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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PETER HOLM,)
)
Plaintiff,)
)
v.)
)
CITY OF BARSTOW, a)
municipal corporation;)
CALEB L. GIBSON,)
individually and as)
Chief of Police for the)
Barstow Police)
Department; RUDY)
ALCANTARA, individually)
and as a Lieutenant for)
the Barstow Police)
Department; KEITH LIBBY,)
individually and as a)
Sergeant for the Barstow)
Police Department; and)
DOES 1 through 100,)
)
Defendants.)

Case No. EDCV 08-420-VAP
(JCx)
**[Motion filed on August 21,
2008]**

**ORDER GRANTING DEFENDANT
HOLM'S MOTION TO DISQUALIFY
COUNSEL STEVEN BROCK AND THE
LAW FIRM LACKIE, DAMMEIER &
MCGILL APC**

Defendant Libby's Motion to Disqualify Counsel Steven Brock and the law firm Lackie, Dammeier & McGille APC came before the Court for hearing on September 15, 2008. The parties chose not to advance arguments at the hearing, and submitted on the Court's tentative ruling to

1 grant the Motion. After considering all papers filed in
2 support of, and in opposition to, the Motion, the Court
3 GRANTS the Motion.

4 **I. BACKGROUND**

5 On February 28, 2008, Plaintiff Peter Holm filed his
6 Complaint ("Compl.") in the California Superior Court for
7 the County of San Bernardino, naming as Defendants the
8 City of Barstow and three individual defendants,
9 including Keith Libby ("Libby"), both individually and as
10 the Sergeant for the Barstow Police Department.

11 Plaintiff alleged the following claims: (1)
12 "whistleblower retaliation," Cal. Lab. Code § 1102.5; (2)
13 "whistleblower retaliation," Cal. Gov. Code § 53298; (3)
14 wrongful termination in violation of public policy; (4)
15 civil harassment; and (5) violation of 42 U.S.C. § 1983.
16 Defendants removed the case to the U.S. District Court on
17 March 28, 2008 on the basis of federal question
18 jurisdiction, 28 U.S.C. § 1331.

19
20 On August 21, 2008, Libby filed a motion to
21 disqualify counsel Steven Brock and the law firm of
22 Lackie, Dammeier & McGill APC ("Mot."), the declaration
23 of Keith D. Libby ("Libby Decl."), and the Declaration of
24 G. Arthur Meneses ("Meneses Decl."). Plaintiff filed his
25 Opposition ("Opp'n") on August 29, 2008 and attached the
26 Declarations of Steven J. Brock ("Brock Decl.") and
27 Dieter Dammeier ("Dammeier Decl."). Libby filed his
28

1 reply on September 9, 2008, as well as the Declaration of
2 G. Arthur Meneses ("Meneses Reply Decl.") and objections
3 to the Dammeier and Brock Declarations.

4

5 **II. Libby's Evidentiary Objections**

6 Libby filed several evidentiary objections to the
7 Brock and Dammeier Declarations.

8

9 **A. Objections to Brock Declaration**

10 In his first objection, Libby objects to lines 1-4,
11 26-28 of ¶ 19 of Brock's declaration, regarding the facts
12 underlying Libby's 2003 case, on the grounds of: (1)
13 "lack of foundation, including failure to demonstrate
14 personal knowledge;" (2) "speculative;" (3) "conclusory;"
15 and, (4) "irrelevant and immaterial." The Court
16 overrules this objection.

17

18 In his second objection, Libby objects to lines 8-17
19 of ¶ 28 of Brock's declaration, which elaborate on
20 Lackie's legal field of specialization, on the grounds
21 of: (1) "argumentative;" (2) "conclusory;" (3) "improper
22 legal conclusion;" and (4) "lack of foundation, including
23 failure to demonstrate personal knowledge." The Court
24 sustains this objection.

