PART 59 APR 0 8 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	PEOPLE'S OPPOSITION TO DEFENDANT'S RENEWED MOTION FOR RECUSAL Ind. No. 71543-23

For the second time, defendant has filed a motion seeking recusal based on the employment of a family member of the Court. This Court should construe the motion as a request for leave to reargue or renew the Court's August 11, 2023 Order rejecting defendant's earlier, identical recusal arguments and deny the motion on procedural grounds alone. The motion also fails on the merits. Defendant's rewarmed arguments identify no new law or fact that calls into question this Court's prior conclusion that "[d]efendant has failed to demonstrate that there exists concrete, or even realistic reason for recusal to be appropriate, much less required." Aug. 11, 2023 Order at 3. Instead, defendant's motion is nothing more than his latest effort to delay the forthcoming trial; and—in both timing and substance—appears transparently reverse-engineered to provide an ex post justification for defendant's attacks on the Court and the Court's family. This Court should reject defendant's dilatory tactic and deny the motion.

1. Although not labeled as such, defendant's motion should be construed as seeking leave to reargue or renew the Court's earlier order denying recusal, and should be denied again for failing to meet the standards for such relief. *See DiPasquale v. Gutfleish*, 74 A.D.3d 471 (1st Dep't 2010) (construing order as denying reargument although "not denominated as such"). The CPL does not expressly address reargument, but courts in criminal cases have looked to the standards in CPLR § 2221(d) to determine whether to exercise their discretion to revisit a prior ruling. *See, e.g.*, *People*

v. Rodriguez, 21 A.D.3d 834, 834 (1st Dep't 2005). Under that statute, a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." CPLR § 2221(d)(2). Although a motion for reargument is within the Court's discretion, "[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those previously asserted." *William P. Pahl Equip. Corp. v. Kassis*, 182 A.D.2d 22, 27 (1st Dep't 1992).

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion." CPLR § 2221(e)(2)-(3). "Renewal is granted sparingly," and "is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation." *Matter of Beiny*, 132 A.D.2d 190, 210 (1st Dep't 1987).

Here, defendant has failed to satisfy the standards for reargument or renewal, and this Court should deny the motion on this ground alone. On reargument, defendant identifies no issue "overlooked or misapprehended" by this Court. To the contrary, he predominantly repeats *the same arguments* that he made in his first recusal motion more than ten months ago and that this Court previously considered and rejected. For example, defendant complains again that the Court's family member has a leadership role and ownership stake in Authentic and purportedly financially benefits from this proceeding (Def. Mot. at 1, 24; Def. May 31 Mot. at 4).[1] Defendant points out, as he did before, that Authentic's client list includes President Biden, Vice President Harris, and

[1] To distinguish between the substantively identical motions, we refer to the current motion as "Def. Mot." and defendant's earlier May 31, 2023 motion as "Def. May 31 Mot."

other elected officials who have publicly opposed defendant (Def. Mot. at 1, 7-11; Def. May 31 Mot. at 5). And he contends once more that some of Authentic's clients have raised funds by referencing this criminal proceeding (Def. Mot. at 1, 12-16; Def. May 31 Mot. at 8). It is nowhere close to the standard necessary for reargument for defendant to do nothing more than present "further argument on matters already argued" for no apparent purpose other than "to delay or prolong resolution of the litigation," *Wesselmann v. Int'l Images, Inc.*, 259 A.D.2d 448, 450 (1st Dep't 1999).

Defendant also falls far short of meeting the standard for renewal. For one thing, his current motion is replete with references to facts that are not new at all—including, on the very first page, a reference to a podcast interview *from 2019* (Def. Mot. at 1). Defendant offers no justification, let alone a reasonable one, for failing to present these facts in his earlier motion for recusal, and this Court should disregard all of these stale facts for this reason alone. *See Zuluaga v. P.P.C. Const., LLC*, 45 A.D.3d 479, 481 (1st Dep't 2007).

The motion's vanishingly small number of facts post-dating defendant's May 31, 2023 recusal motion are overwhelmingly not truly new at all in a way "that would change the prior determination," CPLR § 2221(e)(2). *See Karst v. W.P. Carey Inc.*, 157 A.D.3d 401, 404 (1st Dep't 2018). For example, defendant cites an April 2024 list of Authentic's clients (Def. Mot. at 7) and points to social media posts by Authentic highlighting its clients (Def. Aff. ¶¶ 35, 38-39, 43-44), but those facts simply update or reinforce a client roster that defendant already referenced in his prior motion (Def. May 31 Mot. at 5). Likewise, defendant claims as a new "development[]" that defendant is now "the presumptive Republican nominee" for president (Def. Mot. at 20), but his prior motion was already premised on the fact that defendant "is actively campaigning for re-

election" and faces criticisms from his opponents "in the 2024 presidential election" (Def. May 31 Mot. at 8).

