IN THE SUPREME COURT OF TEXAS

==========

NO. 97-0483

==========

IN RE UNION PACIFIC RESOURCES COMPANY, RELATOR

==========

ON PETITION FOR WRIT OF MANDAMUS

==========

Argued on December 4, 1997

JUSTICE HECHT, concurring.

I concur fully in the Court's opinion and write separately to add two brief observations.

First: The rule that appeal affords an adequate remedy for an erroneous denial of a motion to recuse cannot be without exceptions. In other contexts we have noted that mandamus may be appropriate when a judge has flagrantly refused to follow procedural rules, *see Deloitte & Touche v. Fourteenth Court of Appeals*, 951 S.W.2d 394, 398 (Tex. 1997), or when the ruling is almost certain to require a reversal of the final judgment on appeal, *see Walker v. Packer*, 827 S.W.2d 833, 841, 843 (Tex. 1992). I do not read the Court's opinion to preclude mandamus relief in such extraordinary cases.

Second: Plaintiffs' motion for recusal in this case asserted that Judge Bennett's impartiality might reasonably be questioned because he was being represented by defendant's counsel in a mandamus proceeding. In many circumstances, obviously, a lawyer's representation of a judge can raise reasonable doubts about the judge's ability to be impartial in a case involving the lawyer. *See* ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1477 (1981). But the relationship between judge and lawyer is of less concern, it seems to me, when it involves no more

than the lawyer's representation of the judge as a respondent in a mandamus proceeding. Because the nature of the relationship is important, it may be necessary for the judge to testify concerning the facts, as Judge Bennett did. But the need for a judge to testify concerning facts pertaining to a recusal motion does not justify the judge's offering testimony on the more general matter of the existence of any perceived impartiality. Judges should not inject themselves too far into recusal hearings. Not that Judge Bennett did, I should add; but other judges might. While no judge likes to think of being perceived as partial, a hearing on a motion to recuse is simply not a trial of the judge's character and should not be treated as such. The less a judge is involved in recusal proceedings, voluntarily or involuntarily, the better.

Nathan L. Hecht
Justice

Opinion delivered: March 26, 1998