

Thursday, 12 January, 2017 02:45:23 PM
Clerk, U.S. District Court, ILCD

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FILED UNDER SEAL

United States v. Schock, No. 16-cr-30061

January 12, 2017

The Honorable Sue E. Myerscough
United States District Judge
319 U.S. Courthouse
600 E. Monroe Street
Springfield, IL 62701

Re: *United States v. Schock*, No. 16-cr-30061

Dear Judge Myerscough:

As counsel for Mr. Schock in the captioned matter now pending before Your Honor, I write to respectfully suggest that Your Honor exercise your authority to recuse yourself from further proceedings in the captioned case pursuant to 28 U.S.C. § 455(a) (A judge “shall disqualify [her]self in any proceeding in which [her] impartiality might reasonably be questioned.”). Because a judge may recuse herself from a matter without explanation, we are filing this letter under seal and have no objection to it remaining sealed should Your Honor recuse in this matter.

The factual basis for our position is detailed below. Disqualification under this provision does not require evidence of any actual bias. Rather, as the language of the statute indicates, for the benefit of the integrity of the judicial process in the public eye, a judge must recuse herself if an objective observer could reasonably question her impartiality.

Our suggestion for recusal at this time is prompted by the government’s recent production of documents to Mr. Schock’s counsel. Objectively viewed, these documents provide a basis by which Your Honor’s impartiality could reasonably be questioned. These recently disclosed documents, taken together with other pertinent information, render the issue current. After receiving these documents, we consulted an ethics expert in order to have the benefit of an expert evaluation of the circumstances. His letter is attached. It concludes that Your Honor’s recusal is warranted under the recusal statute and the Code of Conduct for United States Judges.

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The documents discussed above are a set of emails (attached to this letter) the government produced to us on December 7, 2016.¹ These emails demonstrate that Mr. Schock, in his capacity as a Member of Congress for the 18th Congressional District of Illinois and in conjunction with then-Senator Kirk, took steps to ensure that Chief Judge Shadid's commission would be signed by the President before Your Honor's. The effect of this intervention was that Judge Shadid obtained seniority and became chief judge for the Central District of Illinois rather than Your Honor. Had the President signed Your Honor's commission first, you would have been Chief Judge. Because a reasonable observer could objectively and reasonably view the position of Chief Judge as a benefit, Mr. Schock's role in these events could raise a question about Your Honor's impartiality in a matter before Your Honor to which Mr. Schock is a party. Such reasonable questioning would exist regardless of whether Your Honor harbored any actual bias against Mr. Schock.

The circumstances creating a basis upon which Your Honor's impartiality might reasonably be questioned are further informed by Your Honor's previous potential bid for Congress. Public sources state that Your Honor, while serving as a state court judge, was a potential and interested candidate to serve as the Representative for Illinois's 18th Congressional District in the 2008 election. Mr. Schock first ran for Congress in that election. According to public record information, you were under consideration to be the Democratic nominee and met with representatives of the Democratic Congressional Campaign Committee in furtherance of your potential bid for the office. That record also discloses that you later declared that you would not run for the open seat. These circumstances also are a basis upon which Your Honor's impartiality in this matter might reasonably be questioned.

Your Honor also informed Mr. Schock at his arraignment on December 12, 2016 that your daughter was engaged to be married to a McGuireWoods attorney. As you indicated at the time, the undersigned counsel are partners with McGuireWoods. Because of Your Honor's familial relationship to a McGuireWoods attorney, a reasonable observer could reasonably question your impartiality, including on the basis that Your Honor may preside and act so as to counteract any perception that you are favoring Mr. Schock's attorneys.

A commonsense and overarching consideration further renders recusal appropriate in this matter. The issues now before Your Honor implicate Mr. Schock's due process rights. *See Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009). Mr. Schock is a criminal defendant whose liberty is at stake. Fairness dictates that, as between having his case heard by a judge involved in the three foregoing circumstances or heard by one without those encumbrances, the latter is patently more desirable from the perspective of both preserving Mr. Schock's due process

¹ The government did not produce these documents to us as part of discovery, and instead appears to have sent them in connection with the Defendant's requested transfer of the case to the Peoria division. The government emailed these documents to us on December 7, 2016, after the government filed its opposition to the Defendant's Motion for Intradistrict Transfer but before the Court's ruling on that motion, stating in its transmittal email that "we have just recently reviewed certain additional emails produced by others that are also attached and may or may not have some relevance to you. We wanted to bring them to your attention prior to the hearing next week. We leave the question of relevance to your judgment." We subsequently asked the government to produce to us any additional documents related to the emails disclosed on December 7 and asked whether the government had searched for additional documents. To date, the government has not responded to our request.

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rights and avoiding reasonable bases to question the court's impartiality. This conclusion is further compelled when one considers that a juror acknowledging any one of these three circumstances would be subject to exclusion for cause from participation in a trial of this matter. Thus, even if no one of these circumstances, standing alone, warrants recusal under the statute, taken together these circumstances require disqualification because the objective standard of § 455(a) is mandatory. The statute requires recusal when circumstances meet the standard.

We very much appreciate Your Honor's careful consideration of our suggestion for recusal. Should Your Honor elect to recuse herself from the matter, we have no objection to this letter and related materials remaining under seal.

Respectfully submitted,



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Encl: Appendix A: Memorandum of Law
Opinion Letter of Ronald D. Rotunda, dated January 10, 2017
Emails Produced by the Government December 7, 2016
Bernard Schoenburg, *Myerscough Takes Herself Out of the 18th District Race*, Milford Daily News, Aug. 28, 2007.