

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ANDREW P. FLOOD, )  
 )  
 Plaintiff )  
 )  
 v. ) 1:11-cv-00032-DBH  
 )  
 PATRICIA BARNHART, )  
 )  
 Defendants )

ORDER OF RECUSAL

The undersigned Magistrate Judge hereby RECUSES herself from acting any further in this matter.

Upon review of the Defendant's Answer on April 5, 2011, I realized for the first time that in 1999 I was the state court judge who imposed sentence upon Flood. According to the State's record in this case, filed March 30, 2011, I sentenced Flood on March 31, 1999, to a twelve-year term of imprisonment with five years suspended followed by six years of probation. The current § 2254 petition challenges the revocation of that period of probation by another Justice of the Superior Court on January 25, 2010. Thus my involvement with this matter is certainly one step removed from the imposition of the original sentence. However, Flood was sentenced to serve the remaining five years of the original sentence and thus is currently in custody under the terms of a sentence originally imposed by me. Pursuant to 28 U.S.C. § 455 (a) and/or (b)(3) and Russell v. Lane, 890 F.2d 947, 948 (7th Cir. 1989), I am concerned that my continued involvement in this case may create the appearance of impropriety. I also note that a number of

years ago I was involved in a similar situation in another, totally unrelated case. In that case, the petitioner brought the matter to my attention and I immediately recused myself from the case. Nevertheless, the petitioner filed a judicial misconduct complaint against me with the First Circuit. The complaint was summarily dismissed in an unpublished opinion that is no longer available on the Court's website, but my clear recollection was that the Court noted with approval my prompt recusal as soon as I became aware of the potential appearance of impropriety. That finding would be in accordance with the Russell case. I therefore reluctantly conclude that it is appropriate for me to recuse in the instant case, though I harbor no actual bias against Flood and I believe I would not hesitate to call a sentence unconstitutional if it were so, regardless of the fact that I imposed it.

In accordance with the provisions of 28 U.S.C. §455(a), the Clerk of Court shall enter upon the records that the undersigned has been recused.

April 6, 2011

/s/ Margaret J. Kravchuk  
United States Magistrate Judge