Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF OTTER TAIL | SEVENTH JUDICIAL DISTRICT

Craig Stevenson and Marie Stevenson,
Plaintiffs,

v.

Sean Christopher Stevenson, Renee Stevenson, Lisa Stevenson-Allen, and Ashley Anderson,

Defendants.

Court File No.: 56-CV-20-2928
Case Type: Other Civil
Judge: Kevin Miller

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISQUALIFY AND VACATE ORDERS

INTRODUCTION

It is a basic tenet of litigation that: "To remain impartial, judges should avoid the appearance of impropriety and act to assure that parties have no reason to think their case is not being handled fairly." *State v. Malone*, 963 N.W.2d 453, 464 (Minn. 2021). "[T]he appropriate standard for determining whether a judge must be disqualified due to an appearance of partiality is whether a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality." *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011). It is that basic tenet that has been violated in this case.

On June 17, 2024, Plaintiffs Craig Stevenson ("**Craig**") and Marie Stevenson ("**Marie**") (collectively, "**Plaintiffs**") wrote to this Court about an undisputed, and previously undisclosed, issue: the law clerk working on this file for the last two years was James E. Morrison ("**Clerk Morrison**"). (Doc. 487.) Clerk Morrison previously was the law clerk for Senior Judge Mark F. Hansen ("**Judge Hansen**"), the father of Attorney Kirsten Hansen ("**Attorney Hansen**"), who has actively represented Defendants throughout this matter. Attorney Hansen does not dispute the facts of these undisclosed relationships but rather asserts that there was no "influence." (Doc. 490.)

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

The test of whether Judge Miller was disqualified from this case is not whether Judge Miller was influenced by Clerk Morrison's relationship to Judge Hansen; nor is it whether Judge Miller was biased. The test is "whether a reasonable person knowing and understanding the relevant facts would recuse the judge." *In re Jacobs*, 802 N.W.2d at 753.

An objective, unbiased layperson, knowing Clerk Morrison's relationship to Attorney Hansen and knowing Clerk Morrison would be authoring Judge Miller's orders, would have recused Judge Miller. Despite that, this Court stated it would not address this appearance of impropriety without a formal motion. (Doc. 491.)

BACKGROUND

On January 20, 2021, during the first hearing of this case, Attorney Hansen and Judge Kevin M. Miller ("**Judge Miller**") had the following colloquy:

> **Attorney Hansen:** Judge, I did want to indicate one thing to the Court, I was told to tell the Court this. My father is retired Judge Mark Hansen. He told me I needed to let you know in case you thought there was a conflict. I don't think there is, but when I'm told by somebody to tell you. I'm sorry. I just wanted to make sure that was on the record.
>
> **Judge Miller:** Understood. And I appeared before your father. Never worked – he had retired prior to me coming to Otter Tail County, and I've seen him around a little bit as a retired judge when he was still doing that. But he was never a colleague in the sense of sharing chambers or anything like that, so I would not myself deem that any type of conflict.

(Doc. 226, at 3:25-4:21.)

By Judge Miller's statement on the record, he appeared to acknowledge that disqualification due to his relationship with Judge Hansen may be necessary dependent upon the situation.

What was not revealed was that Clerk Morrison had been Judge Hansen's assigned law clerk.

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

JAMES E. MORRISON
LAW CLERK TO THE
HONORABLE MARK F. HANSEN

OTTER TAIL COUNTY
SEVENTH JUDICIAL DISTRICT
STATE OF MINNESOTA

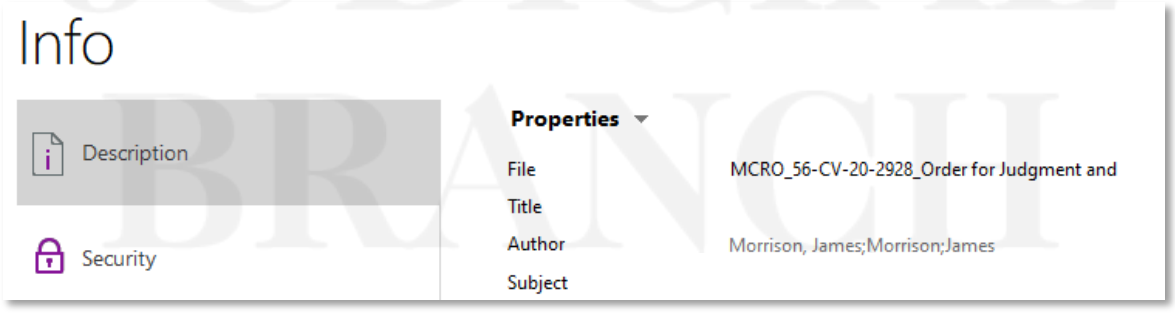
OTTER TAIL COUNTY
COURTHOUSE
121 WEST JUNIUS AVENUE
FERGUS FALLS, MINNESOTA 56537

