

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

P.O. BOX 746  
COURTHOUSE  
GEORGETOWN, DE 19947

December 15, 2003

Richard W. Pell, Esquire  
Tybout Redfearn & Pell  
P.O. Box 2092  
Wilmington, Delaware 19947

Clayton E. Bunting, Esquire  
Wilson, Halbrook & Bayard  
P.O. Box 690  
Georgetown, Delaware 19947

Re: ***Deptula and Swontek v. Steiner***  
C.A. No. 02C-09-006-RFS (consolidated action)

Dear Counsel:

This consolidated action involves claims for damages resulting from an automobile accident in February of 2001. Allegedly, the defendant was negligent in the driving of a vehicle. This resulted in a chain reaction collision involving the plaintiffs. Trial is scheduled for next month.

Defendant's attorney, Richard W. Pell, Esquire, filed a motion to disqualify Clayton E. Bunting, Esquire, attorney for plaintiff Swontek, and the law firm of Wilson, Halbrook & Bayard. In support of the application, an affidavit was submitted by the defendant, Mr. Mark E. Steiner. Mr. Bunting responded and submitted letters along with affidavits from members of his firm who were referenced in Mr. Steiner's affidavit, viz; Dennis L. Schrader, Esquire, Eric C. Howard, Esquire, Robert G. Gibbs, Esquire and Mark D. Olson, Esquire.

A hearing was held on Thursday, December 4, 2003. Mr. Pell acknowledged with appropriate candor that no member of the Wilson, Halbrook & Bayard firm ever represented Mr. Steiner. As an attorney-client relationship never existed, no "conflict of interest" could arise. Therefore, the authorities cited in the motion to disqualify are not germane as they involved former clients. Previously retained counsel owe them a duty of loyalty with other fiduciary responsibilities.

The concern expressed by Mr. Pell focused on the punitive damage claim. Mr. Bunting's firm, through Mr. Olson, represented Mr. Steiner's father in the formation of a limited liability company named Service Energy LLC in 1993 or 1994. In his affidavit, the defendant avers that:

"Mark Olsen, an attorney at the Wilson, Halbrook & Bayard firm has done extensive work for my family business, in which I have an interest, including forming an L.L.C. Should an excess verdict be received in this matter, the firm of Wilson, Halbrook & Bayard has information of my assets which would prove detrimental to me."

Defendant believes his assets are unreasonably exposed to satisfy a judgment which may not be covered by insurance.

On the other hand, Mr. Olson tells a different story. He states:

“I have no knowledge of the personal assets of Mark Steiner, either at the time of the forming of the LLC or at the present time . . . . My only knowledge of Mark Steiner at the time of forming the LLC was that he was an attorney and a member of the Steiner family . . . .”

Mr. Olson only dealt with defendant’s father, Mr. Edward Steiner.

Upon review, the defendant has not shown a sufficient basis to disqualify Mr. Bunting or his firm. Defendant was not represented by them. No information is provided from the firm’s client, Mr. Edward Steiner. Defendant’s affidavit shows that his involvement with the family business was publically known. It makes speculative assumptions which stand in stark contrast to Mr. Olson’s statement.

In reaching this decision, the comments made by then Senior District Judge Caleb M. Wright are pertinent that:

“The fact that there is a dispute concerning whether the telephone conversation ever occurred, combined with the facts that the case has been progressing for fifteen months and Bowman’s prior attorney did not previously file a motion to disqualify, lead the Court to deny Bowman’s motion. Although the Court must protect against the appearance of impropriety, the Court must also be cautious when deciding motions to disqualify when the facts are not clear. A litigant should, absent a genuine conflict of interest, be able to choose his counsel. The Court must be wary so as to prevent motions to disqualify from being used as just another weapon in the litigation arsenal.” *Bowman v. Bank of Delaware*, 1988 WL 54669 (D.Del.).

Considering the foregoing, the motion to disqualify is denied.

***IT IS SO ORDERED.***

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary  
Joseph J. Rhoades, Esquire