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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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XCENTRIC VENTURES, LLC, an
Arizona Corporation, d/b/a
"RIPOFFREPORT.COM"; ED
MAGEDSON, an individual,

No. CV-07-00954-PHX-NVW

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ORDER

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Plaintiffs,

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vs.

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WILLIAM "BILL" STANLEY, an
individual; WILL "BILL" STANLEY
d/b/a DEFAMATION ACTION.COM;
WILL "BILL" STANLEY d/b/a
COMPLAINTREMOVER.COM;
WILLIAM "BILL" STANLEY aka JIM
RICKSON; WILLIAM "BILL"
STANLEY aka MATT JOHNSON;
ROBERT RUSSO, an individual;
ROBERT RUSSO d/b/a
COMPLAINTREMOVER.COM;
ROBERT RUSSO d/b/a
DEFENDMYNAME.COM; ROBERT
RUSSO d/b/a QED MEDIA GROUP,
L.L.C.; QED MEDIA GROUP, L.L.C.)
d/b/a DEFENDMYNAME.COM; QED
MEDIA GROUP, L.L.C. d/b/a
COMPLAINTREMOVER.COM;
DEFAMATION ACTION LEAGUE, an
unincorporated association; and
INTERNET DEFAMATION LEAGUE,
an unincorporated association,

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Defendants.

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1 Pending before the court is the QED Defendants' Motion to Disqualify Plaintiffs'
2 Counsel (Doc. # 31). The facts stated in this order are based on the findings of fact in
3 support of the preliminary injunction (Doc. # 32). While preliminary and non-final, those
4 findings are adequate to dispose of the Motion.

5 **I. Background**

6 The Complaint alleges that Defendants have made defamatory statements about
7 Plaintiffs and the entities and individuals who provide business services to them, tortiously
8 interfered with Plaintiffs' business relationships, cast Plaintiffs in a false light, committed
9 extortion, and engaged in a pattern of racketeering activity in an effort to force Plaintiffs to
10 remove negative postings about certain companies from its website, Ripoffreport.com. A
11 temporary restraining order was entered on May 11, 2007, prohibiting Defendants from
12 continuing to carry out some of the activity alleged (Doc. # 6). On May 17, 2007, the court
13 held a hearing to receive evidence in support of an application for a preliminary injunction.
14 The evidence included testimony from Plaintiffs' counsel, Maria Crimi Speth, an attorney
15 at the law firm Jaburg & Wilk, P.C., who has represented Plaintiff Xcentric Ventures in
16 various matters for the past seven or eight years. Speth testified that Defendants Robert
17 Russo and William Stanley attempted to punish her for representing Plaintiffs by making
18 defamatory statements about her and her law firm and sending spam email to lawyers at her
19 firm and multiple clients, among other acts. According to Speth, the purpose of this conduct
20 was to make it difficult for Plaintiffs to do business by making it too costly for Speth and her
21 firm to continue providing Plaintiffs with legal services. A preliminary injunction was
22 entered on June 21, 2007, prohibiting Defendants from defaming and otherwise harassing
23 Plaintiffs and the individuals who provide business services to them, including Plaintiffs'
24 counsel (Doc. # 33).

25 Defendants now move to disqualify Speth and Jaburg & Wilk as Plaintiffs' counsel
26 under the Arizona Rules of Professional Conduct. The Motion contends that Speth and her
27 firm acquired a proprietary interest in the subject matter of the litigation when Stanley posted
28 defamatory statements about them online, that the personal interest of Plaintiffs' counsel in

1 the litigation creates the risk of a material limitation on the quality of Plaintiffs’
2 representation, and that Plaintiffs’ counsel is disqualified because Speth is a necessary
3 witness in the case. Plaintiffs filed an affidavit indicating that they understand the arguments
4 raised by Defendants, find the arguments unconvincing, and desire to retain Speth and her
5 firm as counsel in this case. Doc. # 39, Exh. A. For the reasons explained below, the Motion
6 will be denied.

