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Judge Won't Remove Pfaelzer From Scientology Case

A federal judge in Los Angeles has denied a motion to oust his colleague Mariana Pfaelzer from presiding over an action brought by the Church of Scientology against defecting members, saying the motion stems from defense counsels' "paranoia."

The defendants, who are alleged to have conspired to steal and distribute secret church courses, sought Pfaelzer's recusal based on what they viewed as an improper ex parte conversation with members of her old law firm, Wyman, Bautzer, Christensen, Kuchel & Silbert. Pfaelzer was portrayed as having assured the lawyers that she would not step out of the case if their firm took over representation of the church.

But U.S. District Court Judge Harry Hupp, ruling on the recusal motion, said there was no factual basis for that charge. He also rejected the contention that Pfaelzer had improperly grabbed the case back after once having disqualified herself.

Hupp's denial of the motion came in a four-page, single-spaced order which, the judge recited, he typed himself to show that the court "has read and considered the motion and considers it to be a tempest in a teapot."

A copy of the order, entered April 14, was obtained late Friday.

Case 'Over-Litigated'

Hupp said in his order:

"This case is among the most massively over-litigated cases involving the Church of Scientology and its former members which seem to involve an inordinate call on the resources of this and other courts. It resembles the other cases in other aspects as well; the litigation is bitterly and extensively conducted, with no simple procedural step being solved by reasonable agreement, with constant and unjustified charges of fraud, perjury, and other misdeeds alleged back and forth, and with volumes and volumes of court files (at least 25 at the last count in this case) needed to contain the constant motions and other procedures filed in an attempt to conduct litigation by exhaustion and attrition. One must have the utmost sympathy for a colleague assigned the onerous responsibility to control the course of the case from start to conclusion based on the facts and the law. This case also involves what might be considered a blot on the profession if not recognized by the lawyers and dealt with professionally—the personal involvement of the lawyers in reprehensible charges and counter-charges against each other. When lawyers become so personally involved in the emotions of their clients, they not only lose perspective but also

objectivity, and tend to view the most innocuous happenings as the result of fraud, perjury, malice, or other improper occurrence. All these unfortunate results seem to be present in this case, and have led to unsubstantiated charges in this motion."

'Product of Paranoia'

Later in his order, Hupp declared:

"This motion has been carefully analyzed by the court, which concludes that it is the product of the 'paranoia' (meant non-medically) which affects counsel when the litigation gets out of hand, as it obviously has here. Whose fault that is is not clear from the record and it may be mutual."

This marks the second time Hupp has denied a recusal motion in the case, involving two consolidated actions. The first motion, denied March 14 of last year, was based on the past membership of Pfaelzer and her husband, Frank Rothman, in the Wyman firm.

Despite Hupp's denial of that motion, Pfaelzer 10 days later voluntarily stepped off the case—only to gain reassignment of it after the Wyman firm withdrew a week later.

The second motion was based in part on Pfaelzer's action in getting the case back. The major thrust of it, however, was the allegation, which first emerged last September, that Pfaelzer improperly engaged in a meeting with members of her former firm in February, 1988.

Those lawyers, Louis R. "Skip" Miller and Andrew M. White, were said to have secured her assurance that she would not step off the case if Wyman, Bautzer took over representation of the plaintiffs. Pfaelzer had made some favorable rulings for the plaintiffs who did not want to lose her as the judge, the motion explained.

Pfaelzer was initially confronted with the charge in open court on Sept. 19 by attorney Joseph Yanny, a former lawyer for the church now being sued by it. At the time, she declined to respond.

Two Versions

Yanny's version of what happened is purportedly based on what Miller related to him. As Miller tells it, however, he and White merely dropped in on Pfaelzer while in the courthouse and, as a "courtesy" told her that a member of their firm was coming into the Scientology case.

The memorandum in support of the motion, drafted by attorney Jerold Fagelbaum, charged that Pfaelzer, by telling the lawyers for Wyman, Bautzer that she would not bow out of the case if they became

counsel for the plaintiffs, "prejudge[d] a motion which Mr. Miller anticipated would be brought, if the Wyman firm entered the case."

In a footnote, it was charged that Pfaelzer, to get the case back, "sent secret letters to Judge [William] Keller and Judge [A. Andrew] Hauk (to whom the consolidated cases had been transferred) indicating the Court's 'availability' to resume control over the cases."

Hupp scoffed that the allegation of an improper ex parte communication is based on "counsel's obvious assumptions that evil occurred without facts to support the assumption." He wrote:

"Defendants assume that Judge Pfaelzer did commit herself *ex parte* not to recuse herself if the Wyman firm entered the case and cites [*sic*] respectable authority to the affect [*sic*] that if that happened, the judge should be disqualified....There is no evidence that such an improper *ex parte* contact occurred and this motion will not be granted on the hearsay and speculative views of disaffected counsel."

Letters Not 'Secret'

Hupp said the letters to Keller and Hauk were not "secret," noting they were read to counsel in open court. He said in his order:

"Defendants question the motives for Judge Pfaelzer in expressing willingness to take the cases back and suggest that that willingness was from some bad motive to injure the defendants in the case (just how and why is not suggested). This suggestion is preposterous, and suggests how far lack of objectivity has gone. Judge Pfaelzer gave the explanation in open court and it makes sense to any judge who has endured the pangs of conscience inherent in transferring a difficult case to an overworked colleague, especially when the judge has had the case for years and through 25 volumes of court files. That explanation was that an unnecessary transfer of the case to another judge would require massive work on the part of the new judge, perhaps redoing much of what had been done in the years of pendency of the case before Judge Pfaelzer, and would be unfair to the new judge when the reason for the recusal had vanished. That reason is so consonant with the spirit in which one treats ones [*sic*] colleagues on this (or any other) court, that it is accepted without question."

Hupp went on to observe:

"Judge Pfaelzer, no doubt at great cost to her mental composure to have to face the mess again, indicated that she was willing to have the cases back. This is praiseworthy, not a reason for recusal now."