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1 In his third objection, Libby objects to lines 18-26
2 of ¶ 29 of Brock's declaration, which recount Lackie's
3 legal experience, on the grounds of: (1) "argumentative;"
4 (2) "conclusory;" (3) "improper legal conclusion;" and
5 (4) "lack of foundation, including failure to demonstrate
6 personal knowledge." The Court sustains this objection.
7

8 In his fourth objection, Libby objects to lines 1-4,
9 27-28 of ¶ 30 of Brock's declaration, which states the
10 prejudice to Plaintiff if Lackie is disqualified, on the
11 grounds of: (1) "argumentative;" (2) "conclusory;" (3)
12 "improper legal conclusion;" and (4) "lack of foundation,
13 including failure to demonstrate personal knowledge."
14 The Court sustains this objection.
15

16 In his fifth objection, Libby objects to line 5 of ¶
17 31 of Brock's declaration, which states that Libby is not
18 a current client of Lackie's, on the grounds of: (1)
19 "argumentative;" (2) "improper legal conclusion;" (3)
20 "lack of foundation, including failure to demonstrate
21 personal knowledge." The Court overrules this objection.
22

23 In his sixth objection, Libby objects to lines 14-18
24 of ¶ 33 of Brock's declaration, which states that Lackie
25 does not represent Libby on any matter through the Legal
26 Defense Fund, on the grounds of: (1) "improper legal
27 conclusion;" (2) "argumentative;" (3) "lack of
28

1 foundation, including failure to demonstrate personal
2 knowledge." The Court overrules this objection.

3
4 **B. Objections to Dammeier Declaration**

5 In his first objection, Libby objects to lines 19-21
6 of ¶ 6 of Dammeier's declaration, which state Dammeier
7 did not possess confidential information regarding
8 Libby's 2003 case, on the grounds of: (1) "irrelevant and
9 immaterial;" (2) "lack of foundation, including failure
10 to demonstrate personal knowledge;" and, (3) "improper
11 legal conclusion." The Court overrules this objection.

12
13 In his second objection, Libby objects to lines 22-24
14 of ¶ 7 of Dammeier's declaration, which state that he had
15 spoken with Libby in the past, on the grounds of: (1)
16 "irrelevant;" and (2) "lack of foundation, including
17 failure to demonstrate personal knowledge...." The Court
18 overrules this objection.

19
20 In his third objection, Libby objects to lines 25-27
21 of ¶ 8 of Dammeier's declaration, which state Mr. Brock
22 did not have contact with Libby's former counsel at
23 Lackie, on the grounds of: (1) "lack of foundation,
24 including failure to demonstrate personal knowledge;" (2)
25 "improper legal conclusion;" (3) "speculative;" and, (4)
26 "argumentative." The Court overrules this objection.

27 ///

1 In his fourth objection, Libby objects to lines 1-6
2 of ¶ 9 of Dammeier's declaration, which state that
3 Dammeier is unaware of the facts or legal issues
4 regarding Libby, on the grounds of: (1) "irrelevant;" (2)
5 "lack of foundation, including failure to demonstrate
6 personal knowledge...;" (3) "argumentative;" and, (4)
7 "improper legal conclusion." The Court overrules this
8 objection.

9

10 In his fifth objection, Libby objects to line 9 of ¶
11 11 of Dammeier's declaration, which states that Libby is
12 not a current client of Lackie's, on the grounds of: (1)
13 "argumentative;" (2) "improper legal conclusion;" and (3)
14 "lack of foundation, including failure to demonstrate
15 personal knowledge." The Court overrules this objection.

16

17 In his sixth objection, Libby objects to lines 18-22
18 of ¶ 13 of Dammeier's declaration, which states that
19 Lackie does not represent Libby on any matter through the
20 Legal Defense Fund, on the grounds of: (1) "improper
21 legal conclusion;" (2) "argumentative;" (3) "lack of
22 foundation, including failure to demonstrate personal
23 knowledge." The Court sustains this objection.

24

25 In his seventh objection, Libby objects to lines 5-13
26 of ¶ 15 of Dammeier's declaration, which elaborates on
27 Lackie's legal field of specialization, on the grounds

28

1 of: (1) "argumentative;" (2) "conclusory;" (3) "improper
2 legal conclusion;" and (4) "lack of foundation, including
3 failure to demonstrate personal knowledge." The Court
4 sustains this objection.

5
6 In his eighth objection, Libby objects to lines 14-19
7 of ¶ 16 of Dammeier's declaration, which states the
8 prejudice to Plaintiff if Lackie is disqualified, on the
9 grounds of: (1) "argumentative;" (2) "conclusory;" (3)
10 "improper legal conclusion;" and (4) "lack of foundation,
11 including failure to demonstrate personal knowledge."
12 The Court sustains this objection.

13 14 **III. DISCUSSION**

15 The Central District of California has adopted the
16 Rules of Professional Conduct of the State Bar of
17 California, and the decisions construing them, as the
18 governing standards of professional conduct. See L.R.
19 83-3.1.2.

