

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT

File No. **10-PR-16-46**

In the Matter of:

Estate of Prince Rogers Nelson,

Deceased.

**ORDER ON CHIEF
JUDGE REVIEW
OF RECUSAL MOTION**

The above-entitled matter came before the Honorable Kathryn D. Messerich, Chief Judge of the First Judicial District, on October 4, 2018, upon request for Chief Judge review of Judge Kevin W. Eide's Order of September 26, 2018 denying CAK Entertainment, Inc. and Charles Koppelman's motion to disqualify Judge Eide from hearing a motion filed August 2, 2018 by the Second Special Administrator on behalf of the Estate of Prince Rogers Nelson. L. Londell McMillan and NorthStar Enterprises Worldwide, Inc. by letter dated October 4, 2018, join in the request to remove Judge Eide from hearing the motion. The moving parties seek limited removal for this single motion and do not seek removal from the entire case.

The Court and parties agreed that the recusal review could be submitted on written memoranda and the record and submissions were due on October 4, 2018. Based upon the proceedings, a review of the court file and the written arguments of counsel, this Court makes the following:

ORDER

1. Petitioner's motion to remove is **DENIED**.
2. Judge Eide shall remain assigned to hear the "Refund Motion" and proceedings

in this matter and shall schedule the matter for the motion hearing at his first available dates.

3. CAK Entities unredacted Memorandum of Law, exhibits and affidavit shall remain under seal.
4. The attached memorandum is incorporated herein as additional findings and rationale for this Court's decision.

BY THE COURT:

Kathryn D. Messerich
Chief Judge
First Judicial District

MEMORANDUM

This matter is before this Court on Chief Judge review of the Honorable Kevin Eide's denial of a limited motion to remove himself, for purposes of a single motion, dated September 26, 2018. The parties seek limited removal on a motion brought by the Second Special Administrator (SSA) seeking refunds for alleged "excessive compensation" paid by the Estate.

As a preliminary matter, this Court is aware that the parties have discussed the Chief Judge's prior affiliation with the Bassford Remele, formerly known as Bassford, Lockhart, Truesdell & Briggs law firm from 1991 to 1997. NorthStar Enterprises Worldwide, Inc. is represented by Attorney Alan Silver, a member of that firm. This Court left the firm some 2 years before Mr. Silver joined Bassford Remele. This

Court has never practiced law with the attorneys who are representing NorthStar nor does this Court have any on-going relationship with them. This Court believes that the former association with the firm over 21 years-ago is remote in time and does not form a basis for recusal. Moreover, e-mail correspondence within the Court file indicates that the parties are aware of this former association and do not object to this Court reviewing Judge Eide's Order denying the request for recusal.

PROCEDURAL BACKGROUND

Prince Rogers Nelson died in Carver County, Minnesota on April 21, 2016. He did not have a will directing administration of his estate. Judge Kevin Eide has been assigned to this case since its inception. The estate at issue is exceptionally large and complicated and pursuant to Minn. Stat. § 524.3-105, Judge Eide has broad authority over the administration of this estate.

During the pendency of this proceeding, Judge Eide authorized the Estate to enter into agreements with Jobu Presents (Jobu) and with Universal Music Group (UMG). The Estate was under the special administration of Bremer Trust at the time the agreements were executed. In connection with this authorization, Bremer Trust as the initial trustee, selected entertainment advisors, CAK (Charles Koppelman) and Londell McMillan (NorthStar Enterprises, Worldwide).

Jobu and UMG paid substantial sums to the Estate from which the entertainment advisors, CAK and NorthStar, received a 10% commission. The agreements with Jobu and UMG were terminated or rescinded and the sums, including commissions, were repaid to Jobu and UMG by the Estate. The commissions were not returned to the Estate by the entertainment advisors.

A Common Interest and Information Sharing Agreement exists between the Personal Representative, Comerica Bank & Trust, and the Special Administrator, Bremer Trust that prevents them from taking adversarial positions against each other. In order to determine whether the sums should be repaid to the Estate or whether the Estate would have any other claims regarding these agreements, the Court appointed the Second Special Administrator (SSA) to conduct an examination as to whether any claims should be pursued by the Estate. (Order Appointing Second Special Administrator, dated August 18, 2017). This procedure is authorized by Minn. Stat. §524.3-721.

The SSA was granted authority to independently examine and analyze the Estate's agreement with UMG and determine whether pursuing any claims would be in the best interest of the Estate. The authority was expanded to include examination and recommendations regarding the advance to Jobu.

