

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

TODD BARTLEY and MICHELLE	:	
BARTLEY, husband and wife, JOHN	:	
DOE and JANE DOE, and COLONIAL	:	
RADIO GROUP OF WILLIAMSPORT,	:	
LLC,	:	
	:	No. CV 23-01,364
Plaintiffs,	:	
	:	
vs.	:	CIVIL ACTION – LAW
	:	
JAMES A. WEBB, JR., WEBB	:	
WEEKLY, and DERRICK DIXON,	:	
Defendants.	:	

OPINION AND ORDER

AND NOW, this 27th day of September, 2024, upon consideration of the Plaintiffs' Motion to Recuse (the "Motion")¹ and the arguments of the parties,² it is hereby ORDERED and DIRECTED that the Motion is DENIED, as explained below.

I. BACKGROUND.

Plaintiffs Todd and Michelle Bartley, John and Jane Doe, and Colonial Radio Group, LLC commenced this action by Writ of Summons on December 8, 2023 against Defendants James A. Webb, Jr., Webb Weekly and Derrick Dixon.³ Plaintiffs thereafter filed their Complaint on June 13, 2024 (the "Complaint").⁴

Plaintiff Todd Bartley alleges that he is the owner and operator of Plaintiff Colonial Radio Group and "an investigative reporter/blogger." In the Summer of 2018, Todd Bartley asserts that he began reporting on allegations of misconduct,

¹ Plaintiffs' Motion to Recuse, filed on September 5, 2024.

² The Court heard argument on the Motion on September 20, 2024. Scheduling Order, dated and entered September 10, 2024. Gregory Stapp, Esq. represented the Plaintiffs/Movants at argument, and David Wilk, Esq. and Peter Lovecchio, Esq. appeared for the Defendants.

³ Praecipe to Issue Writ of Summons, filed December 8, 2023; Writs of Summons, issued December 8, 2023. See also Pa. R. Civ. P. 1007 ("An action may be commenced by filing with the prothonotary ... a *praecipe* for a writ of summons").

⁴ Complaint, filed June 13, 2024.

including sexual assault, involving a trip to Myrtle Beach by the Williamsport High School Baseball Team (the “Underlying Incident”). He began to publish articles concerning the trip and how the resulting investigation of the misconduct was handled by the Williamsport Area School District (“WASD”) and Lycoming County (the “County”).⁵

Thereafter, Plaintiffs claim that they began to receive threats and harassment of various types as a result of Plaintiff Todd Bartley’s reporting. Among other things, Plaintiffs claim that Defendant Webb attempted to interfere with Plaintiff Colonial Radio Group’s advertisers and that Defendant Dixon made various threats to Plaintiffs.⁶ They also claim that, during the relevant period, Dixon was an employee of and acting on behalf of Defendants Webb and Webb Weekly.⁷ The Complaint alleges five causes of action: tortious interference with contractual relations (Count I, Plaintiffs v. All Defendants), tortious interference with a prospective contractual relationship (Count II, Plaintiffs v. All Defendants), vicarious liability (Count III, Plaintiffs v. Defendants Webb and Webb Weekly), negligent infliction of emotional distress (Count IV, Plaintiffs v. Defendant Dixon), and intentional infliction of emotional distress (Count V, Plaintiffs v. Defendant Dixon).⁸

All Defendants filed preliminary objections to the Complaint, and the case was assigned to the undersigned for disposition. Plaintiffs thereafter filed their Motion on September 5, 2024. The Court having heard argument from the parties on the Motion,⁹ it is now ripe for resolution.

⁵ *Id.*, ¶ 10.

⁶ *Id.*, ¶¶ 11-23.

⁷ *Id.*, ¶¶ 24, 41-45.

⁸ *Id.*

⁹ *See, supra*, n.2.

II. LAW AND ANALYSIS.

A. Plaintiff's Motion to Recuse.

The Motion alleges that a lawsuit was filed in the United States District Court pertaining to the Underlying Action.¹⁰ The District Court Action names Lycoming County, William Weber,¹¹ in his individual and official capacities, WASD, and various individuals associated with WASD.¹² Lycoming County and all of the individual defendants, including William Weber, were dismissed as parties to the District Court Action in 2023.¹³ The Plaintiff in the District Court Action was one of the minor persons allegedly assaulted during the Underlying Incident, and he is not a party to the instant litigation.

