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24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 645-492

SUCCESSION OF KENNETH EUGENE CARROLL

FILED: _____

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EXECUTRIX'S OPPOSITION TO MOTION TO RECUSE JUDGE LADART

Isabel Wingerter, the Testamentary Executrix, hereby opposes the motion of Kenneth Carroll, et al. (collectively "the Carroll Children" or "the Children") to recuse the Honorable Ross P. LaDart.

I. Background Facts

This succession proceeding was open by the Testamentary Executrix on May 31, 2007, and the matter was allotted to Judge LaDart.

Being herself a lawyer, the Executrix initially commenced handling the matter herself. However, not long into the administration, the matter became contentious. Hence, the Executrix contacted attorney Max Nathan, a recognized expert in succession matters, and retained his firm, Sessions, Fishman, Nathan & Israel, LLC (hereinafter "Sessions"), to represent the Executrix. Sessions enrolled on October 29, 2007.

The succession proceeding has been marked by continuous litigation primarily between the Carroll Children and the decedent's widow, Susan Carroll. The case has gone to the Court of Appeal on multiple occasions. In 2009, the Carroll Children filed a motion to remove Ms. Wingerter as Executrix, and for other related relief. After a two-day trial in November 12-13, 2009, Judge LaDart rendered judgment denying all of the relief sought by the Carroll Children, except for two items which, by agreement, were deferred. The Carroll Children filed writs from that decision which were ultimately denied and the case remanded.

Thereafter, in order to move the matter toward resolution, on June 15, 2011, the Executrix filed a proposed Tableau of Distribution and set it for hearing on September 21, 2011. Because of scheduling difficulties, the September 2011 hearing was continued to January 30-31, 2012, then again continued to May 7-8 and finally to July 17-18, 2012.

On June 29, 2012, the Carroll Children filed their now-pending Motion to Recuse Judge LaDart. On July 3, 2012, they filed an amendment to that motion. On July 5, 2012, they filed a motion to stay the succession proceedings, particularly the hearing set for July 17-18, 2012.

Also, on June 22, 2012, the Carroll Children filed a new lawsuit in the 19th Judicial District Court (East Baton Rouge Parish) against the Executrix, claiming that she had damaged them by depriving them of much of their inheritance. That 19th Judicial District Court damage suit parrots most, if not all, of the allegations that the Carroll Children raised in 2009 when they unsuccessfully moved to remove Ms. Wingerter as Executrix. Ms. Wingerter is currently filing Exceptions in the 19th Judicial District Court suit seeking to remove that suit to the 24th Judicial District Court for consolidation with this long-pending succession proceeding wherein the issues have already been tried.

II. The Children's Motion to Recuse Judge LaDart

The Children's motion to recuse is based upon the contention that Judge LaDart "has had a unique and close relationship with Max Nathan of the firm of Sessions, Fishman, Nathan & Israel, which relationship has demonstrated that Judge LaDart cannot be fair and impartial."¹ The motion goes on to contend that Judge LaDart has characterized Mr. Nathan as "my mentor, my guru..." and that:

III.

Counsel for movers has personally experienced this unique relationship in a succession procedure before Judge LaDart, wherein Judge LaDart proclaimed that he needed assistance in a succession matter and appointed Max Nathan, Special Master to the court. Counsel for mover herein was ordered to pay Max Nathan fees of \$325.00 per hour from succession funds to advise the Court on the law.

IV.

It is not known what the quid pro quo has been for Max Nathan's advice to the Court in other succession matters, too difficult for the Court to comprehend, but does know what it was in one such case.

The Children then conclude their Motion by stating the following:

VIII.

Grounds For Recusal

1) The Court on its' own motion should have recused himself after making known the details of his mentoring and judicial appointments of Max Nathan to be his judicial mentor.

¹ Motion to Recuse ¶ 1.

2) The Court was substantially biased and prejudiced and personally interested in the outcome of the Succession and participated in the examination of witnesses extensively as an advocate for the recalcitrant executrix to establish a record favoring the executrix in the event of an appeal.

3) The Court was biased and prejudiced in favor of the executrix and her attorneys, which bias and prejudice was substantial in nature, and is manifested in adverse rulings contrary to law, fairness and justice.

4) The Court was biased and prejudiced against the heirs and legatees and attempted to impeach their credibility in order to create a record for his chosen side on appeal.

5) Judge LaDart should be recused and his rulings of November 13, 2009 should be vacated and a new trial had on those issues to restore the rights of the heirs and legatees.

6) The legatees in this case have lost their inheritance, insurance proceeds and trust funds because of the Court's primary concern to award legal fees.

WHEREFORE, petitioners pray that Judge Ross P. LaDart be recused and that all rulings of his entered on the 13th day of November, 2009 be vacated and that this matter be re-assigned for a new, fair and impartial hearing.

