STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State ex rel. Peter Stephenson, a/k/a Peter Rickmyer, Peter Rickmyer,

File No. 27 CV-11-11012

Plaintiff,

v.

MEMORANDUM

State ex rel. Peter Stephenson a/k/a Peter Rickmyer, Peter Rickmyer vs Joan Fabian, in her official capacity as Minnesota Commissioner of Corrections, and her successor, Tom Roy, in his official capacity, Jeff Peterson, in his individual capacity, William McDonald, in his individual capacity, John Hoff, an individual, Megan Goodmundson, an individual, Michael "Kip" Browne, an individual, and John Does 1-3,

Defendants

Peter Rickmyer,

File No. 27 CV-10-3378

Plaintiff,

v.

MEMORANDUM

Peter Rickmyer vs Robert Hodson, John Hoff aka jns aka Johnnynorthside, The Adventures of Johnny Northside, David Arnold Schooler, Jordan Area Community Council et. al.

Defendants.

The above-entitled matters came on before the Court on or about January 8, 2012, on Plaintiff Rickmyer's motion to remove the entire 4th Judicial District bench. My January 9, 2012, Order denying the motion is incorporated herein.

Plaintiff seeks to remove the entire Fourth Judicial District bench.[1] The supporting memorandum draws the court's attention to many sections of the Minnesota Code of Judicial Conduct that might possibly govern his removal motion. I will not repeat those sections. While the memorandum and supporting papers suggest that four members of the bench (Blaeser, Bush, Zimmerman, and Abrams – primarily Blaeser) have engaged in conduct that violates the Code, the moving papers are devoid of any assertion that the 58 remaining members of the bench have engaged in any conduct that suggests partiality against Plaintiff or favoring one or more of the defendants.[2] Nevertheless, the motion/memorandum seems to suggest that Judge Blaeser is implicated in the proceedings such that his conduct may need to be evaluated by any remaining member of the bench who presides over these matters and/or that Judge Blaeser may be called upon to testify in front of that colleague.

Since Plaintiff has not alleged problematic conduct by the vast majority of my colleagues, the heart of the motion appears to be the implication that the impartiality of any Fourth Judicial District judge chosen to preside over his case "may reasonably be questioned" based on the factual assertions levied against a few, specific colleagues, primarily Judge Blaeser. The Code standards do not invoke one litigant's subjective determination that the impartiality of any and all Fourth Judicial District judges could be reasonably questioned. Nor does the standard require me to adopt the perspective of "a

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[1] Although the "Amended Notice of Motion and Motions: Amended January 3, 2012" lists six separate motions, an email of event date from Plaintiff's counsel made it clear that the motion to remove the entire bench is the only motion currently before me.

[2] "Plaintiff makes this motion to recuse the entire Bench due to the unique circumstances of this case. Plaintiff is *not* in any way saying this entire Bench has problems. Far from it. But because Judge Blaeser is both colleague and 'supervisor' at this Bench, and likely a witness, recusal may well be appropriate." (emphasis added) (Plaintiff's Memorandum p. 30)

person unduly suspicious or concerned about a trivial risk that a judge may be biased."[3] Rather, the Code test is whether a "reasonable person who knew the circumstances would question the judge's impartiality." *Fletcher v. Conoco Pipe Line Co.* 323 F.3d 661, 664 (8th Cir. 2003).[4] In essence then, Plaintiff appears to be suggesting that a reasonable person who knew the circumstances asserted in his pleading would question the ability to the entire bench to remain impartial.

Plaintiff does not cite any case from any jurisdiction in which a judicial code section or other authority was used to disqualify an entire bench, especially a large urban court with 62 judges. My own research revealed few such cases and they all involve unique facts not present herein. See *In re Nettles*, 394 F.3d 1001 (7th Cir. 2005) and *Nichols v. Alley*, 71 F.3d 347 (10th Cir. 1995), both of which are discussed in detail *United States v. Sundrud*, 397 F. Supp.2d 1230, 1234 (C.D. California 2005). The *United States v. Sundrud* court found the following common thread in *Nettles* and *Nichols*: "either a direct threat or actual injury to all the judges in the district." The rationale of *Nettles* and *Nichols* was simply that a reasonable person with knowledge that the defendant had threatened to harm all judges in the district might reasonably question their ability to remain impartial vis-à-vis that defendant.

