

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	:	<b>No. CR-890-2013</b>
	:	
<b>vs.</b>	:	
	:	
<b>JAMES McCLOY,</b>	:	
<b>Defendant</b>	:	<b>: Motion to Recuse and Motion for Change of Venue</b>

**OPINION AND ORDER**

By Motion to Recuse filed on January 10, 2014, Defendant requests that the judges of the Court of Common Pleas of Lycoming County recuse themselves from participating in this matter.

Argument was held before this Court on January 23, 2014. While Defendant does not claim that the members of this Court have a direct bias or prejudice against him, Defendant claims that there is at the very least an appearance of impropriety.

Specifically, Defendant argues that the alleged victim in this matter is Susquehanna House, Inc. Defendant is alleged to have converted numerous assets from Susquehanna House. Defendant is the founder of Susquehanna House and was previously employed as the Executive Director.

Defendant further asserts that Susquehanna House provided residential services, foster care, transitional living and day treatment for youths throughout the Commonwealth. Lycoming County previously contracted with Susquehanna House for placement services with respect to youths processed through either the juvenile justice system or through the Children and Youth system.

Because Lycoming County Courts placed individuals through Susquehanna

House and/or utilized Susquehanna House facilities, Defendant claims that the judges of this court should recuse themselves. Defendant argues that because County money was spent for the placement of said youths and because Susquehanna House is an alleged victim, Lycoming County is a derivative victim.

Defendant further argues that because the members of this Court “were a direct part of the process that sent children and funding to Susquehanna House” there is “the appearance of bias, prejudice and unfairness” in the judges’ participation in this case.

At the hearing in this matter, the undersigned conceded that Susquehanna House was utilized as a resource by the judges who handle Children and Youth placements and juvenile placements. The undersigned, however, is not assigned to the Juvenile Court docket nor the Children and Youth docket. The undersigned may have handled a handful of Children and Youth cases since taking the bench in 2010 and has handled perhaps a day or two of Juvenile Court delinquency matters. The undersigned does not recall utilizing Susquehanna House in connection with any placements although it does not preclude such a possibility. The undersigned may have placed an individual in Susquehanna House upon appropriate recommendation of the Juvenile Probation Office.

During the hearing, the undersigned explained that once the allegations were made against Defendant, the President Judge and the Juvenile Judge met and eventually removed Lycoming County youths from residential placement although it is the undersigned’s understanding that some youths continued to utilize other Susquehanna House services.

During the hearing in this matter, the undersigned also confirmed that three judges - President Judge Nancy L. Butts, Judge Richard A. Gray, Supervising Judge of Juvenile

Probation and Judge Joy M. McCoy, Family Court Judge - have recused themselves.

In essence, Defendant argues that the undersigned's continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. Defendant also argues that an "interest" of the court could be substantially affected by the outcome of the proceeding. This jurist, however, disagrees.

None of the judges are employed by Lycoming County; they are employees of the Commonwealth of Pennsylvania. Their salary and benefits are paid by and through the Commonwealth and not Lycoming County. Furthermore, while clearly Lycoming County supports the court through various expenditures including but not limited to payment for staff, supplies, equipment and a courtroom, Lycoming County is not a named victim in this matter. Indeed, even if Lycoming County were a named victim, the undersigned would still not recuse himself under the circumstances. This jurist has sat on numerous criminal cases in which Lycoming County has been a victim. Its victim status does not translate into bias or prejudice, or even an appearance of such.

The victim in this matter is Susquehanna House. Susquehanna House received funding from numerous public and private agencies and entities. Any Lycoming County connection is collateral and not at all relevant to the issues at hand.

As our Supreme Court has held: "It is the burden of the party requesting recusal to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt to the jurist's ability to preside impartially. As a general rule, a motion for recusal is initially directed to and decided by the jurist whose impartiality is being challenged. In considering a recusal request, the jurist must first make a conscientious determination of his or her ability to

assess the case in an impartial manner, free of personal bias or interest in the outcome. The jurist must then consider whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. This is a personal and unreviewable decision that only the jurist can make. Where a jurist rules that he or she can hear and dispose of the case fairly and without prejudice, that decision will not be overturned on appeal but for abuse of discretion.” Commonwealth v. Abu-Jamal, 720 A.2d 79, 89 (Pa. 1998)(citations omitted).

Where a jurist is not in fact biased against the party recusal may be warranted if the conduct of the court raises “an appearance of impropriety.” In the interests of McFall, 617 A.2d 707, 712 (Pa. 1992). The rule is simply that “disqualification of a judge is mandated whenever a ‘significant minority of the lay community could reasonably question the court’s impartiality.’” Commonwealth v. Bryant, 476 A.2d 422, 426 (Pa. Super. 1984).

Under all of the circumstances, the undersigned has no doubt that he can and will hear and dispose of this case fairly and without prejudice. Moreover, this jurist is confident that a significant minority of the lay community could not reasonably question the court’s impartiality in this matter for several reasons. Defendant’s allegations of an appearance are speculative at best. Moreover, no decision of the court will be even remotely influenced by the fact that Lycoming County may have utilized Susquehanna House for placement services. This jurist is not even remotely aware of the funding arrangements, the amount of funds, the amount of individuals or any other financial relationship between Lycoming County and Susquehanna House. Moreover, the judiciary is an entirely independent branch of government from Lycoming County and any decision bears no sympathy for or animus against the County.

Accordingly, the Court will deny Defendant's motion.

**ORDER**

**AND NOW**, this \_\_\_\_ day of February 2014, following an argument on Defendant's motion for recusal, said motion is granted in part and denied in part. The undersigned will not recuse himself from handling Defendant's case. President Judge Nancy L. Butts, Judge Richard A. Gray and Judge Joy McCoy will, however, recuse themselves.

A hearing and argument on Defendant's motion for change of venue is scheduled for the **18<sup>th</sup> day of March 2014 at 1:30 o'clock P.M. in Courtroom No. 4** of the Lycoming County Courthouse.

By The Court,

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Marc F. Lovecchio, Judge

cc: DA  
PD (JF)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file