

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-1761**

In re the Marriage of: Matthew Beland, et al.,  
Appellants,

vs.

Heidi Beland NKA Heidi Rylander,  
Respondent,

Polk County Human Services,  
Respondent.

**Filed May 22, 2023  
Affirmed  
Connolly, Judge**

Polk County District Court  
File No. 60-FA-15-340

Sarah M. Kyte, Kyte Law Office, Grand Forks, North Dakota (for appellants)

Heidi Rylander, East Grand Forks, Minnesota (pro se respondent)

Greg Widseth, Polk County Attorney, Crookston, Minnesota (for respondent county)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Bratvold,  
Judge.

**NONPRECEDENTIAL OPINION**

**CONNOLLY, Judge**

On appeal from an order disqualifying appellant-father's attorney, appellants argue that the district court (1) was biased against them and should have recused; (2) should have

granted father's request for a discovery conference or, in the alternative, held oral testimony at the hearing on respondent-mother's motion to disqualify; and (3) abused its discretion by disqualifying father's attorney. We affirm.

## **FACTS**

In December 2015, the six-year marriage between appellant Matthew Beland and respondent Heidi Rylander was dissolved by stipulated judgment and decree. Pursuant to that judgment and decree, the parties were awarded joint legal and joint physical custody of their two minor children. Both parties later remarried, and in May 2020, Rylander moved to modify custody. Beland then filed his own motion to modify custody in July 2020.

Beland's new wife, appellant Sarah Kyte, is an attorney.<sup>1</sup> In April 2021, Kyte filed a certificate of representation, providing notice of her representation of Beland in these proceedings. Rylander subsequently filed a motion to disqualify Kyte under rule 3.7(a) of the Minnesota Rules of Professional Conduct. Beland objected to the motion on several grounds, including that (1) the district court judge was biased and should have recused herself from the case; and (2) the district court should have granted Beland's request for a discovery conference or, in the alternative, to permit oral testimony on the motion to remove counsel.

The district court found that "this case has been in nearly constant litigation since the original filings of March 3, 2015." The district court then overruled Beland's objection

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<sup>1</sup> Beland and Kyte are collectively referred to herein as "appellants."

to her “handling [the] proceeding,” and denied the request for a discovery conference or, in the alternative, to permit oral testimony at the hearing on Rylander’s motion to disqualify. Finally, the district court determined that Kyte is a necessary witness in the case and that, although disqualification of Kyte “would impose a hardship on [Beland], that hardship is outweighed by the prejudice to [Rylander] and the potential for misleading the tribunal.” As such, the district court granted Rylander’s motion to disqualify Kyte from representing Beland in this case. Beland and Kyte appeal.

## DECISION

### I.

Appellants contend that the district court judge’s bias requires disqualification. This issue is reviewed for an abuse of discretion. *See Haefele v. Haefele*, 621 N.W.2d 758, 766 (Minn. App. 2001), *rev. denied* (Minn. Feb. 21, 2001).

The rules of civil procedure provide that a judge may be removed upon an affirmative showing that the judge is disqualified under the Minnesota Code of Judicial Conduct. Minn. R. Civ. P. 63.03. Under the Minnesota Code of Judicial Conduct, a judge must disqualify herself when her impartiality may be questioned, which includes personal prejudice or bias against a party. Minn. Code Jud. Conduct Rule 2.11(A)(1). “There is the presumption that a judge has discharged his or her judicial duties properly.” *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). Adverse rulings are not a basis for imputing bias to a judge. *See Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

Appellants claim that the district court judge is biased against them because she (1) “has made unsupported . . . findings in public decisions that . . . Kyte is incompetent

and untruthful”; (2) “has threatened to kick . . . Kyte out of the sandbox of lawyers if she does not play nice”; (3) filed an ethics complaint against Kyte; (4) has imposed over \$10,000 in sanctions against Beland for Kyte issuing discovery; and (5) issued a restraining order against Kyte.

