

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAFACE RECORDS, LLC, et al.,
Plaintiffs,

Case No. 2:07-cv-187

-v-

HONORABLE PAUL L. MALONEY

DOES 1 - 5,
Defendants.

ORDER DENYING DEFENDANT DOE #5'S OBJECTION
TO ORDER OF MAGISTRATE JUDGE

This matter comes before the Court on Defendant Doe #5's objection (Dkt. No. 49) to an order issued by a Magistrate Judge. The sole issue raised in the objection is whether the Magistrate Judge has a conflict of interest in the matter. Defendant Doe #5 is proceeding *pro se*.

Plaintiffs are members of the music recording industry. In September 2007, this Court entered an order (Dkt. No. 6) granting Plaintiffs' application for a subpoena to secure information identifying individuals who were alleged to be using the internet to share music in violation of copyright statutes. The subpoena was directed to Northern Michigan University. Defendant Doe #5 filed a motion to quash the subpoena. (Dkt. No. 28.) The motion was referred to Magistrate Judge Timothy Greeley, who entered an order (Dkt. No. 46) denying the motion. Defendant filed a motion for reconsideration, which was also denied (Dkt. No. 48).

Defendant Doe #5 argues Magistrate Judge Greeley has a conflict of interest in this action. Defendant asserts Magistrate Judge Greeley is an adjunct faculty member at Northern Michigan University. Defendant attaches printouts of web pages from Northern Michigan University's Criminal Justice Department, which lists Tim Greeley as an adjunct faculty member. (Dkt. No. 49-2, Exhibit A to Objection.) Defendant argues Magistrate Judge Greeley has a conflict of interest because he is an employee of Northern Michigan University, an entity who may be subject to damages in a suit filed by Doe #5. Defendant argues the situation bears an appearance of impropriety.

Rule 72(a) of the Federal Rules of Civil Procedure authorizes objections to a magistrate judge's orders regarding nondispositive pretrial motions. FED. R.CIV. P. 72(a). Objections must be filed within ten days after being served with a copy of the decision. *Id.* Once filed, the district court "shall modify or set aside any portion of the order that is clearly erroneous or contrary to law." *Id.*

Defendant Doe #5's objection is **DENIED**.¹ Defendant has not alleged any finding made by the Magistrate Judge was either clearly erroneous or contrary to law. The basis for disqualification of a Magistrate Judge is outlined in 28 U.S.C. § 455. *See Liteky v. United States*, 510 U.S. 540, 548 (1994). The statute places the obligation on the judge to determine whether he or she should be disqualified. *See Id.* The issue should have been initially addressed to the Magistrate Judge, rather than to this Court by way of objection. *See In re Eagle-Picher Indust., Inc.*, 963 F.2d 855, 862 (6th Cir. 1992) (affirming the district court's refusal to consider whether the bankruptcy judge should have recused himself because the issue was not raised in the bankruptcy court).

Accordingly, Defendant Doe #5's objection is **DENIED. IT IS SO ORDERED.**

Date: January 8, 2009

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge

¹The Court considers the objection timely filed. *See* FED. R. CIV. P. 6(a)(2). The Magistrate Judge's order was issued on December 2, 2008 and placed in the mail for Defendant. (CM-ECF entry.) The objection was sent directly to chambers, rather than to the Clerk, and was received on December 16. The objection was forwarded to the Clerk and was entered on December 18.