PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
Jason Scott, DVM,	)	Docket No. 9449
Appellant.	)	

ORDER DENYING MOTION FOR DISQUALIFICATION

This case arises under the federal Horseracing Safety and Integrity Act ("HISA"), which Congress enacted in 2020 to provide national uniformity to safety and substance control in the nation's thoroughbred racing industry.[1] Among other things, HISA recognized the Horseracing Integrity and Safety Authority (the "Authority"), a private, independent, self-regulatory, nonprofit corporation, to "develop[] and implement[] a horseracing anti-doping and medication control program and a racetrack safety program" throughout the United States.[2]

The Authority promulgated, and the Federal Trade Commission approved, regulatory rules, which include the statutorily-required Anti-Doping and Medication Control ("ADMC") Program.[3] The ADMC Program Rules

[1] *See* 15 U.S.C. §§ 3051-60.

[2] *Id.* § 3052(a).

[3] *Id.* §§ 3053, 3055, 3057. Capitalized terms used, but not defined in this Order, are those defined in the HISA-approved Rules.

address, among other things: (1) the substances that are banned outright or subject to threshold presence requirements or are regulated as controlled medications; and (2) the conduct constituting violations and corresponding sanctions.[4] The Authority has contracted with the Horseracing Integrity & Welfare Unit ("HIWU"), a private body, to implement and enforce the ADMC Program.[5]

In February 2025, HIWU found two Banned Substances during a search of the vehicle Appellant Dr. Jason Scott, a Veterinarian, drove to Sunland Park racetrack in New Mexico. HIWU charged Dr. Scott with two violations of Rule 3214(a) prohibiting Possession of Banned Substances. An arbitration to resolve HIWU's charges was convened under the auspices of JAMS, a dispute resolution body, and an arbitration hearing was subsequently held. The Arbitrator ruled that Dr. Scott had, as HIWU charged, committed two Anti-Doping Rule Violations ("ADRVs"). Accordingly, the Arbitrator awarded sanctions against Dr. Scott, which include a period of Ineligibility, a fine, and a cost assessment.[6] Dr. Scott has thus brought this proceeding to review the Possession charges against him and the sanctions imposed.[7]

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[4] *See generally* ADMC Rule 3000 series; 88 Fed. Reg. 5070-5201 (Jan. 26, 2023) (FTC Notice of HISA Proposed Rule and Request for Public Comment); Order Approving the ADMC Rule Proposed by HISA (Mar. 27, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/P222100 CommissionOrderAntiDopingMedication.pdf; 88 Fed. Reg. 27894 (May 3, 2023) (FTC Notice of Final Rule, effective May 22, 2023), https://hisaus.org/regulations?modal-shown=true#equine-anti-doping-and-controlled-medication-protocol-rules.

[5] 15 U.S.C. §§ 3054(e)(1)(B)-(E), 3055; Rules 3010(e)(1), 5720(a).

[6] Review App. Ex. A, at 35.

[7] 15 U.S.C. § 3058; 16 C.F.R. §§ 1.145-.148. *See* 87 Fed. Reg. 60077 (Oct. 4, 2022) (Final Rule).

I. Dr. Scott's Disqualification Motion.

This review proceeding is just getting underway. However, Dr. Scott has moved for my recusal on the following grounds: "(1) Judge Himes's demonstrable history of prosecutorial bias and dicta commentary regarding his preference for the harshest penalties; (2) his systematic, habitual, and escalating *sua sponte* interventions against Covered Persons; (3) his advocacy against Dr. Scott in this case; (4) his heavy-handed restrictions on Dr. Scott's appeal rights; (5) his consistent expansion of HISA's appeal rights; and (6) his admitted past association with a member of HISA's board."[8]

These various grounds relate to my rulings in not only Dr. Scott's case, but also in four other HISA cases to which I have been assigned, with one exception: Ground 6 relates to my association, before being appointed as an FTC ALJ, with an individual who, unbeknownst to me, had become a member of the Authority's Board of Directors prior to my appointment. I will first summarize the authority applicable to disqualification based on alleged bias or partiality said to be reflected in judicial rulings. After this overview, I will address Dr. Scott's motion, which, for discussion's sake, I present in three groups: (a) Dr. Scott's case (grounds 3 and 4); (b) HISA cases generally (grounds 1, 2, and 5); and (c) Past association (ground 6).

[8] Appellant's Motion to Disqualify ("Disq. Motion") at 1. Throughout this Order, I use the terms "disqualify" and "recuse" interchangeably.

II. Overview of Disqualification.

In *Liteky v. United States*,[9] the Supreme Court held that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. . . . Almost invariably, they are proper grounds for appeal, not for recusal." Thus, whether the ruling is made "in the course of the current proceedings, or of prior proceedings," they "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."[10]

Accordingly, "[a]n adverse ruling," even when made in the same case, "does not constitute a sufficient basis for disqualification without a clear showing of bias or partiality."[11] Moreover, "'[b]ias cannot be inferred from a mere pattern of rulings by a judicial officer, but requires evidence that the officer had it "in" for the party for reasons unrelated to the officer's view of the law, erroneous as that view might be.'"[12] Time and again, the Courts have reminded that "[a] judge's bias warranting recusal generally must be personal and extrajudicial," the "[o]ne exception" being to "when the movant

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[9] 510 U.S. 540, 555 (1994).

[10] *Id. See also Frey v. EPA*, 751 F.3d 461, 472 (7th Cir. 2014) ("[I]nformation a judge has gleaned from prior judicial proceedings is not considered extrajudicial and simply does not require recusal."); *United States v. Cooley*, 1 F.3d 985, 993-94 (10th Cir. 1993) (Among the factors that "will not ordinarily satisfy the requirements for disqualification" is "prior rulings in the proceeding, or another proceeding, solely because they were adverse. . . .").

[11] *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 665 (8th Cir. 2003).