Jobu also commenced a civil lawsuit against Bremer Trust; Charles Koppelman; CAK Entertainment Inc.; Londell McMillan; North Star Enterprises Worldwide, Inc.; and the Estate in Court File 10-CV-17-368. Jobu Presents asserted a number of causes of action including Fraud in the Inducement (Count I); Fraudulent Misrepresentation (Count II); Negligent Misrepresentation (Count III); and Tortious Interference with Prospective Contractual Relations (Count IV against Defendant Koppelman). The litigation was commenced on or about April 21, 2017 and Judge Eide was initially assigned to the matter. Judge Eide recused himself from that file pursuant to an Order filed on May 22, 2018.

The basis for the recusal in that file was that Judge Eide had prior information from the SSA's report dated May 15, 2018 that was filed in the probate file but not in the civil litigation file. Judge Eide stated that he was concerned that any decision he might render in the civil matter might be perceived to be clouded by his knowledge of the SSA's report in the probate matter. The SSA's report has since become part of the civil litigation file.

Following the SSA's report, Judge Eide issued an Order approving litigation and authorizing the SSA to pursue, on behalf of the Estate, all claims recommended in its reports. (Order & Memorandum Approving Litigation, dated June 14, 2018).

On August 2, 2018, the SSA filed a Notice of Motion and Motion for an Order directing the former Estate entertainment advisors, NorthStar Enterprises Worldwide, Inc. (services of Londell McMillan) and CAK Entertainment, Inc. (services of Charles Koppelman) to refund excessive compensation received related to the Jobu and UMG transactions. (Refund Motion). This motion is pursuant to Minn. Stat. § 524.3-721.

By letter dated August 28, 2018, CAK requested that, Judge Eide recuse himself from the Refund Motion in the probate file. CAK asserted that the same reasons that Judge Eide recused himself from the separate civil litigation in File 10-CV-17-368 should apply to the Refund Motion brought by the SSA. CAK also asserted that Judge Eide had *ex parte* contacts with the SSA. While CAK did not suggest or assert that there was anything improper about Judge Eide's contacts with the SSA, CAK claimed that the very occurrence of such contacts required recusal.

On August 30, 2018, the SSA objected to the recusal request noting differences between the civil litigation and the probate proceedings. By Order dated August 31, 2018, Judge Eide denied the informal request for recusal. Initially, the parties sought review of the order based on the informal request to recuse. This Court required the parties to bring a formal motion before Judge Eide before this Court would consider further review by the Chief Judge.

On September 12, 2018, CAK brought a formal motion to requesting Judge Eide's recusal. This was submitted on written memoranda which L. Londell McMillan and NorthStar joined. On September 26, 2018, Judge Eide issued a second Order denying the request for recusal.

The SSA's reports are part of the record in the probate file. The reports were commissioned by Judge Eide. All of the relevant parties to this motion have been under the jurisdiction of the Court throughout the relevant period, which was not true in the civil proceeding.

Judge Eide conferred with the SSA regarding the receipt and review of the SSA's reports. Judge Eide denies taking part in discussions regarding developing strategies to recover compensation from CAK. In his Memorandum attached to his September 26, 2018 Order denying the removal motion, Judge Eide stated that his involvement was merely to authorize SSA to proceed with any claims if it deemed them warranted.

The moving parties allege that numerous admitted *ex parte* communications between Judge Eide and the SSA require recusal because it calls into question the

impartiality of Judge Eide. The moving parties argue that those communications would cause an objective observer to reasonably question the Court's impartiality. Additionally, the moving parties assert that Judge Eide should recuse himself from the Refund motion for the same reasons he recused himself the civil litigation in file 10-CV-17-368. Finally, the moving parties argue that Judge Eide's statements about his role in supervising the probate matter calls into question whether he could be fair to CAK and NorthStar.

At the outset, this Court notes that there is no allegation of actual prejudice or bias against Judge Eide and that the recusal request is limited to the argument that Judge Eide's impartiality could be reasonably questioned on the issues raised in the Refund motion.

**CHIEF JUDGE AUTHORITY UNDER RULES MINN.
CIV. P. RULE 63.02 and MINN. GEN. R. PRAC. 106**

The SSA argues that this reconsideration motion should not be heard by the Chief Judge as it is and was not a motion to remove for actual prejudice or bias as required by Minn. Gen. R. Prac. 106. This Court agrees that the General Rules of Practice and the Minnesota Rules of Civil Procedure do not provide a procedure for review in the circumstances here where the parties are seeking Chief Judge review of another judge's denial on a motion to recuse for an appearance of bias under the Minnesota Code of Judicial Conduct.