7 **II. Standard of Review**

8 “The district court has the duty and responsibility of supervising the conduct of
9 attorneys who appear before it.” *Erickson v. Newmar Corp.*, 87 F.3d 298, 300 (9th Cir.
10 1996). However, in carrying out this duty it must be “solicitous of a client’s right freely to
11 choose his counsel and . . . wary of disqualification motions interposed for tactical reasons.”
12 *Jamieson v. Slater*, 2006 WL 3421788, at *3 (D. Ariz. Nov. 27, 2006) (internal quotation
13 marks omitted). “Only in extreme circumstances should a party to a lawsuit be allowed to
14 interfere with the attorney-client relationship of his opponent.” *Alexander v. Super. Ct.*, 141
15 Ariz. 157, 161, 685 P.2d 1309, 1313 (1984). A motion from opposing counsel to disqualify
16 an attorney based upon an alleged conflict of interest is therefore to be “view[ed] with
17 suspicion.” *Gomez v. Super. Ct.*, 149 Ariz. 223, 226, 717 P.2d 902, 905 (1986).

18 **III. Defendants Have Standing to Move for Disqualification on the Basis of Speth’s**
19 **Dual Role as Counsel and Witness, But Not on the Basis of Her Purported**
20 **Conflict of Interest**

21 Plaintiffs first argue that Defendants lack standing to move for the disqualification of
22 opposing counsel. To satisfy the requirements for standing under Article III of the United
23 States Constitution, the party seeking relief must show:

- 24 (1) she has suffered an ‘injury in fact’ that is (a) concrete and
25 particularized and (b) actual or imminent, not conjectural or
26 hypothetical; (2) the injury is fairly traceable to the challenged
27 action of the [opposing party]; and (3) it is likely, as opposed to
28 merely speculative, that the injury will be redressed by a
favorable decision.

Wilbur v. Locke, 423 F.3d 1101, 1107 (9th Cir. 2005) (internal quotation marks omitted).
The burden is on the party seeking relief to establish that these requirements have been

1 satisfied “with respect to the particular issues the party wishes to have decided.” *Colyer v.*
2 *Smith*, 50 F. Supp. 2d 966, 968 (C.D. Cal. 1999); *see also O’Connor v. Jones*, 946 F.2d 1395,
3 1400 (8th Cir. 1991) (explaining that the movant “must demonstrate that he has standing to
4 raise the issues in his disqualification motion . . . in order for the court to exercise jurisdiction
5 over his motion”).

6 Plaintiffs’ argument is unpersuasive in part. Defendants have standing to move for
7 disqualification on the ground of Speth’s simultaneous service as counsel and witness in the
8 case. Speth’s dual role will imminently cause injury to Defendants. *Wilbur*, 423 F.3d at
9 1107. She is a critical witness on the contested issue of the relationship between Russo and
10 Taylor. As counsel, Speth will predicate her argument for liability in part on the close
11 cooperation between those individuals and, in doing so, at least implicitly argue her own
12 credibility as a witness to their relationship. This circumstance will confer a tactical
13 advantage upon Plaintiffs and make it more difficult for Defendants to defeat the claims
14 against them. *Cf. Colyer*, 50 F. Supp. 2d at 974 (finding standing for a party to challenge the
15 opposing counsel’s dual role as lawyer and witness).

16 Defendants do, however, lack standing to move for the disqualification of Plaintiffs’
17 counsel on the ground of conflict of interest. The arguments pertaining to counsel’s
18 proprietary and personal interests in the case are predicated exclusively on harm that
19 Plaintiffs might suffer from Speth’s continuing representation. Defendants do not argue that
20 the diminished quality of that representation causes them injury. The constitutional
21 requirement of “injury in fact” is unsatisfied in these circumstances. *Wilbur*, 423 F.3d at
22 1107. It is obvious that, rather than help Plaintiffs obtain effective representation, the
23 conflict-of-interest arguments are designed simply to increase Plaintiffs’ costs and interfere
24 with their ability to pursue their claims and defend against counterclaims. Standing cannot
25 be predicated on this type of interest. *See In re Yarn Processing Patent Validity Litig.*, 530
26 F.2d 83, 90 (5th Cir. 1976); *see also Cottonwood Estates, Inc. v. Paradise Builders, Inc.*, 128
27 Ariz. 99, 105, 624 P.2d 296, 302 (1981) (“To call for disqualification of opposing counsel
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1 for delay or other tactical reasons, in the absence of prejudice to either side, is a practice
2 which will not be tolerated.”).