20 21 **A. California Rule of Professional Conduct 3-310(C)**

22 Under Rule of Professional Conduct 3-310(C), "[a]
23 member shall not, without the informed written consent of
24 each [current] client: ... (2) [a]ccept or continue
25 representation of more than one client in a matter in
26 which the interests of the clients actually conflict...."
27 Even if the simultaneous representations are unrelated,
28

1 disqualification may be required. See Flatt v. Superior
2 Court, 9 Cal.4th 275, 284 (1994); Fremont Indem. Co. v.
3 Fremont Gen. Corp., 143 Cal. App. 4th 50, 64 (2006);
4 Truck Ins. Exchg. v. Fireman's Fund Ins. Co., 6 Cal. App.
5 4th 1050, 1060 (1992).

6
7 The parties dispute whether Libby is a current client
8 of Lackie, Dammeier & McGill APC ("Lackie"). Libby
9 claims he is presently a client of the firm because, as a
10 Barstow police officer, he pays dues to the Barstow
11 Police Officer's Association, which uses the dues paid to
12 obtain legal representation for its members through the
13 Legal Defense Fund of the Police Officer's Research
14 Association of California, and Lackie is a panel law firm
15 that routinely provides services to members of the
16 Association. (Mot. at 7, 8; see also Libby Decl. at ¶ ¶
17 2, 9.) Libby is not currently using the firm's legal
18 services but he "continues to be entitled to
19 representation by Lackie through the Legal Defense Fund."
20 (Mot. at 8.) Lackie claimS that Libby is not a client at
21 the present time and that the firm "does not have a
22 current attorney-client relationship, a retainer, or any
23 other obligation to represent Libby." (Opp'n at 13.)

24
25 When there is conflicting evidence about whether an
26 attorney-client relationship exists, the Court must
27 evaluate the evidence of the factual basis for the
28

1 determination. See Chapman v. Superior Court, 130 Cal.
2 App. 4th 261, 272 (2005). Evaluating the evidence in the
3 record here, the Court finds Libby's belief that he is
4 presently a client of Lackie's an unreasonable one. As a
5 dues-paying member of the Barstow Police Officer's
6 Association, Libby has not sought legal advice and
7 secured that advice from Lackie. See Gulf Ins. Co. v.
8 Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone,
9 79 Cal. App. 4th 114, 126 (2000). Relying only on his
10 continued payment of dues to the Barstow Police Officer's
11 Association, Libby has not presented enough evidence to
12 demonstrate that he has a continuing attorney-client
13 relationship with Lackie. Thus, the Court finds this is
14 not a basis upon which Lackie should be disqualified.

15

16 **B. California Rule of Professional Conduct 3-310(E)**

17 Under Rule of Professional Conduct 3-310(E), "[a]
18 member shall not, without the informed written consent of
19 the client or former client,¹ accept employment adverse
20 to the client or former client where, by reason of the
21 representation of the client or former client, the member
22 has obtained confidential information material to the
23 employment."

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27 ¹ It is undisputed that Libby did not consent in
28 writing or otherwise to Lackie's representation of Holm
in the present action. (Mot. at 5; Libby Decl. ¶ 11.)

1 In California, "[a] former client may seek to
2 disqualify a former attorney from representing an adverse
3 party by showing the former attorney actually possesses
4 confidential information adverse to the former client.
5 However, it is well settled actual possession of
6 confidential information need not be proved in order to
7 disqualify the former attorney. It is enough to show a
8 'substantial relationship' between the former and current
9 representation. If the former client can establish the
10 existence of a substantial relationship between
11 representations, the courts will conclusively presume the
12 attorney possesses confidential information adverse to
13 the former client." H. F. Ahmanson & Co. v. Salomon
14 Brothers, Inc., 229 Cal. App. 3d 1445, 1452 (1991); see
15 also Flatt v. Superior Court, 9 Cal. 4th 275, 283 (1994)
16 ("Where the requisite substantial relationship . . . can
17 be demonstrated, access to confidential information . . .
18 is *presumed* and disqualification . . . is mandatory.").
19 Disqualification on this basis "extends vicariously to
20 the entire firm." Flatt, 9 Cal. 4th at 283-84.