III. Response to the Children's Motion to Recuse

The Motion to Recuse should be denied for the following reasons:

- There is no evidence whatsoever of any prejudice or bias by Judge LaDart in this matter; and
- The Motion to Recuse was filed grossly too late under the governing statutory and jurisprudential law regarding such motions.

As to the first point, i.e., that there is no evidence of any prejudice or bias, we refer the court to the transcript of the two-day trial in November 2009, after which Judge LaDart ruled against the Children, refusing to remove the Executrix and refusing other relief demanded by the Children. Any review of that record leads to the inevitable conclusion that the Children's Motion was completely baseless and it was properly denied. Most of the Children's claims were absolutely bazaar, evidencing a total detachment from reality. Any judge or jury would have quickly arrived at the same conclusion reached by Judge LaDart.

As to the second reason that the Motion to Recuse must be denied, untimeliness of the Motion, we refer the court to Louisiana Code of Civil Procedure article 154 that states:

Art. 154. Procedure for recusation

A party desiring to recuse a judge of a district court shall file a written motion therefor assigning the ground for recusation. **This motion shall be filed prior to trial or hearing unless the party discovers the facts constituting the**

ground for recusation thereafter, in which event it shall be filed immediately after these facts are discovered, but prior to judgment. If a valid ground for recusation is set forth in the motion, the judge shall either recuse himself, or refer the motion to another judge or a judge ad hoc, as provided in Articles 155 and 156, for a hearing.

As stated in ¶3 of the Children's Motion, counsel for the Children premises her claim of prejudice on the fact that Judge LaDart appointed Mr. Nathan as Special Master in a case in which the Children's counsel, Ms. Evangeline Vavrick, "was ordered to pay Max Nathan's fees..." The case to which Ms. Vavrick, refers is the *Succession of Halford* wherein Ms. Vavrick was herself the Executrix of a succession. In *Halford*, Judge LaDart appointed Mr. Nathan as Special Master in early 2006, a fact which was immediately known to Ms. Vavrick by virtue of her personally being a party to that proceeding. Thereafter, Mr. Nathan rendered a "Report of Special Master" to which Ms. Vavrick, through her law partner/daughter, Eve Vavrick, objected. Copy of Ms. Vavrick's objection filed October 20, 2006, is attached hereto as Exhibit A.

Thereafter, there was a hearing in early 2007 which resulted in a consent judgment. However, the 24th Judicial District Court docket sheet shows continued activity in the case as late as 2012.

Accordingly, it is clear that Ms. Vavrick has had personal knowledge of this supposed "unique and close relationship" between Judge LaDart and Mr. Nathan since 2006. Moreover, Ms. Vavrick was obviously unhappy about Mr. Nathan's appointment in the *Halford* case in 2006. She was highly critical at that time of Mr. Nathan's performance as Special Master and unhappy with the prospect of Judge LaDart accepting the Special Master's report. In fact, she stated in her 2006 pleading, that if Judge LaDart accepted Mr. Nathan's report, the judge would "be in violation of the code of judicial conduct."² Ms. Vavrick was then unhappy that the court refused to vacate the Special Master's appointment and unhappy that Judge LaDart ordered that she pay the Special Master's fees.

All of the above was well known to Ms. Vavrick when Mr. Nathan and his firm enrolled as counsel for Ms. Wingerter in this case *Succession of Carroll*, in 2007. Despite all of that knowledge, Ms. Vavrick did not file her Motion to Recuse Judge LaDart until June 29, 2012, almost five years after the fact, after a two-day trial in 2009 in which Judge LaDart ruled against

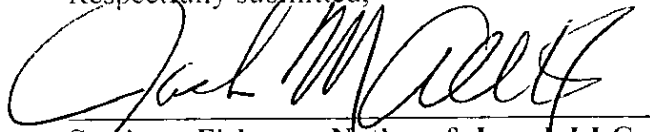
² Exhibit A at ¶XVIII.

Ms. Vavrick's clients, the Carroll Children, and less than three weeks before a pending hearing that Ms. Vavrick would like to avoid.

Under the clear provisions of La. C.C.P. art. 154, even if Ms. Vavrick's Motion had merit (which it does not), the Motion comes much too late. Not only did she not file it shortly after Mr. Nathan and his firm appeared in the case, she then held off and did not file it until after a two-day bench trial and the rendition of a judgment that she does not like. Then she further delayed until the eve of pending motions directed toward moving the succession to conclusion. Not only is her Motion too late, it is grossly and incredibly too late.

For all of these reasons, the Motion to Recuse Judge LaDart should be denied with all costs assessed against the Movers.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document has been served upon all counsel of record via e-mail, facsimile or by placing same in the U.S. Mail, first-class postage pre-paid this ____ day of July, 2012.



JACK M. ALLTMONT