218-998-8420
FAX: 218-998-8438

(*See, e.g., In re Guardianship and Conservatorship of Therese E. Belcher*, 56-PR-14-2528, Doc. 98, at 2.)

While at the time of the January 20, 2021 hearing Clerk Morrison was not assigned to Judge Miller, disclosing Clerk Morrison's long-standing relationship with Judge Hansen at that time would have allowed protective measures to have been taken, such as disqualifying Clerk Morrison from involvement in the case or stipulating to a change of venue to preclude any appearance of impropriety from Clerk Morrison's relationship with Judge Hansen. That disclosure did not occur, and protective measures could not be taken.

Instead, eighteen months later, Clerk Morrison was the primary author of Judge Miller's orders in this case, still without his relationship to Judge Hansen being disclosed.



(*See* Doc. 429; *see also* Decl. of Cassandra Wolfgram, ¶¶ 7-10.)

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

According to the file properties, the following court orders, at a minimum, were authored by Clerk Morrison:

- Doc. 264: Order and Memorandum Denying Motion for Protective Order, Motion to Compel, and Motion for Sanctions, and Granting Counter-Request for Expenses;
- Doc. 266: Denial of Motion for Reconsideration;
- Doc. 311: Second Order Awarding Attorney Fees as Discovery Sanction;
- Doc. 313: Order Granting Limited Permission to Move for Reconsideration;
- Doc. 366: Order and Memorandum Granting in Part, Denying in Part, and Reserving in Part Six Pre-Trial Motions;
- Doc. 367: *Nunc Pro Tunc* Order;
- Doc. 368: Order Denying Request for Conference;
- Doc. 381: Order Denying Request for Conference;
- Doc. 422: Order Awarding Expert Forensic Fees as a Spoliation Sanction;
- Doc. 429: Order and Memorandum Granting Summary Judgment and Dismissing;
- Doc. 464: Order and Memorandum Denying Motion for Rule 11 Sanctions; and
- Doc. 466: Order and Memorandum Regarding Costs and Disbursements.

(*See generally*, Doc. Index; *see also* Decl. of Cassandra Wolfgram, ¶ 10); Decl. of Craig Stevenson, ¶ 305.)

The orders authored by Clerk Morrison, and signed by Judge Miller, repeatedly ignored conduct of Defendants—and Defense Counsel—and indicated Clerk Morrison and/or Judge Miller had prejudged the case. *See, e.g.,* Docs. 264, 311, 313, 366, 429, 464, 466; Decl. of Marie Stevenson, ¶¶ 91-96; Decl. of Craig Stevenson, ¶¶ 63-68; *c.f.* Docs. 214, 237, 258, 270, 287, 295, 302, 316, 324, 353, 355, 357, 359, 361, 363, 394, 437, 438, 454.)

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

After Plaintiffs' counsel learned of Clerk Morrison's involvement, Plaintiffs' counsel wrote to the Court.[1] (Doc. 487.) On July 23, 2024, the Minnesota Supreme Court denied review. (Doc. 497.)

ARGUMENT

I. THE RELATIONSHIP BETWEEN CLERK MORRISON AND JUDGE HANSEN CREATED AN APPEARANCE OF IMPROPRIETY, MANDATING JUDGE MILLER'S RECUSAL.