At the present time, neither Lycoming County nor any person currently or previously associated with Lycoming County is a party to the District Court Action. Plaintiffs contend that "it is possible that the Plaintiffs [in the District Court Action] will be refiling against Lycoming County as a result of information obtained as part of the discovery process in the federal lawsuit."¹⁴ Refiling against Lycoming County may prove challenging, however, in light of the District Court's ruling on October 19, 2023 that dismissed several of the claims against the County with prejudice and otherwise directed that

Plaintiff [in the District Court Action] will be given twenty-one days to file an amended complaint. If no amended complaint is filed, Plaintiff's ... [42 U.S.C.] Section 1983 equal protection, negligence, negligent

¹⁰ *Id.*, ¶ 3. See also the action filed in the United States District Court for the Middle District of Pennsylvania to Docket No. 4:22-cv-1387 (the "District Court Action").

¹¹ William Weber was a detective in the office of the Lycoming County District Attorney who investigated the Underlying Incident. Motion, ¶¶ 4-7.

¹² See the District Court Action.

¹³ See Opinions and Orders entered in the District Court Action on April 27, 2023 and October 19, 2023.

¹⁴ Motion, ¶ 4.

infliction of emotional distress, and negligence per se claims against Lycoming County[] will be dismissed with prejudice.¹⁵

As the twenty-one day period given by the District Court is long-expired, the Plaintiff in the District Court Action may not be able to refile against Lycoming County.

In any event, the Motion alleges that, regardless of whether the case against Lycoming County is re-filed, “William Weber is a key witness in the case currently before the federal court.”¹⁶ This appears to be based upon the allegation that

[a]s Chief County Detective, William Weber, was in a position to interfere and to bury the investigation of the sexual assault of a minor during the William Area High School baseball trip to Myrtle Beach in 2018 which came to light as a direct result of the reporting done by Plaintiff Todd Bartley.¹⁷

Additionally, the Motion alleges that a witness from the Office of the Attorney General testified that William Weber was not charged with crimes because “the Lycoming County Office of District Attorney did not have policies and procedures in place as to how to handle sexual abuse cases involving minors.”¹⁸

Plaintiffs here contend that “Judge Linhardt will most likely be listed as a fact witness for the trial of [the District Court Action].”¹⁹ They conclude that

[s]ince Judge Linhardt will be listed as a fact witness by Plaintiff in the federal case, he may not preside over the above-captioned case as the underlying reason that the Defendants tortuously interfered with contracts were the facts involved in the case currently pending before the federal court.²⁰

¹⁵ Memorandum Opinion entered by the United States District Court for the Middle District of Pennsylvania in the District Court Action on October 19, 2023, at 41. The Order accompanying the Opinion states that Lycoming County’s motion to dismiss is granted with leave to amend as to the claims for (a) 42 U.S.C. § 1983 equal protection (Count II), (b) negligence (Count V), (c) negligent infliction of emotional distress (Count VI), and negligence per se (Count VIII), and without leave to amend as to the claims for (a) 42 U.S.C. § 1983 due process, (b) civil conspiracy (Count IX), vicarious liability (Count III), and negligent failure to rescue (Count VIII). Order entered October 19, 2023 to Docket No. 4:22-cv-1387, at 2, ¶¶ 4-5. It also permits Plaintiff twenty-one days to file an amended complaint and directs that if no amended complaint is “by that date” to claims dismissed with leave to amend will be dismissed with prejudice. *Id.*, at 3, ¶ 6.

¹⁶ Motion, ¶ 7.

¹⁷ *Id.*, ¶ 6.

¹⁸ *Id.*, ¶ 4.

¹⁹ *Id.*, ¶ 7.

²⁰ *Id.*, ¶ 8.

