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4 UNITED STATES BANKRUPTCY COURT
5 EASTERN DISTRICT OF CALIFORNIA
6

7 In re:) Case No. 06-22225-D-7
8 BETSEY WARREN LEBBOS,) Docket Control No. BWL-6
9) DATE: April 5, 2007
10 Debtor.) TIME: 10:00 a.m.
DEPT: D

11 This memorandum decision is not approved for publication and may
12 not be cited except when relevant under the doctrine of law of
the case or the rules of claim preclusion or issue preclusion.

13 MEMORANDUM DECISION

14 Betsey Warren Lebbos ("the Debtor"), who initiated the
15 above-captioned chapter 7 bankruptcy case (the "Case"), seeks to
16 disqualify the undersigned as the bankruptcy judge in this case.
17 For the reasons set forth below, the court will deny the Debtor's
18 request.

19 I. INTRODUCTION

20 On June 26, 2006, the Debtor filed her voluntary chapter 7
21 petition. At that time, the Debtor was represented by attorney
22 Darryll Alvey ("Mr. Alvey").¹

23 A. The Prior Motion

24 About four months after the Case was commenced, the Debtor
25 transmitted to the court a letter dated October 30, 2006,
26 addressed to the Honorable Michael McManus and the judges of this
27 court (hereinafter "the Letter"). The Letter was filed in the
28 _____

1. Mr. Alvey has since been authorized to withdraw as the Debtor's counsel.

1 Case on November 1, 2006, and on November 9, 2006, the court
2 entered an order construing the Letter as a motion to terminate
3 the appointment of the chapter 7 trustee to whom the case was and
4 is assigned, Linda Schuette ("the Trustee"), to terminate the
5 appointment of Michael Dacquisto ("Trustee's Counsel") as the
6 Trustee's attorney, and for disciplinary relief against the
7 Trustee and Trustee's Counsel.²

8 The Debtor, the Trustee, and the United States Trustee's
9 office filed documents in support of their respective positions
10 concerning the Prior Motion. The court heard oral argument on
11 the Prior Motion on January 3, 2007, and on January 22, 2007,
12 issued its Memorandum Decision (hereinafter "the Decision") and
13 order denying the Prior Motion.

14 B. The Present Motion

15 On February 28, 2007, the Debtor filed an Affidavit and
16 Points and Authorities in Support of Disqualification of
17 Honorable Robert Bardwil ("the Affidavit"); on March 14, 2007, a
18 Supplemental Affidavit and Points and Authorities in Support of
19 Disqualification of Honorable Robert Bardwil; and on March 16,
20 2007, page 3 of the supplemental affidavit, which had been
21 inadvertently omitted from the March 14 filing.³ The Debtor did
22 not file a motion to disqualify the undersigned or otherwise seek
23 to set the matter for hearing.

24 / / /

26 2. Hereinafter, the Debtor's request for this described relief
27 will be referred to as "the Prior Motion."

28 3. Hereinafter, the March 14 and March 16 filings will be
referred to collectively as "the Supplemental Affidavit."

1 The matter came to the attention of the court on or about
2 March 21, 2007, when the Debtor filed a letter with the Clerk of
3 the Court referencing the Affidavit. On March 22, 2007, the
4 court entered an order construing the Affidavit as a motion to
5 disqualify the undersigned. The order gave the Trustee, the
6 United States Trustee, and other parties in interest until March
7 30, 2007, in which to file and serve opposition or responses to
8 the Debtor's request for disqualification.

9 On March 21, 2007, the Debtor filed an Ex Parte Request to
10 Void Decisions Due to Pending Disqualification and Supplement to
11 It (hereinafter "Request to Void Decisions").⁴ On March 30,
12 2007, the Debtor filed a Second Supplemental Affidavit in Support
13 of Disqualification of Honorable Robert Bardwil. On March 29,
14 2007, the Trustee filed a response to the Affidavit. On April 4,
15 2007, the Debtor filed a Third Supplemental Affidavit in Support
16 of Disqualification of Honorable Robert Bardwil and Reply to
17 Opposition.⁵

18 On April 5, 2007, the court heard oral argument. The
19 following parties appeared and presented argument: John Read (by
20 telephone), making a special appearance for the Debtor, and
21 Michael Dacquisto (by telephone), for the Trustee. The Debtor
22 also entered her appearance by telephone.