[12] *Scott v. Metro. Health Corp.*, 234 Fed. Appx. 341, 359 (6th Cir. 2007) (quoting *McLaughlin v. Union Oil Co. of Calif.*, 869 F.2d 1039, 1047 (7th Cir. 1989)). *See also, e.g., Chevron Corp. v. Naranjo*, No. 11–1150–cv(L) (and related nos.), 2011 WL 4375022, at *1 (2d Cir. Sept. 19, 2011).

demonstrates pervasive bias and prejudice."[13] "Cases reiterating . . . that the prejudice must be personal rather than judicial are legion."[14]

> As the Federal Judicial Center has further explained:
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> > This so-called "extrajudicial source" doctrine is born of the common-sense view that ordinarily the circumstances suggesting or creating the appearance of partiality cannot reasonably be derived from information revealed in the normal course of litigation because it is natural for judges to form attitudes about litigants and issues before the court as the facts unfold, and no reasonable person would question the impartiality of judges who do.[15]

Therefore, at bottom, the standard for disqualification is whether the judge's "impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case."[16]

With this background, I turn to the grounds Dr. Scott contends support disqualification.

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[13] *FuQua v. Massey*, 615 Fed. Appx. 611, 613 (11th Cir. 2015).

[14] *United States v. Haldeman*, 559 F.2d 31, 132 n.296 (D.C. Cir. 1976).

[15] JUDICIAL DISQUALIFICATION: AN ANALYSIS OF FEDERAL LAW 34 (3d ed. 2020).

[16] *United States v. Ruff*, 472 F.3d 1044, 1046 (8th Cir. 2007). *See also, e.g., Porretto v. City of Galveston Park Bd. of Trs.*, 113 F.4th 469, 492 (5th Cir. 2024) (The standard is "whether a reasonable and objective person, knowing all of the facts, would harbor doubts concerning the judge's impartiality," and considers "the perspective of the well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and suspicious person.") (cleaned up); *Clemens v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 428 F.3d 1175, 1178 (9th Cir. 2005) (the standard is "whether a reasonable person perceives a significant risk that the judge will resolve the case on a basis other than the merits," where "a reasonable person . . . means a well-informed, thoughtful observer, as opposed to a hypersensitive or unduly suspicious person.") (cleaned up); *In re Bellon*, No. 25-1842, 2025 WL 2437828, at *2 (3d Cir. Aug. 25, 2025) (Recusal "is required where a reasonable person who is aware of all relevant facts might reasonably question a judge's impartiality," an analysis that "must rest on the kind of objective facts that a reasonable person would use to evaluate whether an appearance of impropriety had been created, not on possibilities and unsubstantiated allegations.") (cleaned up).

III. Grounds for the Motion: Dr. Scott's Case.

Contemporaneous with beginning this review proceeding, Dr. Scott filed what was styled an "Unopposed Application for Stay" of the sanctions imposed.[17] In response, the Authority asserted that, while Dr. Scott "is liable for the Anti-Doping Rule Violations charged and proven and should be subject to appropriate Consequences [that is, sanctions], the Authority does not oppose a stay of the Arbitrator's decision in light of the rare circumstances in which it was issued."[18] The "rare circumstances," in summary, concerned a mid-arbitration hearing *ex parte* communication involving the Arbitrator and Dr. Scott and his counsel, which HIWU first learned about after the Arbitrator had issued his decision.[19] That decision, the Authority further stated, "suffers from multiple and substantial defects."[20]

Thus, the Authority explained its "non-opposition" to Dr. Scott's stay motion:

> In light of the Arbitrator's improper *ex parte* communications and the glaring flaws in the decision he issued, the Authority does not oppose a stay of that decision *pending either*: (i) vacatur of the Arbitrator's decision and remand for new arbitration proceedings before a new arbitrator, 16 C.F.R. § 1.146(d)(3)(i); or (ii) fulsome, *de novo* review by

[17] Stay App. at 1.

[18] Stay Resp. at 1-2.

[19] *See generally Matter of Scott*, No. 9449, 2026 FTC LEXIS 28, at *2-3 (ALJ Mar. 17, 2026) ("Briefing Order").

[20] Stay Resp. at 2.

> the ALJ, including "determination de novo" of whether Appellant is liable for the Anti- Doping Rule Violations charged, *id.* § 1.146(b).[21]

Far from Dr. Scott's stay motion being "unopposed," the Authority's position was conditional.

The Authority essentially offered Dr. Scott a "do-over" at the arbitration level. Dr. Scott could, of course, decline the offer in favor of pursuing a review on the existing record. But the Authority's offer seemed to me worthy of Dr. Scott's consideration, particularly since the stay papers suggested "a prima facie showing of grounds for vacatur and a remand."[22] Therefore, I issued the Briefing Order to better flesh out the two sides' positions. In summary, I directed that Dr. Scott file papers stating whether or not he objected to the relief the Authority proposed. If he did, then I instructed that he provide "the grounds for his objection and may, if he wishes, propose any other course of action."[23] I also provided for the Authority to respond to Dr. Scott's filing.[24]

Significantly, in view of the issues that Dr. Scott's stay motion raised, I directed that "[p]ending further Order of the Court, the sanctions imposed, and all further proceedings in this review, are **STAYED** as of the date of this Order."[25] Dr. Scott obtained the very stay relief he sought pending the parties' submissions and my further consideration of the issues Dr. Scott's own motion

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[21] *Id.* at 3 (emphasis added).

[22] Briefing Order at *3.

[23] *Id.* at *6-7.

[24] *Id.* at *7.