Rylander asserts that this issue has previously been decided because Beland filed a notice to remove the district court judge in May 2021, and that request was denied; Beland then sought review of the denial by the chief judge of the district court, who also denied relief; and Beland later sought a writ of prohibition from this court seeking to preclude the district court judge from continuing to hear the case, and this court denied the writ. *Beland v. Beland*, No. A22-0086 (Minn. App. June 7, 2022) (order), *rev. denied* (Minn. Aug. 23, 2022). Thus, Rylander urges us to reject appellants’ removal argument on the ground that it is barred by the doctrine of collateral estoppel.

We need not decide whether collateral estoppel applies here because appellants’ argument fails on the merits. Most of the allegations of bias involve adverse rulings that are not a basis for imputing bias to a judge. *See Olson*, 392 N.W.2d at 341. For example, the restraining order prohibited Beland and Kyte from “physically go[ing] to the children’s dental/orthodontic offices” after Beland objected to one of his and Rylander’s children receiving orthodontic treatment. In addition, the sanctions imposed against Beland, and the district court’s findings that Kyte is incompetent and untruthful, also involve adverse rulings. And the district court’s statement to Kyte related to the “sandbox of lawyers” is simply an admonishment to Kyte related to her conduct, which is not extraordinary. Finally, appellants cite no case stating that the filing of an ethics complaint by a district

court judge against an attorney shows bias against that attorney.<sup>2</sup> As such, appellants cannot show that the district court judge was biased against Beland and Kyte.

## II.

Next, appellants challenge the district court's denial of a discovery conference related to Rylander's motion to disqualify Kyte. A district court has broad discretion regarding discovery, and "absent an abuse of that discretion, its discovery decision will not be altered on appeal." *Kielley v. Kielley*, 674 N.W.2d 770, 780 (Minn. App. 2004).

The proper mode for objecting to discovery violations is a motion to compel during pretrial proceedings. *See* Minn. R. Civ. P. 37.01. Under Minn. R. Civ. P. 37.01(b)(2), a party may request an order compelling discovery in the event of incomplete or

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<sup>2</sup> In their reply brief, appellants claimed that "it is unclear" how Rylander can continue to claim that the district court judge "is fit to preside over these proceedings without the neutral observer questioning her ability to remain neutral when . . . Kyte has announced she is running against [the district court judge] in the next judicial election." But issues not raised or argued in an appellant's principal brief cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). Moreover, we take judicial notice of the fact that Kyte has not yet filed for election against the district court judge in this case because the filing period has not yet opened, and this judge is not even up for election until 2026. *See In re Charges of Unprofessional Conduct in Panel File No. 43372*, 984 N.W.2d 542, 546 n.3 (Minn. 2022) (noting that appellate courts "have the power to take judicial notice of records"); *see also In re Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 581 n.8 (Minn. 2021) (holding that even when information is not included in the record, "we are empowered to take judicial notice of public records" and consider those records when justice requires); *see generally*, Minn. R. Evid. 201 (addressing judicial notice). And the mere announcement of an intent to run against a district court judge in the next election is not a valid basis to disqualify that judge because merely making such an announcement would disqualify every sitting judge presiding over a case where an attorney representing a party to that case made an announcement to run against the judge. But we note that questions of bias might arise in such a situation if the attorney actually filed to run against the district court judge in the next election.

nonresponsive discovery responses. Here, Beland objected to Rylander’s failure to respond to his discovery requests but did not file a motion to compel discovery. Thus, appellants cannot show that the district court abused its discretion in denying the request for a discovery conference.

Appellants also contend that the district court abused its discretion in denying the request for oral testimony at the hearing on Rylander’s motion to disqualify. We disagree. The presumptive procedure in family matters is that all motions, except for contempt motions, “shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel.” Minn. R. Gen. Prac. 303.03(d)(1). Parties may request oral testimony, but they must do so by the time they file the motion for which the testimony would be taken. *Id.* (d)(2), (5). “Whether to hold an evidentiary hearing on a motion generally is a discretionary decision of the district court, which we review for an abuse of discretion.” *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007).