3 Defendants contend that their attorney’s responsibility to “inform the appropriate
4 professional authority” of ethics violations under the Arizona Rules of Professional Conduct,
5 ER 8.3(a), creates standing even where injury in fact is absent. The Ninth Circuit has not
6 squarely addressed this issue, and other courts are split on the matter. Those that have
7 adopted Defendants’ approach find it incongruous to deny for lack of standing a motion to
8 disqualify opposing counsel when state law requires the authoring attorney to report the
9 subject matter of the motion. *See Kevlik v. Goldstein*, 724 F.2d 844, 847 (1st Cir. 1984);
10 *United States v. Clarkson*, 567 F.2d 270, 271 n.1 (4th Cir. 1977); *Brown & Williamson*
11 *Tobacco Corp. v. Daniel Int’l Corp.*, 563 F.2d 671, 673 (5th Cir. 1977). These cases view
12 the party’s motion to disqualify as a means by which the authoring attorney may comply with
13 his or her obligation to report ethics violations.

14 The contrary approach is that, generally, “only a current or former client of an
15 attorney has standing to complain of an attorney’s representation of interests adverse to that
16 current or former client.” *Jamieson*, 2006 WL 3421788, at *4. A non-client will have
17 standing to move for disqualification only when an ethical violation is so “manifest and
18 glaring,” *In re Yarn Processing Patent Validity Litig.*, 530 F.2d 83, 88 (5th Cir. 1976), that
19 it “impacts the . . . [non-client’s] interest in a just and lawful determination” of the case,
20 *Colyer*, 50 F. Supp. 2d at 969; *see also In re Corn Derivatives Antitrust Litig.*, 748 F.2d 157,
21 161 (3d Cir. 1984); *O’Connor*, 946 F.2d at 1400-01. This approach, which discounts the
22 significance of state law reporting obligations, is motivated by the limits of Article III
23 standing and by concern that non-client standing would facilitate the misuse of
24 disqualification rules by individuals who do not have the client’s interests at heart. *See In*
25 *re Yarn Processing Patent Validity Litig.*, 530 F.2d at 90.

26 The court finds the latter view more persuasive and therefore rejects Defendants
27 argument. The Ninth Circuit has indicated that it has “difficulty seeing how [an opposing
28 party] has standing to complain about a possible conflict of interest . . . having nothing to do

1 with her own representation” and that, as a general rule, “courts do not disqualify an attorney
2 on the grounds of conflict of interest unless the former client moves for disqualification.”
3 *Kasza v. Browner*, 133 F.3d 1159, 1171 (9th Cir. 1998). *Kasza* ultimately found it
4 unnecessary to rule on the issue of standing, but the case makes apparent that the Ninth
5 Circuit is disinclined to follow the rule articulated in *Kevlik*, *Clarkson*, and *Daniel*
6 *International Corp.* Equally important, while the rationale of *Kevlik* and its progeny applies
7 to this case due to the reporting obligations of attorneys in Arizona, it is difficult to see how
8 the simple presence of that professional responsibility can provide standing in federal court.
9 A reporting obligation is not an “injury in fact,” *see Bras v. Cal. Pub. Utils. Comm’n*, 59 F.3d
10 869, 872 (9th Cir. 1995) (“injury in fact . . . means an invasion of a legally protected
11 interest”), and even if it were, the focal point of the “injury in fact” analysis is the party, not
12 the attorney, so the attorney’s obligation cannot logically determine the party’s standing, *see*
13 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992) (the “injury in fact” necessary for
14 standing “requires that the party seeking review be himself among the injured”).

