

DISQUALIFYING OPINION OCTOBER 17, 1988

758 S.W.2d 417

JOHN I. PURTLE, Justice.

*COMMENTS UPON RECUSAL*

Rule 27 of the Rules of the Supreme Court reads as follows:

Whenever it is desired to suggest the disqualification of a Judge of this Court in a case to be submitted, the attorney so desiring shall present the matter to the Court in consultation *a reasonable time before the day of submission of the case.* [Emphasis added.]

This case was originally scheduled for submission on February 8, 1988, but was subsequently withdrawn because of the recusal of a justice. The appeal was formally submitted to this court for consideration on March 14, 1988. On that same date, this case was orally argued before the court by the attorney for Georgia-Pacific. The opinion of this court was delivered on June 6, 1988. Glaze, J., not participating. Special Justice Mike Gibson, dissenting. The motion suggesting disqualification and petition for rehearing were filed on behalf of Georgia-Pacific on June 23, 1988.

No suggestion of disqualification was timely or properly made in this case. The rule requires the party suggesting disqualification to present the matter to the court in consultation a reasonable time before the day of submission. This motion and its very consideration by this court completely ignore the plain words of Rule 27. Moreover, I interpret the rule to provide for a direct consultation between the justice concerned and the attorney suggesting disqualification.

I am not participating in the petition for rehearing in this case because of the manner in which the appellant Georgia-Pacific has handled the petition and the motion suggesting disqualification. For the record, I wish to state that I had no knowledge that Farmers Insurance Group had any interest in this case until I was informed of the motion and petition by a newspaper reporter who had received copies of these documents before I did. (The original record is no longer available. It was

checked out and "misplaced" by appellant Georgia-Pacific subsequent to the opinion of this court.)

I have done absolutely nothing improper or unethical. Nevertheless, this motion and petition, and the overt accusations concerning this justice's ethics contained therein, have no doubt created in some minds the impression that I have somehow acted with impropriety or with the appearance of impropriety. Consequently, to avoid even the appearance of impropriety, and to preserve the integrity of this court and our civil justice system, I hereby recuse from participation in the consideration of this petition for rehearing.

There is not a precedent-setting word in the entire opinion. I will say nothing further to defend my ethics and integrity in this unfortunate situation. However, considering the action by the court in vacating the opinion, I am compelled to state that the original opinion set out above is proper and correct. Let the legal community decide whose ethics are questionable and who followed the law.