raiser*, which involved a long history of “naming judges
17 as defendants and then seeking disqualification” (*id.*), Mr. Kerr has sued only two
18 judges so far as the undersigned is aware – the undersigned and Judge Gutierrez of the
19 State Courts. Suing a third judge might well tip the balance, but in the face of the
20 seemingly absolute disqualification of § 455(b)(5)(i), the undersigned is not prepared to
21 rule that disqualification can be excused on the present record.

22 For all of these reasons, the undersigned Bankruptcy Judge is not able to preside
23 over the Adversary Proceedings at present. But that is not the end of the analysis.

24 **e. Reassignment could be either to another Bankruptcy Judge,**
25 **randomly selected from within this district, or to the District Judge**

26 Under § 455(b)(5)(i), as discussed above, the judge “shall” disqualify himself or
27 herself if the judge “is a party to the proceeding.” The statute does not specify what
28 happens when the judge is disqualified. The normal process is that the judge “simply

1 steps aside and allows the normal administrative processes of the court to assign the
2 case to another judge.” *Will*, 449 U.S. 200, 212.

3 But the undersigned is not aware of any reason why it would be improper for the
4 District Judge (who has not been sued) to withdraw the reference under 28 U.S.C.
5 § 157(d), which would be an alternative way to reassign the Adversary Proceedings to a
6 judge who is not disqualified. Of course, this type of reassignment would only apply if
7 the District Judge elected to withdraw the reference.

8 In addition, there is nothing improper about the undersigned analyzing which of
9 these two permissible paths might be best suited to avoid needless delay, expense, and
10 waste of judicial resources, while preserving all parties’ rights to be heard on the merits.
11 Indeed, consideration of such issues is required by Rule 1001(a) (Fed. R. Bankr. P.)
12 (duty to pursue “just, speedy, and inexpensive determination” of all matters). The Court
13 of Appeals for the Ninth Circuit has held: “we refuse to construe the word ‘proceeding’
14 [from which the judge is disqualified] to include the performance of ministerial duties
15 such as assigning a case to another judge.” *In Re Cement Antitrust Litigation (MDL No.*
16 *296)*, 673 F.2d 1020, 1024-25 (9th Cir. 1982) (citation omitted).

17 Therefore, the undersigned recommends to the District Court (pursuant to 11
18 U.S.C. § 105(a)) that it consider withdrawing the reference. The reasons are: (i) to
19 avoid duplicative proceedings; (ii) to avoid involving yet another judge in these matters;
20 and (iii) to streamline these proceedings by avoiding jurisdictional “ping-pong” and
21 mooting various arguments by Mr. Kerr regarding the authority of the Bankruptcy Court.

22 Of course, any withdrawal of the reference is entirely within the discretion of the
23 District Court. If the District Court prefers not to withdraw the reference, the
24 undersigned knows that the other Judges of this Bankruptcy Court are ready and willing
25 to adjudicate whatever matters are randomly assigned to them by the Clerk of this
26 Bankruptcy Court.

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1 **f. Any disqualification will apply to the Adversary Proceedings, but**
2 **not as to Mr. Kerr's bankruptcy cases**

3 In addition to being able to perform "ministerial duties" within the Adversary
4 Proceedings after any disqualification, the undersigned is not disqualified in other
5 proceedings, such as Mr. Kerr's bankruptcy cases. Although the statute defines
6 "proceeding" broadly, that term is not without limits:

7 (d) For the purposes of this section ...:

8 (1) "proceeding" includes pretrial, trial, appellate review, or other
9 stages of litigation;

10 [28 U.S.C. § 455(d)(1).]

11 Mr. Kerr's bankruptcy cases are different from the Adversary Proceedings. The
12 case numbers are separate from the adversary proceeding numbers, so the bankruptcy
13 cases are not the same "proceeding" in any formal sense. Nor are the bankruptcy
14 cases the same "proceeding" in any practical sense once the Adversary Proceedings
15 have been assigned to a new judge. In addition, reading the statute to require *per se*
16 disqualification of the undersigned from presiding over Mr. Kerr's bankruptcy cases
17 would run afoul of the above-cited authority that disqualification is not required simply
18 because a disgruntled litigant sues the presiding judge (in an action other than the one
19 over which the judge is presiding), and that such disqualification would be too "easy" a
20 way to evade any judge the litigant dislikes. *Ronwin*, 686 F.2d 692, 701.