[25] *Id.* (capitalization and emphasis in original).

raised. Once Dr. Scott advised the OALJ that he intended to move for my disqualification, I continued the stay to allow this motion to be resolved.[26]

In seeking my disqualification, Dr. Scott exaggerates the import of the Briefing Order, which reflected no more than my preliminary assessment of the parties' stay papers. He asserts that the Order "articulated as many [as] four alleged errors" in the arbitration proceedings, "none" of which the Authority made.[27] But in responding to Dr. Scott's stay motion, the Authority argued that: (1) the *ex parte* communication violated "ADMC Program Rule 7150 and JAMS's own restrictions," and (2) the Arbitrator "provided no explanation for limiting Dr. Scott's Ineligibility (POI) to 18 months for two violations"—less than Rule 3223(b)'s seemingly mandatory 24-month period for a single first violation.[28] The Briefing Order referred to these Authority positions, albeit in greater detail.[29]

I also mentioned, as an "irregularity," the Arbitrator's apparent failure to state whether HIWU sustained its burden of proving Dr. Scott's violations.[30] While that "irregularity" could perhaps support the Authority's position favoring vacatur, it also could support a merits argument by Dr. Scott to set aside the Arbitrator's decision and sanctions. Another point I raised was

[26] 2026 FTC LEXIS 33 (ALJ Mar. 24, 2026).

[27] Disq. Br. at 4.

[28] Stay Resp. at 2.

[29] Briefing Order at *3-5.

[30] *Id.* at *5.

whether, "assuming, for argument's sake," the Authority needed to show prejudice as a pre-condition to vacating the Arbitrator's decision.[31] That identified an issue that either side could assert in paper responding to the Briefing Order.

"[A]n unfavorable judicial ruling . . . is insufficient to require disqualification absent a showing of pervasive personal bias and prejudice."[32] Here, there is not even a "ruling," or other "restrict[ion]" of Dr. Scott's rights on this review.[33] The Briefing Order merely called for additional papers to assist in determining whether there was an agreed-on approach that could obviate a need for a full review proceeding. If there was not, each side was given an opportunity to elaborate on their respective positions. The Briefing Order did not purport to decide Dr. Scott's stay motion, much less the merits of the review he is pursuing.

The issuance of the Briefing Order does not demonstrate any "deep-seated favoritism or antagonism that would make fair judgment impossible."[34]

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[31] *Id.* at *4.

[32] *Holloway v. United States*, 960 F.2d 1348, 1351 (8th Cir. 1992) (cleaned up).

[33] Disq. Br. at 5.

[34] *Liteky*, 510 U.S. at 555. *See also Ahuruonye v. DOI*, 690 Fed. Appx. 670, 680 (Fed. Cir. 2017) (Rejecting disqualification where there was "nothing here beyond disagreement with the administrative judge's decisions."); *Haldeman*, 559 F.2d at 134 (The moving party "must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment.").

To the contrary, my instruction for briefing to hear the parties out itself reflects absence of bias.[35]

"[T]he average person on the street who knows all the relevant facts" would not "reasonably question[]" my impartiality on the basis of the Briefing Order.[36] Equally important, to argue that recusal is appropriate under these circumstances "would encourage litigants to present 'speculative and ethereal arguments for recusal and thus arrogate to themselves a veto power over the assignment of judges.'"[37] That said, I will nevertheless address Dr. Scott's additional grounds for recusal.

IV. Grounds for the Motion: HISA Decisions Generally.

Dr. Scott seeks to come within the exception for "pervasive bias and prejudice," or, as the Supreme Court described it, "a deep-seated favoritism or antagonism," on my part against him. He refers to rulings I have made, or language I have used, in four other HISA cases. These decisions, he argues, show a "pattern of advocating for harsher sanctions and imposing them *sua sponte* [that] far exceeds what would be expected of a neutral adjudicator and demonstrate[] systematic bias favoring the regulatory agency."[38]

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[35] *Cf. SEC v. Razmilovic*, 738 F.3d 14, 30 (2d Cir. 2013) ("The absence of bias in favor of the SEC is reflected by the fact that a hearing was being held.").

[36] *United States v. Ruff*, 472 F.3d at 1046 (internal quotation marks omitted) & pp. 4-5, above.

[37] *Scott*, 234 Fed. Appx. at 365 (cleaned up). *See also In re Onishi*, 856 Fed. Appx. 426, 427 (3d Cir. 2021) ("speculative and conclusory" allegations "do[] not warrant recusal"); *Crawford v. DHS*, 245 Fed. Appx. 369, 383 (5th Cir. 2007) ("unsupported speculation" did not warrant recusal).

[38] Disq. Br. at 2.

But Dr. Scott's apparent "disagree[ment] with the Court's perceived political and judicial philosophy" does not afford grounds for disqualification.[39] Indeed, "[u]nfavorable rulings alone are legally insufficient to require recusal, even when the number of such unfavorable rulings is extraordinarily high on a statistical basis."[40] And in any event, a closer look at the four

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[39] *Stoner v. Young Concert Artists, Inc.*, No. 13 Civ. 4168(LAP), 2014 WL 661424, at *2 (S.D.N.Y. Feb. 7, 2014). *See also, e.g.*:

- *United States v. Ali,* 799 F.3d 1008, 1017-18 (8th Cir. 2015) (Recusal was not required where the judge's remarks allegedly "suggest[ed] a world view equating fundamentalist Islam with terrorism. . . .").
- *United States v. Burnette*, 518 F.3d 942, 945 (8th Cir. 2008) ("Rules against 'bias' and 'partiality' can never mean to require the total absence of preconception, predispositions and other mental habits. . . .").
- *Hradesky v. Comm'r of Internal Revenue*, 540 F.2d 821, 823 n.2 (5th Cir. 1976) (Rejecting, as insufficient to justify recusal, the taxpayer's allegations that "both (Judges) have been tainted by serving the cause of the (Government) . . . and [the taxpayer] faced a . . . battery of (Tax Court) Judges all of whom had long before been agents of the Government at various levels and who were heavily imbued with the (Government's) views.") (parentheticals in original; cleaned up).
- *Baskin v. Brown*, 174 F.2d 391, 394 (4th Cir. 1949) (Recusal could not be based on "zeal for upholding the rights of Negroes under the Constitution and indignation that attempt should be made to deny them their rights. A judge cannot be disqualified merely because he believes in upholding the law, even though he says so with vehemence. Personal bias against a party must be shown.").
- *A.S. Goldmen, Inc. v. Phillips*, No. 05 Civ. 4385 (PKC) (AJP) (and related no.), 2006 WL 1881146, at *42 (S.D.N.Y. July 6, 2006) (Recusal denied where the judge allegedly had a "general pro-prosecution stance.").
- *Lindsey v. City of Beaufort*, 911 F. Supp. 962, 972 (D.S.C. 1995) (Recusal denied where the judge represented "black Americans and other citizens in certain civil rights cases prior to ascending to the bench," and allegedly appeared to have a "peculiar interest in and bias toward Plaintiffs in this case [that] may stem from his participation in this and other civil rights cases.") (internal punctuation deleted).
- *United States v. Nehas*, 368 F. Supp. 435, 437 (W.D. Penn. 1973) ("[V]iews relating to legal questions, even strongly-held views in favor of law-enforcement, do not amount to personal bias. . . . Likewise, the severity of a sentence (within the statutory spectrum) is no indication of personal bias.") (citations omitted).

[40] *Matter of Beverly Hills Bancorp*, 752 F.2d 1334, 1341 (9th Cir. 1984) (cleaned up). *See also In re IBM Corp.*, 618 F.2d 923, 929 (2d Cir.1980) ("A trial judge must be free to make rulings on the merits without the apprehension that if he makes a disproportionate number in favor of one litigant, he may have created the impression of bias.").

decisions Dr. Scott relies on demonstrates that the "pattern" he claims to have found is not there. I have made many rulings in these cases, some in favor of HIWU or the Authority's enforcement counsel, some in favor of the charged Person, and some in favor of the adjudicatory process itself, rather than one side or the other.

A. *Shell II*.[41]

This proceeding reviewed Dr. Shell's proven ADRVs for Possession of four Banned Substances. HIWU argued that sanctions had to be awarded separately for each ADRV. That meant, in practical terms, that Dr. Shell could conceivably be subject to at least two years of mandatory Ineligibility for *each* of four ADRVs—a total of eight years, instead of the two years the Arbitrator awarded. Fines also would increase to as much as $100,000, up from $25,000.

Construing the relevant Rule, I held sanctions had to be imposed for each proven ADRV. But I imported the sports law principle of proportionality, intended in essence to preclude unduly harsh sanctions. I held that "[i]mposing consecutive Ineligibility periods and cumulative fines on [Dr. Shell] for each of the four Possession violations would be grossly disproportionate to the misconduct underlying this case."[42] I also wrote:

> For Dr. Shell, a longtime veterinarian nearing retirement, cumulative Ineligibility of eight years would be tantamount to permanent expulsion from practicing in the HISA-covered racing industry. A $100,000 fine,

[41] *Matter of Shell* ("*Shell II*"), No. 9439, 2025 WL 1784696 (FTC ALJ Mar. 6, 2025).

[42] *Id.* at *34.

> for possessing four Banned Substances discovered during a single search, would similarly inflict undue financial burden.[43]

Plainly, the ruling was favorable to Dr. Shell.

The Authority also argued that the Arbitrator should have imposed consecutive Ineligibility because Dr. Shell was already subject to Ineligibility arising from a prior HISA case. HIWU, however, raised that argument, for the first time, after the Arbitrator had issued his decision. Thus, again I ruled *against* the Authority and in favor of Dr. Shell.[44]

Considering sanctions further, I analyzed whether Dr. Shell demonstrated No Fault or Negligence ("NF") or No Significant Fault or Negligence ("NSF") for Possession of each individual substance. If a Covered Person proves NF, certain sanctions are eliminated. If, instead, NSF is proven, sanctions can be reduced.

Like the Arbitrator, I rejected Dr. Shell's NF defense, and on NSF I came out the same on three of the four substances—no Ineligibility reduction. On the fourth, the Arbitrator's NSF analysis led to reducing the 24-month Ineligibility period by three months. My analysis led me to a 1.5-month reduction. Under prevailing case law, my smaller Ineligibility reduction also would translate into less reduction in the fine than the reduction adopted by the Arbitrator.[45] However, as I wrote, the modest differences did not rise to the

[43] *Id.*

[44] *Id.* at *34-40.

[45] *Id.* at *47.

level of abuse of discretion or otherwise warrant change.[46] Therefore, I upheld the Arbitrator's Ineligibility and fine awards, again favoring Dr. Shell.

B. *Serpe.*[47]

One of the Covered Horses handled by trainer Serpe tested positive for a Banned Substance, and HIWU proved the ADRV. However, because HIWU had sought a monetary fine as part of the sanctions, Mr. Serpe argued, both before the Arbitrator and in a related federal action, that he was entitled to a jury trial under the Seventh Amendment. Although HIWU initially sought a fine against Dr. Scott, the Authority directed HIWU to drop the fine request. Doing so seemingly mooted Dr. Scott's jury trial argument in both the pending HISA arbitration and in his related federal litigation.

The Authority's strategy was troubling. In his related federal action, Serpe asked the Court: "Will Defendants run this set of plays every time a Covered Person is prosecuted under HISA and seeks to vindicate his Seventh Amendment right?"[48] The Court expressed its concern and declined to find the case moot:

> Defendants cite no authority or process by which HIWU came to the decision [not to seek civil penalties]. . . . HIWU's decision does not appear to be the result of substantial deliberation; rather, it appears to be an attempt to manipulate jurisdiction. . . . Defendants in this case

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[46] *Id.*

[47] *Matter of Serpe*, No. 9441 (FTC ALJ Sept. 12, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/614069.2025.09.12_alj_decision_on_application_for_review.pdf ("*Serpe* ALJ Decision").

