

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re)	Case No. 10-16183
)	Docket Control No. None Provided
SALMA H. AGHA,)	
)	Additional Adversary Proceeding Nos. Listed on
Debtor.)	Caption of Motion:
)	13-01086
)	14-01155
)	16-01107

**ORDER DENYING *EX PARTE* MOTION TO SHORTEN TIME
OR
PRESENTATION OF THIRD MOTION TO DISMISS *EX PARTE***

On January 10, 2017, Salma Agha-Khan, MD., who is identified as the Plaintiff-Debtor in the pleadings, filed a “Motion to Shorten Time Re: Third Motion For Judge Richard Lee to Disqualify Himself.” Dckt. 271. The Motion to Shorten time has the caption for the Plaintiff-Debtor’s bankruptcy case, No. 10-16183, and a caption for Plaintiff-Debtor’s pending adversary proceeding, No. 16-01107. The Motion also has the numbers for Adversary Proceedings 13-01086 and 14-01155, in which Plaintiff-Debtor is the plaintiff. The caption, after the bankruptcy case number, contains the direction “(must be filed under the Case number) Chapter 7.” Dckt. 1, p. 1:7.5-8.5.

Judge Richard Lee being out of the state and unavailable to consider the Motion for Order Shortening Time and the Motion to Disqualify, the matters were forwarded to the undersigned Chief Bankruptcy Judge for the District.

Motion for Order Shortening Time

The Motion for Order Shortening Time states with particularity (Fed. R. Civ. P. 7(b) and Fed.

1 R. Bankr. P. 7007, 9013) that Plaintiff-Debtor requests:

2 [p]ermission to shorten time for Judge Lee to DISQUALIFY HIMSELF from her
3 ENTIRE Bankruptcy Case 10-16183, and all its related Adversary Cases,
4 proceedings, matters etc., pursuant to *Barton v. Barbour*, 104 U.S. 126, 129, 26 L.Ed.
5 672 (1881).

6 Motion to Shorten Time, p. 2:4.5-8 (emphasis in original). The Motion to Shorten Time also states
7 that Plaintiff-Debtor has filed a new complaint, Adv. Proc. 16-01107, in which Judge Lee is named
8 as a defendant. *Id.*, p. 2:14-16. The Motion to Shorten Time directs the court to the Third Motion
9 to Disqualify for the actions upon which the requested disqualification is based. The Motion to
10 Shorten Time does not request any specific time period which the normal notice period is to be
11 shortened.

12 The court reviews the Third Motion to Disqualify not to address the merits but to put the
13 request for shortened time in the context of the substantive relief requested. In the Third Motion to
14 Disqualify, Plaintiff-Debtor states that she is requesting that the court hear the Motion *ex parte*
15 pursuant to Federal Rule of Civil Procedure 65 because it is a situation where there is immediate and
16 irreparable injury, loss or damage will result if the Third Motion to Disqualify is heard on regular
17 notice.¹ The Third Motion to Disqualify states the following summary of the irreparable loss and
18 damage if the motion is heard after regular notice:

19 A. “Plaintiff-Debtor, MINORITY COLORED WOMAN has been suffering and will
20 continue to suffer irreparable loss and damage if this motion is heard as a regular
21 noticed motion.” Third Motion to Disqualify, p. 2:14-16; Dckt. 272 (emphasis in
22 original).

23 B. “This is because Defendant Judge Lee has been defending himself actively in
24 Plaintiff-Debtor's Bankruptcy related cases for over TWO YEARS NOW and is still
25 forcefully and fraudulently presiding on Debtors Case forcing biased rulings, hiding
26 facts, lying on record to rule against the Plaintiff-Debtor, committing Bankruptcy
27 Fraud, Fraud Upon the Court by the Court itself.” *Id.*, p. 2:17.5-22.5 (emphasis in
28 original).

29 The Third Motion to Disqualify identifies specific acts and rulings of Judge Lee which Plaintiff-
30 Debtor asserts require disqualification.

31 ¹ In the Motion Plaintiff-Debtor references Federal Rule of Civil Procedure 65. While
32 the substance of the Rule has been incorporated into the Federal Rules of Bankruptcy Procedure,
33 the rules making Rule 65 applicable in the bankruptcy case are Federal Rule of Bankruptcy 7065
34 and 9014.

Federal Rule of Civil Procedure 65

The court's consideration begins with the authority cited for the relief requested - order shortening time or hearing an *ex parte* motion. Federal Rule of Civil Procedure 65 and Federal Rule of Bankruptcy Procedure 7065 address the procedure for the court issuing preliminary injunctions and temporary restraining orders. This Rule does not address shortening time or waiving notice and hearing.

Reference may have been made to Rule 65 by Plaintiff-Debtor for the concept of "irreparable harm." In discussing entering *ex parte* temporary restraining orders, Moore's Federal Practice, Civil § 65.32 states,

Under emergency circumstances, a temporary restraining order may be granted *ex parte*--i.e., without notice to the adverse party or its counsel.

