

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

---

In the Matter of:

Court File No.: 10-PR-16-46

Honorable Kevin W. Eide

The Estate of Prince Rogers Nelson,

Decedent

**MEMORANDUM OF LAW OF THE  
SECOND SPECIAL ADMINISTRATOR  
IN OPPOSITION TO THE MOTION,  
UNDER RULE 106 OF THE RULES OF  
PRACTICE – DISTRICT COURTS, FOR  
RECONSIDERATION OF MOTION  
SEEKING RECUSAL**

---

This Memorandum is submitted by the Second Special Administrator (“SSA”) in opposition to the Motion for Reconsideration of CAK Entertainment, Inc. (“CAK”) to recuse The Honorable Judge Kevin W. Eide from considering the SSA’s Motion for an Order refunding excessive compensation paid to CAK, and the other monetization expert, pursuant to Minn. Stat. § 524.3-721. The Motion for Reconsideration should be denied on the following grounds:

- General Rule of Practice 106 does not apply as there is no assertion that there exists actual prejudice or bias by Judge Eide.
- There exists no basis to find that an objective observer would reasonably question whether Judge Eide can be impartial because:
  - There have been no *ex parte* communications with the SSA concerning the substance of the SSA’s Motion under Minn. Stat. § 524.3-721, or any of the SSA’s strategies to recover excess compensation from CAK;

- His Honor's previous recusal from a separate action between Jobu Presents, LLC, CAK and the other monetization expert, NorthStar Enterprises Worldwide, Inc. ("NorthStar"), was based on one of the SSA's Reports that was not part of the record in that civil matter but, is part of the record in this matter, and was commissioned by the Court in the exercise of its judicial duties and administration of the Estate pursuant to Minn. Stat. § 524.3-105; and
- His Honor's observation that there exists a duty to the Estate to attempt to preserve the assets and pursue claims of wrongdoing against the Estate do not reasonably call into question whether His Honor, Judge Eide, may be biased or prejudiced in favor of the Estate, it simply was in recognition of the Court's judicial responsibilities in this Probate matter.

### ARGUMENT

For the sake of brevity, the SSA has not repeated the factual record pertinent to this Court's reconsideration of Judge Eide's Order and Memorandum Denying CAK's request for recusal dated September 26, 2018. The facts relevant to the determination of CAK's Motion for Reconsideration have been set forth in Judge Eide's Order and Memorandum, as well as CAK's Memorandum of Law in Support of its Motion for Disqualification.

**1. Rule 106 of the Rules of Practice – District Courts Does Not Support CAK's Motion for Reconsideration.**

Rule 106 **HEARING ON MOTION TO REMOVE JUDGE FOR ACTUAL PREJUDICE OR BIAS** provides:

All motions for removal of a judge, referee, or judicial officer, **on the basis of actual prejudice or bias** shall be heard in the first instance by the judge sought to

be removed. If that judge denies the motion, it may subsequently be heard and reconsidered by the Chief Judge of the district or another judge designated by the Chief Judge.

(Emphasis added.)

Rule 106 unambiguously provides that a motion for reconsideration lies only where a motion for recusal in the first instance is based on a claim of actual prejudice or bias. In its Recusal Motion, CAK does not argue, expressly or implicitly, that Judge Eide is actually prejudiced or biased against it in respect of the SSA's Fee Motion. This is clear from CAK's argument at Pages 11-13 of its Memorandum where CAK asserts that an "objective analysis" warrants recusal. CAK Memo. at Page 13. ("... an objective observer would reasonably question the Court's impartiality with respect to the Fee Motion.")

There being no claim, let alone any basis for a finding, of actual prejudice or bias, CAK's Rule 106 Motion should be denied.

Assuming for the sake of argument, this Court considers the objective impartiality of Judge Eide, there is no basis for a finding that an objective observer would reasonably question Judge Eide's impartiality.

CAK advances three reasons in support of its argument that objectively, Judge Eide's impartiality has been called into question. Before turning to each, the SSA believes it instructive to quote Judge Eide from his Memorandum Denying CAK's request for recusal:

As stated in prior orders, this Court has been integrally involved in this Estate matter, including appointing Bremer Trust as Special Administrator on May 2, 2016; appointing Bremer's advisors, CAK/Koppelman and NorthStar/McMillan, on June 8, 2016; approving the UMG agreement on January 31, 2017; and approving the rescission of the UMG agreement on July 13, 2017. If the advisors are alleged to have been overcompensated for their work on behalf of the Estate, this Court is uniquely qualified to consider and rule on that motion. This Court is able and willing to give all parties a full opportunity to be heard on the merits and to rule in an unbiased manner.

Order & Memorandum Denying Request for Recusal, Page 5.

The first grounds on which CAK bases its argument that Judge Eide's partiality has been objectively called into question is that His Honor engaged in *ex parte* communications with the SSA. "*Ex parte*" is a Latin phrase meaning on one side only or for one party. An *ex parte* communication occurs when a party to a case, talks or writes to or otherwise communicates directly with the Judge about the issues in the case without the other party's knowledge. The fallacy in CAK's characterization of the Court's communications with the SSA that they constituted *ex parte* communications is the presumption that CAK is a party in the Probate proceeding. CAK is not a party to the Probate proceeding. It was hired by Bremer to render its alleged monetization expertise in the entertainment industry. Nor is CAK an "interested person" in this Probate proceeding. Minn. Stat. § 524.1-201 defines an interested person as follows:

(33) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

The fact of the matter is that with respect to any communications that the Court had concerning the SSA's Reports and the Court's subsequent Order & Memorandum Approving Litigation filed June 14, 2018, authorizing the SSA to pursue claims identified in the SSA Reports, the Court, as CAK admits at Paragraph 6 of its Memorandum, met with all interested persons and their lawyers including the special administrator, and the heirs' counsel. While Judge Eide candidly acknowledges the Court participated in limited meetings and conference calls where the content and recommendations in the SSA's reports were discussed with the parties, interested persons and their counsel, Judge Eide unambiguously states "the Court's involvement in those discussions was limited to receipt and review of the SSA's reports. The

Court took no part in discussions regarding developing strategies to recover compensation from CAK, it merely authorized the SSA to proceed with such claims if it deemed them warranted.” Order & Memorandum Denying Request for Recusal, Page 4. To the extent it is arguably relevant (it is not), CAK does not, nor can it, show that Judge Eide did anything more than receive and review the reports.

CAK’s characterization of the Court’s limited involvement in the discussions concerning the receipt and review of the SSA’s reports do not constitute *ex parte* communications with one party (or “Interested person”) to the Probate matter to the exclusion of any other party (or “Interested person”) to the Probate matter.

The second basis on which CAK urges recusal is that Judge Eide recused himself from a separate lawsuit between Jobu Presents, LLC, CAK and NorthStar. CAK is unable to make a showing of any arguable basis of partiality or prejudice against it from His Honor’s review of the SSA reports addressing the Jobu Transaction. The differences between the Jobu lawsuit and the SSA’s Motion for a refund of fees are apparent. First, as His Honor noted in his denial of CAK’s recusal motion, the SSA’s report on the Jobu transaction was not part of the record in that separate civil matter, though it is now. The SSA’s reports are part of the record in this Probate proceeding and were, in fact, commissioned by His Honor, unlike the situation in the separate Jobu lawsuit. Second, at the time His Honor recused himself from the Jobu lawsuit, the Estate was not a party to that case.

On the other hand, the SSA has brought the Motion on behalf of the Estate within the Probate proceeding that His Honor has overseen from the outset. His Honor has more detailed knowledge of the administration of the Estate than any other jurist in Minnesota. And, under Minn. Stat. § 524.3-105 His Honor has exclusive jurisdiction to hear the Motion for a refund of

fees consistent with his jurisdiction “. . . to determine how decedents’ estates subject to the laws of this state are to be administered, expended and distributed.” Minn. Stat. § 524.3-15.

Moreover, Judge Eide’s review of the SSA’s report of the Jobu Transaction does not, as a matter of law, constitute a basis for recusal with respect to the Motion for a Refund of Fees. As indicated, the report was commissioned and reviewed as part of His Honor’s judicial duties in overseeing the Probate proceeding. The personal knowledge acquired by Judge Eide through the SSA’s report does not, under Canon 2, Rule 2.11 of the Minnesota Code of Judicial Conduct constitute “personal knowledge” that forms the basis for recusal. *See, State of Minnesota v. Dorsey*, 701 N.W.2d 238, 247 (Minn. 2005) (holding personal knowledge does not include information that a judge learns “in the course of her general judicial capacity or as a result of her day-to-day life as a citizen.”) Judge Eide, as part of his judicial duties in overseeing the administration of this Estate carefully and prudently sought to become as familiar as possible with it and the relevant facts. When issues arose concerning the two transactions, he commissioned the SSA’s reports to further investigate and report thereon. As Justice Brandeis said long ago: “Knowledge is essential to understanding; and understanding should precede judging.” *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504, 520 (Brandeis, J., dissenting). That understanding should not, and does not, objectively call into question His Honor’s impartiality.

The third basis on which CAK argues in support of recusal is what CAK has characterized as “the Court’s relationship to the Estate.” To make this argument, CAK has twisted His Honor’s comments in the Court’s Order & Memorandum Approving Litigation filed June 14, 2018. As His Honor made clear in his Order & Memorandum Denying Request for Recusal, the Court was simply reflecting and recognizing its “. . . commitment in all probate proceedings to ensure an estate is managed in a fair and equitable manner, and that its assets are

preserved for the benefit of the heirs. They are not statements indicating a predisposition relating to the merits of the SSA's pending motion." Order & Memorandum Denying Request for Recusal at Page 5. Rather, they were statements reflecting the duty of the Court to do so as reflected in the Probate Code. *See, generally*, Minn. Stat. § 524.3-105; *also, see*, Minn. Stat. § 524.3-703. CAK's argument in this respect is pure folly.

### **CONCLUSION**

CAK has gone to great lengths to question Judge Eide's impartiality in this matter presumably because it believes that it may somehow give it an advantage on the Fee Motion if the matter were to be heard by a Judge that is not as familiar with these Estate proceedings, including the considerable commissions being held by CAK and NorthStar on the rescinded UMG transaction and the terminated Jobu transaction; two transactions that not only did not benefit the Estate but, resulted in a loss to the Estate. There can be no credible argument that there is any other judicial officer better suited or more qualified than Judge Eide to hear and decide the SSA's Motion. There is nothing in or outside of the record on which anyone can credibly claim that Judge Eide has prejudiced the Motion, is partial, or that His Honor's impartiality may objectively be questioned. Accordingly, the SSA requests that CAK's Motion for Reconsideration of His Honor's Order Denying the Recusal Motion be denied.

Date: October 4, 2018

LARSON · KING, LLP

By *s/ Peter J. Gleekel*

Peter J. Gleekel (0149834)

Bradley R. Prowant (0396079)

2800 Wells Fargo Place

30 E. Seventh Street

St. Paul, MN 55101

Telephone: (651) 312-6500

Facsimile: (651) 312-6618

**Second Special Administrator to the  
Estate of Prince Rogers Nelson**

1778696