

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL NO. 07-103

 * SECTION: "L"

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JAMES PERDIGAO *

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GOVERNMENT'S OPPOSITION TO DEFENDANT JAMES PERDIGAO'S
"MOTION FOR RECUSAL OF U.S. ATTORNEY'S OFFICE"

The United States of America, by and through the undersigned Assistant United States Attorneys, hereby opposes defendant James Perdigao's "Motion for Recusal of U.S. Attorney's Office" (hereafter "Motion for Recusal").

The government opposes this motion because the relief requested—disqualifying an entire United States Attorney's Office—is not available to Perdigao. Indeed, the relief requested by Perdigao has been denied as unavailable to defendants by every Circuit Court to have considered the issue. See United States v. Bolden, 353 F.3d 870, 875-876 (10th Cir. 2003); see also In Re Harris County, Texas, 240 Fed. Appx. 644, 645-646 (5th Cir. 2007) (citing Bolden approvingly, and

overturning a district court order disqualifying an entire district attorney's office).¹ The Tenth Circuit, reviewing nationwide and prominent caselaw not acknowledged by Perdigao,²

¹Tellingly, Perdigao cites no supporting caselaw at all in his Motion for Recusal; and, in his accompanying memorandum of law, his indirect authority for office-wide recusal is citation to inapposite and several decade old state cases. See Perdigao Memorandum in Support of Motion to Recuse ("Recusal Memorandum"), at 9-11. Perdigao's only reference to Fifth Circuit law pertaining, he implies, to office-wide prosecutorial recusal, is to Brennan v. Stewart, 834 F.2d 1248 (5th Cir. 1988). Recusal Memorandum, at 11. That citation is misleading to this Court. The Fifth Circuit in Brennan assessed (and rejected) a due process claim, made in the civil context, relating to a hearing aid denial issued by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids. Perdigao's mischaracterization of any authority for the relief he asks for also is glaringly evident in his only other reference to federal court of appeals caselaw ostensibly relating to office-wide prosecutorial recusal. Perdigao cites In re Corn Derivatives Antitrust Litigation, 748 F.2d 157 (3rd Cir. 1984), stating to this Court that the decision applies to an "allegation of a prosecutor's conflict of interest," Recusal Memorandum, at 10, yet the decision on its face relates to civil antitrust litigation and a proven conflict of interest applicable to privately retained counsel. Id.

²The government regrets that it is obligated to respond to a motion which lacks any legal authority, and conveniently overlooks the consensus of opposite federal criminal court of appeals holdings, and mischaracterizes the few decisions cited wrongly as authority for the relief requested. Perdigao, a charged defendant who previously held himself out also to be a licensed lawyer, makes these legal misrepresentations through experienced, albeit successor, counsel, with the clear purpose only to slander individuals and institutions as a sideshow from the criminal predicament he has put himself into. It is as unsurprising as it is regretful that Perdigao, having admitted his own criminal culpability purportedly to cooperate against those colluding with him, now cannot tolerate a system that will hold him accountable for the crimes he has been charged with; consequently, after terminating multiple successive counsel, Perdigao, through current counsel, feels unconstrained by controlling law against the relief he requests, to file into this Court's record his unsupported frustrations as slanderous

has been categorical both as to the unavailability of the relief Perdigao asks this Court to order, and also as to the specific and affirmative high burden of proof of an actual conflict of interest that a charged defendant must show before he will be heard in an attempt to obstruct and postpone his own prosecution by disqualifying prosecutors responsible for that prosecution.

In the ruling of the Tenth Circuit,

we are strongly influenced by the fact that we can only rarely-if ever-imagine a scenario in which a district court could properly disqualify an entire United States Attorney's office. Indeed, "[t]he disqualification of Government counsel is a drastic measure[,]"...and even "where it is shown that an Assistant United States Attorney is subject to a conflict of interest, the proper remedy [generally] is to remove that individual, not all of the attorneys in the district, from the case...." Thus, because disqualifying an entire United States Attorney's office is almost always reversible error regardless of the underlying merits of the case, a reviewing court will rarely have to delve into the underlying claim to conclude that the disqualification was unwarranted.

invective against his accusers and victims including his former law firm and former client and a local criminal defense attorney with a previously unblemished record for ethics and honesty.

United States v. Bolden, supra, 353 F.3d at 875-876 (emphasis added and citations omitted); see also id. 878-879 (summarizing "drastic measure" of disqualification even of individual and case-responsible government counsel, and concluding, "[i]n light of these principles, [that] every circuit court that has considered the disqualification of an entire United States Attorney's office has reversed the disqualification.") (caselaw omitted).