Here, the district court found that Beland’s request for oral testimony did “not comply with the rules. [He] did not file a separate motion explaining the necessity of testimony, no witness list was provided, and no information was given as to the nature or length of testimony. No details or support for the request for testimony was included in any pleadings.”

Appellants do not dispute that they failed to file a request for oral testimony. Instead, they argue that Beland was prejudiced by the lack of oral testimony because “he was not provided a fair opportunity to respond to [Rylander’s] motion to disqualify . . . Kyte as his legal counsel . . ., leaving [him] without any factual allegations to respond to.”

But the record reflects that Rylander filed her motion to disqualify Kyte on April 25, 2021, and that motion was not heard until September 21, 2022. As such, Beland had over a year to respond to Rylander's motion and file his own request for oral testimony. Beland failed to do so, choosing instead to seek to have the district court judge removed. Beland had ample opportunity to respond to Rylander's motion to disqualify Kyte and, therefore, appellants cannot show that the district court abused its discretion in denying oral testimony.

### III.

Appellants challenge the district court's disqualification of Kyte. We review this decision for an abuse of discretion. *State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808, 816 (Minn. 2014). A district court abuses its discretion if it misapplies the law, makes findings that are unsupported by the record, or resolves the discretionary question in a manner that is contrary to logic and the facts on record. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021).

The Minnesota Rules of Professional Conduct provide that an attorney cannot act as a witness and represent a client in the same proceeding unless one of three delineated exceptions apply. Minn. R. Prof. Conduct 3.7(a). Of those three exceptions, only the last is potentially applicable here: disqualification of counsel is not warranted when it would impose a substantial hardship on the client. *Id.* (a)(3).

Appellants contend that the district court's order disqualifying Kyte must be reversed because: (A) Rylander's attorney lacked standing to file the motion to disqualify; (B) Kyte's relationship with Beland is not a valid legal basis for disqualification; (C) Kyte

is not a necessary witness, but even if she were, it would impose a substantial hardship on Beland if Kyte was disqualified; and (D) rule 3.7 only applies to testimony at trial.

*A. Standing*

Appellants contend that the district court's order disqualifying Kyte must be reversed because Rylander's attorney "lacks standing to file such a motion on her own behalf." We disagree. "A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." Minn. R. Prof. Conduct. 1.2(a). Rylander's attorney filed the motion to disqualify on behalf of Rylander, who is her client. Thus, appellants' standing argument lacks merit.

*B. Kyte's relationship with Beland as a basis for disqualification*

Appellants argue that Kyte should not be disqualified because, under Minn. R. Prof. Conduct 1.8(j), their romantic relationship predated Kyte's legal representation of Beland. But Kyte was disqualified under rule 3.7(a), not rule 1.8(j). The fact that Kyte is in a romantic relationship was not the basis for Rylander's motion to disqualify Kyte.

*C. Disqualification under rule 3.7(a)*

Appellants argue that the district court abused its discretion in disqualifying Kyte because she is not a necessary witness. Appellants further contend that, even if Kyte is a necessary witness, the substantial hardship imposed on Beland by the disqualification outweighs any prejudice to Rylander.

*1. Necessary witness*

The Minnesota Rules of Professional Conduct provide that an attorney cannot act as a witness and represent a client in the same proceeding unless the attorney's testimony

related to an uncontested issue for the value of legal services rendered, or if disqualification would work substantial hardship on the client. Minn. R. Prof. Conduct. 3.7. The supreme court has explained that a witness may not be necessary “[i]f the evidence sought to be elicited from the attorney-witness can be produced in some other effective way.” *Humphrey ex rel. State v. McLaren*, 402 N.W.2d 535, 541 (Minn. 1987). A lawyer is also generally not a necessary witness “[i]f the lawyer’s testimony is merely cumulative, or quite peripheral, or already contained in a document admissible as an exhibit.” *Id.* And the availability of other witnesses who can testify to relevant facts renders an attorney a non-necessary witness. *State v. Fratzke*, 325 N.W.2d 10, 13 (Minn. 1982).

