UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MORANDE AUTOMOTIVE GROUP, INC., ET AL.	:	CIVIL ACTION NO. 3:04 CV 918 (SRU)
v.	:	
METROPOLITAN GROUP, ET AL.	:	

NOTICE AND ORDER

Mitchell R. Harris and William H. Erickson of Day, Berry & Howard, LLP ("Day, Berry" or the "Firm") have entered appearances in this case. Because I am a former Day, Berry partner, the filing of those appearances requires me to consider recusing myself from this case. For the first five years that I served as a judge, I automatically recused myself from all cases in which any lawyer from Day, Berry appeared. I have decided that my automatic recusal upon the filing of an appearance by a Day, Berry lawyer is no longer required or appropriate.

Upon examination of the particular circumstances of this case, I do not believe that I should recuse myself. This notice is intended to provide all parties in the case with sufficient information to evaluate whether to move for my disqualification from this case, and to permit the early filing of any such motion, thereby avoiding the waste of judicial resources that would result from disqualification after I had devoted significant time and attention to this case.

Background

I joined Day, Berry as an associate in September 1985 and became a partner in October 1991. I worked out of the Stamford, Connecticut office of Day, Berry, and throughout my career there handled various types of commercial litigation. I resigned from the Firm effective August 31, 1999. All

sums due to be paid to me from the Firm were paid by early January 2000. I have been provided no financial incentive to return to the Firm should I ever leave the bench, and, in any event, the chances of my leaving the bench are remote.

Day, Berry is a large firm by Connecticut standards, and most of its lawyers do not work out of the Stamford office. My relationship with most of my former partners was, accordingly, less close than if the Firm had been smaller and more centralized. Indeed, I had minimal contact, professionally or socially, with the vast majority of lawyers who worked at the Firm while I did. Based on a recent review of the on-line Martindale-Hubbell law firm directory listing for Day, Berry and my recollection of the lawyers working for the Firm when I left, a significant percentage, if not a majority, of the Firm's current lawyers joined the Firm after I resigned.

Since resigning from Day, Berry, the Firm has provided me with two benefits. Day, Berry often invites its former partners who have left the practice of law to attend an annual partner retreat. In the fall of 1999 and 2000, I accepted invitations to attend the Firm's partner retreats, receiving on each occasion a complimentary weekend of food and lodging. I have received but declined invitations to the partner retreats in more recent years, including this year. In late 2002 and early 2003, Richard Colbert of Day, Berry represented my wife and me in connection with an appeal of our municipal property tax assessment. That representation ended in March 2003. Attorney Colbert did not bill my wife and me for his services, which would have cost us just over $2,000 in fees and expenses.

Discussion

A federal judge's recusal from cases in which a lawyer from his former firm appears is addressed by Canon 3 of the Code of Judicial Conduct and by Advisory Opinion No. 24 (Sept. 1,

1972; revised July 10, 1998; last modified Dec. 9, 2002) issued by the Judicial Conference Committee on Codes of Conduct. Both of these authorities suggest that, for at least two years after taking the bench, a judge should recuse himself from cases in which his former firm appears. "The Committee recommends that judges consider a recusal period of at least two years, recognizing that there will be circumstances where a longer period may be more appropriate." Advisory Opinion No. 24. "A judge must recuse in all cases handled by the former law firm until all payments due the judge have been received, and for a reasonable period of time thereafter. . . . Recusal after payments end is necessary only if the reasonable period needed to allay impartiality concerns (generally, at least two years) exceeds the financial payment period." Canon 3, § 3.3-1(b). Moreover, "[a]fter 15 years on the bench, a judge need not recuse from cases handled by the judge's former law firm." *Id.* § 3.3-1(e).

I have now been a judge for over five years. Accordingly, I am beyond the two-year recommended minimum period of recusal, but not yet to the fifteen-year safe harbor when recusal becomes presumptively unnecessary. I have decided that I will no longer automatically recuse myself when a Day, Berry lawyer files an appearance in a case assigned to me. I believe that I can impartially hear most cases in which Day, Berry lawyers appear. Moreover, I believe that there is no appearance of impropriety in my doing so. Notably, I have not worked with Day, Berry lawyers for over five years – a period more than twice as long as the period during which I recuse from cases handled by my former law clerks, with whom I necessarily worked closely every day of their clerkships.

From now on, I intend to decide whether to recuse myself from cases in which Day, Berry lawyers appear based upon an examination of the particular circumstances of each case. "How long a judge should continue to recuse depends upon various circumstances, such as the relationship the judge

had at the law firm with the lawyer appearing before the judge, the length of time since the judge left the law firm, and the relationship between the judge and the particular client and the importance of that client to the firm's practice. . . . In all cases in which the judge's former law firm appears before the judge, the judge should carefully analyze the situation to determine whether his or her participation would create any appearance of impropriety." Advisory Opinion No. 24.

After considering all of the circumstances of the present case and my past relationships with Day, Berry and Attorneys Harris and Erickson, I conclude that there is no appearance of impropriety in my hearing this matter and, accordingly, that I should not recuse. During my years with Day, Berry I knew Attorney Harris, but do not remember ever working directly with him on any case. I did not know Attorney Erickson. My social relationship with Attorney Harris was limited to Firm functions, and did not continue after I left the Firm. Attorney Harris had no involvement in the representation by Day, Berry arising out of my property tax dispute and, in any event, that representation ended over nineteen months ago. I recall having no relationship whatsoever with Marshall & Stevens ESOP Capital Strategies, Inc., the party now represented by Attorneys Harris and Erickson. I have no recollection that Marshall & Stevens ESOP Capital Strategies, Inc. was a particularly important client of the Firm during my tenure there. I have learned nothing about this case that would suggest it is "so closely related to a matter handled by [my] former firm while [I] was there that it should be considered the same matter in controversy (i.e., common parties, overlapping factual issues, and the decision will have preclusive effect)." Canon 3, § 3.3-1(j).

Federal judges have an obligation to recuse themselves whenever their impartiality could reasonably be questioned, but they also have an obligation not to recuse themselves when

circumstances do not require it. *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988) ("A judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is."). Considering all the circumstances, I believe I remain obligated to hear this case. Accordingly, I do not intend to recuse myself sua sponte.

Conclusion

Having examined this matter carefully, I conclude that I should not recuse myself from this case. I do recognize, however, that one or more of the parties to this case may wish to press the issue. Any party wishing to file a motion based on facts disclosed in this Notice should do so within thirty days from the docketing of this Notice. Any party wishing to bring to my attention facts that I have overlooked or about which I may be unaware may do so at any time, but should do so promptly after learning those facts. Upon receipt of any such motion or additional facts, I will consider the question of recusal anew.

So ordered this 3rd day of November 2004 at Bridgeport, Connecticut.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge