

3. A decision from the U.S. District Court for the Western District of Pennsylvania denying a motion to recuse based on metadata properties within the court's orders suggesting that a special master authored some of the court's opinions in the case, including an opinion adopting the special master's report and recommendation, which the plaintiff claimed created the appearance of impropriety.

In *Arconic Corp. v. Novelis Inc.*, 2022 WL 409488 (W.D. Pa. Feb. 10, 2022), Senior U.S. District Judge Joy Flowers Conti rejected a Plaintiff's motion seeking her recusal on the grounds that metadata properties within her court orders suggested that the special master was the "author" of some of the court's opinions in the case, which the Plaintiff claimed created the appearance of impropriety.

In this action alleging theft of trade secrets and confidential information, the court had appointed a special master early in the proceedings in light of the "complicated and contentious" nature of the litigation. *Id.* at *1. The court later issued an opinion and order under Rule 56(f) that Plaintiff show cause why summary judgment should not be entered on the trade secret and confidential information claims, and the special master issued a long report and recommendation (R&R). *Id.* at *2. A law clerk emailed the opinion to the parties' counsel to give them an opportunity to suggest removal of sensitive corporate information. The system metadata in the attachment to this email identified the special master's staff as the author of the opinion, the "date created" as several months prior, and the "last modified" date as the date of the email to counsel. The court issued a summary judgment opinion the following week concluding that Plaintiff had not properly identified any trade secrets and identified only seven items of confidential information.

Over a year after the court issued its summary judgment opinion, Plaintiff filed a motion to recuse Senior Judge Conti, which she described as "an assertion that the court abandoned its duty to conduct an independent, de novo review of the special master's R&Rs by having the special master's staff ghost-write the court's decisions." *Id.* at *3. She noted that the only evidence supporting Plaintiff's claim was the author and created-date fields of the metadata of certain decisions.

Senior Judge Conti first stated the test for recusal as whether a "reasonable person, with knowledge of all the facts, would conclude that the judge's impartiality might reasonably be questioned." *Id.* (quoting *In re Kensington Int'l Ltd.*, 368 F.3d 289, 301 (3d Cir. 2004)). She continued that extrajudicial bias referred to a "bias that is not derived from the evidence or conduct of the parties that the judge observes in the course of proceedings." *Id.* at *4 (quoting *Johnson v. Trueblood*, 629 F.2d 287, 291 (3d Cir. 1980)). In the absence of proof that a person would reasonably question the judge's impartiality, a judge has an affirmative duty not to recuse herself, noting that recusal motions can serve as a calculated tactical tool used by unscrupulous advocates to avoid unwanted results. *Id.* at *4. Finally, Senior Judge Conti stated that recusal motions must be sought in a timely manner and that a judge need not explain how she performed her duties or the mental processes used in formulating official judgments.

Senior Judge Conti then explained why Plaintiff's arguments based on the author field of metadata were wrong and its speculation that the special master played an improper role in the court's decisions was "entirely unfounded." *Id.* at *5. She explained that the author field of the metadata was not evidence of who prepared the document and did not support a reasonable inference that

the court abandoned its role or provide a basis for recusal. Instead, the author field was part of the “system metadata,” which is used by a computer’s file management system to “track file locations and information about a file’s name, size, creation, modification, and usage.” Senior Judge Conti stated that when creating documents in Microsoft Word, the user name entered on the File > Options > General tab is automatically added as the “author” in the metadata. The “author” field is not authenticated and will continue to reflect the name of the person who originally created the document used as the template but can be modified. Users can remove the original author name in the metadata by opening the document, accessing the File > Info, right-clicking on the author field of the metadata, and selecting “Remove Person.” Senior Judge Conti stated that the court did not take these steps to alter or remove the author field of the metadata of the documents at issue.

Senior Judge Conti explained that the court followed its typical procedure of using a document that had already been docketed as a template for its opinion as a matter of promoting efficiency. She stated that in using a prior document as a template, the metadata from the first document is not overwritten, and therefore the author metadata from the original document carried over into its opinion. She further explained that the “metadata pointed to by [Plaintiff] about the ‘author’ in the court’s opinions and orders at issue is superficial and has no relationship to the contents of the final product.” Senior Judge Conti noted in particular that in some cases, where the court adopted R&Rs issued by the special master in which the court used the “save as” command and filed the same order as the special master, changing only the date and signature lines. *Id.* at *6. In those cases, the author field in the metadata of the court’s order reflected the name of the special master’s staff. She also stated that at some point, the court used a document originally created by the special master’s staff as a template for court opinions in this case, thereby causing all intervening opinions or orders to inherit that metadata.

Senior Judge Conti explained that the author field of the metadata was not a smoking gun or a reasonable or reliable way to determine who is responsible for the content of a document. She stated that in preparing this particular opinion, the court reviewed the “[Guidelines for Editing Metadata](#)” released by the Administrative Office of the United States Courts, which suggested either starting orders or opinions with a fresh document or proactively changing the author metadata field. Judge Conti stated that the court would follow these suggestions going forward to avoid the concerns raised by Plaintiff.

Senior Judge Conti next discussed the “created” date in the metadata. She stated that unlike with the author field, using the “save as” command in Word to create a template automatically changes the created-date field of the document’s metadata. She further explained that the “created” date field reflects, rather than when the file was created, when the file came to exist on a particular storage medium, such as a hard drive. In the context of using a file as a template for a new document, the “created” field will reflect the date of the “save as” copying, not the date the file originally came into existence.

Plaintiff argued that the “created” date in the metadata of the court’s summary judgment opinion attached to the email to counsel dated months later implied that the special master or her staff was working on that opinion. *Id.* at *7. Senior Judge Conti denied this inference and noted this date merely reflects that the court began working on a draft opinion before the briefing was completed, and the date changed automatically when the Word document was first created from a template document.

Senior Judge Conti stated that Plaintiff's "motion for recusal based on hidden fields of system metadata is not reasonable in light of the visible content of the court's written decisions." She continued that "[i]t is readily apparent that the court performed an independent review of the special master's R&Rs and that the decisions at issue are the work of the court." She further stated that in several of the opinions at issue, the court "expressly discussed the de novo standard of review being applied by the court," and therefore it was "readily apparent on the face of the documents at issue that the opinions and orders are those of the court, acting independently of the special master." *Id.* at *8. Senior Judge Conti therefore denied Plaintiff's motion for recusal.