21 On a related issue, the undersigned is aware of authority that partial recusal is
22 permitted in some circumstances. In other words, conceivably any disqualification of
23 the undersigned could be limited to Mr. Kerr's (frivolous and barred) claims against the
24 undersigned, while the undersigned could continue to preside over claims against all
25 other defendants. See *Gordon v. Olguin*, 2024 WL 5411363 at *3 (C.D. Cal. 2024)
26 (Gutierrez, J.) (distinguishing *U.S. v. Feldman*, 983 F.2d 144 (9th Cir. 1992)); and see
27 also *Kelmar v. Bank of Am. Corp., Gutierrez, J., et al*, 2012 WL 12854894 at *3-4 (C.D.
28 Cal. 2024) (Gutierrez, J.), *merits decision at* 2012 WL 12850425 (C.D. Cal. 2012), *aff'd*
599 Fed.Appx. 806 (9th Cir. 2015).

1 But in the view of the undersigned, Mr. Kerr's claims against Trustee and others
2 are too closely intertwined with his claims against the undersigned to support such
3 partial recusal. Accordingly, so long as Mr. Kerr's claims against the undersigned are
4 not dismissed, disqualification applies to the entire Adversary Proceedings.

5 **g. Disqualification will last only until Mr. Kerr's claims against the**
6 **undersigned are dismissed**

7 The undersigned Bankruptcy Judge is confident that Mr. Kerr's claims against the
8 undersigned will be dismissed, both because they are entirely frivolous and because
9 they are absolutely barred by judicial immunity. Once those claims are dismissed, the
10 Adversary Proceedings could be transferred back to the undersigned.

11 True, the above-quoted definition of the "proceeding" includes appellate review,
12 and the general rule is that anything more than ministerial involvement after a judge
13 disqualifies himself or herself is error. See generally *Stringer v. United States*, 233 F.2d
14 947, 948 (9th Cir. 1956). Therefore, arguably the undersigned would be disqualified
15 unless and until final affirmance of any order dismissing Mr. Kerr's claims against the
16 undersigned – *i.e.*, after review by the Ninth Circuit and denial of any petition for
17 certiorari, which could take years.

18 But this would take disqualification too far. *Stringer* itself noted that, in addition to
19 "ministerial duties short of adjudication," "[t]here may be other instances where a judge
20 disqualifying himself could resume direction or even decide the issues." *Stringer*, 233
21 F.2d 947, 948 n. 2. The statute only requires disqualification when the judge is "a party
22 to the proceeding" (28 U.S.C. § 455(b)(5)(i)) and a fair reading of the statute is that after
23 claims against the undersigned are dismissed the undersigned will no longer be a
24 disqualified "party" to the proceeding within the meaning of the statute.

25 That interpretation does not go as far as the authority, cited above, that
26 reassignment of claims against the presiding judge permits that judge to continue
27 adjudicating claims against other defendants. Certainly, if such partial reassignment
28 cures disqualification, then dismissal of claims against the presiding judge would permit

1 adjudication of claims against other defendants. See *Gordon*, 2024 WL 5411363 at *3;
2 *Kelmar*, 2012 WL 12854894 at *3-4, *merits decision* at 2012 WL 12850425, *aff'd* 599
3 Fed.Appx. 806. See also Advisory Opinion No. 69 (reproduced in 2B *Guide to Judiciary*
4 *Policy*, § 220) (disqualification due to stock ownership often can be mooted by disposing
5 of the stock).

6 Moreover, the foregoing interpretation accords with statutory intent which, as
7 noted at the start of this discussion, is a balancing act in which there is as much
8 obligation not to recuse when there is no occasion to do so as there is to recuse when
9 disqualification is required. As noted above, being too eager to disqualify (i) would
10 enable litigants to “game the system” with judge shopping, delays, undue expense, etc.,
11 (ii) would unduly burden the judiciary, and (iii) would, instead of bolstering public
12 confidence in the judiciary, undermine that confidence. Geyh & Kimberling, *Judicial*
13 *Disqualification*, Part I.B., at pp. 8-9.

14 In addition, all three of these dangers are exponentially increased in this time
15 when litigants and attorneys can so easily find templates online, or use artificial
16 intelligence, to generate huge volumes of somewhat plausible-sounding pleadings and
17 learn tactics such as suing the presiding judge in multiple *fora*. See, e.g., *In re Luna*
18 (Case No. 2:25-bk-13083-NB, Bankr. C.D. Cal. 2025) dkt. 39, p. 4 *and passim* (self-
19 represented litigant included verbatim, in the text of his pleading, both his inquiry to
20 ChatGPT and its response).