In *United States v. Sundrud*, the defendant assaulted one court security officer as a number of security officers attempted to escort him out of the courthouse. He claimed

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[3] *McClelland v. McClelland*, 359 N.W.2d 7, 11 (Minn.1984), explains that:

> Judges, of course, should be sensitive to the "appearance of impropriety" and should take measures to assure that litigants have no cause to think their case is not being fairly judged. Nevertheless, a judge who is able to preside fairly over the proceedings should not be required to step down upon allegations of a party which themselves may be unfair or which simply indicate dissatisfaction with the possible outcome of the litigation.

[4] See also Roatch v. Puera, 534 N.W.2d 560, 563 (Minn. App 1995).

that all judges of the district should be excluded from presiding over the resulting criminal case because they had regular, casual contact with the court security officers involved in the fracas and thus their impartiality could reasonably be questioned. The United States District Court analyzed a number of similar courthouse assaults after which the accused attempted to remove all local judges on a similar basis. That analysis caused the court to reject the defendant's contention and hold instead that "casual, regular contact" with court security officers "is not enough . . . to order recusal of any individual judge, let alone the entire Central District bench." In other words, the court determined that a reasonable observer knowing that a judge may have had regular, casual contact with a courthouse assault victim would not reasonably question that judge's ability to remain impartial.

Turning to the role played by Judge Blaeser, the judge whose conduct is most challenged by his motion, Plaintiff has not adduced any case standing for the proposition that the impartiality of a judge (or entire bench) may reasonably be questioned merely because a colleague from the same bench may be called to testify in another colleague's courtroom, or because a litigant's legal claims may require one colleague to examine the propriety of another's colleague's conduct. I could not find any such cases either. In analyzing Plaintiff's arguments, I must remain mindful that judges have as strong a duty to preside over cases when there is no legitimate reason to recuse as they do to recuse when the law and facts require. *United States v. Greenspan*, 26 F.3d 1001, 1005 (10th Cir. 1994). Other cautionary maxims that must also be considered include recognition that Canon 2.11 (A) must not be so liberally construed that it presumes the need to recuse/remove upon the merest, unsubstantiated suggestion of partiality, and that the

Code should not become a tool to exercise veto power over judicial assignments. *Id.* Instead, I must start my analysis by presuming that my colleagues have and will continue to discharge their judicial duties properly. Plaintiff must overcome that presumption. *State v. Schlienz*, 774 N.W.2d 361 (Minn. 2009).

Since Plaintiff has not adduced conduct by the vast majority of my bench that suggests partiality, I necessarily must focus my analysis on the global nature of his suspicions. In that regard, I suppose it is possible that in the eyes of some lay people judges could be perceived as belonging to some mystical fraternity such that an extremely strong, common bond exists which would require reason and fairness to take a back seat when the conduct of another colleague is called into question, but I would consider such thoughts to be those of a "person unduly suspicious or concerned about a trivial risk that a judge may be biased," which represents the kind of thought process that I need not honor in this analysis.

The question before me is what a reasonable person "who knew the circumstances" would conclude regarding the ability of my colleagues to remain impartial should another colleague be called to testify in front of them or should they be called upon to examine the propriety of another colleague's conduct. In making that determination one can legitimately ask whether the only relevant "circumstance" here is the fact that the four allegedly offending judges are colleagues of all the remaining judges on the Fourth Judicial District bench. Or, might the "circumstances" (plural) include knowledge that: 1) this is a very large urban court with approximately 78 judicial officers; 2) my colleagues are housed in many different facilities; 3) some colleagues preside in courts housed outside the Hennepin County Government Center for years at a

time and have limited, infrequent contact with judges housed elsewhere; 4) not all Fourth Judicial District judges hold all their colleagues in high regard (because of their leadership positions, some Fourth Judicial District judges even need to confront other colleagues from time to time in less than pleasant circumstances); and 5) many litigants are oblivious to that fact that the judge before whom they appear is a retired judge from another district or a current judge from another district on a unique assignment in Hennepin County? It seems to me that all of these "circumstances" are ones that a reasonable observer would need to consider.