[48] Reply in Supp. of Pl.'s Renewed Mot. for Prelim. Inj. at 18, *Serpe v. FTC,* No. 0:24-cv-61939 (S.D. Fla. Aug. 22, 2025), ECF No. 57.

> have supplied no clear reason or process justifying their change of course, let alone a well-reasoned one.
> . . . .
> [T]he recent decision not to seek monetary penalties here appears to be a "one-off" specifically designed to moot Serpe's Seventh Amendment Challenge.[49]

I similarly criticized the Authority for directing HIWU to drop its request for a fine: "there is something unseemly about the Authority's constitutional avoidance strategy, which would enable it to forego often minor monetary fines while continuing to expose those covered by HISA and the Rules to banishment from thoroughbred horseracing for substantial periods of Ineligibility—here, two years for Serpe's first ADRV."[50]

In my view, the Authority's direction to HIWU represented inappropriate involvement in HIWU's exercise of prosecutorial discretion in Mr. Serpe's individual case.[51] As the Authority wrote in prior papers in the case, "HIWU . . . serve[s] as . . . the independent enforcement agency, . . . responsible for . . . independent investigations, charging and adjudication of potential ADMC rule violations. . . ."[52] HIWU similarly had written that it "separately and independently manages the processing of potential violations of the ADMC Program. The Authority is not involved in the management or

[49] *Serpe v. FTC,* No. 0:24-cv-61939, 2025 WL 2840499 at *6 (S.D. Fla. May 29, 2025) (order denying preliminary injunction).

[50] *Serpe* ALJ Decision at 46.

[51] *Id.* at 47-56.

[52] Authority Resp. to ALJ Order, *Shell II,* No. 9439, 2024 WL 5078329, at *3 (Nov. 12, 2024).

decision-making with respect to this process."[53] Similar representations of HIWU's independence from the Authority recurred throughout earlier papers in the case.[54]

HIWU's Authority-directed decision to refrain from seeking a fine seemed to have its intended effect in the arbitration. Although the Arbitrator upheld Dr. Scott's Possession ADRV and found no grounds to reduce his Ineligibility for either NF or NSF, he awarded no fine, without offering any explanation. Therefore, in the review proceeding before me, to avoid the Authority's strategy to moot his Seventh Amendment argument, Dr. Scott contended that it was *mandatory* for the Arbitrator to have awarded a fine as a sanction for his proven ADRV. Construing the relevant sanctions Rule, I held that "up to" language meant a fine was *not* mandatory. A fine of $0 could, if accompanied by an appropriate explanation, be awarded.[55] That construction favored Persons charged under the Rules beyond that which Mr. Serpe had argued for. My ruling recognized an arbitrator's discretionary authority to impose, or not impose, a fine, despite a proven ADRV.

Considering these circumstances, I further analogized the role of arbitrators in HISA disciplinary cases, as well as that of ALJs on review, to that of a judge in a criminal case. There, a judge has authority to regard as advisory a prosecutor's or jury's sentencing recommendation and has an

[53] HIWU Resp. to ALJ Order, *Shell II,* No. 9439, 2024 WL 5078331, at *2 (Nov. 12, 2024).

[54] *See Serpe* ALJ Decision at 49-53 (quoting the Authority and HIWU statements).

[55] *Id.* at 56-57, 62-63.

obligation to make an independent judgment on the punishment to be imposed. Thus, I found that the Arbitrator was not required to adopt HIWU's decision to withdraw its initially requested fine.[56] That ruling recognized the independence of arbitrators in HISA cases (and of ALJs on review). It is neither pro-enforcement nor pro-charged individual.

I further ruled on the merits of Serpe's Seventh Amendment argument, deciding the issue against him. The case is currently on an appeal to the FTC, which is, of course, the appropriate course of action to review all my actions in the case—or in any other HISA case.

C. *Overly.*[57]

Dr. Overly, a Veterinarian, was charged with Possession of two Banned Substances. Possession was not disputed, but Dr. Overly alleged that he had a "compelling justification" for Possession and that there was either NF or NSF on this part. I rejected all those defenses on the facts.

Dr. Overly argued that, although he possessed two Banned Substances, and HIWU discovered both during the same search, the proportionality principle required that HIWU charge only one Possession violation, not two. The Authority opposed that argument and also maintained that the Arbitrator erred in imposing a "combined" sanction for both proven ADRVs, instead of

[56] *Id.* at 58-62.

[57] *Matter of Overly*, No. 9443 (FTC ALJ Jan. 27, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/614746.2026.01.27_administrative_law_judge_decision_on_application_for_review.pdf ("Overly ALJ Decision"), *app. for review*, FTC (Feb. 26, 2026).

imposing consecutive Ineligibility periods (and correspondingly aggregated fines). I analyzed the Rules and existing HISA case law, as well as the facts of Dr. Overly's case, and decided these issues in the Authority's favor.[58]

I also discussed Dr. Overly's NF and NSF defenses. Exercising my *de novo* review authority, I concluded that Dr. Overly's account of the facts was contrived, thus rendering NF and NSF defenses inapplicable as a matter of law.[59] I nevertheless undertook, as an alternative, to analyze the NF and NSF defenses on the merits. Like the Arbitrator, I concluded that Dr. Overly failed to establish NF.[60]

The Arbitrator, however, determined that a one-month reduction for NSF was appropriate, relying on the absence of evidence that Dr. Overly intended to treat, or did in fact treat, any Covered Horse with the two Banned Substances he possessed, or that he otherwise sought to cheat. I rejected the Arbitrator's grounds for a one-month reduction from the 24-month Ineligibility period provided for under the Rules.

Under Rule 3214(a), Possession is a strict liability violation in which "intent" is not a factor where, as in Dr. Overly's case, actual Possession was proven.[61] Instead, absence of bad intent is "simply part of 'the totality of the

[58] *Id.* at 62-66, 85-92.