21 For all of the foregoing reasons, the ruling of the undersigned is that
22 disqualification will last only until Mr. Kerr’s claims against the undersigned are
23 dismissed. Once that happens, these proceedings could be transferred back to the
24 undersigned, in whole or in part, if the new judge would find that helpful or necessary.
25 *But cf. DeFazio v. Hollister, Inc.*, 2007 WL 926510 at *3 *and passim* (E.D. Cal.) (“the
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1 court's initial reason for disqualification is no longer present," but "in an abundance of
2 caution" the court would "not resume control of the case").⁵

3 **h. Notwithstanding the disqualification of the undersigned, it is**
4 **mandatory and appropriate to have considered other issues of jurisdiction and**
5 **authority**

6 It has been necessary and appropriate for the undersigned to examine issues of
7 jurisdiction and authority, as was done at the start of this discussion, notwithstanding
8 the ultimate conclusion that disqualification is required. First, federal courts have a duty
9 to examine those matters. *AWTR*, 547 B.R. 831, 833-34. Second, there is a "chicken
10 and egg" issue: how can the undersigned examine whether he should disqualify himself
11 if he lacks jurisdiction to do so? Third, as discussed above, the issues of jurisdiction
12 and authority are intertwined with the disqualification issues, because they include
13 whether the undersigned (i) should request and direct the Clerk of this Bankruptcy Court
14 to reassign the Adversary Proceedings to another Bankruptcy Judge or (ii) should
15 recommend to the District Court that it withdraw the reference.

16 **E. CONCLUSION**

17 The undersigned will issue a separate order in each Adversary Proceeding
18 (A) disqualifying himself from presiding over such Adversary Proceeding (pursuant to 28

19 _____
20 ⁵ Procedurally, the Federal Action would not be "reassigned" to the undersigned because its
21 removal was a nullity. But the Federal Action still could be transferred to the undersigned to deal with
22 Trustee's defenses if not for all purposes, given the intertwined nature of the claims against all
23 Defendants and Mr. Kerr's two bankruptcy cases before the undersigned.

24 The State Action (removed to Adv. No. 1341), could be sent back to the undersigned by
25 whichever new judge is presiding over that matter. (Another alternative would be to remand the State
26 Action to the State Courts, but that is not recommended (i) to avoid duplicative proceedings (the State
27 Action and Federal Action are largely duplicative, although the sets of Defendants are slightly different),
28 (ii) to avoid the risk of inconsistent orders or judgments, (iii) to avoid wasting judicial resources, (iv) to
avoid added delay and expense for parties, and (v) to reduce the opportunities for further abusive tactics
arising from jurisdictional "ping-pong.")

In both the State Action and the Federal Action, a "directed reference" appears to be the proper
procedural mechanism for any transfers by the District Court to the undersigned (or to a different
Bankruptcy Judge, although that is not recommended). See *Thomas Steel*, 101 B.R. 16, 22 (citations
omitted). If the new judge is another Bankruptcy Judge, any reassignment would be handled by that
Judge and the Bankruptcy Clerk's Office.

1 U.S.C. § 455(b)(5)(i)), and (B) recommending to the District Court that it withdraw the
2 reference (pursuant to 11 U.S.C. § 105(a) and 28 U.S.C. § 157(d)). If the District Court
3 declines to do so, either expressly or implicitly (through the passage of an amount of
4 time set forth in that order without such withdrawal), then the undersigned will request
5 and direct the Clerk of this Bankruptcy Court to reassign the Adversary Proceedings
6 randomly to another Bankruptcy Judge within this district.

7 Later on, after the anticipated dismissal of Mr. Kerr's claims against the
8 undersigned, the new judge (*i.e.*, either the District Judge or the new Bankruptcy Judge)
9 could opt to transfer the remainder of the proceedings to the undersigned. But that is
10 not actually recommended.

11 To be clear, the undersigned is willing and able to accept any such transfers.
12 Also, it is true that such transfers would have the advantages that (x) the new judge will
13 not have to "reinvent the wheel" by learning about the history of Mr. Kerr's bankruptcy
14 cases and (y) Trustee will retain the benefit of a decision by the judge who knows the
15 most about her conduct during those bankruptcy cases, which form the basis of Mr.
16 Kerr's claims against her.

17 Nevertheless, in the particular circumstances presented in these matters, it might
18 be easier for any new judge simply to decide the pending motions to dismiss and
19 related matters. Nor does it appear that doing so would unduly burden or prejudice
20 Trustee or any other party.

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1 The bottom line is that it will be up to the new judge to determine what to do, and
2 the undersigned stands willing and able to assist. The undersigned hopes that the
3 foregoing analysis will be helpful to whichever new judge presides over these matters.

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24 Date: January 13, 2026



Neil W. Bason
United States Bankruptcy Judge

Defendant

Hon. Leslie B. Gutierrez
Judge of the Superior Court of California, County of Los Angeles
c/o Cummings, McClorey, Davis, Acho & Associates, P.C.
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Magistrate Judge

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