

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MICHAEL CHIASSON

CIVIL ACTION

VERSUS

NUMBER 08-121-FJP-SCR

DAVID M. VAUGHN, ET AL

RULING

This matter is before the Court on the motion in limine¹ filed by Michael Chiasson, trustee of the bankruptcy estate of Charis Hospital, L.L.C. An opposition has been filed to the motion.² For reasons which follow, the motion in limine is granted.

Former Bankruptcy Judge Louis M. Phillips was the presiding Bankruptcy Judge in the underlying bankruptcy proceeding. The defendant, David Vaughn, seeks to call Judge Phillips³ as a witness in the trial of this matter. Vaughn's attempt to require Judge Phillips to testify as a witness is DENIED.

¹Rec. Doc. No. 10.

²Rec. Doc. No. 14.

³Former Bankruptcy Judge Phillips apparently did not request that the U. S. Department of Justice represent him in this case. Because of the Court's ruling, the Court did not request the Department of Justice to make an appearance herein. However, should further proceedings be necessary on this issue, the Court assumes that Judge Phillips will request the Department of Justice to represent him. In an abundance of caution and in the interest of justice and judicial economy, the Court will request the Clerk of this Court to send a copy of this ruling to the United States Attorney for the Middle District of Louisiana.

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It is totally impermissible for Vaughn to call Judge Phillips, the presiding judge in the underlying case, to testify about his mental impressions for making any rulings in the case now pending before this Court. It is also impermissible for Vaughn to call Judge Phillips as an expert regarding the facts, rulings, or performance of the parties in the underlying bankruptcy proceedings in which Judge Phillips presided. There are many other sources for Vaughn to obtain evidence to defend the current case. The entire bankruptcy record is available for the parties to use at the trial of this case. This includes transcripts of hearings held before Judge Phillips. There is no indication that witnesses who testified in the underlying proceeding are no longer available to testify. Thus, there is no need for Vaughn to call Judge Phillips to testify as to the facts, rulings, performance, and competency of the lawyers who were involved in the underlying bankruptcy case.

To allow Judge Phillips to testify regarding his rulings, the facts of the case, or to testify as an expert in front of a jury will, in this Court's opinion, be prejudicial to the plaintiff in this case because the testimony of Judge Phillips will clearly put his prior judicial position and the power and authority he had as a judicial officer in support of Vaughn.

In addition to the prejudicial and unfair nature of the

testimony, Rules 402,⁴ 403,⁵ and 605⁶ of the Federal Rules of Evidence would prohibit Judge Phillips from testifying at the trial of this case. Rule 402 prohibits irrelevant evidence from being admissible at a trial. Rule 403 provides that even though evidence is relevant, it "may be excluded if its probative value is **substantially outweighed by the danger of undue prejudice.**"⁷

Although Rule 605 provides that the "judge presiding at the trial may not testify in **that trial** as a witness," the same principle should apply to the presiding judge of the underlying trial where facts, rulings and performance of the attorneys are the key issues in this pending case. The probative value of Judge Phillips' testimony is clearly "substantially outweighed" by the unfair prejudice his testimony will cause to the plaintiff in this case.

Canon 2(A) and (B) of the Code of Conduct for United States Judges would also prevent Judge Phillips from testifying in this

⁴"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other statutory authority. Evidence which is not relevant is not admissible."

⁵"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

⁶"The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point."

⁷Fed.R.Evid. 403 (emphasis added).

case.⁸ Canon 2 provides in part that: “[a] judge should not lend the prestige of the judicial office to advance the private interests of others.”⁹ This Canon further provides that a judge should not testify voluntarily as a character witness. Indeed, the Commentary to Canon 2B provides an important analysis of the danger of allowing a presiding judge in an underlying case to be called as a witness in a separate case which pertains to the judge’s rulings and other matters involved in the underlying case. The Commentary to Canon 2B provides in part:

Canon 2B. The testimony of a judge as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford the judge a privilege against testifying in response to an official summons. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

⁸175 F.R.D. 363 (1998).

“CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

- A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.”

⁹*Id.*

A judge should avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge should not use the judge's judicial position to gain advantage in litigation involving a friend or a member of the judge's family....¹⁰

Indeed, if Judge Phillips was still in active service, he would be required to recuse himself from the underlying case if he testifies in the case pending before this Court under 28 U.S.C. § 455.

The rulings from the Fifth Circuit Court of Appeals also support the Court's ruling to grant the plaintiff's motion in limine to prevent Judge Phillips from testifying in this case.¹¹

In reviewing the record in this case, the Court fails to see any extraordinary circumstances that would allow this Court to grant an exception and allow Judge Phillips to testify in this case on behalf of Vaughn in any capacity. The public and this Court expect their judges to be fair and impartial in their rulings. Judges must not only be fair, but must also avoid any appearance of impropriety in their rulings. To allow the presiding judge in the underlying case to testify on behalf of one of the parties in this case would impugn the dignity and respect of the office of the judge and the tradition of acting in a fair and impartial manner without bias, prejudice, or favoritism for or against any party.

¹⁰*Id.* at 365.

¹¹*See, Robinson v. Commissioner of Internal Revenue*, 70 F.3d 34, 38 (5th Cir. 1995); *Gary W., et al v. State of La., Dept. Of Health and Human Resources*, 861 F.2d 1366, 1368-69 (5th Cir. 1988).

To eliminate the protection judges have from testifying in a case and allow parties to subpoena judges in cases in which they preside would interfere with a judge's ability to perform his or her duties without fear of later being called to justify or explain their rulings or the conduct of counsel.

In summary, there is simply no evidence that Judge Phillips possesses factual knowledge that is relevant but not unduly prejudicial to the issues the jury must decide. Nor does the record reflect that Judge Phillips is the only possible witness who can provide the relevant information and non-judicial testimony Vaughn seeks to present in this case. The bankruptcy record is extensive and readily available to the parties as are all of the rulings Judge Phillips made. As noted earlier, there is no evidence that any of the witnesses who were involved in the bankruptcy proceeding are unavailable to testify at this trial. Having so concluded, the Court believes that the only possible reason the defendant could want Judge Phillips to testify is to inject the weight, prestige, and authority of a judge to support Vaughn's defense before the jury. Paragraph one of the Commentary to Canon 1 provides an appropriate ending to this opinion.

"Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this

responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law."¹²

Public confidence in the judiciary must be protected at all times. To that extent, judges must avoid all impropriety or the appearance of impropriety. At the same time, the independence of the federal judiciary must also be protected. To allow parties to subpoena a judge who presided in an underlying case to testify on behalf of a party in a new case based on the underlying case would erode the independence of the federal judiciary. If a judge knows there is a possibility he or she will be subpoenaed each time the judge issues a ruling in a case, it could interfere with the judge's decision-making process. Judges should and must be allowed to act without fear or favor. It is only then that the public will have confidence and trust in the rulings made by the judges.

Therefore:

IT IS ORDERED that the plaintiff's motion in limine shall be granted.

IT IS FURTHER ORDERED that no party may call former Bankruptcy Judge Louis M. Phillips to testify in this case.

IT IS FURTHER ORDERED that a copy of this opinion shall be sent to the United States Attorney for the Middle District of Louisiana.

¹²175 F.R.D. at 364.

IT IS SO ORDERED.¹³

Baton Rouge, Louisiana, January 7, 2009.



FRANK J. POLOZOLA
MIDDLE DISTRICT OF LOUISIANA

¹³The Court has considered all of the contentions of the parties whether specifically discussed herein. The Court also reserves the right to supplement these written reasons should the Court find it necessary to do so.