The basis for contending that the undersigned will be a witness in the District Court Action appears to be that prior to being elected to the bench on November 7, 2017, the undersigned served as District Attorney of Lycoming County from 2008 until 2017. During this tenure, the undersigned hired William Weber as a Lycoming County Detective and thereafter supervised him.²¹ Plaintiffs further allege that prior to 2008 the District Attorney had policies and procedures in place as to how to investigate sexual assault cases against minors but that those were removed during the undersigned's tenure as District Attorney.²²

The Underlying Incident occurred in March, 2018. William Weber was involved in investigating it from May, 2018 until his retirement in 2020. According to the Complaint, Plaintiff Todd Bartley began reporting on the Underlying Incident “[i]n the summer months of 2018.”²³ The retaliation against Plaintiffs allegedly arising out of this reporting necessarily occurred after the reporting. All of these events happened after the undersigned took the bench in January, 2018.

Bearing in mind that WASD is the only defendant presently in the District Court Action and that all of the events relevant to the District Court Action and the case before this Court occurred while the undersigned was a sitting judge of the Court of Common Pleas, the Court finds it unlikely that the undersigned would have any meaningful testimony to offer in the District Court Action. Furthermore, whether the undersigned testifies as a witness in the Underlying Action does not necessarily dictate the undersigned's capacity to preside over this action—the parties in the two cases are not the same, the issues are not the same, and the facts of the Underlying

²¹ *Id.*, ¶ 6.

²² *Id.*

²³ Complaint, ¶ 10.

Incident are material to this action only insofar as Plaintiff Todd Bartley's reporting on them forms the basis for his allegations of retaliation.

Indeed, for these reasons, there would not be an automatic conflict for the undersigned or the Lycoming County Bench even if Plaintiff in the District Court Action refiles against Lycoming County, however remote that possibility might be. What happens in the District Court Action simply has no bearing on this case, as this case turns on whether Defendants retaliated against Plaintiffs based upon things Todd Bartley previously said about the Underlying Incident. In point of fact, what actually happened during the Underlying Incident and whether the things that Todd Bartley said about it were accurate are relevant to this action only as background to the issues that this case presents to the Court. If this case ultimately proceeds to trial, there is unlikely to be any valid justification for more than a cursory recitation of the facts of the Underlying Incident to the trier of fact.

B. Controlling law.

Justice Wecht summarized the standards applicable to a recusal motion in *League of Women Voters of Pennsylvania v. Commonwealth*,²⁴ as follows.

A motion for disqualification is directed to and decided by the jurist whose impartiality is questioned. The applicable standard of review for a motion seeking a jurist's recusal is as follows:

In disposing of a recusal request, a jurist must first make a conscientious determination of his or her ability to assess the case before the court in an impartial manner, free of personal bias or interest in the outcome. "This is a personal and unreviewable decision that only the jurist can make." Once satisfied with that self-examination, the jurist must then consider whether or not continued involvement in the case would tend to undermine public confidence in the judiciary. In reviewing a denial of a disqualification motion, we "recognize that our judges are honorable, fair and competent. Once the decision is made, it is final...."

²⁴ *League of Women Voters of Pa. v. Com.*, 179 A.3d 1080 (Pa. 2018).

Recusal is not to be granted lightly, lest a jurist abdicate his “responsibility to decide.”²⁵

The Ethics Committee of the Pennsylvania Conference of State Trial Judges has recognized that there is some confusion concerning use of the terms “disqualification” and “recusal” and has clarified the distinction:

In general, “disqualification” is a specified fact, circumstance or condition that makes one ineligible or unfit to serve, or otherwise deprives the judge of the power to preside. “Recusal” is the act of removing or absenting oneself in a particular case because the judge concludes that the prevailing facts or circumstances could engender a substantial question in reasonable minds whether the judge can be impartial.²⁶

Thus, Pennsylvania’s Code of Judicial Conduct (the “Code”) identifies certain specific “fact[s], circumstance[s] or condition[s]” that make a judge “ineligible or unfit to serve” or “otherwise deprives the judge of the power to preside”²⁷ and also permits a judge to

recuse himself or herself from presiding over a matter even in the absence of a disqualifying fact or circumstance where—in the exercise of discretion, in good faith, and with due consideration for the general duty to hear and decide matters—the judge concludes that prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required.²⁸

Specifically, the Code provides, *inter alia*, that “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.”²⁹ It itemizes certain specific instances when this

²⁵ *Id.*, at 1083 (citations omitted) (quoting *Com. v. Travaglia*, 661 A.2d 352, 370 (Pa. 1995); *Goodheart v. Casey*, 565 A.2d 757, 764 (Pa. 1989); *Reilly by Reilly v. Southeastern Pa. Transp. Auth.*, 489 A.2d 1291, 1300 (Pa. 1985); Pa. Code of Jud. Conduct, Rule 2.11(A)).

²⁶ 207 Pa. Code § 15-4, 207 PA ADC § 15-4 (Formal Advisory Opinion of The Ethics Committee of the Pennsylvania Conference of State Trial Judges, adopted Sept. 25, 2015) (citing Black’s Law Dictionary, 7th Ed.).

²⁷ *Id.* (citing Pa. Code of Jud. Conduct, Rule 2.11(A)).

²⁸ *Id.* (quoting Pa. Code of Jud. Conduct, Rule 2.7, cmt. [2]).

²⁹ Pa. Code of Jud. Conduct, Rule 2.11(A).

situation obtains, including (i) when “[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding;” (ii) when “[t]he judge knows that the judge ... is ... likely to be a material witness in the proceeding;” and (iii) when “[t]he judge ... served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding.”³⁰ Accordingly, the undersigned must disqualify himself if any of these “facts, circumstances or conditions” obtain and may recuse himself if he “concludes that prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required.”

In addition, the Code mirrors Justice Wecht's admonition that recusal is not to be granted lightly. Among other things, it requires a judge to give precedence to the duties of his judicial office³¹ and to decide matters that come before him.³² Indeed, it is a well-established legal principle that “our ‘honorable, fair and competent’ judges do not grant recusal motions lightly.”³³ There is no doubt that this stems from the concept that “the duty to render decisions in cases that are ripe for resolution is an implied but essential duty of judicial office.”³⁴ Furthermore, a request for recusal “should not be made lightly.”³⁵

³⁰ *Id.*, Rules 2.11(A)(1), 2.11(A)(2)(d), 2.11(A)(6)(b). Rule 2.11(A) contains additional instances where disqualification may be appropriate, but the Court has limited its recitation of these to those that may be pertinent here. Moreover, as the official Comment to Rule 2.11 makes clear, “a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.” *Id.*, Rule 2.11, cmt. [1].

³¹ *Id.*, Rule 2.1 (“The duties of judicial office, as prescribed by law, shall ordinarily take precedence over a judge's personal and extrajudicial activities”).

³² *Id.*, Rule 2.7 (“A judge shall hear and decide matters assigned to the judge, except where the judge has recused himself or herself or when disqualification is required by Rule 2.11 or other law”).

³³ See, e.g., *Com. v. King*, 839 A.2d 237, 240 (Pa. 2003) (quoting *Reilly by Reilly*, *supra*, 489 A.2d at 1300).

³⁴ *In re Smith*, 687 A.2d 1229, 1233 (Pa. Ct. Jud. Disc. 1996).

³⁵ *Aetna Life Ins. Co. v. Lavoie*, 106 S. Ct. 1580, 1588 (1986) (citing *Rooker v. Fidelity Trust Co.*, 44 S.Ct. 149 (1923) (explaining that recusal motions should be filed with “care and good faith”)). See

With these principles in mind, the Court turns to whether there is any fact, circumstance, or condition that makes the undersigned ineligible or unfit to serve or otherwise deprives the undersigned of the power to preside. “The party who asserts that a trial judge must be disqualified ‘must produce evidence establishing bias, prejudice, or unfairness which raises a substantial doubt as to the jurist’s ability to preside impartially.’”³⁶ The Court concludes that Plaintiffs have failed to produce evidence raising a substantial doubt as to the undersigned’s ability to preside impartially:

First, Plaintiffs have not produced evidence demonstrating that the undersigned “has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.”³⁷ Plaintiffs have not suggested that the undersigned has any personal bias or prejudice concerning Plaintiffs or their lawyer. The Motion arguably suggests that the undersigned may have personal knowledge of facts that are in dispute in the proceeding. If Plaintiffs are making that suggestion, they are incorrect. Plaintiffs have not alleged that the undersigned has personal knowledge of the facts in dispute in this action. Rather, they appear to be conflating this action with the District Court Action and the Underlying Incident, and they appear to suggest that the undersigned has personal knowledge of facts in dispute there. As mentioned above, however, all events material to the District Court Action and the Underlying Incident occurred after the undersigned assumed the bench and was no longer associated with the District Attorney’s Office or Detective Weber’s employment.

also, e.g., In re Crawford’s Estate, 160 A. 585, 587 (Pa. 1931) (“The charge of disqualification is serious, and should not be made lightly or frivolously”).

³⁶ *Lomas v. Kravitz*, 130 A.3d 107, 122 (Pa. Super. 2015) (quoting *Arnold v. Arnold*, 847 A.2d 674, 680 (Pa. Super. 2004) (citation omitted)).

³⁷ Pa. Code of Jud. Conduct, Rule 2.11(A)(1).

Furthermore, even if the undersigned did have knowledge of the Underlying Incident, Plaintiffs have not demonstrated that any such knowledge would have any bearing on this action.

Second, Plaintiffs have not produced evidence demonstrating that the undersigned “knows that [he] ... is ... likely to be a material witness in the proceeding.”³⁸ Although Plaintiffs have stated that the undersigned likely will be called as a witness in the District Court Action, they have not demonstrated that the undersigned has any relevant and material testimony to offer in that case or that such testimony, if given, would have any bearing on this action.

Third, Plaintiffs have not produced evidence demonstrating that the undersigned “served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding.”³⁹ Plaintiffs have alleged that during the undersigned’s tenure as District Attorney, the undersigned hired William Weber as a detective and removed or otherwise discontinued policies concerning how investigations of alleged sexual assault of a minor were to be handled. Even if proven, those allegations have no bearing either on this case or on the District Court Action in its current posture.

Finally, Plaintiffs have not produced evidence demonstrating that the undersigned’s “impartiality might reasonably be questioned.”⁴⁰ The allegations of the Motion simply do not support a suggestion that the undersigned’s impartiality concerning the issues presented for resolution in this case reasonably could be questioned.

³⁸ *Id.*, Rule 2.11(A)(2)(d).

³⁹ *Id.*, Rule 2.11(A)(6)(b).

⁴⁰ *Id.*, Rule 2.11(A).

Having concluded that Plaintiffs have failed to produce any evidence in support of the undersigned's disqualification, the Court will now consider whether the undersigned should recuse himself from presiding over this case in the absence of a disqualifying fact or circumstance. "[I]n the exercise of discretion, in good faith, and with due consideration for the general duty to hear and decide matters," the undersigned cannot conclude that "prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required."⁴¹ The Court simply has not seen evidence demonstrating that disqualification or recusal is mandated or even that it is advisable under the circumstances.

Plaintiffs suggest that there will be an appearance of impropriety if the undersigned presides over this case. The Court finds that they have not demonstrated this to be so. Moreover, unwarranted recusal carries its own danger for the judiciary:

Although there are times when disqualification or recusal is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification or recusal may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge should not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.⁴²

With that heavy burden in mind, the Court concludes that recusal is neither mandated nor warranted.

⁴¹ *Id.*, Rule 2.7, cmt [2].

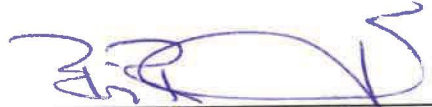
⁴² *Id.*, Rule 2.7, cmt. [1].

IV. CONCLUSION AND ORDER.

For reasons explained above, the Plaintiffs' Motion to Recuse the undersigned from this case is DENIED.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

cc: Gregory Stapp, Esq. (gstapp@stapplaw.net), *Stapp Law, LLC*
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