23 / / /

24
25 4. This request is referred to in this decision insofar as it
26 supplements the Affidavit. The court has not yet ruled on the
27 request itself, which is set for hearing on April 25, 2007.

28 5. Hereinafter, the Affidavit, the Supplemental Affidavit, the
Second Supplemental Affidavit, and the Third Supplemental Affidavit
will be referred to collectively as "the Motion."

1 No objection was made to any evidence offered. The Motion
2 having been briefed and argued by those parties wishing to be
3 heard, the court took the Motion under submission.⁶

4 II. ANALYSIS

5 A. Request for Determination by Another Judge

6 As a preliminary matter, the Debtor asks that her request to
7 disqualify the undersigned be determined by a judge other than
8 the undersigned. Therefore, before the Motion can be resolved on
9 the merits, the court must determine whether the disqualification
10 issue can and should be decided by another judge.

11 Determination of the Motion is governed by 28 U.S.C. § 455
12 (see discussion, below). The Ninth Circuit appears to require
13 that a motion for disqualification under that section be decided
14 by the judge whose disqualification is sought. Bernard v. Coyne
15 (In re Bernard), 31 F.3d 842, 843 (9th Cir. 1994); United States
16 v. Sibla, 624 F.2d 864, 868 (9th Cir. 1980). Section 455 does
17 not "contain a mechanism for referring disqualification motions
18 to someone else." In re Bernard, 31 F.3d at 843. Nor do the
19 Federal Rules of Bankruptcy Procedure or the local rules of this
20 court provide such a procedure.⁷ Therefore, the request to have

21
22 6. Pursuant to the remarks of Mr. Read at the hearing, the
23 court considers the Debtor's request for disqualification to be
24 applicable to her parent bankruptcy case and to the two adversary
proceedings pending in it, Adv. Nos. 06-2314 and 07-2006.

25 7. The court notes that 28 U.S.C. § 144 provides for
26 disqualification proceedings to be assigned to a judge other than the
27 challenged judge. However, that section does not apply to
28 bankruptcy judges. Seidel v. Durkin (In re Goodwin), 194 B.R. 214,
221 (B.A.P. 9th Cir. 1996). The court is unable to locate a Rule 224
in the local rules of the U.S. District Court for the Central
District of California, which is referred to by the Debtor, but notes
that the Debtor cites that rule as applicable to federal district
court judges, not to bankruptcy judges.

1 the Motion determined by a judge other than the undersigned is
2 denied.

3 B. Legal Standards for Disqualification

4 This court has jurisdiction over the Motion pursuant to 28
5 U.S.C. sections 1334 and 157(b)(1). The Motion is a core
6 proceeding under 28 U.S.C. section (b)(2)(A) & (0); In re Betts,
7 143 B.R. 1016, 1018 (Bankr. N.D. Ill. 1992).

8 "A bankruptcy judge shall be governed by 28 U.S.C. § 455,
9 and disqualified from presiding over the proceeding or contested
10 matter in which the disqualifying circumstance arises, or, if
11 appropriate, shall be disqualified from presiding over the case."
12 Fed. R. Bankr. P. 5004(a).

13 Section 455 of Title 28 provides in part as follows:

14 (a) Any justice, judge, or magistrate of the United
15 States shall disqualify himself in any proceeding in
which his impartiality might reasonably be questioned.

16 (b) He shall also disqualify himself in the following
17 circumstances:

18 (1) Where he has a personal bias or prejudice
19 concerning a party, or personal knowledge of
disputed evidentiary facts concerning the
proceeding.

20 * * *

21 (4) He knows that he . . . has a financial
22 interest in the subject matter in controversy
23 or in a party to the proceeding, or any other
interest that could be substantially affected
by the outcome of the proceeding.