[59] *Id.* at 68-70.

[60] *Id.* at 70-73.

[61] *Id.* at 11 & 84 (citing authority); *Scott v. Horseracing Integrity & Safety Authority*, No. 2:25-cv-632-SMD-GJF, 2025 WL 2987598, at *7 (D.N.M. Oct. 22, 2025)

circumstances' that may be taken into account" analyzing NSF.[62] For that reason and based on my assessment of Dr. Overly's lack of veracity, I concluded that "neither absence of administration [of either Banned Substance to a Covered Horse] nor professed lack of intent to cheat provide any cognizable offset" for NSF.[63] For each of the two Banned Substances, I held the one-month Ineligibility reduction was not sustainable. I therefore rejected the Arbitrator's reduction and awarded the full 24-month maximum Ineligibility period and $25,000 fine for each ADRV.

I also referred to Rule 3227 on Aggravating Circumstances as affording a basis for increasing sanctions where false evidence is presented by a charged Person in an arbitration. To my knowledge, there is no HISA case law to date that discusses this issue, but sports law generally recognizes that presenting false evidence can constitute Aggravating Circumstances. As one arbitrator wrote in increasing the sanctions on this basis, the athlete "sought to muddy the waters from first to last both prior to and during this Arbitration by provision of false evidence."[64] Nonetheless, I "refrain[ed] from invoking Rule 3227, despite my conclusion that the evidence Dr. Overly ha[d] offered lacks believability."[65]

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[62] *Overly* ALJ Decision at 84 (quoting Rule 1020 (definition of NSF)).

[63] *Id.* at 84.

[64] *Lewis-Parry v. USADA* at ¶ 114 (Dec. 4, 2020), https://www.usada.org/wp-content/uploads/Chi-Lewis-Parry-Decision.pdf. *See also, e.g., Datunashvili v. UWW*, CAS 2024/A/10931, at ¶ 267 (The athlete offered into evidence a fabricated video "put forward as accurate in the first instance until challenged under cross examination . . .").

[65] *Overly* ALJ Decision at 94.

Dr. Overly seeks FTC review of my decision. He contends that permitting HIWU to charge two Possession ADRVs misreads Rule 3228(d) and that imposing consecutive Ineligibility and aggregated fines for the two ADRVs was error.[66] He had not, at least at this point, asserted that it was error to set aside the Arbitrator's reduction in Ineligibility under an NSF analysis. The Commission has not yet ruled on whether to accept review.

D. *Kriple.*[67]

Mr. Kiple, a trainer, was charged with failure to secure veterinary care for one of his horses, which died a painful death as a result. The Authority's enforcement counsel proved a violation of the HISA Racetrack Safety Program ("RSP") Rules, and the Authority imposed a two-year suspension under Rule 8200(b). While the Rule sets out the various forms of sanction available to the Authority for RSP violations, it does not prescribe any particular period of suspension.

I upheld the Authority's sanction. In doing so, I summarized Mr. Kriple's proven neglect over at least a two-day period, as well as record evidence that: (1) this was the *second* horse to die while cared for by Mr. Kriple, and (2) viewing the same facts, the Ohio racetrack stewards, after

[66] Notice of Appeal and Application for Review at 2-4, *Matter of Overly,* No. 9443 (Sep. 24, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/614149.2025.09.24_notice_of_appeal_and_application_for_review.pdf.

[67] *Matter of Kriple*, No. 9446, 2026 FTC LEXIS 25 (ALJ Mar. 4, 2026).

a hearing, recommended that the State Racing Commission bar Mr. Kriple *for life*—a recommendation that the Racing Commission adopted.[68]

Against this backdrop, I wrote that the Authority's suspension period "seem[ed] overly lenient."[69] However, I noted that "the HISA regime is relatively new, and that reported decisions arising from equine deaths due to deprivation or abuse generally are highly fact-specific."[70] I further cited to diverging equine competition decisions in cases involving death of the horse.[71]

Lacking guidance in Rule 8200(b) or in any party-briefing on the length of suspension, I deferred "to enforcement counsel's recommendation, adopted by the IAP member [essentially, here, the arbitrator] and the Board."[72] I added this: "since Rule 8200(b) itself provides no guideposts for the sanctions detailed, decision-making at all levels will be better-served if both grounds for exercising the Authority's discretion and supporting authority are provided."[73]

* * *

In *Liteky*, the Supreme Court wrote that a judge is not "recusable for bias or prejudice" based on "knowledge and the opinion it produced," when "properly and necessarily acquired in the course of [judicial] proceedings" or

[68] *Id.* at *22-23.

[69] *Id.* at *23.

[70] *Id.*

[71] *Id.* at *23-25.

[72] *Id.* at *25.

[73] *Id.*

"as a result of what they learned in earlier proceedings. . . ."[74] The Seventh Circuit also reminds that:

> In evaluating whether a judge's impartiality might reasonably be questioned, our inquiry is from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances. . . . That an unreasonable person, focusing on only one aspect of the story, might perceive a risk of bias is irrelevant. . . . Consequently, where a judge's comments, writings, or rulings are the basis for a recusal request, our analysis assumes that a reasonable person is familiar with the documents at issue, as well as the context in which they came into being.
>
> In addition to being well-informed about the surrounding facts and circumstances, for purposes of our analysis, a reasonable person is a thoughtful observer rather than . . . a hypersensitive or unduly suspicious person. . . . Finally, a reasonable person is able to appreciate the significance of the facts in light of relevant legal standards and judicial practice and can discern whether any appearance of impropriety is merely an illusion.[75]

Nothing arising from the four cases Dr. Scott relies on, whether considered individually or collectively, meets the standards required for disqualification. This is not *Liteky's* "almost never" case. I turn now to the final ground for Dr. Scott's motion.

