IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JAMES E. TAGGART,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2:09-2701-V
	)	
KROGER LIMITED PARTNERSHIP I,	)	
	)	
Defendant.	)	

ORDER DENYING PLAINTIFF'S REQUEST FOR MAGISTRATE JUDGE VESCOVO TO RECUSE FROM CASE

Before the court is the January 5, 2011 motion of the plaintiff, James E. Taggart ("Taggart"), proceeding *pro se*, requesting that I, the undersigned United States Magistrate Judge, recuse myself from hearing the instant case. The defendant, Kroger Limited Partnership I ("Kroger"), filed a timely response in opposition. For the reasons stated below, Taggart's motion is denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

In this employment discrimination suit, Taggart filed a *pro se* form complaint on October 28, 2009 alleging that Kroger demoted him from the position of Human Resources Manager to the position of Store Manager because of his race. The case was originally assigned to United States District Court Judge Anderson as the presiding judge, and I was assigned as the referral judge. In early October 2010, the parties consented to trial by magistrate judge, and on October 8, 2010, Judge Anderson referred the matter

to me "to conduct all proceedings and order the entry of a final judgment." (D.E. No. 12.)

On December 21, 2010, I conducted a status conference in which counsel for Kroger, David P. Jaqua (Jaqua"), appeared, but Taggart failed to appear. During the status conference, I informed Jaqua that the parties' joint motion to extend discovery and dispositive motion deadlines was granted. I also stated that my step-son is a junior associate at Butler, Snow, O'Mara, Stevens & Cannada, PLLC ("Butler Snow"), the same law firm where Mr. Jaqua is an equity member, and inquired whether my step-son had or will be actively participating in this case. Jacqu assured me that my step-son was not involved with this case and would not be. Jaqua agreed to relay this information to Taggart and emailed Taggart the minutes from the status conference. On January 5, 2011, Taggart subsequently requested that I recuse myself from hearing the case. (D.E. No. 18.) Specifically, Taggart stated, "I feel it would be in my best interest to have this case heard by another magistrate due to the bond and personal relationships we sometimes have with our family members." (*Id.*)

Jaqua is an equity member at Butler Snow. (Def.'s Mem., D.E. No. 21 at 3.) Butler Snow employs 163 attorneys in four offices: Ridgeland, Mississippi; Gulfport, Mississippi; Memphis, Tennessee; and New Orleans, Louisiana. (*Id.*) My step-son, Michael McLaren[1],

[1] I married Michael's father in 2006. Michael began working for Butler Snow on September 8, 2009, following his graduation from law school.

is a junior associate at Butler Snow in the Memphis office. (*Id.*) The Memphis office consists of 47 attorneys: 20 equity members and 27 salaried attorneys. (*Id.*)

Jaqua is the only attorney appearing for Kroger in this suit. Michael does not practice in Butler Snow's employment law practice group and does not have any involvement in this case. (*Id.*) Furthermore, Jaqua states that he has not discussed this suit with Michael, and Michael is not permitted to have any involvement with this litigation. (*Id.*)

II. ANALYSIS

Recusal or disqualification of a judge is governed by 28 U.S.C. 455. The statute provides, in relevant part:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
> (b) He shall also disqualify himself in the following circumstances:
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> . . .
>
> (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
> (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> . . .
>
> (ii) Is acting as a lawyer in the proceeding;
> (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.
>
> . . .

28 U.S.C. § 455. Motions to recuse are to be determined in the

first instance by the judicial officer sought to be disqualified. *Hewelett-Packard Co. v. Bausch & Lomb Inc.*, 882 F.2d 1556, 1567 (Fed. Cir. 1989). The standard to be applied is an objective one: whether a reasonable person, knowing all the relevant facts, would question the judges's impartiality. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 848 n.1 (1988); *Hughes v. United States*, 899 F.2d 1495, 1501 (6th Cir. 1990). "When the question is close, the judge must recuse himself." *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993)(citing *Roberts v. Bailer*, 625 F.2d 125, 129 (6th Cir. 1980)). However, a judge's duty to recuse himself where disqualified is equally as strong as his duty to sit where qualified. *Laird v. Tatum*, 409 U.S. 824, 837 (1972).

Although a judge must recuse himself when someone within a third degree of relationship to him or his spouse is acting as a lawyer in the proceeding, recusal is not automatically required when the relative-lawyer is merely employed by the law firm representing a party in the proceeding. *See Cloverdale Equipment Co. v. Manitowoc Engineering Co.*, 964 F. Supp. 1152, 1155-56 (E.D. Mich. 1997), *judgment aff'd*, 149 F.3d 1182 (6th Cir. 1998)*; see also Southwestern Bell Telephone Co. v. F.C.C.*, 153 F.3d 520, 523 (8th Cir. 1998)(affirming that the judge was not required to recuse himself because of the employment of his son by a named intervenor in a civil action)*; United States v. Equifax, Inc.*, 557 F.2d 456, 463-64 (5th Cir. 1977), *cert. denied*, 434 U.S. 1035 (1978)(finding that 28 U.S.C. § 455 did not require recusal when judge's son was

associate of a law firm representing the defendant but was not involved in the proceeding); *Voltmann v. United Fruit Co.*, 147 F.2d 514, 517 (2d Cir. 1945)(finding that the judge was qualified even though the judge's son-in-law was a member of the firm representing the defendant). In *Cloverdale*, United States District Court Judge Gadola held, and the Sixth Circuit affirmed, that disqualification was not warranted even though his son was a junior associate in the firm representing the defendant. 964 F. Supp. 1152, 1155. Judge Gadola explained that reasonable persons would not question his impartiality because his son was merely a junior associate and his son did not actively participate in the case. *Id.* at 1155-56.

The present case is analogous to *Cloverdale* in that the risk of impartiality is far too small to warrant recusal under 28 U.S.C. § 455. The only fact that implicates impartiality is that Michael works for the defense counsel's law firm and is my husband's son. Michael, however, does not reside in my household. Michael does not work in Butler Snow's employment law practice group and has not been involved in this case. Because Butler Snow employs 47 lawyers in its Memphis office, Michael can be effectively screened from any impending communication involving this case. Additionally, Michael is a salaried employee rather than an equity partner; thus, his salary interest as an associate is too remote to fall under the financial interest prohibition of Section 455(b)(4). There is nothing to indicate that the outcome of this case would make any difference to Michael financially.

Furthermore, although I informed the parties that my step-son works for Mr. Jaqua's law firm, I am not required to do so. *See Hewelett-Packard*, 882 F.2d 1556, 1569 (finding that the trial judge was not required to disclose to the defendant that his son was employed by the plaintiff). In fact, some authorities indicate that judges should refrain from asking for the approval of counsel in these situations. *Id.* (citing Resolution L of The Judicial Conference of the United States, *Interest in Litigation* (adopted Oct. 1971)). It is appropriate and important, however, that I verify that my step-son or any relative-lawyer has not actively participated in a case before me so that I may determine whether I am required to recuse myself.

Having verified that Michael is not involved in the instant case, I find that any reasonable, objective person, knowing all the relevant facts, would not question my impartiality. Accordingly, I conclude that my step-son's employment with Butler Snow does not require my recusal, and I have a duty to sit as the judge on this case.

III. CONCLUSION

For the reasons stated above, Taggart's motion that I disqualify myself in this case is denied.

IT IS SO ORDERED this 28th day of January, 2011.

s/ Diane K. Vescovo
DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE