

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-34V

Filed: April 22, 2011

Originally Filed: April 20, 2011

_____)	
KHALIL W. EARLES, by)	
NICOLE EARLES, His Mother)	
and Next Friend,)	TO BE PUBLISHED
)	
Petitioner,)	Motion to recuse; response;
)	procedure; 28 U.S.C. § 455
v.)	
)	
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

ORDER¹

On April 19, 2011, I held a telephonic hearing in the above-captioned case. Following the hearing, Respondent's counsel called my chambers to clarify the appropriate process for filing a response to Petitioner's Motion for Recusal. On April 20, 2011, my chambers contacted counsel for both parties to discuss the appropriate procedure. The parties were informed that I would issue an order that set forth the proper procedure.

No statutes or rules specifically govern the procedures that apply to a motion to recuse. "By and large, the disqualification statutes provide little guidance regarding the procedures by which they are to be invoked or applied." 13D Charles Wright, Arthur Miller & Edward Cooper, Federal Practice and Procedure § 3550 (3d ed.). Neither the

¹ This Order has been reissued to give the parties notice that it will be made publicly available. I intend to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). Otherwise, the entire ruling will be available to the public. Id.

Rules of the Court of Federal Claims nor the Vaccine Rules provide any specific guidance regarding the procedures governing motions to recuse.

If a procedural matter is not specifically addressed by the Vaccine Rules, a special master “may regulate the applicable practice, consistent with [the Vaccine Rules] and with the purpose of the Vaccine Act, to decide the case promptly and efficiently.” Vaccine Rule 1(b).

The recusal statute is 28 U.S.C. § 455 (2006). Addams-More v. United States, 79 Fed. Cl. 578, 579 (2007). The statute imposes an independent obligation on a judicial officer to determine his ability to remain impartial in a case, and requires him to disqualify himself where appropriate. See Wright, Miller & Cooper, supra, § 3550. A judicial officer must recuse himself when there are grounds for doing so, even in the absence of a motion by a party. Id. As a matter of prudence, a judicial officer should refrain from requesting the views of counsel on whether disqualification is appropriate. Hewlett-Packard Co. v. Baush & Lomb Inc., 882 F.2d 1556, 1569 (Fed. Cir. 1989); see generally Wright, Miller & Cooper, supra, § 3550.

Based on my reading of the applicable law, I have an independent obligation to determine my ability to remain impartial in this case. In reaching a decision on whether I must recuse myself, I will consider all of the grounds raised in Petitioner’s Motion, and I will consider all other relevant facts. No rule or statute requires me to give Respondent an opportunity to file a response before I rule on Petitioner’s Motion. Accordingly, to ensure the prompt resolution of this matter, I plan to issue a ruling on Petitioner’s Motion quickly and will not wait for Respondent to file a response.

If Respondent would like to respond to Petitioner’s Motion or if Respondent believes she is entitled to submit a response, Respondent may file a motion for leave to file a response, and she may attach the response as an exhibit to that motion. Such a motion will be ruled on in due course.

Any questions regarding this Order shall be directed to Tom Broughan, at (202) 357-6353.

IT IS SO ORDERED.

s/ Dee Lord
Dee Lord
Special Master