The district court found that the underlying action in this case relates to motions to modify custody. The district court then found that Kyte and Beland “have lived together for years” and that Kyte provides “regular care for the children at issue in this case.” The district court also found that “Kyte has participated in parenting time exchanges” and “has first-hand knowledge regarding many of the best interest factors.” And the district court found that Kyte’s “testimony involves information that cannot be obtained by other witnesses, as at times she was the only individual present” in the dispute with Rylander and/or her husband. Thus, the district court determined that Kyte was a necessary witness because her “testimony is relevant and material to the custody disputes.”

Appellants challenge the district court’s findings, claiming that “no factual support has been submitted to show that . . . Kyte has any firsthand knowledge to be able to testify to facts that are material or that her testimony would not be duplicative.” We are not persuaded. Because this case relates to the parties’ child-custody motions, the best-interest

factors are relevant in addressing the issues before the district court. *See* Minn. Stat. § 518.17, subd. 1(a) (2022) (listing best-interest factors a district court “must . . . evaluate” when “determining issues of custody”).<sup>3</sup> These factors consider, among other things, whether domestic abuse has occurred in the home, *see id.*, subd. 1(a)(4), and the parties’ ability to cooperate, *see id.*, subd. 1(a)(12).

Here, the record reflects that Kyte has been Beland’s partner for several years, is the mother of his child, and is now his wife. As Beland’s partner, Kyte has provided regular care for Beland and Rylander’s children and has participated in parenting-time exchanges. As such, she would likely need to be interviewed by the parties’ parenting investigator. In addition, Beland alleged that abuse occurred in Rylander’s home. When child protection services interviewed the children, Kyte attended the interview with Beland as his partner.

Moreover, the parties’ ability to cooperate, or lack thereof, is a major consideration in the custody-modification proceedings. *See id.* Relevant to this consideration are requests for harassment restraining orders (HROs) that were filed by the parties. Kyte has admitted that she could be a witness in those proceedings, which is exemplified by allegations that Rylander’s new husband threatened Kyte with a gun when no one else was present. This allegation indicates that Kyte has firsthand knowledge related to the parties’ inability to cooperate.

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<sup>3</sup> Section 518.17, subdivision 1(a), was amended in 2022. The amendment is not relevant here. Therefore, we cite the most recent version of Minn. Stat. § 518.17. *See Interstate Power Co. v. Nobles Cnty. Bd of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (recognizing that, generally, “appellate courts apply the law as it exists at the time they rule on a case”).

The record further reflects that Kyte has injected herself into the litigation by becoming personally involved in objections to Beland and Rylander's children's medical and dental care. Kyte's personal involvement in disputes related to the children's health care directly relates to the parties' custody-modification proceedings. Therefore, the district court's findings that Kyte is a necessary witness are not clearly erroneous.

Appellants also contend that the district court's decision to disqualify Kyte is erroneous because Rylander's "disqualification request was made for an abusive purpose." Indeed, the court must be wary of the potential for abuse or use of disqualification as a trial tactic. *McLaren*, 402 N.W.2d at 541. But appellants' argument that Rylander's motion for disqualification is a tactic for abuse is being raised for the first time on appeal and, therefore, it is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts do not address questions not previously presented to and considered by the district court). Moreover, the district court found Kyte to be a necessary witness and that finding is supported by the record. Accordingly, appellants cannot show that Rylander's disqualification request was made for an abusive purpose.

Appellants argue further that Kyte cannot be a necessary witness due to the marital privilege codified in Minn. Stat. § 595.02, subd. 1(a) (2022). This statute provides that, subject to certain exceptions not applicable here,

[a] husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage.