15 *Jamieson* does not warrant a different conclusion. That case, which found that a
16 litigant had standing to move for the disqualification of opposing counsel, does not stand for
17 the proposition that the professional obligation to report ethics violations in Arizona
18 independently confers standing upon the party seeking disqualification. Rather, standing in
19 *Jamieson* was predicated on the combination of the state law reporting obligation, the
20 likelihood that the proffered representation “would . . . have a negative impact on [the other
21 party’s] interest in obtaining a just and lawful determination of the claims at issue,” and the
22 absence of “evidence that [the motion was] filed for tactical reasons.” 2006 WL 3421788,
23 at *5. Unlike the motion in *Jamieson*, the present Motion failed to articulate how Plaintiffs’
24 representation will imminently result in any injury to Defendants and is transparently
25 motivated by tactical considerations. Insofar as *Jamieson* suggests that the attorney’s
26 reporting obligation is even supportive of standing, the court respectfully disagrees.

27 Because Defendants lack standing to move for disqualification on the basis of conflict
28 of interest, the court does not have jurisdiction to decide whether counsel’s purported

1 proprietary and personal interests in the case warrant disqualification. *Fleck & Assocs. v.*
2 *City of Phoenix*, 471 F.3d 1100, 1107 n.4 (9th Cir. 2006).

3 **IV. Even Assuming that Defendants Have Standing with Respect to all of the**
4 **Disqualification Issues, Disqualification of Plaintiffs' Counsel is Unwarranted**

5 Due to lack of jurisdiction, the court cannot rule on the merits of those aspects of the
6 Motion that seek disqualification on the basis of counsel's conflict of interest. However,
7 given the cited division of authority and absence of directly applicable authority from the
8 Ninth Circuit, the court will conditionally address the merits of Defendants' conflict-of-
9 interest arguments to avoid an unnecessary remand in the event that the court's ruling on
10 standing is disapproved on appeal. Defendants' remaining argument for disqualification will
11 be decided on the merits.

12 **A. Disqualification Would Be Unwarranted Under Rule 1.7(a)(2)**

13 Defendants contend that the representation provided by Plaintiff's counsel creates a
14 conflict of interest requiring disqualification under Rule 1.7(a)(2). The Rule generally
15 prohibits representation of a client where "there is a significant risk that the representation
16 . . . will be materially limited . . . by a personal interest of the lawyer." Representation may
17 only proceed despite the presence of such a risk where (1) the "affected client gives informed
18 consent, confirmed in writing," (2) "the lawyer reasonably believes that the lawyer will be
19 able to provide competent and diligent representation to each affected client," (3) "the
20 representation is not prohibited by law," and (4) "the representation does not involve the
21 assertion of a claim by one client against another client represented by the lawyer in the same
22 litigation or other proceeding before a tribunal." Ariz. R. Prof. Conduct, ER 1.7(b). This
23 analysis seeks to determine "the likelihood that a difference in interests will eventuate and,
24 if it does, whether it will materially interfere with the lawyer's independent professional
25 judgment in considering alternatives or foreclose courses of action that reasonably should be
26 pursued on behalf of the client." *Id.* at cmt. 8.

27 The Motion would be denied with respect to Rule 1.7(a)(2) because the exception
28 expressed in Rule 1.7(b) applies. The affidavit from Plaintiff Ed Magedson states that he is

1 aware of the conflict that Defendants allege but nevertheless wishes to retain Speth and
2 Jaburg & Wilk as his counsel in this case. Doc. # 39 at Exh. A. Given that the conflict of
3 interest is purely conjectural at this point, that the interests of Speth and Plaintiffs in
4 removing the defamatory statements are by all appearances consistent, and that Speth is
5 uniquely positioned to pursue the representation due to her longstanding attorney-client
6 relationship with Plaintiffs and knowledge of the case, it is reasonable for Speth to believe
7 that she will be able to provide competent and diligent representation. The representation,
8 moreover, is not prohibited by law and does not involve the assertion of conflicting claims
9 among Speth's clients.

