

IN THE 51ST JUDICIAL DISTRICT COURT
OF SCHLEICHER COUNTY, TEXAS

THE STATE OF TEXAS

VS.

WARREN STEED JEFFS

§
§
§

NO. 990, 997, 1017 and 1061

**ORDER DENYING AMENDED MOTIONS
TO RECUSE TRIAL JUDGE**

On July 18, 2011 the Defendant's amended motion for rehearing and motion to recuse trial judge, filed on July 15, 2011, was heard.

The Defense has appropriately urged that the acts of the challenged judge, Barbara Walther, not be considered in a vacuum but as a cumulative whole. It is also necessary to view the conduct of the trial judge in the backdrop of this multifaceted litigation, extending for a period of more than three years.

Although the Defendant's motion alleges five separate factual grounds for recusal, the hearing on July 18 focused on two; communications Judge Walther had with the director of the Tom Green County Court Appointed Special Advocate program (CASA) and information furnished to Judge Walther from her court bailiff regarding the names and photographs of individuals which law enforcement considered a potential risk to the judge's safety and a further risk to the integrity of court proceedings.

The Defendant contends both the communications from Judge Walther regarding placement of children removed from the FLDS Church compound in

Schleicher County and the information conveyed to her regarding her personal safety were prejudicial extrajudicial communications.

The State has accurately described the communications as falling within the scope of judicial proceedings. Given the magnitude of the ongoing FLDS litigation, it is unreasonable to conclude from the evidence presented that Judge Walther acted inappropriately. As the presiding judge she has a duty to oversee the placement of children removed by acts of Child Protective Services and to assure the appointment of ad litem for the children within the legal system. In the instance of state governmental action by warrant into a compound the size of the FLDS with the subsequent removal of children, a presiding judge does not have the luxury of “going her merry way” after issuing the warrant as the Defendant contends.

Moreover, the information that law enforcement deemed to jeopardize the judge’s safety is found to have been appropriately disclosed to the judge. Likewise, the precautions taken for Judge Walther’s safety were not limited just for her but applicable to any judge assigned to hear the case.

During the July 18, 2011 hearing the Defense was given a wide latitude to develop the recusal allegations despite objections from the State as to relevancy. Anticipating that the testimony would be shown to be probative of the Defendant’s contentions, the Court allowed testimony that proved to have no bearing on Judge Walther’s conduct.

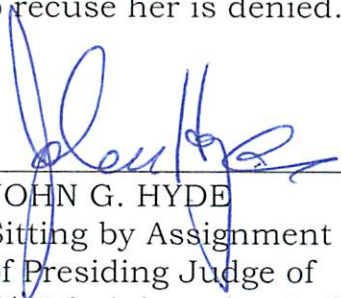
The issuance of the search warrant, the search of the FLDS Church compound by law enforcement, the presence of Child Protective Service Officers on the FLDS compound during the search and the heightened security

measures initiated not by Judge Walther but by law enforcement officials are irrelevant to the charge of judicial prejudice.

Additionally, the testimony that there is nothing else a judge needs to do after signing a warrant is a shallow view of the judicial process. To the contrary, some cases necessitate judicial involvement in the litigation process prior to the trial. This litigation was such a case.

Ultimately, Judge Walther's actions should not be measured by a yardstick of perfection but by the standard of procedural fair play. Impartiality is not gullibility, Liteky v. U.S., 114 S. Ct. 1147 (1994). In that regard the testimony presented against her rests on innuendo and supposition. The Defendant's allegations in the second motion to recuse Judge Walther are found to be without merit and the motion to recuse her is denied.

Signed this 19th day of July, 2011.



JOHN G. HYDE
Sitting by Assignment
of Presiding Judge of
7th Administrative Judicial Region