Minn. Stat. § 595.02, subd. 1(a). But the marital privilege should be narrowly construed so as to not interfere with the process of determining the truth. *State v. Hannuksela*, 452 N.W.2d 668, 676 (Minn. 1990). And “courts should determine the validity of the privilege by considering whether the testimony will actually be adverse.” *Lundman v. McKown*, 530 N.W.2d 807, 829 (Minn. App. 1995), *rev. denied* (Minn. May 31, 1995).

Here, the district court noted that, at the hearing on the motion to disqualify, Kyte “repeatedly asserted that any testimony she would offer at trial would be *adverse to [Rylander] and in support of [Beland]*. In other words, . . . Kyte indicated that her testimony would *not be adverse to [Beland]*.” (Emphasis added.) This finding is supported by the record, as Kyte stated that at the hearing that her “testimony would be nothing but egregiously detrimental to [Rylander].” Because Kyte’s testimony would not be adverse to Beland, appellants cannot establish that the marital privilege is applicable. *See id.* (concluding that where the testimony was not adverse to the non-testifying spouse, the district court did not abuse its discretion in allowing non-adverse spousal testimony). Accordingly, appellants cannot establish that the district court erred in concluding that Kyte was a necessary witness.

## **2. Substantial hardship**

Appellants argue that even if Kyte is a necessary witness, the district court abused its discretion in disqualifying Kyte because the disqualification would impose a substantial hardship on Beland. *See* Minn. R. Prof. Conduct 3.7(a) (stating that disqualification of counsel is not warranted when it would impose a substantial hardship). In determining whether disqualification would impose a substantial hardship, the district court must give

due regard to the effect of disqualification on the client and must balance the interests of the client against the likelihood that counsel's testimony will mislead the tribunal or cause prejudice to the opposing party. *Id.*, 3.7 cmt. 4. "Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses." *Id.* In weighing these interests, "[i]t is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness." *Id.*

The district court found that "disqualifying . . . Kyte as [Beland's] counsel would impose a hardship on [Beland]." But the district court found that the hardship to Beland "is outweighed by the prejudice to [Rylander] and the potential for misleading the tribunal." And the district court found that "[i]t is clear that the parties were well aware that . . . Kyte would be a witness in the custody case." As such, the district court concluded that the "balancing test shows a greater prejudice to [Rylander] and potential to mislead the tribunal than the hardship to [Beland]."

Appellants challenge the district court's decision, arguing first that "[e]ven if . . . Kyte is a necessary witness, disqualification would impose a substantial hardship on Beland." To support their position, appellants point out that disqualification of Kyte would cause significant financial hardship to Beland, and that Kyte is Beland's "constitutionally protected choice in counsel," one who is "well experienced in family law" and "well informed of the almost eight-year factual and procedural history of this case." We acknowledge, as did the district court, that disqualification of Kyte would impose a

hardship on Beland. But although Beland would prefer to have Kyte represent him in these proceedings, his arguments related to his right-to-counsel guarantee under the Sixth Amendment are not applicable because this is a dissolution proceeding in which Beland has no statutory or constitutional right to counsel. *See Reed v. Albaaj*, 723 N.W.2d 50, 56 (Minn. App. 2006). Moreover, the district court concluded that, despite the hardship that disqualification would impose on Beland, that hardship “is outweighed by the prejudice to [Rylander] and the potential for misleading the tribunal.”

Appellants argue that the district court’s decision was an abuse of discretion because “[n]o prejudice would befall upon” Rylander if Kyte was not disqualified. To support their position, appellants appear to contend that, because Kyte is prohibited from testifying under the marital privilege, Rylander “cannot be prejudiced by . . . Kyte’s continued representation” of Beland. But, as addressed above, the marital privilege is not applicable because Kyte’s testimony would not be adverse to Beland. *See Lundman*, 530 N.W.2d at 829. Moreover, as the district court found, this is a very “high conflict” and “difficult” case in which “even the smallest issue will be in dispute.”<sup>4</sup> The district court also

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<sup>4</sup> Indeed, this court’s most recent opinion in the parties’ various disputes states:

These two consolidated appeals (A22-1468 and A22-1469) are the fourth and fifth appellate matters arising out of HRO proceedings occurring in district court in files 60-CV-20-895 and 60-CV-21-760. Other appellate matters arising out of those HRO files are A20-0958, A21-1485, and A21-1487. These five HRO-related appellate matters are a part of a larger constellation of litigation spawned by the acrimonious breakup of the relationship between . . . Beland and . . . Rylander. *See* A20-0957, A20-1070, A21-0002, A21-1486, A21-1488, A21-1675, A22-0086, A22-1467, A22-1761. In all 14 of these

recognized that Kyte’s “testimony is important” because Kyte (1) is Beland’s partner and she and Beland have lived together for several years; (2) has participated in parenting-time exchanges and has provided care for the children at issue in this case; (3) has contacted the children’s medical providers; (4) has attended an interview with child protection services; and (5) has firsthand observations of Beland, the minor children, Rylander, Rylander’s husband, and other important parties that will be relevant in these proceedings. In light of the nature of the proceedings, the district court found that the “parties were well aware that . . . Kyte would be a witness” in this case. The district court’s findings are supported by the record and show that Rylander would be prejudiced if Kyte were not disqualified.

In addition to the prejudice that would befall Rylander if Kyte were not disqualified, the district court expressed “concerns that allowing . . . Kyte to continue as legal counsel in the custody proceedings would increase the potential for misleading the tribunal in future proceedings.” The district court found that “[t]his potential is based on historical issues of misrepresentation and improper discovery (a potential witness deposing another potential witness).” The district court’s concerns appear to be well founded as the record reflects that the district court judge reported Kyte to the Minnesota Lawyer’s Professional Responsibility Board after finding that Kyte redacted key portions of a police report, thereby materially changing the contents of the report and misrepresenting relevant

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appellate matters, Beland has been the appellant or the petitioner.

*Beland v. Rylander*, No. A22-1468, 2023 WL 2769071, at \*1 (Minn. App. Apr. 3, 2023), *pet. for rev. filed* (Minn. May 3, 2023).

information. The district court's order balancing the harm to Beland against the potential for prejudice of Rylander and the potential to mislead the tribunal is thorough and well analyzed. Although Beland disagrees with the decision, he cannot show that it was an abuse of discretion.

*D. Application of rule 3.7 to pretrial proceedings*

Appellants argue that because rule 3.7 only “applies to advocacy and testimony ‘at a trial,’” the district court abused its discretion by disqualifying Kyte from the entire case. Indeed, the Eighth Circuit Court of Appeals has recognized that, because “the jury is usually not privy to pretrial proceedings,” the disqualification rule in the rules of professional conduct “does not normally disqualify [a] lawyer from performing pretrial activities.” *Droste v. Julien*, 477 F.3d 1030, 1036 (8th Cir. 2007).<sup>5</sup> But the court also recognized that the applicable rule does require the disqualified attorney to refrain from pretrial activities that “include[] obtaining evidence which, if admitted at trial, would reveal the attorney’s dual role.” *Id.* (quotation omitted).

Here, the district court disqualified Kyte “from representing [Beland] in this case, including all pending motions” because “Kyte may be a witness in any evidentiary hearing and the remaining pending matters are inextricably intertwined with one another.” Appellants cannot show that this decision is an abuse of discretion. The record reflects that, as Beland’s wife, Kyte is intimately involved in all facets of this case, including

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<sup>5</sup> In *Droste*, the Eighth Circuit Court of Appeals analyzed a Missouri rule that is identical to Minn. R. Prof. Conduct 3.7. *Compare* Minn. R. Prof. Conduct 3.7 *with* Mo. R. Prof. Conduct 4-3.7.

matters related to Beland and Rylander's children. As Rylander points out, "Kyte's first-hand knowledge and involvement in this case is so pervasive that she must be disqualified from the case altogether." Therefore, the district court did not abuse its discretion in disqualifying Kyte from all matters related to this case.

**Affirmed.**