24

25 The disqualification statute was comprehensively revised in
26 1974, to provide for disqualification not only where a judge
27 holds a personal bias or prejudice, but also to spell out a list
28 (not fully reproduced above) of various interests and

1 relationships that require the judge to disqualify himself from
2 hearing a proceeding; such interests and relationships were only
3 generally stated in the prior statutory language. Liteky v.
4 United States, 510 U.S. 540, 546-48 (1994). Section 455(a) was
5 added to include objective, "catch-all" grounds for
6 disqualification, in addition to the earlier "interest or
7 relationship" grounds and "bias or prejudice" grounds, which are
8 now specifically stated and set forth in the various subsections
9 making up § 455(b). Liteky, 510 U.S. at 548. Under § 455(a),
10 "[the standard for recusal is clearly objective: 'whether a
11 reasonable person with knowledge of all of the facts would
12 conclude that the judge's impartiality might reasonably be
13 questioned'." In re Georgetown Park Apts., Ltd., 143 B.R. 557,
14 559 (B.A.P. 9th Cir. 1992), quoting United States v. Nelson, 718
15 F.2d 315, 321 (9th Cir. 1983) (other citations omitted).

16 The Code of Conduct for United States Judges (the "Code of
17 Conduct") mirrors the provisions of 28 U.S.C. § 455. The Code of
18 Conduct requires that "every judicial officer must satisfy
19 himself that he is actually unbiased towards the parties in each
20 case and that his impartiality is not reasonably subject to
21 question." Bernard, 31 F.3d at 843. Under this standard, the
22 judge must not only be subjectively confident that he is
23 unbiased; it is also objectively necessary that "an informed,
24 rational, objective observer would not doubt his impartiality."
25 Id. at 844, citing United States v. Winston, 613 F.2d 221, 222
26 (9th Cir. 1980). However, "to say that § 455(a) requires concern
27 for appearances is not to say that it requires concern for
28 mirages." United States v. El-Gabrownny, 844 F. Supp. 955, 961

1 (S.D.N.Y. 1994). As such, recusal must be based on factors in
2 the record and in the law. Id. at 962.

3 Cases applying recusal statutes apply a presumption of
4 impartiality. E.g. In re Larson, 43 F.3d 410, 414 (8th Cir.
5 1994) (judge presumed impartial; parties seeking recusal bear
6 "substantial burden" of proving otherwise); First Interstate Bank
7 v. Murphy, Weir & Butler, 210 F.3d 983, 987 (9th Cir. 2000)
8 ("Judicial impartiality is presumed"); In re Spirtos, 298 B.R.
9 425, 431 (Bankr. C.D. Cal. 2003) ("A judge is presumed to be
10 qualified to hear a matter and the burden is upon the moving
11 party to prove otherwise").

12 In addition, "[j]udges have an obligation to litigants and
13 their colleagues not to remove themselves needlessly . . .
14 because a change of umpire in mid-contest may require a great
15 deal of work to be redone . . . and facilitate judge-shopping."
16 In re Betts, 143 B.R. 1016, 1020 (Bankr. N.D. Ill. 1992), quoting
17 In re National Union Fire Ins. Co., 839 F.2d 1226, 1229 (7th Cir.
18 1988) (omitting citation); see also In re Computer Dynamics,
19 Inc., 253 B.R. 693, 698 (E.D. Va. 2000) (judge equally obligated
20 not to remove himself when there is no necessity and to do so
21 when there is), aff'd 10 F. App'x 141 (4th Cir. 2001).

22 C. The Debtor's Arguments

23 The Debtor offers several arguments designed to show that
24 the undersigned has a personal bias or prejudice against her and
25 in favor of the Trustee, Trustee's Counsel, and the United States
26 Trustee, and further, that "[a] person aware of the facts would
27 also entertain a reasonable doubt as to [the undersigned's]
28 ability to be impartial." Affidavit, at 1:17-21.