A. Judges are Required to Disqualify Themselves When There is an Appearance of Impropriety.

The Code of Judicial Conduct requires a judge to "disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Minnesota Code of Judicial Conduct Rule 2.11(A) (2023); *see also Powell v. Anderson*, 660 N.W.2d 107, 116 (Minn. 2003) (citing to former Minn. Code of Jud. Conduct Canon 3(D)(1)[2]). This "requires the judge to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality." *Hall v. Small Bus. Admin.*, 695 F.2d 175, 176 (5th Cir. 1983) (citing to 28 U.S.C.A. § 455(a) (1982)). "This objective standard requires disqualification not only when there is in fact impropriety, but also when there is an appearance of impropriety." *Roatch v. Puera*, 534 N.W.2d 560, 563 (Minn. App. 1995) (citing *United States v. Hollister*, 746 F.2d 420, 425-26 (8th Cir. 1984) (avoiding appearance of impropriety is important to develop public confidence in the judiciary)).

---

[1] *See* Minn. R. App. P. 108.01, subd. 2 (2023) (stating appeal suspends the district court's jurisdiction over any order affecting the order or judgment appealed from).

[2] Canon 3(D)(1) was renumbered to Rule 2.11(A) effective July 1, 2009. *See* ADM08-8004 (formerly C4-85-697), Dec. 18, 2008 Order Promulgating Revised Minn. Code of Judicial Conduct (adopting Rule 2.11(A)); *see also* ADM08-8004 (formerly C4-85-697) Oct. 31, 2007 Rep. of the Ad Hoc Advisory Comm. to Rev. the Minn. Code of Jud. Conduct, at "Proposed Minn. Code of Jud. Conduct vs. Current Minn. Code of Jud. Conduct," 21-24 (comparing proposed Rule 2.11 to Canon 3).

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

B. Clerk Morrison's Relationship With Judge Hansen Disqualified Judge Miller From this Case.

The Alaska Supreme Court, whose professional rules rely upon the ABA Model Rules, just like Minnesota, explained:

> At the same time, however, we recognize that law clerks can play a significant role in judicial decision-making:
>
> > Law clerks are not merely the judge's errand runners. They are sounding boards for tentative opinions and legal researchers who seek the authorities that affect decisions. **Clerks are privy to the judge's thoughts in a way that neither [the] parties to the law suit nor [the judge's] most intimate family members may be.**
>
> *Hall,* 695 F.2d, at 179.
>
> Codes of judicial conduct have long recognized the principle that it is not enough for judicial officers to be untainted by bias; judicial officers must, in addition, conduct themselves so as to avoid engendering reasonable suspicions of bias. *See Perotti v. State*, 806 P.2d 325, 327 (Alaska App.1991) (Canon 3C(1) of the Code of Judicial Conduct requires judges to disqualify themselves in "[any] proceeding in which [their] impartiality might reasonably be questioned"). Moreover, the conduct of members of the judge's staff can, in some circumstances, implicate the judge's duty to avoid creating the appearance of bias. Under Alaska Judicial Canon 3B(2), judges must supervise their staff so as to "require [them] … to observe the standards of fidelity and diligence that apply to [the judge]."
>
> Because of the close working relationship between judges and their law clerks, there comes a point where a law clerk's bias for or against a particular party or attorney, or a law clerk's potential interest in the outcome of particular litigation, rises to an intolerable level—a level where the judicial decisionmaking process comes under reasonable suspicion. As the court stated in *Hamid*, 51 F.3d at 1416, **"[e]ven if the judge has no [personal] reason to recuse herself …, a law clerk's relationships might cause [people to reasonably question] the impartiality of [the] decisions … in which the [law] clerk participates."**
>
> If a judge's law clerk is actually biased for or against a party or an attorney, or if the law clerk has a substantial personal interest in the outcome of litigation, then the law clerk should not participate in any facet of the case. *Compare* AS 22.20.020(a)(9), forbidding judges from participating in litigation when they "feel[ ] that, for any reason, a fair and impartial decision cannot be given." Also compare Canon 3E(1)(a) of the American Bar Association's Model Code of Judicial Conduct: "A judge shall disqualify himself or herself … [when] the judge has a personal bias or prejudice concerning a party or a party's lawyer[.]"

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

> **More difficult problems are posed by situations short of actual bias or conflict of interest, where a law clerk's actions or a law clerk's relationship to a party or an attorney may give rise to an appearance of partiality. In the worst of such circumstances, disqualifying the law clerk would still be the proper course of action.** However, if circumstances gave less cause for alarm, a judge might reasonably decide to reveal the law clerk's potential bias or conflict of interest to the parties and see if they would be willing to waive the problem. *Compare* AS 22.20.020(b) (allowing the parties to waive various grounds of judicial disqualification—but not actual bias); Canon 3F of the American Bar Association's Model Code of Judicial Conduct (again, allowing the parties to waive various grounds of disqualification—but not a judge's "personal bias or prejudice concerning a party").