Warmed-over versions of facts previously presented do not suffice to support renewal, and more strident repetitions of arguments previously rejected do not support reargument. This Court should deny the bulk of defendant's motion on this ground alone, with the exception of a few minor and wholly meritless points that the People address further below.

2. Even if this Court were to reconsider defendant's arguments de novo, it should reject them again.

As the People previously argued in their June 14, 2023 Opposition to Defendant's Motion for Recusal, there is absolutely no basis for recusal based on the employment of this Court's family member. The People pointed to the absence of any "direct, personal, substantial or pecuniary interest in reaching a particular conclusion," *People v. Alomar*, 93 N.Y.2d 239, 246 (1999), when (1) neither the Court's family member nor Authentic has a relationship with the People or defendant; (2) Authentic has many clients that have nothing to do with defendant or presidential politics; (3) there is no evidence that Authentic's work is related to its clients' statements about defendant or this criminal trial; and (4) there is also no evidence that Authentic stands to make more or less money from its clients depending on defendant's political fortunes (People's June 14 Opp. at 3-5). The People also cited multiple cases holding that there is no basis for recusal when a judge's family member participates in an industry that may, as a general matter, be affected by the outcome of a case; or when a judge's family member merely engages in political matters that may be affected by pending litigation (People's June 14 Opp. at 5-7).

This Court agreed (Aug. 11, 2023, Decision and Order at 2-3). In doing so, this Court relied on a May 4, 2023, opinion by the Advisory Committee on Judicial Ethics finding no basis for

recusal because this criminal prosecution "does not involve either the judge's relative or the relative's business, whether directly or indirectly," and because a "relative's independent political activities do not provide a *reasonable* basis to question the judge's impartiality." Advisory Committee on Judicial Ethics, Op. 23-54 (May 4, 2023).[2]

Defendant has pointed to nothing that would warrant revisiting these conclusions. As in his earlier motion, defendant asserts that Authentic receives money from certain candidates and affiliated entities (Def. Mot. at 28-29); those candidates have publicly criticized defendant (*id.* at 24-26); and some of them have mentioned this prosecution in soliciting campaign donations (*id.* at 13-16). Completely absent is any direct connection between these facts. The "case studies" from Authentic that defendant cites (*id.* at 7-11) do not mention any work done related to criticizing defendant; and the messages from political candidates that do mention defendant or this prosecution (*id.* at 11-17) are not attributed to Authentic. Indeed, it seems quite unlikely that the income Authentic receives (*id.* at 28-30) is dedicated solely to creating advertisements mentioning defendant, when candidates also devote a significant amount of advertising to tout their own achievements, comment on issues of concern to voters, and criticize their direct opponents.

It thus remains pure speculation to assume that rulings by this Court would affect Authentic's contracts or revenue, when there is still no evidence that Authentic has done any work related to the criminal charges at issue here, no evidence that any portion of the money made through fundraisers referencing this case was paid to Authentic, and no evidence that Authentic's revenues are somehow based on defendant's political fortunes, rather than (for example) the duration of a client's campaign or the parameters of a specific project. Recusal is simply not warranted when, as here, "the interest

[2] https://nycourts.gov/legacyhtm/ip/judicialethics/opinions/23-54.htm

asserted bears only a tangential relationship to the subject matter of the suit." *Brody v. President & Fellows of Harvard Coll.*, 664 F.2d 10, 12 (1st Cir. 1981).

Moreover, even if Authentic were somehow involved in the fundraising campaigns mentioning this criminal trial, there would still be no basis for recusal. Although judges face limits on engaging in outside political activities, the Advisory Committee specifically found that "a judge's relatives remain free to engage in their own bona fide independent political activities" without affecting the judge's impartiality. Advisory Committee on Judicial Ethics, Op. 23-54 (May 4, 2023). Here, even under defendant's allegations, the Court's family member's business is simply too attenuated from this criminal trial to create even an appearance of impropriety, let alone an actual conflict. All that defendant has shown is that the Court's family member has a leadership role at a private company; some of the company's business involves contracting with political candidates; and some of those candidates criticize defendant some of the time, including by mentioning this trial. The Court, of course, is not directly involved with either Authentic or its clients; and neither Authentic, the Court's family member, nor their clients are parties or witnesses to this case. Any political activities by the Court's family member are thus wholly independent of this criminal prosecution and "do not provide a *reasonable* basis to question the judge's impartiality." *Id.*[3]

3. Defendant's motion raises a grab-bag of other baseless complaints, some having nothing to do with recusal at all. This Court should reject all of them.