V. Grounds for the Motion: Prior Association.

I became an FTC ALJ in March 2024. A few months later, I independently determined, for the first time, that an individual whom I knew

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[74] 510 U.S. at 551. *See also Jaffree v. Wallace*, 837 F.2d 1461, 1465 (11th Cir. 1988) ("It is simply not enough to voice disagreement with previous rulings by [the Court] in this and other cases.").

[75] *In re Sherwin-Williams Co.*, 607 F.3d 474, 477-78 (7th Cir. 2010) (internal quotation marks and citations omitted; cleaned up).

from New York State Bar Association activity prior to becoming an ALJ, Ms. Terry Mazur, had become a member of the Authority's Board of Directors in August 2023. From mid-2024 on, the Office of Administrative Law Judges has followed the practice of disclosing this prior association to the parties whenever I am assigned a HISA case. In *Matter of Galvin*, the appellant veterinarian moved to disqualify me on the basis of this past association.[76] I denied the motion, relying on what I believe to be prevailing authority.[77] My Order sets forth the facts more fully, and Dr. Galvin's motion includes the form of disclosure then made, which has differed in non-substantive respects as time has passed.[78]

Dr. Scott offers no authority suggesting I should revisit the conclusion I reached on Dr. Galvin's motion. And as also discussed above, Dr. Scott's other five grounds do not establish a basis for disqualification. However, at the end of his brief, Dr. Scott includes a paragraph in which he asserts: "The fact that Judge Himes believed that his contacts with Ms. Mazur were substantial enough to require disclosure is evidence that he believed a reasonable person could perceive bias."[79] But that is simply wrong.

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[76] Motion for Disqualification, No. 9445 (Dec. 8, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/614434.2025.12.08_motion_for_disqualification_of_alj.pdf ("Galvin Motion").

[77] No. 9445, 2025 FTC Lexis 129 (ALJ Dec. 15, 2025) ("Galvin Order").

[78] Galvin Order at *1-3; Galvin Motion, Ex. A.

[79] Disq. Motion at 8.

Of necessity, a judge's trigger for disclosure must be broader than the requirements for disqualification. Otherwise, judges would consistently disqualify themselves for tenuous reasons, or they would assess the circumstances insufficient to require any disclosure at all. Either way, disclosure frequency would decline, if not cease entirely. The purposes of disclosure and disqualification, however, simply are different:

> [D]isclosure can enhance the goal of impartiality, as well as promote transparency, by giving the parties the opportunity to seek disqualification based on the disclosed information, seek additional information from the judge, waive disqualification, or appeal a judge's decision to not disqualify. . . . [D]isclosure "serves the important role of reaffirming the integrity and impartiality of the judicial institution. It provides the parties with the reassurance the judge has examined whether or not certain factors in regard to the case require recusal, that the judge has determined that recusal is not required, and that, in spite of that determination, the judge believes the parties and their counsel should be made aware of those factors."[80]

In sum, since a judge is "presumed to be impartial," when a motion for disqualification is made, analysis begins "with a presumption against disqualification."[81] The fact of disclosure is not itself a consideration that can rebut the presumption.

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[80] William Kearse McGill, Ethics Column: When to Recuse or Disclose?, ABA JD Record (Dec. 30, 2024) (quoting David M. Rothman, Richard D. Fybel, Ronni B. MacLaren, and Mark D. Jacobson, CALIFORNIA JUDICIAL CONDUCT HANDBOOK 495 (4th ed. 2017)), https://www.americanbar.org/groups/judicial/resources/jd-record/2025/when-recuse-disclose/.

[81] *See, e.g., Doe v. Cabrera*, 134 F. Supp. 3d 439, 444 (D.D.C. 2015) (citing authorities) (internal quotation marks omitted).

VI. Dr. Scott's Authorities Have No Application.

Dr. Scott's case law adds no substance to his motion. Four decisions arose from the judge's conduct during the trial itself, where—unlike the proceeding here—there is an ongoing opportunity, often daily, for judicial intervention in the presentation of evidence and in the ebb and flow of the trial proceedings generally. In two cases, the Court of Appeals rejected any appearance of bias or other impropriety on the judge's part. These decisions are not discussion-worthy, regardless of Dr. Scott's snatching words from them.[82]

The other two trial conduct decisions are:

Pastrana v. Chater[83]: This was a social security disability case that the ALJ had to try a second time after a District Court remand. Reviewing the record in the second trial, the District Court noted that the ALJ "appear[ed]" to take "the district court's remand order as a personal affront," repeatedly commenting on its inability to apply the decision that formed the basis for the remand.[84] The District Court's opinion further details "what can only be

[82] *See Van Leirsburg v. Sioux Valley Hosp.*, 831 F.2d 169, 173 (8th Cir. 1987) (The District Court's questions and comments, "when read in context did not destroy the overall fairness of the trial," in some instances "clarify[] previous testimony," and in all events, the jury was properly charged that it "may disregard the Court's comments on the facts entirely."); *Warner v. Transamerica Ins. Co.*, 739 F.2d 1347, 1352 (8th Cir. 1984) ("[T]here is simply no evidence that the district court became an advocate in this trial, nor is there any evidence that Transamerica was prejudiced by the limited number of questions and comments the court did make.").

[83] 917 F. Supp. 103 (D.P.R. 1996).

[84] *Id.* at 108.

described as a diatribe against the work ethic of the people of Puerto Rico."[85] The ALJ's statements, the District Court said, were of a "shocking nature," and included "disgusting, and often racist rantings."[86] The District Court held that the record "unequivocally support[ed] remand" and, not only reassignment to a different ALJ, but also a referral for "appropriate disciplinary action. . . ."[87]

United States v. Rivera-Rodriguez[88]: In a criminal case: (a) the District Court intervened to question the government's two cooperating witnesses, taking "over the prosecutor's role" in eliciting one witness's understanding of the consequences of his plea agreement, and for the other, the witness's obligation to tell the truth[89]; (b) The District Court questioned one cooperating witness to dispel possible "confusion and imprecision on an important point" so that the presentation was "credibly anchored in the witness's testimony"[90]; and (c) during closing argument, the District Court intervened to "help[] the government" and offered a remark in the nature of "fact-finding . . . on an issue that should have been left to the jury."[91] The District Court's "continued one-sided interventions . . . cumulatively gave jurors the impression that the court

[85] *Id.* (internal quotation marks omitted).

