

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ESTADOS UNIDOS MEXICANOS, *et al.*,

Plaintiffs

v.

Civil No. 98-186-P-C

AUSTIN J. DECOSTER, *et al.*,

Defendants

Gene Carter, District Judge

**Memorandum of Decision and Order**

The Court now has before it Defendant Austin J. DeCoster's motion requesting recusal. Defendant Decoster argues that my impartiality in this matter is reasonably subject to question based upon comments I made about Defendant DeCoster at a criminal sentencing hearing that involved an employee of Defendant DeCoster's corporation. *See* 28 U.S.C. § 455(a).

Defendant points, as a basis for recusal, to the Court's statement of reasons for its sentencing in the matter of *United States v. Ramirez*, Crim. No. 92-46-P-C, in particular, the Court's assessment of the credibility of Austin J. DeCoster, the Defendant herein, who had appeared before the Court as president of the codefendant corporation involved in the criminal conduct there in issue. These comments, made by the Court in sentencing Mr. Ramirez and stating the Court's reasons for rejecting some of his arguments in respect to the sentence to be imposed, were as follows:

I want the message to go out from this Court to people in Mr. Ramirez' situation and to the people that employ them, that exploitation of these people in their depressed circumstances is not a mere commercial transaction, not just a matter of dollars and cents. I want these people that are sent out by people like the DeCoster Egg Company to do these things, and I believe that's what happened here, and I'll get to that in a minute, to know that they put not only their money and DeCoster's money on the line but that they put their liberty on the line because this is heinous conduct which will not be tolerated.

I took the plea from the DeCoster corporation and I heard Mr. Austin DeCoster attempt to convince me that he knew nothing about this happening.

The record of my colloquy with him I believe will make it very clear that I permitted him to state on the record what was his position in that respect but I believe I gave no indication of credibility to it. I did not believe him then and I do not believe him now. He was insulated behind a corporate entity and a plea agreement. It was simply a corporate transaction for him, so I accepted the corporation's plea and imposed a very significant fine which had been agreed to.

The fact of the matter is this has got to stop and the way that it stops is to make it more than a paper and money transaction. The people who come out to do this sort of thing to these people and to exploit them to realize, and I hope this sentence will carry the message, that we're talking about more than money, we're talking about human decency, about business ethics and about moral propriety.

Transcript at 105-07.

The Court has carefully reviewed the pleadings in this matter and has noted the apparent and strong likelihood that the conduct at issue in this case will have many factual similarities to, if not be identical to, the conduct at issue in the prior criminal prosecution. The Court can reasonably anticipate that the credibility of Mr. DeCoster could well be highly relevant, if not crucial, to resolution of important factual issues in this case.

In these circumstances, it is likely to be thought immaterial to an objective lay observer, in considering whether my impartiality might be questioned, whether I had developed my preformed views on Mr. DeCoster and his credibility within or outside of the performance of my judicial duties. I clearly have views on those subjects, formed outside of the evidence to be heard in this case. They are views legitimately formed by me in the proper pursuit of my judicial duties in the criminal case. They are strongly held views. They are clearly adverse to Mr. DeCoster. They are views formed while considering basically the same factual matters that I anticipate will be involved, at least in part, in the present case. In such circumstances, I am convinced that the ordinary objective person could well have reasonable doubts as to whether I can completely set aside those preformed views, regardless of the context in which they were formed, and not permit them to influence me in the performance of my judicial duties in this case.

Accordingly, the Court determines that it is necessary to recuse under section 455(a) because my “impartiality might reasonably be questioned” in respect to the credibility of Austin J. DeCoster in proceedings herein. 28 U.S.C. § 455(a).

So **ORDERED**.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 8<sup>th</sup> day of April, 1999.