SAM GLASSOCK III
VICE CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Date Submitted: March 23, 2012
Date Decided: March 28, 2012

Kurt M. Heyman
Patricia L. Enerio
Dawn Kurtz Crompton
Proctor Heyman LLP
300 Delaware Avenue, Suite 200
Wilmington, Delaware 19801

David L. Finger
Finger & Slanina, LLC
One Commerce Center
1201 N. Orange Street, 7th floor
Wilmington, Delaware 19801

Re: *Manning v. Vellardita*,
Civil Action No. 6812-VCG

Dear Counsel:

The following is my decision on the Defendants' Motion to Revoke the *Pro Hac Vice* Status of Charles B. Manuel, Jr., and Disqualify Him from Representing Plaintiffs. Because Mr. Manuel's representation of the Plaintiffs will not work undue prejudice on the Defendants, I deny the Defendants' Motion. Nonetheless, I find that Mr. Manuel, in failing to disclose his association with Shiboleth LLP ("Shiboleth") when moving for admission *pro hac vice*, fell short of the level of candor this Court expects of attorneys practicing in Delaware. Though I am allowing Mr. Manuel to continue representing the Plaintiffs in this litigation, I am referring the matter discussed below to the New York State Bar Association, as

well as to the Delaware Office of Disciplinary Counsel, to take disciplinary action as they find appropriate.

A brief summary of the relevant facts is in order. This Section 225[1] action will turn, in part, on whether the Board of ValCom, Inc. ("ValCom"), approved a loan from Solomed Pte., Ltd. ("Solomed"), to ValCom, and, if so, the terms of that loan. According to Defendants, Solomed agreed to fund a $1 million line of credit to ValCom in exchange for ValCom's pledging as collateral 50 million shares of its Series A Preferred Stock, including voting rights, to Solomed to hold until the repayment of the debt (the "Loan"). Shiboleth, a New York law firm, represented ValCom in connection with the negotiation of the Loan. This representation was headed by Jonathan Shechter, a Shiboleth attorney. The nature and extent of Shiboleth's involvement in the negotiations of the Loan is in dispute. The Plaintiffs assert that Shiboleth's role was minimal, that Shiboleth did not draft the Loan documents, and that ValCom and Solomed finalized and executed the Loan documents months after Shiboleth was terminated as counsel for ValCom.

In all filings in this action, including the pleadings and the motion seeking Mr. Manuel's admission *pro hac vice*, Mr. Manuel has represented himself as being with the law firm "Manuel & Associates, LLP." Mr. Manuel has not identified himself as being associated with any other law firm. On February 13,

[1] 8 *Del. C.* § 225.

2012, however, Mr. Manuel sent an email to counsel for the Defendants from the email address "CharlesM@Shiboleth.com."[2] Upon investigation, the Defendants found that Mr. Manuel is not only associated with Shiboleth, but is the head of litigation at that firm. This fact was not disclosed to this Court and apparently was not known to the Defendants until they followed up on Mr. Manuel's February 13th email. The Defendants have moved to disqualify Mr. Manuel, and have asked me to revoke his admission *pro hac vice* before this Court.

The Defendants argue that Mr. Manuel should be disqualified as in violation of the Delaware Lawyers' Rules of Professional Conduct ("DLRPC") Rule 1.9. Rule 1.9, covering "Duties to Former Clients," states:

> (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.[3]

Comment 3 of Rule 1.9 explains that "[m]atters are 'substantially related' for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter."[4] Per Rule 1.10, the conflict of one

[2] *See* Def.'s Mot. Revoke *Pro Hac Vice* Status Ex. A.
[3] Del. Prof. Cond. R. 1.9(a).
[4] *Id.* R. 1.9 cmt. 3.

member of a firm is generally imputed to his associates absent the informed consent of the client: "Except as otherwise provided in this rule, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9."[5]

This Court is aware of the potential for abuse of motions to disqualify, and parties seeking disqualification face a heavy burden. "A motion to disqualify must contain clear and convincing evidence establishing a violation of the [DLRPC] so extreme that it calls into question the fairness or the efficiency of the administration of justice."[6] Additionally, "the Scope of the Rules . . . [does] not contemplate a non-client third party's enforcement of conflict matters. . . . [unless] that party proves a *personal* detriment or misconduct which taints the fairness of the proceeding."[7]

It appears that this litigation is at least "substantially related" to Shiboleth's representation of ValCom in the Loan negotiations. As stated above, a central issue of this case is whether Solomed validly received 50 million voting shares of ValCom in exchange for extending a $1 million line of credit to ValCom. These shares were purportedly received through a loan transaction negotiated, at least in part, by Mr. Shechter, Mr. Manuel's colleague at Shiboleth. According to the

[5] *Id.* R. 1.10(a).
[6] *Dunlap v. State Farm Fire & Cas. Co. Disqualification of Counsel*, 2008 WL 2415043, at *1 (Del. May 6, 2008).
[7] *In re Infotechnology, Inc., S'holder Litig. Disqualification of Counsel*, 582 A.2d 215, 219 (Del. 1990).

Defendants, Solomed voted those shares in favor of stockholder actions that ousted the Plaintiffs from the ValCom Board, thus precluding the apparent termination of Mr. Vellardita's employment at a later ValCom Board meeting. Mr. Manuel now represents two members of the purportedly ousted faction of the ValCom Board. His clients seek a declaration that the stockholder actions supposedly leading to their removal from ValCom's Board were invalid. It is the Defendants' view that Solomed validly participated in these actions on the basis of its receipt of 50 million shares in a transaction negotiated in part by Shiboleth. Thus, the Plaintiffs' interests are potentially adverse to those of Shiboleth's former client, ValCom, in that the Plaintiffs seek, as the Defendants see it, to invalidate a contract negotiated by Shiboleth for its former client.

There is some evidence in the record that Shiboleth itself recognized a conflict in representing one of the two warring factions of ValCom's Board in a suit for corporate control that would turn on the details of a loan which Shiboleth had facilitated as attorney for ValCom. What is clear is that it was a Shiboleth attorney who referred this matter to Mr. Manuel. Mr. Manuel litigates both as a "Shiboleth" lawyer and as a "Manuel & Associates" lawyer. Apparently wearing his "Manuel & Associates" hat rather than his "Shiboleth" headgear, Mr. Manuel accepted the representation.

Ultimately, I need not decide whether a conflict exists here, because I find that, assuming a conflict exists, the Defendants have not met their burden to show "a violation . . . so extreme that it calls into question the fairness or the efficiency" of this proceeding. The Defendants assert that, in the course of his representation of ValCom, Mr. Shechter obtained confidential information from Mr. Vellardita in his capacity as CEO and as a director of ValCom, information to which Mr. Manuel had access as a member of the Shiboleth firm. As the Plaintiffs point out, however, at least one of the Plaintiffs was also a member of ValCom's Board during the time ValCom engaged Shiboleth in connection with the Loan, and so had access to any information that could have been available to Mr. Manuel through Mr. Shechter. Thus, contrary to the Defendants' assertions, Mr. Manuel's representation of the Plaintiffs does not confer an advantage on the Plaintiffs in such a way that the Defendants are unfairly prejudiced in their ability to mount a defense in this case.

That said, I cannot overlook Mr. Manuel's actions in this litigation. Delaware benefits, perhaps uniquely, from the skill and expertise of the lawyers from around the country who are admitted *pro hac vice* to practice in its courts. While this state is justly proud of its own bar, it is fair to say that those who come to our state to practice through admission *pro hac vice* include among them the finest attorneys in the country. Nonetheless, the appointment of an attorney

admitted to the bar of a sister state to the Delaware bar *pro hac vice* is a privilege. Such admissions are typically granted as a matter of course, on the assumption that the prospective admittee has represented himself openly and honestly before the Court. Thus, to maintain the value to this Court of extending the privilege of *pro hac vice* admission to attorneys from other jurisdictions, it is necessary that those attorneys accorded this privilege are held to a high level of conduct including, importantly, candor with the Court.

In litigation before this Court, Mr. Manuel referred to himself as an attorney associated with Manuel & Associates, LLP. If he had disclosed his association with Shiboleth at the time local counsel for the Plaintiffs moved for his admission *pro hac vice*, presumably the Defendants would have objected to his involvement. An appropriate discussion of the conflicts involved would have ensued, and I could have made an orderly determination of the issues described above. However, Mr. Manuel did not make this revelation at the time of his motion for admission *pro hac vice* or thereafter. In fact, Mr. Manuel's association with Shiboleth only came to light through the Defendants' investigation, after their suspicions were aroused by an email address.

Rule 170 of the Court of Chancery Rules, which governs admissions *pro hac vice*, does not explicitly require the attorney seeking admission to disclose conflicts under DLRPC Rule 1.9. The attorney must file a certificate, however, stating that

he has reviewed and is bound by the Rules. A duty of candor dictates that, where a colorable claim of conflict under DLRPC Rule 1.9 exists, at a minimum facts sufficient to put the Court and opposing counsel on notice should be disclosed in the Rule 170 application. This potential conflict, in other words, should not have been left to disclosure by chance or accident; gently put, Mr. Manuel was not as candid as he should have been when he sought to be admitted in this matter.

When I asked at the telephonic argument on this matter why Mr. Manuel had not made such a disclosure, he replied that the conflict was not obvious to him and that he failed to see the need for any disclosure. I take Mr. Manuel at his word. He candidly disclosed at the same argument that this matter was referred to him by Shiboleth, his own firm, and that he discussed the case with Mr. Shechter, who Mr. Manuel plans to call as a witness at trial. The duty of an applicant for admission *pro hac vice*, however, goes beyond simply not affirmatively attempting to mislead the Court. Here, Mr. Manuel ignored the obvious potential conflict and structured his application in such a way that the conflict was not revealed to the Court and the other parties. Mr. Manuel has failed to make the kind of full and candid disclosures this Court expects of attorneys practicing within its jurisdiction.

Thus, although I find that the severe remedy of disqualification is not warranted here, I cannot condone Mr. Manuel's failure to disclose without encouraging similar actions in the future, actions perhaps more sinister in intent

than ones I have described here. I have therefore decided to refer this matter to the disciplinary authority of Mr. Manuel's home state bar association, and to the Delaware Disciplinary Counsel, for whatever action they find appropriate.

The Defendants' Motion is DENIED. To the extent that the foregoing requires an order to take effect,

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III