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Ninth Circuit Asked to Recuse Judge Pfaelzer

The Ninth U.S. Circuit Court of Appeals has been asked to remove U.S. District Court Judge Mariana Pfaelzer from a Church of Scientology case based on the appearance that she and the church are "allies," it was learned Friday.

A petition for a writ of mandate was filed by the defendants, church defectors who are accused of conspiring to steal and distribute secret church courses. They are asking the appeals court to overturn the action of U.S. District Court Judge Harry Hupp, who on April 11 rejected a motion to recuse Pfaelzer and, in a strongly-worded memorandum, accused the defendants' lawyers of exhibiting "paranoia."

The defendants 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.

Pfaelzer had made some favorable rulings for the plaintiffs who did not want to lose her as the judge, the defendants argued.

In the petition to the Ninth Circuit, attorney Jerold Fagelbaum of Myerson & Kuhn argued:

"...Judge Pfaelzer and the Plaintiffs have created the indelible impression in the eyes of any disinterested observer that Plaintiff and the District Court are allies and, thereby, have irretrievably destroyed any appearance of impartiality by the District Court. As reluctant as the District Court may have been to allow Plaintiffs' action to dictate the result, anything but the grant of Defendants' Petition will unavoidably and substantially encroach upon the District Court's impartiality and will serve to advance the perception that Plaintiffs have succeeded in currying good favor with Judge Pfaelzer by retaining the District Court's former law firm."

Pfaelzer did recuse herself on March 24, 1988 following the entry into the case of her former law firm, to which the defendants protested. However, a week later, the Wyman firm withdrew, and Pfaelzer had the case reassigned to her.

It was later that the defendants learned of the alleged ex parte communication, and sought to disqualify Pfaelzer on that basis.

In the writ petition, filed May 12, the defendants argued:

"Neither the image that Plaintiffs can reach the Judge, nor the stigma attaching to Defendants for assuming an adversarial relationship with the District Court can be washed away by the delayed departure of the Wyman firm, especially in view of subsequent revelations of the District Court's own complicity in Wyman's entry into the case and the cover up of that complicity. A pall was cast over all subsequent proceedings in this case to the detriment of Defendants. The District Court's continuing demonstration of prejudice in favor of Plaintiffs has deepened and darkened that pall."

Fagelbaum took exception to Hupp's barb that the motion for recusal was based on counsels' "paranoia

(meant non-medically)." He pointed to an instance where, as he saw it, Hupp incorrectly stated what was contained in a footnote to an opinion, and remarked:

"[I]t does reflect a bent on mind which suggests that Defendant's motion was not analyzed as carefully as Judge Hupp says before he concluded it was the 'product of the paranoia which affects counsel.'"

The lawyer went on to remark:

"Perhaps if Judge Hupp had permitted oral argument several of his factual misstatements and omissions would have been prevented."