

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Complaint of  
Rochester Express Airport Shuttle vs.  
Rochester Direct Corp.

ORDER

On February 17, 1997, Dawn M. Parsons, Attorney at Law, filed an Affidavit of Prejudice seeking the disqualification of Administrative Law Judge Richard C. Luis from this pending contested case.

The affidavit, which was signed by Dean Wickstrom, President of Rochester Direct Corp., states that the instant case involves a complaint against Rochester Direct, and that a similar complaint case was heard by Judge Luis in 1995 and 1996. The affidavit states that Judge Luis found that Rochester Direct had violated the law in 1995, that Judge Luis's Report was adopted by the Commissioner of Transportation, and that Rochester Direct has filed an appeal of the Commissioner's Order with the Court of Appeals, but that the appeal has not yet been decided by the Court. The affidavit states that in all likelihood the instant complaint will go to hearing before the Court of Appeals renders the decision on the prior complaint. The affiant expresses concern that, given the fact that Judge Luis has already ruled on this issue once, it is doubtful that he would reach a different outcome in the instant case.

The affidavit also alleges that back in 1989, Rochester Direct attempted to acquire the authority of another carrier and that in his handling of the case, Judge Luis made several rulings contrary to Rochester Direct which were ultimately reversed by the Transportation Regulation Board.

In concluding, Wickstrom states that he has a "perception of prejudice and bias on the part of Administrative Law Judge Luis" and requests that a different judge be assigned to the current complaint proceeding.

Having considered Minn. Rule pt. 1400.6400 in light of the allegations contained in the affidavit, and having reviewed the attachments thereto, the Chief Administrative Law Judge makes the following:

**ORDER**

That the Affidavit of Prejudice filed by Rochester Direct Corp. against Judge Richard C. Luis be, and hereby is, DENIED, for the reasons set forth in the attached Memorandum, which is incorporated herein.

Dated this \_\_\_\_\_ day of February 1997.

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KEVIN E. JOHNSON

Chief Administrative Law Judge

**MEMORANDUM**

Minn. Rule pt. 1400.6400 provides as follows:

The Judge shall withdraw from participation in a contested case at any time if he or she deems himself or herself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the Chief Judge shall determine the matter as part of the record, provided the affidavit shall be filed no later than five days prior to the date set for hearing.

This rule does not provide a standard to guide the Chief Judge in making a decision when an affidavit has been filed. The concept behind allowing the filing of such

affidavits is to assure that litigants perceive that hearings are being conducted in a fair and impartial manner. Minn. Stat. § 14.48 requires that all administrative law judges be free of any political or economic association that would impair their ability to function officially in a fair and objective manner. The Code of Professional Responsibilities for Administrative Law Judges and Compensation Judges requires that judges be fair in their rulings and be mindful that their duty is the application of the law and rules to the particular facts presented on the record.

The Office's rule for disqualification is intentionally different from the Rules of Civil Procedure for the District Court because of the limited number of ALJs. Nevertheless, the standards applicable in District Court do provide guidance. Rule 63.03 provides for the filing of a notice to remove without requiring a showing of bias or prejudice. However, after a party has once disqualified a presiding judge as a matter of right, then that party may only disqualify substitute judges by making an affirmative showing of prejudice. Minnesota courts have stated the following:

Bias or prejudice, to be disqualifying, must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.

*In re Estate of Lange*, 398 N.W.2d 569, 573 (Minn. App. 1986). Even in a criminal context, the fact that a judge is familiar with the defendant from a prior criminal trial is not an affirmative showing of prejudice requiring removal. *State v. Yeager*, 399 N.W.2d 648, 652 (Minn. App. 1987).

The fact that a judge has earlier ruled that certain events did occur and that they did constitute a violation of law does not, in and of itself, show that the judge is biased or prejudiced in a later case. The relationship between the acts at question in the instant case and the acts which Judge Luis found to have occurred back in 1995 is unknown. But, even assuming that the facts are exactly the same, the mere existence of his 1995 ruling does not constitute a showing of bias or prejudice.

I have examined the other allegations contained in the affidavit, and none of them support a finding of bias or prejudice. Therefore, the petition for removal is denied.

KEJ