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[3] Defendant also repeatedly cites Judiciary Law § 14 in his current motion, but that statute is wholly inapplicable here. Judiciary Law § 14 only prohibits a judge from sitting in a matter "to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree." The "interest" in Judiciary Law § 14 must be a "pecuniary or property interest" that the judge himself has in the instant proceeding or motion. *See, e.g.*, *Matter of Est. of Sherburne*, 124 Misc. 2d 708, 710 (Sur. Ct. Queens Cnty. 1984). Defendant has not alleged that the Court himself has a pecuniary or property interest in this case, or that Authentic or the Court's family member are parties to the proceeding—nor could he. Judiciary Law § 14 is therefore inapplicable.

First, defendant faults this Court for "participat[ing] in an interview with the media" to talk about this case (Def. Mot. at 22; *see also* Def. Aff. Ex. 22). But defendant's argument not only relies on a misleading factual presentation, but also is wrong on the law. As defendant admits, the article in fact makes clear that the Court "wouldn't talk about [this] case" (Def. Aff. Ex. 22). And the only quotations from this Court evinced nothing more than a broad commitment to impartiality that would be applicable to any case, including the Mental Health Court proceedings that were the actual setting for the article. Defendant's claim that this Court's quoted statements run afoul of 22 N.Y.C.R.R. § 100.3(B)(8) is wrong. That rule explicitly permits a judge to "explain[] for public information the procedures of the court." A statement that the Court will "follow the law" and dispense justice impartially is in accordance with that directive. *See, e.g.*, *People v. Lazzaro*, 180 A.D.2d 696, 696 (2d Dep't 1992).

Second, defendant makes the outrageous claim that, in a 2019 podcast interview, the Court's family member "disclosed statements by the Court that reflect bias toward" defendant (Def. Mot. at 31). The quoted statements show no such thing. The five-year-old statement attributed to this Court was that the Court "hate[s] that politicians use Twitter" (Def. Mot. at 30). But—even if this third-hand podcast quote accurately reflects the Court's view from five years ago—there is no indication that the sentiment specifically refers to defendant, and the use of the plural word "politicians" indicates otherwise since, as of 2019, many politicians used Twitter—including President Biden, Vice President Harris, and many of the other candidates whom defendant deems to be his political opponents. A general distaste for politicians' use of social media is simply not the same as bias toward one such politician, and defendant's claim to the contrary is not just wrong but irresponsible. *See, e.g.*, *People v. Chai*, 37 Misc. 3d 1203(A) (Just. Ct. 2012) (allegation of bias insufficient to

warrant recusal where statements purportedly critical of one of the parties were "general," "attenuated in time," and had "no bearing on the instant matter pending before the court").

Third, defendant makes much about the purported revelation that this Court's family member once used an account on X (formerly Twitter) to criticize defendant (Def. Mot. at 21). Again, if accurate, this assertion shows at most that a family member of the Court engaged in independent political activities; such activity does not call into question this Court's impartiality. Defendant goes further, though, to suggest that there is an "appearance of impropriety" from his guess that the Court's family member deleted the X account "to destroy public evidence of animus toward" defendant at around the time this Court sought an opinion from the Advisory Committee (Def. Mot. at 21). This is yet another irresponsible accusation based on zero facts. Indeed, people delete social media accounts for a host of reasons, not least of which is to avoid becoming a target of defendant's online attacks—a fear that would be well-founded in this case given defendant's recent campaign of harassment targeted at the Court's family member.

Finally, defendant rehearses here a host of other complaints having nothing to do with recusal, including his objection to the Court's recent order restricting his extrajudicial statements, and his continuing complaints about which correspondence belongs in the court file and on what schedule (Def. Mot. at 2-3, 23). These complaints are the subject of other motions and orders and are not properly raised here. To the extent that defendant cites these complaints as further proof of the Court's alleged partiality, he is wrong: "adverse rulings are not evidence of judicial bias." *Trask v. Rodriguez*, 854 F.3d 941, 944 (7th Cir. 2017).

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Courts have an obligation to reject unsupported recusal motions to deter parties from judge-shopping that can undermine the perception of fairness in the justice system. Indeed, as this Court

already recognized, "[a] judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is." Aug. 11, 2023 Order at 2 (quoting *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988)).

Defendant's motion is not a good-faith effort to identify legitimate grounds for this Court's recusal. Instead, this motion is no more than an effort to end-run the order restricting extrajudicial speech and pollute the court file with *ad hominem* attacks against the Court and the Court's family as part of a meritless effort to call the integrity of these proceedings into question. And the motion is yet another last-ditch attempt to address defendant's real objective, which is—as the Court has already recognized—to delay this proceeding indefinitely. As this Court has repeatedly held, there is no valid ground to avoid or adjourn the forthcoming trial. Defendant's current motion should be denied.

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Respectfully submitted,

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