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IN THE IOWA DISTRICT COURT FOR SAC COUNTY

STATE OF IOWA,

PLAINTIFF,

vs.

DARREN MITCHELL MEADE ,

DEFENDANT.

Case No. 02811 FECR012634

ORDER

A hearing was held on December 1, 2014 on Defendant's Amended Motion to Disqualify County Attorney. The State appeared by Sac County Attorney Benjamin Smith. Defendant appeared by his attorney, Glen Downey. The Defendant was present by telephone. Only legal argument was presented. Although several proposed exhibits were electronically filed by the Defendant, no evidence was offered at the hearing and the parties did not stipulate to any facts.

Defendant contends that Smith must be disqualified if the Defendant establishes that there is a "substantial possibility" that Smith has of a conflict of interest, citing *Nichol v. State*, 309 N.W.2d 468, 470 (Iowa 1981), which establishes "substantial possibility" as the appropriate standard in Iowa for determining whether an attorney has provided ineffective assistance to his client. This Court disagrees with Defendant's contention and is of the view that a showing of an actual conflict, if not a greater showing, must be made. See, e.g., *Ex Parte Reposa*, 2009 WL 348455 (Tex. Crim. App. Oct. 28, 2009) (Holds that a prosecutor "may not be disqualified unless an actual conflict of interest

exists and that conflict rises to the level of a due process violation."). See also, State v. Hottle, 476 S.E. 2d 200, 211-12 (W.VA. 1986)("Prosecutorial disqualification can be divided into two major categories.... A second category is where the prosecutor has some direct personal interest arising from animosity, a financial interest, kinship or close friendship such that his objectivity and impartiality are called into question.... Under circumstances where it can reasonably be inferred that the prosecuting attorney has an interest in the outcome of a criminal prosecution beyond ordinary dedication to his duty to see that justice is done, the prosecuting attorney should be disqualified from prosecuting the case.").

The Defendant contends that disqualification of Sac County Attorney Smith is required because Smith is a victim of the alleged crimes and therefore, possesses an actual conflict of interest. However, from a review of the Trial Information, it does not appear that any of the charges relate to Smith as a victim. Nonetheless, Defendant contends that "Smith cannot avoid the actual conflict and especially not the appearance of a conflict by failing to charge Meade with statements he made against Smith when he is charging Meade with statements he made against other government officials involved with Smith and the Richter murder case." Assuming the Defendant made statements regarding Smith similar to those that he allegedly made with respect to the Richter witnesses referred to in Counts II through IX, there is no showing that such statements would make Smith a victim of any crime or that the alleged statements caused Smith such personal animosity towards the Defendant that Smith can not fulfill his duties as the prosecutor in this case. This court is not aware of any authority for the proposition that criticism of a prosecutor by a defendant necessarily means a prosecutor should be disqualified from prosecuting that defendant especially when the alleged crimes relate to the integrity of the judicial system.

Defendant also contends in his Motion that Smith should be disqualified because of his relationship with the daughter of Richter trial witness Mary Higgins. There is no charge

in the Trial Information of witness tampering relating to Mary Higgins and there was no evidence presented at the hearing that such a charge would be warranted. Moreover, there was no evidence presented that Smith's relationship with Higgins' daughter is causing him to prosecute the Defendant out of animosity toward the Defendant. Indeed, there was no evidence of what it anything the Defendant has done as it relates to Mary Higgins.

Defendant also contends that disqualification of Sac County Attorney Smith is required because Smith's relationship with Tracey Richter's ex-husband Michael Roberts creates both an actual and apparent conflict of interest. The Defendant makes many allegations but no evidence was offered at the hearing that Smith's relationship with Roberts rises to an actual conflict requiring disqualification.

Defendant also contends that disqualification of Sac County Attorney Smith is required because as the sole investigator in this matter, he has an actual conflict of interest which impairs his ability to act impartially. Specifically, Defendant contends that Smith "as the sole investigator and author of the Search Warrant Application which comprises the bulk of 'evidence' in the case, Smith possesses an actual conflict of interest."

Defendant's Brief at 4. The Defendant cites *State v. Nicholson*, 7 S.W.2d 375 (Mo.App. 1928), which he represents "held a prosecutor must be disqualified who swore to and filed an application for a search warrant." Defendant's Brief at 4. Suffice to say, that in addition to filing the application, the prosecutor in *Nicholson* assisted in the service, and testified at trial in connection with the circumstances with the search. Smith's authoring the Search Warrant Application is not alone sufficient evidence that he has such a personal interest in this case as to disqualify him from actively prosecuting this case. Moreover, Smith is not listed as a witness in the Trial Information and there was no showing at the hearing that Smith would necessarily have to be a State's witness in these proceedings. See also *U.S. v. Melton*, 948 F. Supp.2d 998, 1006-07 (N.D. Ia. 2013).

ORDER:

IT IS THEREFORE ORDERED that the Amended Motion to Disqualify County Attorney Ben Smith is overruled.

CLERK TO FURNISH COPIES TO:

SAC COUNTY ATTORNEY

GLEN DOWNEY



State of Iowa Courts

Case Number
FECR012634
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Case Title
STATE VS DARREN MITCHELL MEADE
OTHER ORDER

So Ordered

A handwritten signature in cursive script that reads "Gary McMinimee".

Gary McMinimee, District Court Judge,
Second Judicial District of Iowa

Electronically signed on 2015-01-23 09:12:16