1 The Trustee responds that the Debtor should not benefit from
2 her failure to follow the proper procedures to set this matter
3 for hearing, that the Motion, coming as it does seven months into
4 the bankruptcy case, should be denied as untimely, and that the
5 grounds advanced by the Debtor amount to nothing more than
6 dissatisfaction with the court's orders.⁸

7 1. Alleged Failure to Read Debtor's Pleadings

8 The Debtor's first ground for disqualification is that the
9 undersigned has issued rulings in this Case without reading the
10 Debtor's pleadings. In the Affidavit, she cites several examples
11 of allegedly false statements in the Decision, and asserts that
12 the court drew heavily from inaccurate statements in the U. S.
13 Trustee's brief, while ignoring the Debtor's pleadings.

14 The Debtor begins by delineating the numerous times she
15 mentioned her probation and probation officers in her pleadings
16 comprising the Prior Motion, in her motion for change of venue,
17 and in her opposition to her attorney's motion to withdraw as her
18 counsel. She complains that the undersigned, in the Decision,
19 falsely referred to her "parole agents," instead of to her
20 "probation officers," and concludes therefrom that the
21 undersigned failed to read the Debtor's pleadings, but instead
22 mirrored the U.S. Trustee's pleadings. The Debtor asserts that
23 the undersigned knew the Debtor was not on parole and had no
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26 8. Because the Motion comes shortly after the issuance of the
27 Decision which forms the basis for the Motion, the court concludes
28 that the Motion is timely. See First Interstate Bank v. Murphy, Weir
& Butler, supra, 210 F.3d at 988 n.8 [recusal issues must be raised
at the earliest possible time after facts supporting recusal request
are discovered].

1 parole agents, that the undersigned "had his claims published so
2 as to cause [the Debtor] actual harm while knowing that he [was]
3 defrauding the public with his false claims," and that "he did so
4 out of a personal bias and prejudice" against the Debtor.⁹

5 In fact, the court used both terms--"probation officers" and
6 "parole officers"--in the Decision, the former much more
7 frequently than the latter. Further, the distinction between
8 parole officers and probation officers, in the context of the
9 Debtor's bankruptcy case and of the Decision, is a distinction
10 without a difference; in fact, it mattered not at all to the
11 court's decision whether the Debtor was on parole or on
12 probation. That both the U.S. Trustee and the court mentioned
13 "parole officers" demonstrates not that the court was overly
14 influenced by the U.S. Trustee's brief but only that the court
15 read and considered the U.S. Trustee's pleadings, as well as the
16 Debtor's, as was its duty.¹⁰

17 More important, the court's methods of analyzing the
18 parties' contentions and arguments, whatever they may have been,
19 and in preparing its Decision, cannot, in and of themselves,
20 demonstrate the bias and prejudice requiring disqualification.
21 Instead, "[t]he alleged bias and prejudice to be disqualifying
22 must stem from an extrajudicial source and result in an opinion
23

24 9. The Debtor contends that the act of "publishing" the
25 Decision was intended to cause harm to the Debtor. However, the
26 Decision was not published in any official reporter, but only on the
court's website, as required by the E-Government Act of 2002, Pub. L.
No. 107-347.

27 10. "The United States trustee may raise and may appear and be
28 heard on any issue in any case or proceeding under this title. . . ."
11 U.S.C. § 307.

1 on the merits on some basis other than what the judge learned
2 from his participation in the case." Liteky v. United States,
3 supra, 510 U.S. at 545, n.1 (citation omitted). "Judicial
4 rulings alone almost never constitute a valid basis for a bias or
5 partiality motion. (Citation.) In and of themselves . . . they
6 cannot possibly show reliance upon an extrajudicial source; and
7 can only in the rarest circumstances evidence the degree of
8 favoritism or antagonism required . . . when no extrajudicial
9 source is involved." Id. at 555; In re Focus Media, Inc. 378
10 F.3d 916, 930 (9th Cir. 2004). The court's inadvertent use of an
11 incorrect term, "parole officers," derives solely from what the
12 court learned from its participation in the case, and not from
13 any extrajudicial source.