Vaska v. State, 955 P.2d 943, 945–46 (Alaska Ct. App. 1998) (emphasis added).

Federal courts have taken a similar position:

> Judicial ethics reinforced by statute exact more than virtuous behavior; they command impeccable appearance. Purity of heart is not enough. Judges' robes must be as spotless as their actual conduct. These expectations extend to those who make up the contemporary judicial family, the judge's law clerks and secretaries.

Hall, 695 F.2d at 176.

Federal courts have explained the unique nature of the judge/law clerk relationship and how critical it is to avoid the appearance of impropriety:

> In order fully to appreciate the role of a law clerk and to evaluate the taint of impropriety that occurred in this case, we consider it appropriate to note briefly the role of law clerks in our judicial system. Historically, the practice of employing federal judicial law clerks began in 1882 when Justice Horace Gray was appointed to the Supreme Court. **Justice Oliver Wendell Holmes, who continued this practice when he succeeded Justice Gray, termed law clerks "puisne judges."** Congress has provided that "district judges may appoint necessary law clerks." 28 U.S.C. s 752 (1970). The law clerk has no statutorily defined duties but rather performs a broad range of functions to assist his judge. A judicial clerkship provides the fledgling lawyer insight into the law, the judicial process, and the legal practice. **The association with law clerks is also valuable to the judge; in addition to relieving him of many clerical and administrative chores, law clerks may serve as sounding boards for ideas, often affording a different perspective, may perform research, and may aid in drafting memoranda, orders and opinions.**
>
> This general knowledge and experience is an invaluable asset to the law clerk and his subsequent utilization of the knowledge is to be encouraged. See generally K.

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

> Llewellyn, The Common Law Tradition: Deciding Appeals, 321-23 (1960). A law clerk, by virtue of his position, is obviously privy to his judge's thoughts in a way that the parties cannot be. We are not holding that a former law clerk may never practice before the judge for whom he clerked. Such a holding would clearly be unwarranted and would cast an undue burden on the law clerk. Moreover, it would hinder the courts in securing the best qualified people to serve as law clerks. What is offensive here is that the district judge seemed to countenance the notion that the law clerk could improperly use the specific knowledge gained from working with him on this particular case. The impartiality of a trial judge is seriously open to question when the judge refuses to recuse himself after being made aware that his former law clerk is actively involved as counsel for a party in a case in which the law clerk participated during his clerkship.
>
> In addition to the possibility that Fredonia might have an unfair advantage because of its counsel's former association with the trial judge, we are concerned with the "purity of the judicial process and its institutions." *Kinnear-Weed Corp. v. Humble Oil & Refining Co*., 403 F.2d 437, 439-40 (5th Cir. 1968), cert. denied, 404 U.S. 941, 92 S.Ct. 285, 30 L.Ed.2d 255 (1971). **The Supreme Court has repeatedly stated that "justice must satisfy the appearance of justice."** *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11 (1954); accord, *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955); *Tumey v. Ohio*, 273 U.S. 510, 532, 47 S.Ct. 437, 444, 71 L.Ed. 749 (1927). The Code of Judicial Conduct for United States Judges, approved by the Judicial Conference of the United States, expresses concern that the judicial system be protected from the appearance of impropriety in the eyes of both the parties and the general public.

Fredonia Broad. Corp. v. RCA Corp., 569 F.2d 251, 255–56 (5th Cir. 1978) (emphasis added).

Due to the relationships of law clerks and their judges, the Eighth Circuit expressed concerns of the appearance of impropriety and discussed that judicial policies for recusal were appropriate:

> We do, however, endorse the principle that a certain insulation period should pass before a judge sits on a case in which his or her former law clerk acts as counsel. Avoiding the appearance of impropriety is as important to developing public confidence in the judiciary as avoiding impropriety itself.

Hollister, 746 F.2d at 426.

