

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 OF
CAK ENTERTAINMENT, INC. FOR
RECUSAL**

This Memorandum is submitted by the Second Special Administrator (“SSA”) in opposition to the Motion of CAK Entertainment, Inc. (“CAK”) for the recusal of the Honorable Judge Kevin W. Eide from hearing and deciding the SSA’s Motion for Refund of Fees (“Motion”).¹

The Minnesota Code of Judicial Conduct, Canon 2, Rule 2.11 provides:

- (A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:
- (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

The listed circumstance of a judge having “personal knowledge of facts that are in dispute” in the proceeding, does not provide a basis for recusal. The reason is because this Court’s receipt and review of the SSA’s Reports concerning the rescinded UMG and terminated

¹ In essence, CAK’s Motion is one for reconsideration. On August 28, 2018, CAK submitted a letter requesting the Court to recuse itself. The SSA responded on August 30, 2018. On August 31, 2018, the Court entered its Order. Despite the Court’s Order, CAK has now moved for recusal. However, CAK did not request express permission from the Court to review the issue in accordance with Rule 115.11 of the Minnesota General Rules of Practice. Having so failed, CAK’s Motion should be denied on that basis alone.

Jobu Agreements does not constitute the type of personal knowledge contemplated by Rule 2.11 as a basis for recusal. Stated otherwise, Your Honor's impartiality cannot credibly be questioned by the Court's receipt and review of the SSA's Reports.

Minnesota law is clear that the "personal knowledge" aspect of Rule 2.11(A) refers to "knowledge that arises out of a judge's private, individual connection to particular facts." *State of Minnesota v Lorenzo Dorsey*, 701 N.W.2d 238, 247 (Minn. 2005). It 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." *Id.*

In *Dorsey*, the Minnesota Supreme Court addressed a case in which the Judge had knowledge of facts that contradicted a witness's testimony. 701 N.W.2d at 243. During the case, the Judge questioned the defendant's witness's testimony, admitting her knowledge of the facts, and had her clerk investigate to confirm what she thought she knew. *Id.* at 243-44. The witness statement was discredited by the Court, and the Court ruled against the defendant. *Id.* at 245. The defendant appealed, arguing that the Judge should have disqualified herself due to "personal knowledge of disputed evidentiary facts concerning the proceeding." *Id.* The Supreme Court of Minnesota explained the meaning of personal knowledge required for recusal as follows:

[T]he requirement that a judge must disqualify herself if she has "personal knowledge of disputed evidentiary facts" is a narrow prohibition, and that the word "personal" should be interpreted according to its common usage. "Personal" is primarily defined as "of, relating to, or affecting a person," and is regarded as synonymous with "private." Webster's Ninth New Collegiate Dictionary 877 (1987). "Private," in turn is defined as "restricted to the individual or arising independently of others." *Id.* at 936. For the purposes of [the judicial canon], "personal knowledge" pertains to knowledge that arises out of a judge's private, individual connection to particular facts. We conclude that it does not include the vast realm of general knowledge that a judge acquires in her day-to-day life as a judge and a citizen.

Id. at 247. The Minnesota Supreme Court then determined that the Judge’s knowledge was not “personal” and that it was not cause for recusal. *Id.*

Thus, under Minnesota law, for personal knowledge to serve as a basis under Rule 2.11 the “personal knowledge” at issue must be “extrajudicial.” *See, also, United States v. Long*, 88 F.R.D. 701, 702 (W.D. Pa. 13811, Aff’d 676 F.2d 888 (3rd Cir. 1982) (defining “personal knowledge” as that which a judge obtains as “a witness to the transaction or occurrence not in [their] judicial capacity.”) Knowledge acquired by a judge while he performs his judicial duties does not constitute grounds for recusal. Not only is this settled law in Minnesota, it is the same in other jurisdictions throughout the United States. *See, e.g., United States v. Kelley*, 712 F.2d 884, 889-90 (1st Cir. 1983); *United States v. Phillips*, 664 F.2d 971, 1002 (5th Cir. 1981), *cert. denied*, 457 U.S. 1136, *cert. denied* (following second petition), 459 U.S. 906 (1982). *See, also, United States v. Grinnell Corp.*, 384 U.S. 563 (1966); *United States v. Bernstein*, 533 F.2d 775, 785 (2nd Cir.), *cert. denied* 429 U.S. 998 (1976).

Obviously, the knowledge Your Honor has acquired in this matter has been acquired through Your Honor’s exercise of judicial duties; the knowledge is not extrajudicial. The SSA was appointed by the Court in this Probate proceeding to investigate and report to Your Honor on the UMG and Jobu transactions. The information obtained by Your Honor through the SSA reports was clearly within the exercise of the Court’s judicial responsibilities and was necessary for the Court to be informed, and to make reasoned decisions in connection with the administration of the Estate. Thus, the personal knowledge that Your Honor has acquired in the performance of judicial duties does not and cannot form the basis, standing alone, for recusal.

Nor does Your Honor’s “judicial” knowledge arising out of the SSA’s Reports reasonably objectively call into question Your Honor’s partiality. Although Your Honor has

been privy to certain facts and recommendations by the SSA thereon, CAK can make no showing whatsoever that this has resulted in any personal bias or prejudice to it. *See, e.g., United States v. Lyon*, 588 F. 2d 581, 583 (8th Cir. 1978), *cert. denied*, 441 U.S. 910 (1979) (absent showing a prejudice, the fact that judge was aware of inadmissible evidence after remand did not require recusal). The fact that Your Honor has come upon the “personal knowledge” in a judicial capacity rather than personal capacity, while perhaps not outcome determinative of the issue, is highly relevant to the Court’s appearance of impartiality. *See, In re International Business Machines Corp.*, 618 F.2d 923, 929 (2d Cir. 1980); *United States v. Daley*, 564 F.2d 645, 651-52 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978). In fact, it is respectfully submitted that there existed no reasonable grounds for the Court to recuse itself from the separate action involving Jobu, CAK, Mr. Koppelman, NorthStar Enterprises Worldwide, Inc. and Mr. McMillan, Court File No. 10-CV-17-368.

Assuming for the sake of argument only, that there existed a reasonable basis on which to raise an issue of Your Honor’s partiality in *Jobu Presents, LLC v. CAK Entertainment, Inc., et al.* (File No. 10-CV-17-368) (“Jobu Lawsuit”), CAK is unable to make any showing of an appearance of partiality or prejudice against it with respect to the Motion. Nothing can be shown that the Court has not or cannot be impartial.

Moreover, there were notable differences between the Jobu Lawsuit and the SSA’s Motion. The Jobu Lawsuit, at the time Your Honor recused himself, did not involve the Estate and was not part of the Probate proceeding. The SSA has brought the Motion on behalf of the Estate within the Probate proceeding Your Honor has overseen from the onset. Your Honor has more detailed knowledge of the administration of the Estate than any jurist in Minnesota. Any Motion brought within the Estate Probate proceedings should only be heard by Your Honor.

Second, the Jobu Lawsuit involves claims under common law causes of action. The SSA's Motion is a Motion brought pursuant to the Minnesota Probate Code. CAK's Motion seeking recusal of Your Honor implicitly misunderstands this distinction. Yet, the distinction is critical. The SSA does not seek "damages" in its Motion based upon some cause of action. Nor is the Motion dependent on the facts necessary for a finding of liability or non-liability in the Jobu Lawsuit. The SSA's Motion is brought pursuant to statute. Minn. Stat. § 524.3-721. That statute imposes an obligation on every Minnesota Probate Court, and could be raised by any party to the Probate proceedings in an appropriate circumstance to the case here. The obligation is to ensure an Estate does not overcompensate those it employs. Determining reasonableness of compensation received by agents is within the sole discretion of the Probate Court; it is not subject to proving a cause of action and the facts underlying any such cause of action.

Third, neither are there "allegations" set forth in the Jobu Report or the UMG Report. Neither Report is a Complaint. By contrast, Jobu's Complaint in the Jobu Lawsuit contains allegations by Jobu against the Advisors that do not assert liability or fault against the Estate. The SSA Reports contain factual recitations based upon an impartial investigation conducted at the direction of this Court. Reading the SSA Reports was necessary to this Court's continued supervision of the administration of the Estate and, as pointed out above, part and parcel of Your Honor's judicial duties; not "extrajudicial." Overseeing a lawsuit where Jobu alleges malfeasance by CAK that, at the time did not involve the Estate, is a substantially different matter than the Probate proceeding where arguably a review of the SSA's report of the Jobu Transaction might give rise to the perception of a cloud although it is submitted not objectively reasonably arguable at the time of the recusal. Such is not the case with respect to the Motion. Because the knowledge gained by Your Honor has been gained through your judicial duties in

overseeing probate of the Estate, it is, to say the least, unreasonable to suggest that the exercise by you of your judicial duties somehow disqualifies Your Honor from continued supervision of the Probate proceedings to the extent it involves CAK.

CAK seeks a new Judge with no familiarity with the Estate proceedings to hear the SSA's Motion. This despite the fact there is no other judicial law officer in a better position than Your Honor to decide the SSA's Motion. Apparently, CAK is under the impression that it would gain some advantage by requiring a new Judge familiarize him/herself with the Probate proceeding, and then be asked to hear the Motion for a refund of fees on a matter on which that Judge has not previously sat. Though CAK may protest this point, there does not appear to be any other reasonable motivation to CAK's recusal motion as there is nothing in or outside of the record on which any party can credibly claim Your Honor has prejudiced the motion or is partial to any party.

In sum, there is no Judge better suited or more qualified to hear the SSA's Motion than Your Honor. Not only is unreasonable, but it is wrong as a matter of law, to find that Your Honor, in exercising your official duties, has now become partial or that Your Honor's partiality might reasonably be questioned to hear the SSA's Motion on a matter over which Your Honor has sole discretion.

Accordingly, the SSA requests that CAK's Motion for Recusal be denied in its entirety.

Date: September 21, 2018

LARSON · KING, LLP

By *s/ Peter J. Gleekel* _____

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