14 The Debtor asserts that the court copied from the U.S.
15 Trustee's brief "for [the court's] own financial self-interest in
16 currying favor with the U.S. Trustee in order to try and keep its
17 job." Affidavit, at 8:3-5. This contention is based solely on
18 speculation. "The standard for recusal is whether a reasonable
19 person, with knowledge and understanding of all the relevant
20 facts, would conclude that the judge's impartiality might
21 reasonably be questioned. [Citations] The court asks how things
22 would appear to the well-informed, thoughtful, and objective
23 observer, not the hypersensitive, cynical, and suspicious
24 person." 12 Moore's Federal Practice, § 63.20[4] (Matthew Bender
25 3d ed.); see also O'Connor v. State of Nevada, 27 F.3d 357, 363-
26 64 (9th Cir. 1994). Speculation based on the court's choice of
27 wording in its Decision simply does not suffice.

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1 The Debtor also complains that the court copied the U.S.
2 Trustee's allegedly false statement that the Debtor was under
3 house arrest in Santa Clara County. Affidavit, at 7:3-5. In
4 fact, this statement came from the Debtor herself. See Letter,
5 at page 5; Declaration of Betsey Warren Lebbos in Support of
6 Motion to Terminate Linda Schuette as Trustee and Michael
7 Dacquisto as a Lawyer, filed November 27, 2006, at para. 28.¹¹

8 The Debtor cites several other examples where she alleges
9 the court copied incorrect statements from the U.S. Trustee's
10 brief, and concludes therefrom that the court, out of bias and
11 prejudice, failed to read the Debtor's pleadings. The court has
12 reviewed each example, together with the portions of the record
13 cited by the Debtor in support, and is satisfied that the court
14 read and considered all of the Debtor's pleadings prior to
15 issuing each of its rulings in this case, including the Decision.

16 2. Procedural Handling of Debtor's Letter

17 The Debtor next complains about the court's procedural
18 handling of the Prior Motion:

19 On November 1, 2006 the Court, without my consent or
20 permission, converted my attorney disciplinary
21 complaint letter to be presented by a volunteer lawyer
22 prosecuting the case before a professional attorney
23 disciplinary committee, where I would be a witness
24 only, into its own motion on my bankruptcy case to
25 terminate the trustee and her lawyer and for other
26 disciplinary relief. [Citation to record.] It did so by
27 prejudicially construing my letter as a motion to
28 terminate them and to impose discipline.

Affidavit, at 8:14-19.

26 11. The Debtor raises a similar argument about the court's
27 reference at the March 14, 2007 hearing to the Debtor being
28 incarcerated. The court's remark was in connection with the
indication of its likely ruling in favor of the Debtor on her motion
to set aside a default against her. The reference to incarceration,
as opposed to house arrest, was nothing more than inadvertence.

1 The Debtor argues that the court's action in treating the
2 Letter as a motion forced her and her attorney, "against their
3 will, to prosecute a motion they never filed" The Debtor
4 concludes from this that "[t]he judge was making the debtor's
5 lawyer withdraw so she would be forced to have no lawyer."
6 Affidavit, at 8:21-9:2.¹²

7 By contrast, the Letter itself contained an explicit request
8 that the Honorable Michael McManus and the judges of this court
9 consider the Letter an official disciplinary complaint, and
10 concluded by thanking them for their "expeditious handling of
11 this matter." Thus, the Debtor clearly intended the Letter to
12 result in some form of relief from the bankruptcy court. The
13 court's action in setting the matter for hearing to consider
14 appropriate disciplinary action was in compliance with Rule 83-
15 184(a) of the local rules for the U.S. District Court for this
16 district, as incorporated in bankruptcy cases in this district by
17 Local Bankruptcy Rule 1001-1(c).

18 Moreover, the Debtor's present assessment of this matter
19 conflicts with the opinion she held before the court ruled on the
20 Prior Motion, when she stated, "Judge Bardwil's conversion of my
21 attorney disciplinary complaint into a motion to terminate Linda
22 Schultze [sic] as trustee and Michael Dacquisto as her lawyer and
23 to initiate disciplinary proceedings against them is an act of

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27 12. This statement conflicts with Mr. Alvey's testimony that
28 the Debtor demanded he be relieved as her counsel both before and
after the Debtor sent the Letter to the court. See Declaration of
Darryll Alvey in Support of Motion to be Relieved as Counsel, filed
December 4, 2006.