Consistent with that, the Eighth Circuit has found that a judge is not required to recuse if the judge immediately screened the law clerk from any cases wherein the law clerk's involvement would raise a question of impartiality. *See, e.g., United State v. Martinez*, 446 F.3d 878, 883 (8th

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

Cir. 2006) (judge took affirmative steps to screen law clerk, who was former defense attorney, from criminal docket); *Trammel v. Simmons First Bank of Searcy*, 345 F.3d 611, 613 (8th Cir. 2003) (judge took affirmative steps to preclude law clerk, who was a friend of a party, from the case).

On the other hand, "a law clerk's relationships might cause the impartiality of decisions from that judge's chambers in which the clerk participates reasonably to be questioned." *Xyngular Corp. v. Schenkel*, 160 F.Supp. 3d 1290, 1300 (D. Utah, Centr. Div. 2016). "If a law clerk continues to work on the case in which his or her impartiality might reasonably be questioned, however, the clerk's actual or potential conflict may be imputed to the judge." *Mathis v. Huff & Puff Trucking, Inc.*, 787 F.3d 1297, 1311 (10th Cir. 2015); *see also Xyngular Corp.*, 160 F.Supp. 3d at 1300.

Even if there was a contention that this Court made the decisions and Clerk Morrison simply prepared the orders later, courts have been dismissive of this argument:

> The judge's assertion that he had made up his mind immediately after hearing the case, without the law clerk's assistance, is immaterial. Every judge has suffered a change of heart after reaching a tentative decision. Much might happen during research and opinion writing to affect the decision. Until the decision was signed and rendered, it was *in pectore judicis*, subject to possible influence.

Hall, 695 F.2d at 180.

Here, Clerk Morrison, who has worked as a judicial law clerk since at least 2016, was employed by Judge Hansen—the *father* of Attorney Hansen. A *reasonable* person would question whether Clerk Morrison, and by extension, Judge Miller, was impartial. Judge Miller failed to disclose Clerk Morrison's relationship while relying on Clerk Morrison to author orders in this matter. Under the objective standard, disqualification was mandated for the appearance of impropriety.

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

C. The Orders Authored by Clerk Morrison Must be Vacated.

The objectives of disqualification are to provide the parties a fair trial and to promote confidence in the judicial system. *Powell*, 660 N.W.2d at 121. Consistent with that, the courts must consider a balancing test for vacatur:

> [I]t is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. We must continuously bear in mind that to perform its high function in the best way justice must satisfy the appearance of justice.

Powell, 660 N.W.2d at 121 (citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988)); *see also State v. Lopez*, 988 N.W.2d 107, 120 (Minn. 2023).

The first factor—risk of injustice to Plaintiffs—mandates vacatur. As Justice Dietzen explained, "there is a risk of injustice to [Plaintiffs] in having a 'disqualified' judge hear the case." *State v. Pratt*, 813 N.W.2d 868, 879 (Minn. 2012) (Dietzen, J., concurring). In Plaintiffs' case, in particular, there were 12 orders (at least) affected by a disqualified judge. The fact Clerk Morrison was the author of these orders "posed an unacceptable danger of subtly distorting the decisionmaking process." *Powell*, 660 N.W.2d at 122 (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 831 (1986) (Blackmun, J., concurring)).

The fact that these were signed by Judge Miller and not Clerk Morrison does not change this analysis. Even a *unanimous* order from a three-judge panel of the court of appeals is subject to vacatur if *one* of those three judges appears to be partial:

> The description of an opinion as being "for the court" connotes more than merely that the opinion has been joined by the majority of the participating judges. It reflects the fact that these judges have exchanged ideas and arguments in deciding the case. It reflects the collective process of deliberation which shapes the court's perception of which issues must be addressed and, more importantly, how they must be addressed. And, while the influence of any single participant in this process can never be measured with precision, experience teaches us that each member's involvement plays a part in shaping the court's ultimate disposition. The

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

> participation of a judge who has a substantial interest in the outcome of a case of which he knows at the time he participates *necessarily* imports a bias into the deliberative process. This deprives litigants of the assurance of impartiality that is the fundamental requirement of due process.

Powell, 660 N.W.2d at 122 (quoting *Aetna Life Ins. Co.*, 475 U.S. at 831 (Brennan, J., concurring)).

Yet here, Clerk Morrison's involvement was more than deliberating with *two* other judges. Clerk Morrison wrote at least 12 orders for Judge Miller. Clerk Morrison was the individual who addressed the issues. Clerk Morrison's involvement did not just "play[ ] a part in shaping the court's ultimate disposition;" his involvement *was* the ultimate disposition. Due to his participation, Plaintiffs were deprived "of the assurance of impartiality that is the fundamental requirement of due process." The first factor—risk of injustice to Plaintiffs—weighs in favor of vacatur.

As to the second factor, "there is a risk that the denial of relief in this case will produce injustice in other cases. Specifically, if the court does not vacate the judgment in this case, there will be little incentive for other similarly situated parties to timely bring a conflict issue to the attention of the court and the other parties." *Pratt*, 813 N.W.2d at 879 (Dietzen, J., concurring). If vacatur is not granted, then there is a high risk of silencing conflict issues. Specifically, it would preclude litigants from relief so long as Clerk Morrison's involvement is concealed until *after* judgment is entered. Undoubtedly, all litigants are entitled to know if the law clerk authoring the dispositive orders in their file has a unique connection to the parties or counsel. As Clerk Morrison has worked with numerous judges at Otter Tail County, and Attorney Hansen has appeared in front of judges, there is a strong risk that denial of vacatur would prejudice parties in other cases. Namely, other litigants who were also unaware of Clerk Morrison's relationship with Judge Hansen. The second factor—risk of injustice to third parties—also weighs in favor of vacatur.

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

But most importantly, the three factors are not equally weighted. *State v. Malone*, 963 N.W.2d 453, 469 n.18 (Minn. 2021). The Minnesota Supreme Court has vacated and reversed "on the sole basis that the question of impartiality arises from some affirmative act by the court that risks undermining the public's confidence in the fairness of the judicial process so significantly that express consideration of the other two factors is unnecessary." *Id.*

> The Supreme Court characterized the need for the administration of justice to "reasonably appear to be disinterested as well as to be so in fact" as "[t]he guiding consideration" in applying the *Liljeberg* factors. *Liljeberg*, 486 U.S. at 869-70, 108 S.Ct. 2194 (quoting *Pub. Utils. Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466, 67, 72 S.Ct. 813, 96 L.Ed. 1068 (1952) (Frankfurter, J., in chambers)). And "[t]he citizens of Minnesota rely on [us] to be vigilant in making sure that all cases will be decided in accordance with the highest traditions of the judiciary." *Pratt*, 813 N.W.2d at 879 (Dietzen, J., concurring). For our legal system to maintain the confidence of the public, and for the public to accept and abide by judicial decisions, the judicial branch must aspire to and exemplify both the reality and appearance of justice in every case. *See Pratt*, 813 N.W.2d at 878; *see also Troxel v. State*, 875 N.W.2d 302, 320 (Minn. 2016) (Lillehaug, J., dissenting). Therefore, the risk of undermining the public's confidence in the judiciary is the predominating factor in determining the relief warranted here.

Malone, 963 N.W.2d at 470.

In *Malone*, the Minnesota Supreme Court reversed and remanded to the district court to vacate a conviction, and order a new pretrial hearing, because: "the judge's affirmative actions of investigating the service procedures, announcing those findings to the parties, and relying on those findings when ruling on a motion so significantly risks undermining the public's confidence in the fairness of our judicial system that we must reverse." *Malone*, 963 N.W.2d at 470. In *State v. Schlienz*, 774 N.W.2d 361 (Minn. 2009), the Minnesota Supreme Court reversed and remanded when the district court judge suggested arguments for the prosecutor. *Id.* at 369.

Similarly, in *Pratt*, the Minnesota Supreme Court reversed and remanded to vacate convictions when the district court judge was retained as an expert witness by one of the parties in another matter. *Id.* at 878. The Minnesota Supreme Court cited with approval *Pepsico, Inc. v.*

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

McMillen, 764 F.2d 458 (7th Cir. 1985), *DeNike v. Cupo*, 196 N.J. 502, 958 A.2d. 446 (2008) and *Scott v. United States*, 559 A.2d 745 (D.C. 1989) (en banc) for the proposition that "merely negotiating for future employment might cause a reasonable observer to question a judge's impartiality." *Pratt*, 813 N.W.2d at 877. The Minnesota Supreme Court stated:

> The appearance of equal justice requires that the judge not be exploring the prospects of employment with one lawyer or all lawyers appearing in a case before him. The dignity and independence of the judiciary are diminished when the judge comes before the lawyers in the case in the role of a suppliant for employment. The public cannot be confident that a case tried under such conditions will be decided in accordance with the highest traditions of the judiciary.