The rules and procedures on disqualification or removal of a judge differ among case type. The Minnesota Rules of Criminal Procedure set forth an entirely different process in Rule 26.03, Subd. 14 (3) (4). In contrast, Rule 63.02 of the Minnesota

Rules of Civil Procedure provides: "No judge shall sit in any case if that judge is interested in its determination or if that judge might be excluded for bias from acting therein as a juror. . ."

Minn. R. Civ. P. 63.03 permits a party to remove a judge as a matter of right in a civil proceeding within ten days after a party receives notice of that judge's assignment to a trial or hearing or no later than the commencement of the trial or hearing. If the judge sought to be removed has already presided at a motion or hearing to which the party had notice, a removal may only occur upon an affirmative showing of prejudice on the part of the judge. Rules 63.02 and 63.03 do not address a review procedure in District Court a judge does not recuse him or herself upon an allegation of an "appearance" of partiality as defined in the Code of Judicial Conduct..

Rule 106 of the Rules of Practice – District Courts sets for the procedure for Chief Judge review: "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. . ." Rule 106 seemingly applies only to removals for actual bias and not a denial of a recusal motion, however, Rule 2.11 of the Code of Judicial Conduct refers to "disqualification."

Reviewing all of the pleadings here, the moving parties appear to be asking this Court to apply the Rules of Criminal Procedure, Rule 26.03, Subd. 14(3) which do require the Chief Judge to review a denial for of a motion to disqualify under the

Code of Judicial Conduct.

The Rules of Civil Procedure and General Rules of Practice do not squarely address this unusual situation or set forth the procedure to follow. This Court notes that the terms “disqualification, recusal and removal” seem to be used interchangeably by the Rules of Court and the parties. There is no express procedure for Chief Judge review of a judge’s denial of a motion to recuse for the appearance, as defined in the Code of Judicial Conduct, that a judge cannot be impartial.

This Court also notes that procedurally, Chief Judge review under Rule 106 is permissive and merely permits reconsideration. A party may appeal the denial of a motion to remove for cause or bias directly to the Minnesota Court of Appeals. In the criminal context, the Chief Judge *must* review a denial of a motion to disqualify an assigned judge.

As noted in the comments to Rule 106, applying to parties in a civil case: “[T]he procedure for review by the chief judge of the district is not entirely satisfactory. Consideration should be given to facilitating appeal of these issues to the appellate courts, but the Task Force did not address this question because of the current limited jurisdiction of the appellate courts to hear appeals of decisions by judges declining to recuse themselves.”

Chief Judges in District Courts have limited statutory authority to review the decisions of other judges. Where such authority is provided, this Court agrees that review is warranted. Here, it is unclear, however, given the ambiguity within the

Rules of Court and case law as to the standard or procedure to be applied to a recusal situation in a civil case.

Despite the lack of clear guidance, this Court will conduct the review as it appears to fall within the purview of Minn. Stat. § 484.33 governing Rules of Practice in District Courts. This statute provides: "Such rules, as the same shall be so revised and amended from time to time, shall govern all district courts in this state; but, in furtherance of justice, they may be relaxed or modified in any case, or a party relieved from the effect thereof, on such terms as may be just." Because, there is no clear path for a recusal review, this Court, in the interests of justice and judicial economy, has reviewed the proceedings herein to review and reconsider Judge Eide's denial of the recusal request.

CODE OF JUDICIAL CONDUCT

The Minnesota Code of Judicial Conduct provides that: "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might be reasonably questioned. . ." Rule 2.11. The comments to this rule call for disqualification "regardless of whether any of the specific provisions of paragraphs (A) (1) through (5) apply."

In determining whether a basis for disqualification exists, this Court must determine whether Judge Eide's impartiality can be "reasonably questioned." While this Court reviews this allegation with a lay-person standard in mind, it is important to look at the fact that this request arises in the context of a very large supervised estate which necessarily is governed by different procedures and judicial priorities than more

ordinary civil litigation where the parties are clearly defined and delineated.

Here, the advisors (CAK and NorthStar) are asking the Court to recuse himself for 3 reasons arguing that each or cumulatively create an appearance of partiality on Judge Eide's part. They are: *ex parte* contacts with the SSA and the heirs; statements about the Court's duties while supervising the estate and recusal from civil litigation involving Jobu, CAK and NorthStar following receipt of the SSA's report, which at the time was not part of the civil proceeding.