1 judicial courage and decency."¹³ Clearly, it is the court's
2 ruling in the Decision the Debtor objects to now, not the fact
3 that the court construed the Letter as a motion. The cases,
4 however, are uniform that a "judge's adverse rulings in the
5 course of a judicial proceeding almost never constitute a valid
6 basis for disqualification based on bias or partiality." 12
7 James Wm. Moore, Moore's Fed. Practice § 63.21[4], at 63-39 (3d.
8 ed. 2006) (citing cases); see also Liteky, 510 U.S. at 554-55.

9 3. Alleged Omissions from the Decision

10 The Debtor next complains that the court failed to refer in
11 the Decision and in other rulings in the Case to each particular
12 point raised by the Debtor. In the Debtor's view, these alleged
13 omissions evidence a personal animosity toward the Debtor and an
14 inability to be impartial. However, many of the matters
15 allegedly omitted by the court either were actually addressed by
16 the court or were immaterial to the particular decision of which
17 the Debtor now complains.

18 For example, the Debtor asserts that the court failed to
19 refer in the Decision to "thirty one admitted acts" of the
20 Trustee and Trustee's Counsel in communicating with the Debtor
21 without the consent of her attorney. Affidavit, at 9:3-12. In
22 fact, the Decision responded explicitly to the Debtor's
23 complaints that the Trustee's Counsel's communications with her
24 probation officers were prohibited by applicable Rules of
25 Professional Conduct, as indirect communications with the Debtor
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28 13. Debtor's Declaration in Opposition to Attorney's Motion to
Withdraw Now and for Stay of Order Until After Removal of Trustee and
Lawyer, filed December 14, 2006, at 1:23-26.

1 outside the presence of her counsel. The court rejected the
2 contention. Decision, at 8:20-9:2.

3 The remaining alleged ex parte communications by the
4 Trustee's Counsel consisted of serving court-filed documents on
5 the Debtor, as evidenced by proofs of service filed with the
6 court.¹⁴ Inasmuch as the applicable rules require the service of
7 motions in bankruptcy cases on the debtor as well as the debtor's
8 attorney, the contention that service on the Debtor constitutes
9 an unauthorized communication is without merit.¹⁵ That the court
10 did not mention this point in the Decision is evidence only of
11 its immateriality and would not suggest bias or prejudice to the
12 reasonable observer.

13 The Debtor complains that the court ignored her allegations
14 of perjury committed by the Trustee and her argument that on two
15 occasions she was not given actual notice of the continued
16 meeting of creditors. On the contrary, the court made express
17 findings on both these issues. See Decision, at 9:16-10:9 and
18 7:16-25. The court's failure to itemize each of the alleged
19 instances of perjury does not mean the court failed to read the
20 Debtor's pleadings. On the contrary, the undersigned is
21 satisfied the he read and carefully considered all the Debtor's
22 pleadings in this Case prior to issuing each ruling, including
23 the Decision. In particular, with regard to the allegations of
24 perjury, the court concluded in each of the itemized instances

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26 14. See Reply by Debtor re: 115 Misconduct Acts by Linda
27 Schuette and Michael Dacquisto re: Their Termination, Disciplinary
Action, and Referral of The Perjury Acts to The United States
Attorney, filed December 27, 2006, at page 7.

28 15. See Fed. R. Bankr. P. 9014(b), 7004(b)(9) and (g).

1 that the statements of the Trustee and Trustee's Counsel did not
2 constitute perjury or misconduct in the prosecution of the Case.
3 The court's failure to list and discuss each alleged instance
4 would not suggest to the reasonable observer any basis to
5 question the court's impartiality.

6 The Debtor refers at length to the Debtor's Medical Report
7 Indicating Impossibility of Performance, filed February 15, 2007,
8 and asserts that the court ignored this document and others filed
9 by the Debtor detailing her inability to attend a continued
10 meeting of creditors in Redding, California. Request to Void
11 Decisions, at 1:25-2:7. There is no evidence other than the
12 Debtor's dissatisfaction with the court's rulings in the Case to
13 support the conclusion that these documents were not read and
14 considered by the court.¹⁶

15 Finally, the Debtor raises the possibility that the court
16 caused her misunderstanding as to certain hearings on March 14,
17 2007, at which she did not appear. Request to Void Decisions, at
18 2:8-16. The court notes that the Debtor might have sought to
19 confirm with Court Call the status of those hearings, as she did
20 with certain hearings on February 28, 2007. The court would add
21 in passing that the Debtor's filing of ex parte requests without

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23 16. The court notes that the Debtor has failed to respond to
24 the Trustee's Counsel's inquiries on October 9, 2006 and February 21,
25 2007, as to whether the Debtor might be able to travel to the federal
26 courthouse in San Jose so the meeting could be conducted there. See
27 Exhibits in Support of Trustee's Opposition to Debtor's Motion to
28 Disqualify Trustee, to Disqualify Counsel for the Trustee and to
Impose Disciplinary Sanctions, filed December 18, 2006, at page 37 of
47; Exhibits to Ex Parte Request to Void Decisions Due to Pending
Disqualification and Supplement to It, filed March 21, 2007, at page
47 of 56. The Debtor admits she is able to leave her residence in
San Jose for two to four hours per day. Second Supplemental
Declaration, at ¶ 34.

1 setting them for hearing and her failure otherwise to follow the
2 court's local rule with respect to its motion calendar and
3 procedures (Local Bankruptcy Rule 9014-1) causes confusion when
4 reviewing the court docket.

5 4. Alleged Fabrication of Arguments

6 The Debtor asserts that the court fabricated the argument
7 (only to refute it) that the Debtor's probation officers were her
8 agents, and thus, that communications with them might constitute
9 indirect communications with the Debtor outside the presence of
10 her counsel. The Debtor did in fact argue that the Trustee's
11 Counsel's communications with her probation officers were
12 attempts to communicate with her indirectly rather than through
13 her attorney. See Affidavit, at 3:13-20; 4:4-9. That the court
14 phrased the argument in terms of agency, rather than indirect
15 communication, had no bearing on the Decision, and does not
16 demonstrate personal bias or prejudice against the Debtor, as she
17 alleges.

18 The Debtor also complains that the court wrongly construed
19 as consent her then counsel's failure to object when informed
20 that the Trustee's Counsel intended to contact the Debtor's
21 probation officers. The court finds nothing in the applicable
22 rule, Rule 2-100(A) of the California Rules of Professional
23 Conduct, to the effect that consent cannot be shown by failure to
24 object. The court notes also that the rule expressly does not
25 prohibit communications with a public officer. Rule 2-100(C)(1).

26 In any event, the Debtor has failed to demonstrate that a
27 reasonable person would view the court's ruling on this issue,
28 right or wrong, as motivated by bias or prejudice against the

1 Debtor, by favoritism toward the U.S. Trustee, or by any other
2 factor requiring disqualification.

3 5. Grounds Raised in Supplemental Affidavits

4 The Debtor purports to raise new issues in her Supplemental
5 Affidavit and Second Supplemental Affidavit, and itemizes a
6 variety of new grounds for disqualification in her Third
7 Supplemental Affidavit. Among these is the alleged evidence of a
8 misogynist and sexist attitude on the part of the undersigned,
9 and an allegation that the undersigned is prejudiced against
10 debtors. The undersigned does not view the evidence presented as
11 proof of any such tendency, and concludes that the reasonable
12 observer would draw no such inference.

13 The court does find significant the Debtor's assertion that
14 she did not read or sign the petition commencing this Case, for
15 if that is accurate, the court's jurisdiction may be in
16 question.¹⁷ The assertion is contradicted by the documents filed
17 under cover of the Trustee's Counsel's declaration filed February
18 26, 2007. However, in the interest of an accurate determination
19 on this important issue, by order dated April 3, 2007, the court
20 seeks additional evidence.

