

April 2, 2024

The Honorable Juan M. Merchan
New York State Supreme Court, Criminal Term, Part 59

Dear Justice Merchan,

The People respectfully submit this letter opposing defendant's April 1, 2024 pre-motion letter seeking leave to file another motion for recusal based, again, on the Court's family member's employment. Defendant has identified no changed circumstances that warrant revisiting the Court's August 11, 2023 Order denying defendant's earlier motion for recusal. CPLR 2221(d)(2), (e)(2)-(3). Alternatively, this Court may treat the pre-motion letter and this response as the relevant briefing, *see* Mar. 8 Order at 1, and summarily deny defendant's recusal reargument on the merits.

First, defendant asserts, without citation, that "Authentic has used social media to market its connections to President Biden and Vice President Harris while deriding President Trump." Def.'s Apr. 1 Ltr. Even assuming that this claim is true, it merely reiterates defendant's earlier argument based on Authentic's client list. *See* Def.'s May 31, 2023, Mot. for Recusal at 5 (naming Biden and Harris). This Court and the Advisory Committee on Judicial Ethics have already determined that such a claim provides no basis for recusal. *See* Aug. 11, 2023, Order at 2-3; *see also* Advisory Committee on Judicial Ethics, Op. 23-54 (May 4, 2023) ("A relative's independent political activities do not provide a reasonable basis to question the judge's impartiality.").

Second, defendant asserts, again without citation, that "Authentic has received millions of dollars" from "entities associated with [defendant's] political rivals," and that some of those "entities" are "associated with legislators and PACs" that have "solicit[ed] contributions specifically based on this case." Def.'s Apr. 1 Ltr. Defendant's own careful wording reveals the multiple attenuated factual leaps here that undercut any direct connection between Authentic and this case: Authentic has received money from "entities"; those entities are "associated with" politicians; and those politicians have raised money based on this case. This daisy chain of innuendos is a far cry from evidence that this Court has "a direct, personal, substantial or pecuniary interest in reaching a particular conclusion." *People v. Alomar*, 93 N.Y.2d 239, 246 (1999). There is simply nothing new here that would alter this Court's prior conclusion that nothing about this proceeding will directly benefit Authentic or this Court's family member, let alone this Court.

Third, defendant faults this Court for making "extrajudicial comments about the case." Def.'s Apr. 1 Ltr. To the extent defendant intends to seek recusal based on the cited article, such a request would be a frivolous and vexatious effort to further waste the Court's time. Defendant fails to note that—aside from acknowledging "intense" preparation—the article reports that "[Justice] Merchan wouldn't talk about the case."¹ And notwithstanding defendant's claim to the contrary in his separate filing yesterday on the Court's order regarding extrajudicial statements, this article does *not* report that the Court was talking about this case when the Court reportedly said "There's no agenda here. We want to follow the law." Even if the Court did have this case in mind, expressing a broad commitment to impartiality is very obviously not a prohibited "comment about a pending or impending proceeding," 22 NYCRR § 100.3(B)(8); and is not a basis for recusal.

¹ <https://apnews.com/article/trump-hush-money-criminal-trial-judge-merchan-c227f5eab200cccffb19ed931b4dac92>.

Respectfully Submitted,

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