

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,573

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Appeal of)

INTRODUCTION

The petitioner has filed an appeal of an Administrative Review Decision by the Office of Child Support Enforcement (OCSE). However, before presenting the merits of her appeal the petitioner has moved that the hearing officer recuse himself from the case.

DISCUSSION

The petitioner was the subject of Fair Hearing No. 12,959, decided by the Board on September 30, 1994, a copy of which is attached hereto. The petitioner alleges that in deciding Fair Hearing No. 12,959, this hearing officer was "not fair and impartial", that he did not record the proceedings, that he "intimidated" the petitioner at the hearing, that he didn't "consider the facts" brought to the hearing by the petitioner, and that he "took sympathy" with the absent parent (the petitioner's son's father) in the case.

A review of the record in Fair Hearing No. 12,959 lends no support whatsoever to the petitioner's allegations. The petitioner did not appeal that decision and took no other action against that decision or the hearing officer's alleged conduct in it until the instant appeal.

Canon 3 of the Vermont Code of Judicial Conduct, Section E includes the following under "Disqualification":

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding, or is to serve as fact-finder in a case in which the judge has conferred ex parte with the parties in an unsuccessful effort to mediate or settle the matter pursuant to Section 3B(7)(d);

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge

has been a material witness concerning it;

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding.

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

Nothing either in the record in Fair Hearing No. 12,959 or in the hearing officer's recollection (admittedly limited) of those proceedings provides any reasonable basis to conclude that he was biased, prejudiced, or otherwise not impartial regarding the petitioner, or that he cannot act with impartiality in the instant appeal. The fact that the petitioner may have been unhappy with the result of her prior hearing does not establish that the hearing officer cannot judge her present case fairly and impartially.

ORDER

The petitioner's motion that the hearing officer recuse himself in this matter is denied.

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