

STATE OF VERMONT

SUPERIOR COURT
Windham Unit

CIVIL DIVISION

CHARLES CHANDLER

Docket 114-3-11 Wmcv

v.

STATE OF VERMONT

CHARLES CHANDLER

Docket 224-5-13 Wmcv

v.

VERMONT MUTUAL INSURANCE CO.

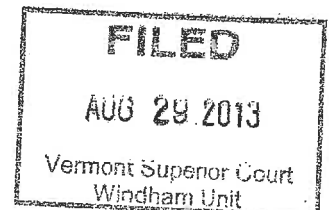
DECISION

Motion to Disqualify Judge Davenport

Charles Chandler is a party in four cases in the Civil Division in Windham Superior Court. He filed a Motion to Disqualify Judge Amy Davenport from sitting on any of his cases, and the matter has been referred to the undersigned. Because two of the cases are on appeal with nothing pending in the trial court (Docket Nos. 153-3-10 Wmcv and 410-8-10 Wmcv), they are not addressed at this time. This decision pertains only to the two above-referenced pending cases.

A hearing was held on August 9, 2013 on the Motion as it relates to the two cases in the caption. Present were: Charles Chandler, Attorney Ashley Harriman on behalf of the Windham County State's Attorney in No. 114-3-11 Wmcv, and Attorney Andrew Boxer on behalf of Vermont Mutual Insurance Company in No. 224-5-13 Wmcv. Judge Davenport is apparently the trial judge currently responsible for these cases due to recusals of other judges.

Mr. Chandler claims that Judge Davenport is biased against him personally and gave several reasons in his original written motion and at the hearing. Before focusing on the specifics of his claim, it is important to clarify the standards that apply to a motion to disqualify a judge. The Vermont Supreme Court has recently done so in *State of Vermont v. Robert Zorn*,



2013 VT 65 (mem.), available at <http://info.libraries.vermont.gov/supct/current/op2012-019.html>, issued the same day as the hearing in this case.

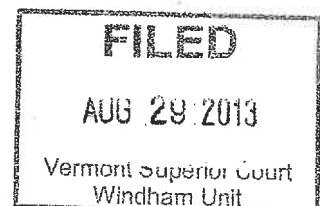
The *Zorn* Court set forth the basic standard from *Leonard v. Wilcox*, 101 Vt. 195 (1928): “[I]t must appear that it is the judge who is prejudiced against the party and not that it is the party who is prejudiced against the judge.” *Zorn*, 2013 VT 65, ¶ 29 (citation omitted). The Court further set forth the requirement that “the existence of bias against the respondent ‘must be clearly established by the record.’” *Id.* (citation omitted). “In order to color a claim of judicial disqualification for the presiding judge, ‘[a] defendant must affirmatively show bias or prejudice directed against him.’” *Id.* (quoting *State v. Beshaw*, 134 Vt. 347, 351 (1976)); see also *Ball v. Melsur Corp.*, 161 Vt. 35 (1993).

A party seeking disqualification of a judge “must make a clear and affirmative showing of bias or prejudice” sufficient to raise a reasonable doubt as to the judge’s ability to be impartial. *Ball*, 161 Vt. at 39 (citing *State v. Carter*, 154 Vt. 646, 647 (1990) (mem.); *Luce v. Cushing*, 2004 VT 117, ¶ 22, 177 Vt. 600. The judge who is the subject of the motion is accorded “a presumption of honesty and integrity.” *State v. Putnam*, 164 Vt. 558, 561 (1996) (citing *Ball*, 161 Vt. at 39–40).

In sum, it is the burden of the person seeking disqualification to make an affirmative showing, based on specific facts, of bias or prejudice sufficient to overcome the presumption of honesty and integrity of the judge.

Mr. Chandler claims that Judge Davenport’s bias is shown by the fact that she continues to assign biased or incompetent or unethical judges to Mr. Chandler’s cases. Specifically, he claims that she assigns Mr. Chandler’s cases to Judge Hayes when she knows that Judge Hayes’s rulings in Mr. Chandler’s cases are improper and illegal, and he cites to the fact that Judge Hayes issued a Decision against him, dismissing his post conviction relief petition, that was overturned on appeal. As a result of Mr. Chandler making this claim at the August 9th hearing, the undersigned judge reviewed the Supreme Court Opinion in which Judge Hayes’s Decision was overturned to see what it reveals about Judge Hayes’s conduct in Mr. Chandler’s case as well as knowledge that could be attributed to Judge Davenport, as Mr. Chandler did not present any other facts in support of this claim.

