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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VICTOR HEINZ KOHRING,

Defendant.

No. CR07-00055-01-JWS

MOTION FOR EVIDENTIARY
HEARING REGARDING NEW
TRIAL AND THE RECUSAL OF
JUDGE JOHN SEDWICK

EVIDENTIARY HEARING REQUESTED

COMES NOW, the defendant, Victor Heinz Kohring, by and through undersigned counsel, and moves the Court for an order granting an evidentiary hearing on the motion for dismissal of the Indictment or, in the alternative, for a new trial, so that the Court is able to hear live, sworn testimony and the defense is able to exercise its rights of confrontation and cross examination.

This motion is based upon 28 U.S.C. §§ 144 and 455; Cannon 3 of the Code of Conduct for United States Judges; the Sixth Amendment; and on the files and records heretofore entered in this cause and the memorandum of authorities and exhibits filed in support of this motion.

I. BACKGROUND OF THE CASE

On February 1, 2008, the defense filed a motion to dismiss the Indictment or, in the alternative, for a new trial based on the appearance of fairness doctrine due to the antagonistic relationship between Judge Sedwick's wife, Deborah Sedwick, and the defendant during the late 1990's. At Dkt. 155.

1 On February 4, 2008, Judge Sedwick entered an order referring the motion to the
2 Honorable Judge H. Russell Holland for determination. At Dkt. 158. The order further
3 stayed all proceedings in this case pending Judge Holland's resolution of the request for
4 Judge Sedwick's recusal. Most important for the purposes of this motion is the fact that
5 Judge Sedwick, in his order, represented that he had "no recollection" of any
6 conversations with his wife pertaining to former Representative Kohring or the fact that
7 he was her nemesis in the State Legislature. He further disavowed any knowledge of
8 their contentious relationship and merely acknowledged that he recalled legislation that
9 combined his wife's Department with another Department and that she became head of
10 the new department. These representations, however, are irrelevant under the applicable
11 reasonable person standard in assessing claims arising under the appearance of fairness
12 doctrine and should not serve as the basis for any determination of the issue.

13 In a subsequent Order dated February 6, 2008, Judge Holland refused the
14 assignment and transferred the case back to Judge Sedwick. At Dkt. 160. Judge Holland
15 held that the defense motion should be considered pursuant to Section 455(a), not Section
16 144, so that Judge Sedwick must determine the motion himself.

17 **II. THE COURT SHOULD TRANSFER THE CASE FROM JUDGE
18 SEDWICK, HOLD AN EVIDENTIARY HEARING SUBJECT TO THE
19 RULES OF EVIDENCE, AND NOT RELY ON ANY UNSWORN
20 STATEMENTS CONTAINED IN JUDGE SEDWICK'S ORDER.**

21 As Judge Sedwick failed to execute the self-enforcing provisions of Section
22 455(a), and as Mr. Kohring already submitted a timely affidavit (Def. Mot. at Ex. D)
23 sufficient for Judge Sedwick to recuse himself under Section 144, the proper remedy is
24 transfer of the proceedings to another judge, vacation of the conviction, and a new trial.

The defendant's Motion to Dismiss is premised on both 28 U.S.C §§ 144 and
455(a). While Section 455(a) requires that the judge personally determine the issue of his
or her own disqualification, Section 144 provides that when a party submits a timely
affidavit sufficiently detailing the bases of the judge's ostensible bias, another judge shall
be assigned to the case.

After the defense filed its motion, Judge Sedwick properly transferred the case to
Judge Holland. Despite Judge Sedwick's protestations that he was unaware of any
circumstances that might call his impartiality into doubt, he nevertheless deemed it

1 proper to transfer the case in order to avoid any further appearance of unfairness. He thus
2 must have found that the affidavit Mr. Kohring submitted (at Docket 155, Ex. D.)
3 presented sufficient grounds for his recusal.

4 The Court should heed Judge Sedwick's caution and transfer the proceedings. In
5 addition, the Court should in no manner grant any credence to the unsworn statements in
6 Judge Sedwick's Order and grant an evidentiary hearing so that the defense can exercise
7 its constitutionally provided rights of confrontation and cross examination. Not only is it
8 irresponsible on the part of Judge Sedwick to include unsworn statements in a judicial
9 order, but it stretches the limits of credulity to accept that he and his wife never discussed
10 her past contentious relationship with then Representative Kohring.

11 Especially given Ms. Sedwick's attendance during the final day of closing
12 argument and for the reading of the jury verdict, it seems unrealistic to blindly accept that
13 Judge Sedwick had no knowledge of the antagonism that characterized Ms. Sedwick's
14 relationship with Mr. Kohring. In addition, the Sedwicks live catty-corner from the
15 residence of Bill Allen; it seems likewise impossible that the Sedwicks would not discuss
16 their neighbor, who has been a primary subject of the Alaska media for nearly the past
17 year, his legal troubles, and what was happening in Judge Sedwick's courtroom.

18 Finally, the defense requests that the Court not accept the disingenuous arguments
19 by the government that Judge Sedwick's Order somehow constitutes the law of the case.
20 Analogously, the defense beseeches the Court to force the government to provide verified
21 facts, as opposed to newspaper snippets containing voluntary contributions from
22 motivated parties with animus against Mr. Kohring, particularly Democratic party
23 opponents.

24 **III. CONCLUSION**

For the reasons stated above, Mr. Kohring respectfully requests a full evidentiary
hearing on the defense motion to dismiss the Indictment, or in the alternative, for new
trial, and the disqualification of Judge John Sedwick from participation in any future
proceedings in this case on account of the appearance of impropriety, and perhaps actual
impropriety as well.

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1 Presented by,

2 Victor Heinz Kohring, represented by,

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11 **CERTIFICATE OF SERVICE**

12 I HEREBY CERTIFY that on March 10th, 2008, I electronically filed Defendant
13 Victor Heinz Kohring's Motion for an Evidentiary Hearing on the issue of judicial bias
14 with the clerk of the court using the CM/ECF system which will send notification of such
15 filing to the attorneys of record for the defendant and the government.

16 Dated this 10th day of March, 2008.

17 s/ Lisa A. Earnest
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