

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ANTHONY J. SCIRICA
CHIEF JUDGE

22614 UNITED STATES COURTHOUSE
SIXTH AND MARKET STREETS
PHILADELPHIA, PENNSYLVANIA 19106
(215) 597-2399
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ascirica@ca3.uscourts.gov

November 22, 2005

Senator Arlen Specter
Chairman, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Senators Specter and Leahy,

I am pleased to respond to a letter dated November 9, 2005, from Senator Leahy and other members of the Senate Judiciary Committee. I enlisted the aid of our Court's Office of the Clerk, and have enclosed relevant information and documents compiled by that office. This includes the unreported not precedential per curiam opinion issued on July 30, 2002 by the initial panel in Case No. 01-1827, Vanguard's corporate disclosure statement filed in this case, both parties' briefs, all motions and responses to motions including appellant's motion to vacate the judgment and appellees' motion in opposition to the motion to vacate, all orders including the order vacating the initial panel's opinion, a memorandum prepared by the Office of the Clerk summarizing this Court's conflict of interest checking and recusal procedures, and copies of relevant local rules and operating procedures regarding recusals.

I have also enclosed a letter from Judge Alito to me, dated December 10, 2003, explaining his reasons for recusal in Case No. 01-1827. To the best of my recollection, after the motion to vacate was filed, I spoke with Judge Alito by telephone. I did not believe Judge Alito was required to disqualify himself, but in response to his request, I

Senator Arlen Specter
Senator Patrick Leahy

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vacated the opinion and appointed a new panel to hear the case. I have no further information regarding Judge Alito's recusal.

I hope the enclosures are of assistance to you and your colleagues.

Sincerely,



Anthony J. Scirica

MARCIA M. WALDRON
CLERK

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: pacer.ca3.uscourts.gov

TELEPHONE
215-597-2995

November 22, 2005

Honorable Anthony J. Scirica
Chief Judge of the Third Circuit
22614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Chief Judge Scirica:

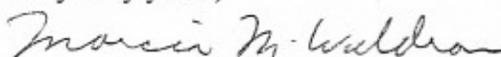
As you requested, our office has gathered information and documents responding to the questions raised in the letter dated November 9, 2005 from members of the Senate Judiciary Committee regarding Case No. 01-1827, *Monga v. Ottenberg*. To the extent we have not answered or responded to any question, it is because we have no relevant documents or knowledge.

We enclose copies of all pleadings and orders that were requested, including a copy of the initial panel's unreported not precedential per curiam opinion. Generally, in pro se cases such as this one, a standing pro se merits panel consisting of three judges is sent the file, including relevant pleadings, briefs, other documents, and the court's docket sheet, which contains corporate disclosure statements. The panel is also sent a draft opinion prepared by a staff attorney. The final opinion is issued by the panel. Generally, the presiding judge on the panel transmits the opinion to the clerk for filing. In this case, Judge Alito was the presiding judge and transmitted the opinion to the clerk for filing.

We have no information and have found no records regarding Judge Alito's reasons for recusal in this case. Nor do we have information or records of any communications between Judge Alito and any member of this Court regarding statements to the Senate Judiciary Committee during his confirmation hearings in 1990.

Finally, I have drafted a memorandum, which I enclose, describing our procedures to check for conflicts of interest.

Very truly yours,



Marcia M. Waldron, Clerk

MMW/gin
Enclosure

OFFICE OF THE CLERK
Interoffice Memo

TO: Chief Judge Scirica
FROM: Marcy Waldron, Clerk
RE: Recusal Procedures
DATE: November 21, 2005

Local Rule 26 requires corporations to file disclosure statements; corporate disclosure statements are not required of pro se litigants.

I.O.P. 11.1.2 provides that judges may submit to the clerk names of businesses, lawyers, and law firms that would require the judges' recusal if they are a party to a case. Generally, these communications are in writing and sent via e-mail. Judges advise the clerk's office whenever there is a change, e.g. buying or selling of stock. In addition, the clerk's office periodically sends judges their current recusal list and asks for any updates. In August 1999, the recusal process was automated.

In pro se cases, clerk's office personnel check recusal lists against the parties, attorneys, and law firms in a case prior to sending a motion to a panel. If a match is found, a different panel is selected. Clerk's office personnel also check the recusal list prior to sending motions and petitions for rehearing; if a match is found, the petition is not sent to that judge.

Procedures for cases to be decided after counsel have filed briefs are somewhat different. Clerk's office personnel first check the recusal lists before tentatively assigning cases to panels. Then the cases are put "on clearance." This procedure is described in I.O.P. 11.1.1. Prior to 1999, a copy of the docket sheets and disclosure statements was sent to all the judges on the panel. Since 1999, an automated report that lists the parties, attorneys, and law firms is sent; this report includes information received from the corporate disclosure statements. If the calendaring unit has already identified a recusal problem, that case will either not be included in the clearance package or the recusal will be noted. The judge reviews the clearance report and informs the clerk if there are any cases he/she must recuse in. Pro se cases do not go through this clearance review because they are decided by standing pro se merits panels consisting of three judges; recusals in pro se cases are checked by clerk's staff prior to assignment to a panel.

Even with the best of intentions, errors do occur. Sometimes judges notify me that they have received cases they shouldn't have. I.O.P. 11.1.3 provides that if a judge discovers after distribution of the briefs that he or she must recuse, the judge returns the case to the clerk and another judge is found.

L.A.R. 26.1.0 CORPORATE DISCLOSURE STATEMENT

26.1.1 Disclosure of Corporate Affiliations and Financial Interest

(a) Promptly after the notice of appeal is filed, each corporation that is a party to an appeal, whether in a civil, bankruptcy, or criminal case, shall file a corporate affiliate/financial interest disclosure statement on a form provided by the clerk that identifies every publicly owned corporation not named in the appeal with which it is affiliated. The form shall be completed whether or not the corporation has anything to report.

(b) Every party to an appeal shall identify on the disclosure statement required by F.R.A.P. 26.1 every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. The form shall be completed only if a party has something to report under this section.

(c) In all bankruptcy appeals, counsel for the debtor or trustee of the bankruptcy estate shall promptly provide to the clerk in writing a list identifying (1) the debtor, if not named in the caption, (2) the members of the creditors' committees or the top 20 unsecured creditors, and (3) any entity not named in the caption which is an active participant in the proceeding. If the debtor or trustee of the bankruptcy estate is not a party, the appellant shall file this list with the clerk.

Source: 1988 Court Rule 25

Cross-references: 28 U.S.C. § 455; F.R.A.P. 26.1

Committee Comments: Subsection (c) is new. Prior Court Rule 25 imposed an obligation upon all parties to civil or bankruptcy cases and all corporate defendants in criminal cases to file a corporate affiliate/financial interest disclosure statement. 3rd Cir. L.A.R. 26.1.1(a) limits that obligation to corporate parties only. The rule also provides that the statement shall be filed promptly after the notice of appeal is filed, and shall be made on a form provided by the clerk. 3rd Cir. L.A.R. 26.1.1(b) retains the requirement that every party to an appeal disclose the identity of every publicly owned corporation, not a party to an appeal, that has a financial interest in the outcome of the litigation. The revised rule specifies that, under these circumstances, a negative report need not be filed.

26.1.2 Notice of Possible Judicial Disqualification

If any judge of this court participated at any stage of the case, in the trial court or in related state court proceedings, appellant, promptly after filing the notice of appeal, shall separately notify the clerk in writing of the judge and the other action, and shall send a copy of such notice to appellee's counsel. Appellee has a corresponding responsibility to so notify the clerk if, for any reason, appellant fails to comply with this rule fully and accurately.

Source: 1988 Court Rule 19.1

Cross-references: 28 U.S.C. §§ 144, 455; F.R.A.P. 26.1

Committee Comments: Prior Court Rule 19.1 required appellant to notify the clerk of a possible judicial disqualification when filing the opening brief. 3rd Cir. L.A.R. 26.1.2 now requires appellant to notify the clerk of such disqualification promptly after filing the notice of appeal. 3rd Cir. L.A.R. 26.1.2 adds a new requirement that appellee notify the clerk of any possible disqualification if appellant fails to do so.

THIRD CIRCUIT INTERNAL OPERATING PROCEDURES

CHAPTER 11. RECUSAL OR DISQUALIFICATION OF JUDGES

11.1 Procedure.

- 11.1.1 Before cases are sent to a panel, the clerk transmits copies of the docket sheets and disclosure statements to each judge who responds promptly informing the clerk of those cases in which the judge is recused.
- 11.1.2 Each judge may submit to the clerk in writing those circumstances which would generally require a recusal, including names of businesses in which the judge or family members have a financial interest, names of lawyer relatives whose names may appear as counsel in the appeals, and names of law firms on whose cases the judge does not sit.
- 11.1.3 A judge who finds it necessary to recuse after distribution of briefs or a motion immediately notifies other members of the panel and the chief judge or the active judge next in precedence if the chief judge is recused. The chief judge, or the judge next in precedence, names a substitute and reconstitutes the panel. A written order is not necessary for the reconstitution of any panel. The substituted judge on any panel is open to opinion assignments on the same basis as original panel members.

11.2 Circumstances.

- 11.2.1 The provisions of 28 U.S.C. § 455 and 28 U.S.C. § 144 re recusal are fully incorporated here.
- 11.2.2
- (a) With respect to "financial interest" as used in 28 U.S.C. § 455, ownership of a small percentage of the outstanding shares of a publicly traded corporation which is a member of a trade association that is a party to the lawsuit is not a "financial interest" in the subject matter in controversy or in a party to the proceeding unless the owner has an interest that can be substantially affected by the outcome of the proceeding.
 - (b) Ownership of a small percentage of the outstanding shares of a publicly traded corporation that is listed as a creditor of the

bankrupt who is a party to the lawsuit is not a "financial interest" in the subject matter in controversy or in a party to the proceeding unless the owner has an interest that can be substantially affected by the outcome of the proceeding.

- (c) An insurance policy issued to a judge or a member of his or her family is not a "financial interest" in the insurance company.

United States Court of Appeals
for the Third Circuit

CHAMBERS OF
SAMUEL A. ALITO, JR.
JUDGE

U. S. COURTHOUSE
NEWARK, NEW JERSEY 07101-9999

December 10, 2003

Chief Judge Anthony J. Scirica
22614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Monga v. Ottenberg, No. 01-1827

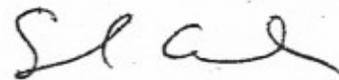
Dear Chief Judge Scirica:

This is a case in which a pro se panel on which I sat unanimously affirmed the order of the district court dismissing the complaint. The judgment was entered on July 30, 2002.

The panel has recently received a motion to vacate the judgment and to disqualify me on the ground that I own shares in several mutual funds. The motion sets out an argument that I have a financial interest in parties to the case even though I do not own shares in any party. Indeed, the motion contends that I am a party!

I do not believe that I am required to disqualify myself based on my ownership of the mutual fund shares. Nor do I believe that I am a party. However, it has always been my personal practice to recuse in any case in which any possible question might arise. Under the circumstances here, I am voluntarily recusing in this case. This will of course necessitate the reconstitution of a panel to consider the pending motion.

Sincerely yours,



Samuel A. Alito