Nonetheless, now obligated to respond to Perdigao's shell of a vehicle giving expression to his unsupported vitriol against his accusers and victims, the government also is compelled to indicate tersely that Perdigao's related allegation of suppressed evidence is untrue. Fortunately, Perdigao's mendacity with the facts is as disprovable as his mendacity with the law. And the mendacity was predictable. As soon as Perdigao littered his own admissions of considerable fraudulent criminal activities in his practice as a lawyer with false and unsupported impugns of others-and sought specifically to connect his aspersions to other persons Perdigao might think would invite the government to consider leniency for him, above all, to other pending and past public figure prosecutions-this Office, unknown to Perdigao, took precisely the safeguarding action Perdigao wrongly guesses and contends with sinister implication did not occur. Opposite from "suppressing" even the bald accusations that he, a charged

defendant seeking favorable criminal disposition, sought to level at others (yet which neither he nor his lawyers developed during months of initial meetings with the government; nor ever, it appears, to the courts directly themselves as credible on their own merit), the United States Attorney's Office for the Eastern District of Louisiana, in an abundance of caution, promptly referred the matter to separate and independent Department of Justice inquiry and resolution. See attached Exhibit 1 (Recusal-Eastern District of Louisiana, dated Sept. 13, 2006) (redacted in the attached public filing, but not to the Court in accompanying sealed form).³

In other words, anticipating Perdigao's perfidy, manifest early in his vacillations and lies to law enforcement and increasing in severity as he approached eventual full accounting in federal court, this Office over two years ago requested and achieved independent Department of Justice review of the very hearsay malice Perdigao planted and now speculates was suppressed. As further proof that Perdigao knew the information was not suppressed by the U.S. Attorney's office, Perdigao made the allegations not only to the U.S. Attorney's office but also to the FBI, and to the former Attorney General of the United States who afforded his lawyers the opportunity to present the

³The Department of Justice's Public Integrity Section is available to verify its resolution, after full investigation, of this matter, as without merit and closed.

allegations directly to the head of the DOJ Public Integrity Section. Again, it is as unsurprising as it is regretful that Perdigao, and current counsel, would seek through unavailable legal relief to inflame and obstruct his approaching courtroom resolution of federal criminal charges against him by insinuating accusations of wrongdoing into false and deteriorating cooperation efforts, and would simultaneously re-hire prior counsel who, for years, manifestly from their own silence perceived no validity to Perdigao's self-serving hearsay accusations against his accusers and victims.

Finally, as a further assurance to this Court-without conceding that any charged defendant has standing or any legal position to submit inflamed accusations indiscriminately against government officers not responsible for his prosecution(the Deputy Criminal Division Chief)-the government would confirm to this Court that it has already and will continue to comply with all Department of Justice self-reporting and professionalism obligations. Thus even inflamed and self-serving accusations against government attorneys not handling Perdigao's case-so unrelated to the instant Motion for Recusal before the Court-have been submitted for review independently by the Department of Justice. As they were levied, each accusation about the U.S. Attorney's office including the claim that Perdigao's cooperation was being leaked were contemporaneously referred to the DOJ

Office of Professional Responsibility (OPR) which determined there was no merit in them and closed their investigation in April 2007. See Exhibit 2 (OPR's closing letter) (presented to the Court in accompanying sealed form). The undersigned have confirmed, additionally, that the Department of Justice would comply with any in camera and ex parte showing this Court might deem appropriate pursuant to its supervisory powers and not triggered by or connected in any way to pre-trial "legal" filings arising out of the pending charges against defendant James Perdigao. The law concerning the issue of a defendant induced office-wide recusal is so decidedly in favor of the Government that an evidentiary hearing would serve no purpose. Should the Court determine that a hearing is necessary, the Government requests leave to supplement its' filing with a factual chronology of the defendant's own admissions of guilt in debriefings with the Federal Bureau of Investigation, the defendant's uncorroborated allegations of wrongdoing by others, the defendant's attempts to dissuade the government from prosecuting him through a series of threats relayed by him and others on his behalf about the damaging fallout that a prosecution against him would incur and the steps taken by the U.S. Attorney's Office to insure that if and when such a motion was filed as the one pending, we would be able to pinpoint with certainty the steps taken to insure an independent analysis of

any legal relevance Perdigao's allegations had to this or any other prosecution undertaken by this office.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2008, I electronically filed the foregoing with the Clerk of Court by using the CM/E.C. system which will send a notice of electronic filing to counsel of record.

/S/ James R. Mann

JAMES R. MANN

Assistant U.S. Attorney