It is also true that some of my colleagues are very close personal friends and confidants with other colleagues; some are even married to each other; and some have worked very hard to develop very close professional bonds. Whether or not it would reasonable to question such colleagues' ability to remain impartial should they be forced to interact as judge and witness in the same courtroom involves a significantly different thought process than would an inquiry into the impartiality of a judge who presides over a trial in which another judge with whom he has not even had regular, casual contact appears on the witness stand.

Many cases that have analyzed Canon 2.11(A) or its predecessor have recognized that such cases are fact intensive and highly nuanced. They are not reducible to simple constructs as advanced by Plaintiff herein. Plaintiff apparently contends that it is reasonable to question my colleagues' collective ability to remain impartial largely based on the fact that another judge from the bench may be called upon to testify in his/her courtroom. Plaintiff seems to suggest that this maxim applies regardless of whether: 1) the bench in question consists of two colleagues versus dozens of colleagues; 2) the

judge/witness is a central witness or will only be offering cumulative testimony; and 3) the presiding judge and judge/witness have little or no relationship. Instead of a fact extensive, nuanced approach, Plaintiff seems to proffer a bright line rule that "one judge sitting in the Fourth Judicial district cannot make rulings about a colleague."[5] Such bright line rules are reserved for those who draft the governing Codes, statutes, and rules, or for higher courts who establish precedent.[6] It is not for me as a trial judge to rule that no judge in a large urban court can preside over a trial in which a colleague may be called as a witness regardless of the circumstances and no matter how trivial his testimony may be. This bright line rule is impossible to reconcile with the test that I must apply: what would a reasonable person knowing the circumstances (plural) conclude regarding the ability to remain impartial. Plaintiff insists that I ignore the plural word "circumstances" in favor of a singular circumstance – the fact that Judge Blaeser, the Presiding Judge of the Civil Division and the one whose conduct dominates Plaintiff's factual assertions, is a colleague of the other 61 judges on my bench. That I cannot do in the context of a bias-based motion to remove.

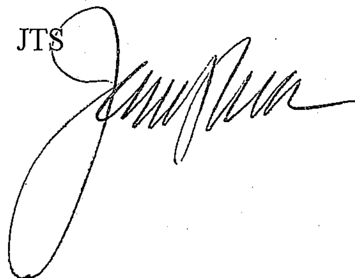
There is another point worth mentioning here. The overbroad nature of Plaintiff's bench-wide bias claim [actually the claim involves perception of bias] fails to offer a distinction that clarifies how any other judge in the State of Minnesota would not be subject to the same appearance of bias. If I were to sign an order removing all Fourth Judicial District judges from further appearing on this case, it is more than likely that the

[5] This argument also ignores the reality that judges in the Fourth Judicial District are often required to make rulings about colleagues. As Chief Judge I am required to "make rulings" regarding whether my colleagues have demonstrated bias such that I must pull them off cases and appoint other colleagues in their stead. One of my colleagues currently sits on the Board of Judicial Standards and must participate in rulings regarding his colleagues.

[6] Minnesota Statutes section 484.70 subd. 6 is an example of a bright line rule. It allows litigants to remove all referees en masse simply because of their status as referees.

Chief Justice could end up assigning this case to a trial judge from another district who has had far more regular contact with Judge Blaeser (or Bush, Zimmerman, and Abrams) than have a number of my colleagues. Will the next motion be one to disqualify all Minnesota judges who have served on a statewide committee with one or more of these four judges?

JTS



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