

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE PETER COULTER,
Debtor.

BAP No. CO-12-014

PETER COULTER,
Appellant,

Bankr. No. 11-22535
Chapter 13

v.

ORDER DISMISSING APPEAL

JAMES DAVIS, doing business as Auto
Recyclers, FERYDOON ASGARI, AR
& BA, LLC, JERRY PRIDDY, GARY
BERGMAN, DAVID JONES, and
S-LINE MOTORSPORT LLC,

April 2, 2012

Appellees.

Before NUGENT, RASURE, and KARLIN, Bankruptcy Judges.

On March 2, 2012, this Court issued its Order to Show Cause Why Appeal Should Not Be Considered For Dismissal as Interlocutory (“Order to Show Cause”). On March 21, 2012, the pro se Appellant Peter Coulter filed his Response to the Order to Show Cause. None of the Appellees have entered an appearance in this appeal.

Appellant filed his notice of appeal on February 27, 2012, from a bankruptcy court minute order denying Appellant’s motion for recusal, entered February 13, 2012 (“Recusal Order”).

This Court has jurisdiction to hear appeals from final orders, final collateral orders, and, with leave of court, interlocutory orders. 28 U.S.C. § 158; *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 768 (10th Cir. BAP 1997). An order is considered final if it “ends the litigation on the merits and leaves nothing

for the court to do but execute the judgment.”” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). Because the Recusal Order does not end the bankruptcy case, it is not a final order. *See In re Am. Ready Mix, Inc.*, 14 F.3d 1497, 1499 (10th Cir. 1994) (“An order denying a motion to recuse or disqualify a judge is interlocutory, not final, and is not immediately appealable.”).

An interlocutory order may be appealed to this Court with leave of court.

As this Court has stated:

Leave to hear appeals from interlocutory orders should be granted with discrimination and reserved for cases of exceptional circumstances. Appealable interlocutory orders must involve a controlling question of law as to which there is substantial ground for difference of opinion, and the immediate resolution of the order may materially advance the ultimate termination of the litigation.

Personette, 204 B.R. at 769 (citing 28 U.S.C. § 1292(b)).

Appellant has not shown that the Recusal Order involves exceptional circumstances, a controlling question of law as to which there is substantial ground for difference of opinion, or that the immediate resolution of the Recusal Order might materially advance the ultimate termination of the litigation. Because nothing in the record before us meets the *Personette* prerequisites, leave to appeal is DENIED.

Mandamus is also an appropriate means of reviewing a judge's refusal to disqualify him- or herself, and we will also proceed to analyze the Response as, essentially, a petition for mandamus. To obtain mandamus relief, Appellant must demonstrate a clear and undisputable right to relief. *Am. Ready Mix*, 14 F. 3d at 1499 (citing *Will v. United States*, 389 U.S. 90, 96 (1967)). The denial of a motion to recuse is reviewed under an abuse of discretion standard. *Hinman v. Rogers*, 831 F.2d 937, 938 (10th Cir. 1987). Yet, the Appellant's Response sets out no facts that show the bankruptcy court committed an abuse of discretion in refusing to recuse. The Appellant cannot meet the higher standard required for

mandamus relief.

It is true that a judge is required to avoid the appearance of bias or partiality and to recuse himself or herself if the judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). However, "section 455(a) must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice." *United States v. Hines*, 696 F.2d 722, 729 (10th Cir. 1982).

The Appellant relies on three instances, apparently based upon prior adverse rulings or directives, to support his plea that he has been denied impartial treatment by the bankruptcy judge. While there is no question that the judge made rulings unfavorable to the positions taken by Appellant, nothing in this record suggests that those actions were biased, as opposed to merely being adverse. Appellant has presented no basis for this Court to determine that grounds existed for the bankruptcy judge to recuse himself. Previous adverse rulings are almost never a basis for recusal. *Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible."); *see also United States v. Mendoza*, 468 F.3d 1256, 1261-62 (10th Cir. 2006) ("disqualification is appropriate only where a reasonable person, were he to know all the circumstances, would harbor doubts about the judge's impartiality.") (quoting *In re McCarthey*, 368 F.3d 1266, 1269 (10th Cir.2004)).

Because the Response falls short of meeting the standard for a successful petition for mandamus, the construed petition is DENIED. The appeal is DISMISSED.

For the Panel:

A handwritten signature in black ink that reads "Blaine F. Bates". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Blaine F. Bates
Clerk of Court