

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NICOLE CORRADO,

Plaintiff, ORDER

- against -

CV 12-1748 (DLI)(MDG)

NEW YORK STATE UNIFIED COURT SYSTEM,

Defendant.

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By letter filed on March 14, 2013 (ct. doc. 73), Ambrose Wotorson, counsel for plaintiff, seeks my recusal from pretrial supervision of this action. Plaintiff claims that recusal is warranted for my failure to disclose that I served as a member of the Governor's Task Force on Minority Representation on the Bench (the "Task Force") from 1991-1992. For the reasons set forth below, plaintiff's application is denied.

DISCUSSION

A judge is required to recuse himself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a) (1988). The standard to be applied to a motion to recuse is an objective one: whether a reasonable person, knowing all the facts, would conclude that the trial court's impartiality could reasonably be questioned. See Apple v. Jewish Hosp. Med. Ctr., 829 F.2d 326, 333 (2d Cir. 1987). A judge has

an affirmative duty not to disqualify himself unnecessarily. See LoCascio v. United States, 473 F.3d 493, 498 (2d Cir. 2007); National Auto Brokers Corp. v. General Motors Corp., 572 F.2d 953, 958 (2d Cir. 1978).

Plaintiff contends that this Court's failure to disclose participation on the Task Force is a basis for recusal and "[t]o plaintiff, [t]his issue potentially establishes a conflict or, at the very least, raises the appearance of one." Ct. doc. 73 at 2. In particular, plaintiff is concerned with "this Court's connection or affiliation to either of the two Cuomo administrations . . ."

First, plaintiff is wrong that the Court has not disclosed its participation in the Governor's Task Force. The biography posted on this Court's website includes my membership on the Task Force, and to the best of my knowledge, has been unchanged since before commencement of this action. See http://www.nyed.circ2.dcn/dc/Court_Directory/Judicial_Officers/Magistrate_Judges/MDG/mdg.html.

Importantly, no reasonable person would conclude that this Court's impartiality could reasonably be questioned because of my membership on the Task Force. The Task Force was charged with the duty to prepare a report to the Governor which would, inter alia, "identify the causes of under-representation of minorities on the New York State bench, ... [and to d]etermine which changes, if any, to the judicial selection process would likely

increase minority representation on the bench. . ." N.Y. Comp. Codes R. & Regs. tit. 9, § 4.149 (1991). I served in my capacity as a member of the private bar and, like other members on the Task Force, received no compensation. Id. My participation on the Task Force could hardly be viewed as a "connection or affiliation" to the current or past Cuomo administrations, or even qualify as government service meriting recusal. Cf. Matson v. Bd. of Educ. of City Sch. Dist. of N.Y., 631 F.3d 57 (2d Cir. 2011) ("A judge's prior governmental service, even with the same entity appearing before the judge as a party, does not automatically require recusal"); see Longi v. New York, 363 Fed. App'x 57 (2d Cir. 2010) (affirming denial of recusal motion where district judge and magistrate judge were previously employed by defendants). The facts alleged by plaintiff and the parties to this case have nothing whatsoever to do with the work of the Task Force.

Moreover, the familial relationship between then Governor Mario Cuomo, who appointed me to the Task Force, and the current Governor Andrew Cuomo, has no bearing on this case. The plaintiff has sued the Unified Court System, a separate branch of the New York state government. See generally In re N.Y. State Inspection, Sec. and Law Enforcement Employees, District Council 82, AFCME, 64 N.Y.2d 233, 239 (1984) (discussing separation of powers of government of State of New York). Plaintiff's argument is based on such an attenuated connection as to be patently

frivolous.¹ See Ransmeier v. Mariani, 718 F.3d 64, 70 (2d Cir. 2013).

CONCLUSION

There being no appropriate basis for recusal, plaintiff's application is denied.

SO ORDERED.

Dated: Brooklyn, New York
March 17, 2014

/s/
MARILYN DOLAN GO
UNITED STATES MAGISTRATE JUDGE

¹ Although counsel carefully couches his argument as his client's view, he is responsible for the arguments that appear in his motion papers. See Fed. R. Civ. P. 11(b), (c)(1).