

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**MITCHELL KIEFFER and
MICHELLE KIEFFER**

PLAINTIFFS

v.

No. 3:18-cv-81-DPM

**MARTEN TRANSPORT LTD. and
STEPHEN JACK ANDERSON**

DEFENDANTS

ORDER

I note J. Barrett Deacon's recent appearance as co-counsel for Anderson. He has been on my recusal list since I became a judge. We practiced law at the same small firm from the time he graduated law school, which I think was in the early 2000s, until I departed for the Arkansas Court of Appeals at the end of 2006. I have a fuzzy memory that he became a partner before I left. Our contacts have been sparse since 2006, but I have not taken him off my list. I should probably consider doing so. As best I can tell, he now practices at a different small firm that is unconnected with any of my long-time former law partners, though it has a similar name. I conclude that I could preside impartially in this case with him as one of the lawyers. But, as things stand at this point, an informed observer – a person on the street corner who is neither overly suspicious nor overly trusting – could reasonably

question my impartiality based on my recusal list. 28 U.S.C. § 455(a). It concerns me that the recusal issue has arisen so late in this older case: summary judgment has been addressed; motions *in limine* are under advisement; and trial is set (second out) for 7 June 2021. A new judge would have to get up to speed quickly and the trial date might be lost. Considering all the circumstances, the parties should have an opportunity to consider waiver. Therefore, unless all the parties waive any Deacon-related conflict by 10 March 2021, I will recuse and the Clerk will reassign this case at random. Do not file any waiver on the docket or otherwise communicate your decision to me. Instead, write a letter directly to the Clerk of Court.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

2 March 2021