The court may issue an [sic] temporary restraining order *ex parte* (i.e., without written or oral notice to the adverse party or its attorney) only if both of the following requirements are met:

- Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.
- The movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Because an *ex parte* order "runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute," the requirements of Rule 65(b)(1) must be scrupulously observed. Further, both an attorney seeking an *ex parte* order and a judge asked to grant such relief have ethical obligations regarding *ex parte* communications. If *ex parte* action is not clearly required under the circumstances, notice is an ethical obligation.

As stated by the United States Court of Appeals for the District of Columbia, merely alleging "irreparable injury" is not sufficient.

Despite this flexibility, we require the moving party to demonstrate at least "some injury," *id.*; see, e.g., *Sea Containers*, 890 F.2d at 1210-1211 (upholding district court decision denying request for preliminary injunction where moving party may have been "likely to succeed" but did not carry burden of showing irreparable harm), since "the basis of injunctive relief in the federal courts has always been irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 88, 39 L. Ed. 2d 166, 94 S. Ct. 937 (1974) (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506, 3 L. Ed. 2d 988, 79 S. Ct. 948 (1959)). Because CityFed has made no showing of irreparable injury here, that alone is sufficient for us to conclude that the district court did not abuse its discretion by rejecting CityFed's request. We thus need not reach the district court's consideration of the remaining factors relevant to the issuance of a preliminary

1 injunction.

2 *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995).

3 **Notice Requirements For Motions**

4 The procedure for filing and noticing motions is stated in Local Bankruptcy Rule 9014-1.
5 Motions must be set for hearing using either the (minimum) of 28-days notice or 14-days notice
6 (when proper). L.B.R. 9014-1(f)(1) and (f)(2). The Local Bankruptcy Rules also provide a
7 procedure for seeking an order shortening time. L.B.R. 9014-1(f)(3). The notice period may be
8 shortened for “good cause shown.” The term “good cause shown” is not defined in the Local
9 Bankruptcy Rules.

10 **Review of Adversary Proceedings**

11 As Plaintiff-Debtor stated, she has prosecuted two prior Adversary Proceedings, with Judge
12 Lee named as a defendant in the second Adversary Proceeding. Additionally, Plaintiff-Debtor
13 commenced the third Adversary Proceeding in December 2016, Adv. Proc. No. 16-01107. A review
14 of the court’s files discloses the following. Adversary Proceeding No. 13-01086 was dismissed on
15 February 19, 2015. 13-01086, Dckt. 264. On December 5, 2016, Plaintiff-Debtor filed a motion to
16 reopen adversary proceeding, which motion is captioned with both Adversary Proceedings 13-01086
17 and 14-01155. *Id.*, Dckt. 280.

18 The legal authority for reopening Adversary Proceeding 13-01086 is stated to be Federal Rule
19 of Bankruptcy Procedure 5010. Motion to Reopen, p. 4:2-8; Dckt. 280. Plaintiff-Debtor states that
20 she seeks relief from an order in the Adversary Proceeding, issued by Judge Lee, dismissing the
21 Adversary Proceeding. Plaintiff-Debtor further states that Judge Lee cannot hear the motion to
22 reopen and that the Adversary Proceeding must be transferred to a different court and different
23 district. *Id.*, p. 4:27-28.

24 No Motion to Reopen has been filed in Adversary Proceeding 14-01155. For that Adversary
25 Proceeding, the District Court withdrew the reference and that Adversary Proceeding has been
26 prosecuted in the District Court for the Eastern District of California, Case No. 15-cv-00042. On
27 the District Court docket, an Order of the Ninth Circuit Court of Appeals affirming the dismissal of
28 Plaintiff-Debtor’s claims against some of the Defendants, including Judge Lee, is filed. 15-cv-

00042, Dckt. 148.

In the most recently filed Adversary Proceeding filed by Plaintiff-Debtor, 16-01107, the District Court has issued an Order to Show Cause why the reference to the bankruptcy court for the Adversary Proceeding should not be withdrawn. E.D. Cal. Case No. 1:17-cv-00011, Dckt. 2.

Review of Plaintiff-Debtor's Bankruptcy Case File

In reviewing Plaintiff-Debtor's bankruptcy case, there are no motions or other matters pending, other than the Third Motion to Disqualify.

Ninth Circuit Court of Appeals Proceeding - Request for Writ of Mandamus

In conducting a Pacer search of the Central District Bankruptcy Court case filed by Plaintiff-Debtor, the court discovered a Ninth Circuit Court of Appeals Action consisting of a Petition for Writ of Mandamus filed by Plaintiff-Debtor. Ninth Circuit Court of Appeals No. 16-73883, filed December 12, 2016. In the Petition, Plaintiff-Debtor requests that the Ninth Circuit Court of Appeals:

- A. Void Judgments and Orders Issued in Excess of Jurisdiction, Lacking Due Process Procured by Fraud and False Oaths, and in Violation of Mandatory Statutes.
- B. For Immediate Transfer to Another US Bankruptcy District for the Ongoing Case Under This Court's Supervisory Power.

Ninth Circuit No. 16-73883.

At this point, Plaintiff-Debtor has sought relief from the Ninth Circuit Court of Appeals to not have any rulings from any bankruptcy judges in the Eastern District of California, including Judge Lee.

DENIAL OF MOTION TO SHORTEN TIME AND FOR WAIVER NOTICE AND HEARING

While it is clear that Plaintiff-Debtor is actively prosecuting litigation in the District Court for the Eastern District of California and the Ninth Circuit Court of Appeals against a number of persons, including Judge Lee, there does not appear to be any matter pending before the bankruptcy court for which a twenty-eight day notice for hearing on the Third Motion to Disqualify would cause harm to Plaintiff-Debtor. While it is clear from the pleadings that Plaintiff-Debtor is distressed by how the bankruptcy judges in the Eastern District of California have historically addressed matters

1 in her bankruptcy and Adversary Proceeding 13-01086, these have been proceeding for years. As
2 shown by the title, this is stated to be Plaintiff-Debtor's Third Motion to have Judge Lee disqualify
3 himself.

4 Nothing in the pleadings indicates why a normal 28-day notice and hearing for the Third
5 Motion to Dismiss would present any loss or harm to Plaintiff-Debtor. No "irreparable harm," the
6 standard stated by Plaintiff-Debtor has been shown. Using the "for good cause" standard stated in
7 Local Bankruptcy Rule 9014-1(f)(3), the court concludes that no good cause has been shown.

8 It is significant that Plaintiff-Debtor has pending before the Ninth Circuit Court of Appeals
9 a Petition for Writ of Mandamus to do exactly what she requests in the Third Motion to Disqualify -
10 take the bankruptcy case (and all related matters) from Judge Lee (and all other bankruptcy judges
11 in the Eastern District of California). Plaintiff-Debtor has created a situation where she is attempting
12 to litigate the same in at least two courts. This creates the potential for a conflict in whatever may
13 be ordered in the bankruptcy case in light of the relief requested in the Petition now pending before
14 the Ninth Circuit Court of Appeals.

15 Therefore, upon review of the Motion for Order Shortening Time, the related Third Motion
16 for Disqualification, the files in the bankruptcy case, the matters for which the reference has been
17 withdrawn or an order to show cause why the reference for the latest Adversary Proceeding should
18 not be withdrawn, the Petition for Writ of Mandamus to the Ninth Circuit Court of Appeals, and
19 good cause appearing;

20 **IT IS ORDERED** that the Motion for Order Shortening Time, or in the alternative as stated
21 in the Third Motion for Disqualification (Dckt. 272) as a request for relief *ex parte*, is denied.

22 **IT IS FURTHER ORDERED** that Salma Agha-Kahn, the Chapter 7 Debtor and Plaintiff-
23 Debtor in the Adversary Proceedings filed in this court and pending in the District Court, shall set
24 for a noticed hearing the Third Motion for Judge Richard Lee to disqualify himself from her
25 bankruptcy case and adversary proceedings pursuant to Local Bankruptcy Rule 9014-1(f)(1) for
26 which a minimum 28-day notice is required (which procedure must be used in adversary
27 proceedings).

28 This 28-day notice is required to ensure that the United States District Court judges who have

1 withdrawn the reference or for which an order to show cause why the reference should not be
2 withdrawn for adversary proceedings and the Ninth Circuit Court of Appeals judges to which the
3 Petition for Writ of Mandamus has been assigned are fully advised of such motion, the impact of
4 such proceeding in connection with the matters before the other courts, and whether prosecuting such
5 motion in the bankruptcy court conflicts with proceedings in such higher courts.

6 The Clerk of the Court shall transmit copies of this Order to: (1) the Hon. Lawrence J.
7 O'Neill, Chief Judge of the United States District Court for the Eastern District of California; and
8 (2) the Clerk of the Ninth Circuit Court of Appeals, to be forwarded to the judge or judges of the
9 Ninth Circuit before whom the Petition for Writ of Mandamus is now pending.

10 Dated: January 17, 2017

11
12 /s/
13 RONALD H. SARGIS, Chief Judge
14 United States Bankruptcy Court
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked _____, via the U.S. mail.

Debtor(s)	Attorney for the Debtor(s) (if any)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
Lisa Holder 4550 California Avenue, 2 nd Flr. Bakersfield, CA 93309	Connie M. Parker 5260 N. Palm Avenue, Ste. 201 Fresno, CA 93704
Hon. Lawrence J. O'Neill Chief Judge United States District Court 2500 Turlare Street, 7 th Flr. Fresno, CA 93721	Molly C. Dwyer, Clerk of the Court Ninth Circuit Court of Appeals 95 7 th Street, Suite 429 San Francisco, CA 94103