21 The court finds that the numerous itemized instances of the
22 court's alleged failure to address issues raised by the Debtor,
23 alleged falsification of the record and of "bias with
24 discriminatory conjectures and surmises" are restatements of
25 arguments already raised by the Debtor and considered by the
26 court.

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28 17. See Debtor's declaration entitled No Debtor's Signature on
Petition Evidence Relative to Venue Motion, filed March 26, 2007.

1 Similarly, the court finds that the alleged "evidence of
2 preferential treatment for his appointee attorney" has been, for
3 the most part, previously raised and considered. The Debtor
4 raises the new argument that because the undersigned authorized
5 the employment of the Trustee's Counsel, the undersigned had a
6 "personal interest in the outcome" of the Debtor's Prior Motion,
7 and should have disqualified himself on that basis. However, a
8 single judge typically presides in a particular bankruptcy case,
9 and a ruling on an application to employ counsel gives the
10 deciding judge no personal stake of any kind in the outcome of
11 any other proceedings in the case.

12 The Debtor's argument that one panel trustee may not serve
13 as attorney for another panel trustee is similarly flawed. In
14 this district at any rate, such employment is not uncommon, and
15 the court's failure previously to address this issue is certainly
16 no evidence of favoritism toward the Trustee's Counsel, as the
17 Debtor alleges.

18 The Debtor's arguments that the court prejudices the issues
19 in the Case are unfounded and demonstrate the Debtor's
20 dissatisfaction with the rulings she cites; they do not
21 demonstrate the sort of pervasive bias or prejudice that would
22 constitute grounds for disqualification.

23 Finally, the Debtor asserts that the court supports and
24 approves of the crimes and frauds allegedly committed by the
25 Trustee and Trustee's Counsel. In this regard, the court notes
26 that the Debtor has no hesitation about stating her opinions as
27 fact. "[The court] even admits the conduct is criminal and it
28 approves of it." Affidavit, at 11:15. This statement is simply

1 incorrect. The Debtor's statement is evidence of nothing more
2 than her dissatisfaction with the court's rulings in the Case.¹⁸

3 The court has read and considered the alleged "new evidence
4 of pervasive bias" presented by the Debtor in her Supplemental
5 and Second and Third Supplemental Affidavits, and finds that in
6 each instance, the Debtor's real complaint is with the court's
7 rulings in the Case. Despite the sheer number of examples
8 itemized by the Debtor, and mindful that there is an exception to
9 the extrajudicial source rule in cases of bias or prejudice "so
10 extreme as to display clear inability to render fair judgment"
11 (see Liteky v. United States, supra, 510 U.S. at 551), the court
12 nevertheless is satisfied that its decisions have been based on a
13 careful review and analysis of the points raised by the Debtor,
14 without bias or prejudice in favor of any party or attorney. The
15 court believes its rulings have been firmly grounded in the
16 applicable law and are appropriate in light of the facts as
17 presented by all the parties.

18 In summary, the undersigned is satisfied that he is actually
19 unbiased towards the attorneys and the parties in this matter,
20 including the Debtor. The undersigned also cannot conclude that
21 the grounds advanced by the Debtor are such as would cause a
22 reasonable person to question the impartiality of the
23 undersigned.

24 25 III. CONCLUSION

26
27 18. In a similar vein, the Debtor repeatedly accuses the
28 undersigned of admitting that he has never read particular pleadings
of the Debtor. Third Supplemental Affidavit, at page 2.

1 For the reasons stated above, the court finds that the
2 Debtor has not met her burden under 28 U.S.C. § 455(a) of
3 overcoming the presumption of impartiality and demonstrating that
4 the impartiality of the undersigned might reasonably be
5 questioned. Neither has the Debtor demonstrated grounds for
6 disqualification under 28 U.S.C. § 455(b).

7 The court will issue an order in the Case consistent with
8 this memorandum, as well as orders in Adversary Proceeding Nos.
9 06-2314 and 07-2006.

10 Dated: April 13, 2007

_____/s/
ROBERT S. BARDWIL
United States Bankruptcy Judge