***Ex parte* Contacts**

The Code of Judicial Conduct provides that a judge "shall not initiate, permit, or consider *ex parte* communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending matter." Minn. Code Judicial Conduct Rule 2.9 (A).

Several exceptions exist to this rule including contacts for the purposes of administrative or scheduling purposes which do not address substantive issues. In this case, Judge Eide appointed a Special Administrator to conduct an investigation and advise the Court. Judge Eide and the SSA both indicate that any contacts or discussions were merely to facilitate receipt of the report rather than substantive discussions about the SSA's recommendations.

Reviewing the contacts from an objective standard, but also with the prism of a judge's role in supervising an estate, particularly of this magnitude, this Court agrees with Judge Eide's determination that he did not engage in improper *ex parte* communications with the SSA. The SSA was appointed by Judge Eide in connection with his supervision

of this estate. While CAK and NorthStar infer that these contacts were improper, the SSA was appointed by the Court. The Court necessarily must have contact with the SSA to carry out the scope of its authority under the appointment order.

Moreover, the prohibitions against *ex parte* contacts applies to parties in the matter. CAK and NorthStar are not parties to the probate proceeding. While in correspondence dated October 4, 2018 L. Londell McMillan and NorthStar assert that they are “interested parties”, the assertion does not align with the definition in the Probate Code, Minn. Stat. § 524.1-201 which provides:

(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 purpose of, and matter involved in, any proceeding.

After reviewing the Orders issued by Judge Eide as well as the purpose of the *ex parte* communications here, this Court is satisfied that these discussions, viewed objectively and within the context of judicial management in a probate case, do not create a basis for questioning Judge Eide’s impartiality in the Probate case.

Recusal from civil litigation

Jobu Presents brought a separate civil lawsuit against CAK and NorthStar and their individual entertainment advisors, Charles Koppelman and Londell McMillan in Court File 10-CV-17-368. The Jobu litigation largely asserts fraud and misrepresentation among the defendants.

At the time Judge Eide received and reviewed the SSA report regarding the Jobu transaction, and issued his order authorizing the SSA to commence an action in the

probate matter, the SSA report was not part of the civil file. It subsequently became part of the civil litigation file.

Judge Eide recused himself from the Jobu litigation because, at the time he felt that his knowledge of that report might be perceived to cloud his perception of the issues in that civil litigation. Given that the report was not part of the civil case, Judge Eide's recusal from that case demonstrates an abundance of caution to avoid an appearance of bias or prejudice. Judge Eide commissioned the SSA report as part of his duties within the probate matter. He did not independently investigate the facts or obtain extra-judicial knowledge of disputed facts. Rather, he expressed his commitment to fair and equitable administration of the probate matter. At the time of the recusal, the Estate was not a party to the Jobu litigation.

Moreover, the issues and allegations presented in the Jobu litigation are different than the refund issues in the probate case. The decision under Minn. Stat. §524.3-721 is whether the trustee overpaid a person who the trustee employed. The remedy in that instance is whether a refund should be ordered. In its prayer for relief, Jobu seeks monetary relief in the form of compensatory, consequential and punitive damages and rescission of the July 7, 2016 Agreement. Jobu demands a trial by jury. This Court does not believe that Judge Eide's recusal in the Jobu litigation forms a reasonable basis to question Judge Eide's impartiality to handle the refund motion.

Comments about the Court's Duties to the Estate

CAK and NorthStar both allege Judge Eide's comments about the estate, in his Order of June 14, 2018 Approving Litigation create an appearance of partiality on his part. CAK argues that Judge Eide "equated himself with the estate" and that his

statements reflect the District Court's "close affiliation" that would cause an objective observer to question the court/s impartiality.

A reasonable observer, in this context, would need to consider the nature of the litigation and the manner in which the statements were made. Reasonableness depends on the circumstances. In this case, Judge Eide use of the word "fiduciary", in his memorandum, appears to reflect his commitment to following his statutory duties while supervising the estate. It does not evince bias or prejudice, or the appearance of such bias or prejudice but rather the fact that a judge overseeing and supervising a complicated and massive estate has statutory obligations. His obligation is to oversee the entire estate and to oversee the actions of those who are fiduciaries of the estate. Minn. Stat. §524.3-703. He has the authority to authorize proceedings for a review of the employment of agents and compensation of personal representatives and employees of the estate. Minn. Stat. § 524.3-721.

Finally, consistent with prior orders in this case, the Court grants CAKs motion to seal its pleadings, and exhibits filed in connection with this motion.

K.D.M.