10 **B. Disqualification Would Be Unwarranted Under Rule 1.8**

11 Rule 1.8(i) states in part that a "lawyer shall not acquire a proprietary interest in the
12 cause of action or subject matter of litigation the lawyer is conducting for a client." The
13 rationale behind this prohibition is that an attorney who acquires a proprietary interest in the
14 subject of his client's case is more likely to "plac[e] his own recovery ahead of his client,"
15 *In re Stewart*, 121 Ariz. 243, 245, 589 P.2d 886, 888 (1979), and less likely to "seek and
16 accept client guidance on major decisions in the lawsuit," *Ankerman v. Mancuso*, 271 Conn.
17 772, 779, 860 A.2d 244, 247 (2004). Defendants contend that Plaintiffs' representation
18 violates this Rule because several of the defamatory statements at issue adversely affect the
19 business interests of Speth and her firm and create an independent incentive for them to
20 pursue an action against Defendants.

21 Defendants' argument would be rejected, in part because Plaintiffs' counsel has not
22 acquired a cognizable proprietary interest in the litigation. Other than possibly attorney's
23 fees, neither Speth nor her firm lay claim to any monetary entitlement that is contingent upon
24 the outcome of the case. Damages are sought exclusively for Plaintiffs. Although a
25 favorable outcome for Plaintiffs would likely benefit their counsel by clarifying that
26 Defendants' conduct was generally unlawful, there is little basis for concluding that such a
27 benefit is a "proprietary interest" that will interfere with the legal representation, particularly
28 where Plaintiffs have voiced their continuing desire to retain their current counsel despite the

1 purported conflict of interest. *See* Black’s Law Dictionary 1256 (8th ed. 1999) (defining
2 “proprietary” as “[o]f, or relating to, or holding as property”).

3 Even assuming that a cognizable proprietary interest is present, the court would not
4 disqualify Plaintiffs’ counsel on that basis when Defendants’ unlawful conduct is the source
5 of the interest. To burden Plaintiffs with disqualification in such circumstances would
6 effectively reward Defendants for bad behavior.

7 **C. Disqualification Is Unwarranted Under Rule 3.7**

8 Rule 3.7 states that a “lawyer shall not act as advocate at a trial in which the lawyer
9 is likely to be a necessary witness unless” (1) “the testimony relates to an uncontested issue,”
10 (2) “the testimony relates to the nature and value of legal services rendered in the case,” or
11 (3) “disqualification of the lawyer would work substantial hardship on the client.” Ariz. R.
12 Prof. Conduct, ER 3.7(a). Defendants contend that the Rule disqualifies both Speth and her
13 firm because Speth is a necessary witness on the nature of the relationship between Stanley
14 and Russo.

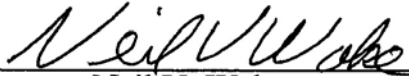
15 The argument is again unpersuasive. To the extent that Speth’s future argument of
16 her own credibility will wound Defendants, that wound is self-inflicted. Common sense
17 dictates against disqualification in these circumstances. Moreover, due to the defamatory
18 statements made about Plaintiffs’ counsel, Defendants’ demonstration of a commitment to
19 harass any entity that provides a business or legal service to Plaintiffs, the threats that led
20 separate counsel for Plaintiffs to quit in a previous matter, Doc. # 39, Exh. A at 3, the
21 longstanding attorney-client relationship between Plaintiffs and their counsel, and the
22 familiarity of Plaintiffs’ counsel with the case, it is apparent that disqualification would work
23 substantial hardship on Plaintiffs. If Speth were disqualified, Defendants’ conduct would
24 make it difficult for Plaintiffs to retain new representation. An attorney contemplating taking
25 the case could easily view the defamatory statements and harassment of Plaintiffs’ current
26 and previous counsel as sufficiently injurious to outweigh any professional benefit in
27 pursuing the representation.
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IT IS THEREFORE ORDERED that the QED Defendants' Motion to Disqualify Plaintiffs' Counsel (Doc. # 31) is DENIED.

IT IS FURTHER ORDERED denying Defendants' Motion for Oral Argument (Doc. # 45).

DATED this 27th day of July 2007.



Neil V. Wake
United States District Judge