Pratt, 813 N.W.2d at 877-878 (quoting *Pepsico, Inc.*, 764 F.2d at 461).

Yet, in all of these cases, the appearance of impropriety was significantly less than here. In this matter, Clerk Morrison actively participated in at least 12 non-dispositive and dispositive motions. Clerk Morrison was directly involved in motions for spoliation, sanctions, summary judgment, and costs and disbursements. Throughout that entire time, Attorney Hansen was on the file. Clerk Morrison was a former *employee* to Judge Hansen, which is significantly more concerning than hiring a headhunter or applying for jobs, or even attending one meeting about being an expert witness. A reasonable examiner would question whether Clerk Morrison would be impartial when the *daughter* of his former boss was counsel of record, and by extension, whether Judge Miller would be impartial.

The fact that Clerk Morrison, an *employee* of Judge Hansen, was writing orders in favor of Attorney Hansen's clients, "significantly risks undermining the public's confidence in the fairness of our judicial system." The affirmative action of assigning Clerk Morrison to this file, and not disclosing his relationship to Judge Hansen, mandates vacatur.

Each and every one of these factors direct this Court to vacate orders written by Clerk Morrison.

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

CONCLUSION

Rule 2.11 is "not purely aspirational in its terms, because it uses the operative verb 'shall disqualify.'" *Powell*, 660 N.W.2d at 115; *see also* Minn. Code of Jud. Conduct R. 2.11(A) (2023). As explained by the Fifth Circuit, disqualification rules exist because:

> [W]e are concerned with the purity of the judicial process and its institutions. **The Supreme Court has repeatedly stated that justice must satisfy the appearance of justice.** The Code of Judicial Conduct for United States Judges, approved by the Judicial Conference of the United States, expresses concern that the judicial system be protected from the appearance of impropriety in the eyes of both the parties and the general public.

Fredonia Broad. Corp., 569 F.2d at 255–56 (citations and quotations omitted) (emphasis added).

In the words of the *Hall* and *Fredonia Broadcasting Corporation* courts, Clerk Morrison was privy to Judge Hansen's thoughts in a way that Plaintiffs could not be while Clerk Morrison authored the decisions of Judge Miller. Yet, at the same time, Judge Hansen's daughter, Attorney Hansen, appeared on behalf of Defendants in this matter. Notably, the Minnesota Judicial Code of Conduct prohibits Attorney Hansen from appearing before Judge Hansen as a conflict of interest. Minn. Jud. Code of Conduct R. 2.11(A)(2)(b) (2023).

Judge Hansen's "puisne judge" wrote orders in favor of Judge Hansen's first-degree relative, Attorney Hansen. Attorney Hansen felt it was necessary to disclose her relationship to Judge Hansen. A reasonable, objective examiner would question whether Clerk Morrison was impartial when Attorney Hansen was an active participant on the file. And a reasonable, objective examiner would question whether Attorney Hansen had an unfair advantage.

Clerk Morrison's involvement in this case "undermine[s] the public's confidence in the judicial process," which is imputed to Judge Miller. For the reasons stated above, Plaintiffs request that this Court grant the relief set forth in Plaintiffs' Notice of Motion and Motion for Disqualification and Vacatur.

Filed in District Court
State of Minnesota
7/26/2024 11:59 PM

Dated: July 26, 2024

DOUGHERTY, MOLENDA, SOLFEST, HILLS & BAUER P.A.

s/ Matthew J. Schaap
Matthew J. Schaap, Atty. I.D. 323421
Cassandra C. Wolfgram, Atty I.D. 399659
14985 Glazier Avenue, Suite 525
Apple Valley, Minnesota 55124
(952) 432-3136 Phone
(952) 432-3780 Fax
mschaap@dmshb.com
cwolfgram@dmshb.com

Attorneys for Plaintiffs

ACKNOWLEDGMENT

The parties above-named represented by the undersigned, hereby acknowledge that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

s/ Matthew J. Schaap
Matthew J. Schaap

MINNESOTA JUDICIAL BRANCH