[86] *Id.* at 109, 111.

[87] *Id.* at 111.

[88] 761 F.3d 105 (1st Cir. 2014).

[89] *Id.* at 115-18, 120.

[90] *Id.* at 121.

[91] *Id.* at 122.

favored a guilty verdict. . . ."[92] Thus, the Court of Appeals set aside the conviction.

Another cited decision, *United States v. Microsoft Corp.*[93] involved a trial, but not the District Court's conduct in open court. Just the opposite: the District Court gave "secret interviews to select reporters" before issuing his findings of fact, conclusions of law, and final judgment.[94] During the interviews, the Court: (1) discussed "numerous topics relating to the case"[95]; (2) "secretly divulged to reporters his views on the remedy for Microsoft's antitrust violations"[96]; and (3) "embargoed" the interviews until the Court's final judgment.[97] Based on the judge's "deliberate, repeated, egregious, and flagrant" violations of the disqualification statutes and the Canons of the Code of Conduct for United States Judges, the Court of Appeals directed re-assignment of the case on remand.[98]

It belabors the obvious to state that, on this motion, Dr. Scott has shown nothing remotely comparable to the facts of these three cases.

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[92] *Id.* at 123.

[93] 253 F.3d 34 (D.C. Cir. 2001).

[94] *Id.* at 108.

[95] *Id.* at 109.

[96] *Id.* at 111.

[97] *Id.* at 108.

[98] *Id.* at 107.

Dr. Scott's final authority is *Cinderella Career & Finishing Schools, Inc. v. FTC*,[99] which arose from an FTC proceeding alleging that Cinderella's advertising contained false, misleading and deceptive representations. While appeal from the FTC hearing examiner's decision to the Commission was pending, the FTC Chair gave a speech before a newspaper industry group. The Chair commented on advertising standards, which, he said "could stand more tightening by many newspapers."[100] In remanding for reconsideration of the case, the Court of Appeals disqualified the Chair. His public remarks, the Court wrote, could "give the appearance that he ha[d] already prejudged the case and that the ultimate determination of the merits will move in predestined grooves."[101]

Again, there is nothing similar here. I have not publicly commented on Dr. Scott's case, or on any other HISA case assigned to me.

* * *

"A judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is."[102] Dr. Scott's motion is **DENIED**.

VII. Further Proceedings in the Case.

Denial of Dr. Scott's motion takes us back to the issuance of the Briefing Order and my subsequent March 24, 2026 Order, as a result of which both

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[99] 425 F.2d 583 (D.C. Cir. 1970).

[100] *Id.* at 590.

[101] *Id.*

[102] *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988). *See also United States v. Woodmore*, 135 F.4th 861, 875 (10th Cir. 2025) (rejecting disqualification).

sanctions and proceedings in this case were stayed pending resolution of this disqualification motion. We will go forward as follows.

It is **ORDERED** that:

1. My March 24, 2026 Order will remain in effect for seven days from the issuance of this Order. During that period, the parties must **CONFER** and decide whether there is, indeed, a basis for proposing an agreed-upon stay of the sanctions imposed.

a. At the conclusion of this seven-day period, the parties must **FILE** either: (1) if agreement is reached, a stipulation and proposed form of stay order for my consideration; or (2) a notice stating, in substance, that there is no agreement to stay the sanctions.

b. If there is no agreement, however, then the stay of both sanctions and case proceedings now in effect will be vacated, effective as of expiration of the seven-day period to confer without further Order.

c. To inform the parties' discussion, I address the second basis on which the Authority was willing to condition its non-opposition to Dr. Scott's stay motion, not previously discussed here: that there be a "fulsome, *de novo* review by the ALJ, including 'determination de novo' of whether Appellant is liable for the Anti-Doping Rule Violations charged, *id.* § 1.146(b)."[103] HISA and the FTC Rules already direct that my review is

[103] Stay Resp. at 3.

de novo.[104] Therefore, to request that it be "fulsome" does not explain what more might be contemplated and, in consequence, provides no guidance that I could even consider implementing. I do not preclude the possibility that the parties might jointly propose a scope of review that they envision and offer it for my consideration. That does not, however, mean that I necessarily would accept it, instead of applying the *de novo* review default that already applies.

d. Also, if during the seven-day period, the parties are able to agree on any other course of action in this case, they may similarly submit it for my consideration.

2. Absent the parties' agreement on resolving Dr. Scott's pending "unopposed" motion for a stay of sanctions, Dr. Scott has **LEAVE** to withdraw that motion and to **FILE** a renewed motion that is contested (or partially contested) if he still wishes such relief. Any such motion must be filed not later than seven days from the expiration of the period to confer, described above, unless the parties stipulate to a longer period for filing the motion. If a new stay motion is filed, the Authority should respond within seven days of being served with the motion, as provided in FTC Rule 1.148(b)(1).

3. The Authority must **FILE** its response to Dr. Scott's application for review not later than 10 days from the expiration of the period to confer. I will

[104] 15 U.S.C. § 3058(b)(1); FTC Rule 1.146(b)(3).

defer issuing an Order regarding additional review material and briefing pending filing of the Authority's response.

4. All filings in this case must be made by 5 p.m. ET on the date specificized. In addition to service with the Office of the Secretary, the parties must transmit their papers to the Office of Administrative Law Judges ("OALJ") electronically by email (OALJ@ftc.gov).

ORDERED:

Jay L. Himes

Jay L. Himes
Administrative Law Judge

Date: April 16, 2026