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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**LAURIE MILLER, BRIAN DIMAS,  
KIM MILLS, ANTHONY SOZA,  
BRUCE CAMPBELL, KELLIE  
BOWERS, TIM HUNTER, BRIAN  
SAYLOR, MICHAEL SCHAMADAN,  
INDIVIDUALLY AND AS  
REPRESENTATIVE OF THE ESTATE  
OF HIS WIFE, BRANDI SCHAMADAN,  
  
Plaintiffs,  
  
vs.  
  
YORK RISK SERVICES GROUP and  
FRANK GATES SERVICE COMPANY,  
  
Defendants.**

**2:13-cv-1419 JWS  
  
ORDER AND OPINION  
  
[Re: Motion at Docket 278]**

**I. MOTION PRESENTED**

At docket 278 defendants move to disqualify two lawyers, Thomas Whitley and Roger Schwartz of the law firm Taylor and Associates, from representing plaintiffs in this lawsuit. Plaintiffs, who are also represented by two additional lawyers, Michael Patrick Doyle and Kevin Wein of the law firm Doyle Raizner LLP, oppose the motion at docket 322. Defendants reply at docket 340. Oral argument was not requested and would not assist the court.

1 **II. BACKGROUND**

2 The parties are familiar with the background giving rise to the case at bar, and  
3 that background has been described in earlier orders issued by the court. There is no  
4 need to repeat it in this order. For purposes of the present motion to disqualify, the  
5 following additional facts may be noted. When this case was commenced on July 15,  
6 2013, plaintiffs were represented by lawyers Doyle and Wein.<sup>1</sup> Lawyers Schwartz and  
7 Whitley appeared as counsel for plaintiffs nearly a year later on June 25, 2014.<sup>2</sup> The  
8 next day defendants noticed the depositions of both Schwartz and Whitley.<sup>3</sup> The  
9 docket does not contain any document filed on behalf of plaintiffs which was signed by  
10 either Schwartz or Whitley. However, Schwartz and Whitley did represent nine of the  
11 plaintiffs in the proceedings before the Industrial Commission of Arizona (“ICA”) with  
12 which the case at bar is concerned, and they continue to represent three of the plaintiffs  
13 in matters still on-going before the ICA.

14 **III. DISCUSSION**

15 The gravamen of defendants concern is captured in the following passage:  
16 “Mr. Whitley’s and Mr. Schwartz’s association as co-counsel in this case, at such a late  
17 date, allows Mr. Whitley and Mr. Schwartz access to work product and trial preparation  
18 documents that York has disclosed in this case but has not—and is not—disclosing in the  
19 ICA litigation of Plaintiffs Saylor, Hunter and Mills which is still ongoing.”<sup>4</sup> Defendants  
20 also complain that, “Mr. Whitley and Mr. Schwartz have appeared in this case as  
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22 <sup>1</sup>See, Complaint at doc. 1.

23 <sup>2</sup>Docs. 202 and 203.

24 <sup>3</sup>Docs. 211 and 213.

25 <sup>4</sup>Doc. 278 at 2. Defendants also point out that if the court grants plaintiffs’ request to  
26 compel disclosure of materials defendants consider privileged, that information would also fall  
27 into the hands of Messrs. Schwartz and Whitley. This is not a separate argument, it merely  
28 adds to the consequences of the document access Schwartz and Whitley would have as co-  
counsel.

1 counsel conveniently after York requested their depositions in this case, they now  
2 object to York taking their depositions.”<sup>5</sup>

3 Turning to the second argument first, the court finds that it has no merit for two  
4 reasons. First, as noted in the preceding section, Schwartz and Whitley appeared  
5 before, not after, their depositions were noticed. Second, plaintiffs point out that  
6 Whitley and Schwartz will not be counsel at trial for plaintiffs. Indeed, Whitley and  
7 Schwartz are not even preparing documents for filing by plaintiffs. The court will rely  
8 upon and enforce the representation that Whitley and Schwartz may not appear at trial.  
9 It follows, as plaintiffs correctly point out, that Schwartz and Whitley can therefor testify  
10 at deposition regarding anything save privileged communications. The court relies on  
11 this representation and will require that Schwartz and Whitley appear for deposition  
12 upon proper notice from defendants.

13 The first argument overlooks the fact that all of the confidential information which  
14 Schwartz and Whitley may see which is of concern to defendants is subject to a  
15 protective order which expressly limits the use of confidential information to the case at  
16 bar. Use of confidential information in another proceeding would violate the protective  
17 order.<sup>6</sup> Thus, assuming defendants have standing to make the motion to disqualify,  
18 their first and primary argument lacks merit.

19 **IV. CONCLUSION**

20 For the reasons above, the motion at docket 278 is DENIED.

21 DATED this 3rd day of September 2014.

22  
23 /s/ JOHN W. SEDWICK  
24 SENIOR UNITED STATES DISTRICT JUDGE

25 \_\_\_\_\_  
26 <sup>5</sup>Doc. 278 at 3.

27 <sup>6</sup>The order at docket 97 adopted the interim protective order at docket 82 as the final  
28 protective order. Paragraph 10 of docket 82 limits use to this case only. See *also* Exhibit A to  
docket 82, which is the acknowledgment Schwartz and Whitley are obligated to sign.