The Opinion is *In re Charles Chandler*, 2013 VT 10, available at <http://info.libraries.vermont.gov/supct/current/op2012-073.html>. It is true that Judge Hayes’s Decision was reversed with the result that Mr. Chandler’s post-conviction relief petition in a criminal case was allowed to proceed after Judge Hayes had dismissed it. However, this was not a situation in which Judge Hayes ruled contrary to clearly established law, nor is there any indication of motivation against the interests of Mr. Chandler. The issue was one that had not previously been addressed. “We have not, however, confronted the precise question presented here: whether a petitioner’s post-conviction claim of ineffective assistance of counsel—filed before the expiration of the sentence

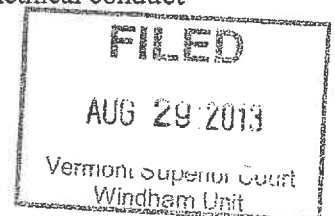


for the challenged conviction—is rendered moot by his release.” *Chandler*, 2013 VT 10, ¶ 11. It presented challenging issues of legal analysis. The justices did not agree on issues of jurisprudence, and two separate opinions were filed. Review indicates that Judge Hayes’s decision was not an arbitrary one. Thus, there is nothing to indicate that Judge Hayes’s Decision was motivated by incompetence or bias in the first instance, and secondly, there is no basis to believe that Judge Davenport caused Judge Hayes to sit on Mr. Chandler’s cases with knowledge that Judge Hayes was acting improperly or illegally. Mr. Chandler asks the Court to infer bias from the circumstances, but the facts do not support the inference, and do not meet the required standard of an affirmative showing of bias or prejudice of either Judge Hayes or Judge Davenport against Mr. Chandler.

Mr. Chandler claims that Judge Davenport’s bias is shown by her having specially assigned Judge Gerety to Mr. Chandler’s post conviction relief case when she knew that Judge Gerety’s son was working for the State’s Attorney, who was Mr. Chandler’s opposing party. Mr. Chandler shows no facts that Judge Davenport had such knowledge. It appears that he is attributing such knowledge to her in the belief that she must have known. Mr. Chandler’s own personal belief, or the inference he draws from the circumstances, are not sufficient to make an affirmative showing of bias or prejudice. Judge Davenport, in issuing the Entry Order referring Mr. Chandler’s Motion to Disqualify to the undersigned for decision, states that she had no knowledge when she assigned Judge Gerety to the case (which occurred on April 19, 2013) that his son was or would be an intern at the Windham State’s Attorney’s office and that she first learned of it on or about June 19, 2013 when Judge Gerety disqualified himself for that reason. Mr. Chandler’s allegations amount to suppositions from circumstances, and are not sufficient to meet the required legal standard of an affirmative showing of bias or prejudice on the part of Judge Davenport.

Mr. Chandler claims that Judge Davenport’s bias is shown by her having assigned Judge Carroll to sit on his criminal case (No. 663-5-06 Wmcr), and deliberately reassigning her to sit on the case for a period of three years, contrary to normal rotation, while her husband was the Clerk of the Civil Division, and furthermore that Judge Davenport knew (or perhaps should have known) that Judge Carroll altered the court records of the case with her husband which delayed an appeal. The undersigned has reviewed the docket entries in case No. 663-5-06 Wmcr. Judge Carroll did sit on the case from December of 2007 until it ended in March of 2011. The reason cannot be ascertained from the docket entries and Mr. Chandler has made no showing of facts on the issue. During that period Mr. Chandler filed motions to disqualify Judge Carroll that were denied by Judge Davenport on three occasions.

Mr. Chandler has presented to this Court in connection with this motion no evidence to indicate that Judge Carroll had any bias or prejudice toward Mr. Chandler during the criminal case, nor that she altered court records, and the docket record shows no such information. Furthermore, Mr. Chandler has made no affirmative showing of evidence that Judge Davenport had knowledge that Judge Carroll was engaged in any biased or prejudicial or unethical conduct



in connection with the criminal case. Mr. Chandler has not made the necessary showing for disqualification of Judge Davenport based on facts related to Judge Carroll.


In his written motion, Mr. Chandler alleged that Judge Davenport (as well as the three other judges who were the subject of the motion) has an extreme bias toward Pro Se litigants. He claims that the other three judges involved do not provide Pro Se litigants with motion hearings or give them an opportunity to present exhibits or give or take testimony, and that this is related to their socioeconomic status, and that Judge Davenport is aware of such conduct on their part and fails to report them to disciplinary authorities. These are broad allegations made in a general way against all three judges. No specific instances of such alleged conduct were shown by Mr. Chandler, nor did he show knowledge on the part of Judge Davenport of any such conduct. General allegations fall far short of meeting the standard of making an affirmative showing of bias.

Because Mr. Chandler has not made the necessary affirmative showing of bias or prejudice on the part of Judge Davenport, the motion to disqualify her from sitting on the two above-referenced cases must be denied.

ORDER

Defendant's motion to disqualify Judge Davenport is *denied*.

Dated at Saint Johnsbury, Vermont, this 28th day of August, 2013.


Hon. Mary Miles Teachout
Superior Court Judge.

cc: C. Chandler
A. Boyer, Esq. T. Skriver, Esq.