21

22 **1. Substantial Relationship Test**

23 The "substantial relationship" test focuses on the
24 "similarities between the two factual situations, the
25 legal questions posed, and the nature and extent of the
26 attorney's involvement with the cases." H.F. Ahmanson &
27 Co., 229 Cal. App. 3d at 1455 (quoting Silver Chrysler

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1 Plymouth, Inc. v. Chrysler Motor Corp., 518 F.2d 751, 760
2 (2d Cir. 1975) (Adams, J., concurring)); see also
3 Morrison Knudsen Corp. v. Hancock, Rothert & Bunshoft,
4 LLP, 69 Cal. App. 4th 223, 234 (1999). "If the former
5 client can establish the existence of a substantial
6 relationship between representations, the court will
7 conclusively presume the attorney possesses confidential
8 information adverse to the former client." H.F. Ahmanson
9 & Co., 229 Cal. App. 3d at 1452; see also In re County of
10 Los Angeles, 223 F.3d 990, 994 (9th Cir. 2000) ("If there
11 is a reasonable probability that confidences were
12 disclosed [in an earlier representation] which would be
13 used against the client in [a] later, adverse
14 representation, a substantial relationship between the
15 two cases is presumed." (quoting Trone v. Smith, 621 F.2d
16 994, 998 (9th Cir. 1980).); Styles v. Mumbert, 164 Cal.
17 App. 4th 1163, 1167 (2008); Fox Searchlight Pictures,
18 Inv. v. Paladino, 89 Cal. App. 4th 294, 300 (2001).

19

20 Libby argues that the 2003 case in which he was
21 represented by Lackie is substantially related to the
22 current action, where Lackie represents Plaintiff Holm,
23 who is suing Libby. According to Libby, "[t]he matters
24 are substantially related because they both involve the
25 alleged application of the City of Barstow's policies,
26 practices and procedures in responding to Barstow Police
27 Officers' exercise of free speech regarding alleged

28

1 wrongful conduct by senior management in the Barstow
2 Police Department." (Reply at 1.) Lackie argues the two
3 cases are unrelated and do not arise from the same
4 events. (Opp'n at 12.)

5
6 It is undisputed that Plaintiff Holm's case does not
7 arise from the identical facts or legal issues as did
8 Libby's former case. The cases, however, do share
9 similar facts and legal claims. (See Def.'s Ex. A;
10 Compl.)

11
12 **a) Factual Similarities**

13 In 2003, Libby retained Lackie to represent him in
14 his case against the Barstow Police Department and the
15 City of Barstow. (Libby Decl. at ¶ 7; Def.'s Ex. A.)
16 Libby claimed that the defendants had "wrongfully
17 retaliated against [him] and took action to suppress
18 [his] civil rights as a result of statements [he] made on
19 behalf of the Barstow Police Officers Association."
20 (Libby Decl. at ¶ 8.) Specifically, Libby alleged that
21 he had "distributed a confidential memorandum to members
22 of the Barstow Police Officers Association" that
23 expressed concerns about the "temporary appointment of
24 rank and file officers [who had not received adequate
25 training] to the position of supervisor in the absence of
26 an on duty corporal or sergeant." (Def.'s Ex. A ¶ 12.)
27 For this act of "inciting insubordination," Libby was
28

1 disciplined and allegedly suffered "various acts of
2 intimidation, reprisal, retaliation, suppression and
3 extreme exercise;" that discipline was the basis for
4 Libby's claims. (Id. at ¶¶ 13, 22)

5
6 The facts of Holm's claims differ somewhat. Holm
7 alleges he wrote a report after a traffic accident
8 involving the Chief of Police's son-in-law concluding the
9 son-in-law was at-fault for the accident. (Compl. at ¶¶
10 11-13.) Allegedly, Holm's supervisors, including Libby,
11 repeatedly instructed Holm to change his report to
12 reflect that the Chief's son-in-law was not at fault.
13 (Id. at ¶¶ 15-26.) Holm allegedly stated his objections
14 to changing the report but the changes were made anyway.
15 (Id. at ¶ 21.) Holm filed an internal complaint with the
16 City of Barstow regarding the incident and allegedly has
17 suffered negative consequences, including harassment, as
18 a result. (Id. at ¶¶ 27-39.)

19
20 The facts of Libby's claims and those of Holm are
21 similar. Both allegedly arise out of a police officer's
22 alleged exercise of his First Amendment right to free
23 speech. Furthermore, both arise from alleged wrongful
24 discipline and retaliation imposed as a result of the
25 officer's exercise of his free speech rights. Finally,
26 and most critically, both Holm's case and Libby's case
27 involve the same law enforcement agency, the City of
28

1 Barstow's police department. "The facts of cases are
2 never entirely alike" but these facts are sufficiently
3 similar to satisfy the fact prong of the substantially
4 related test. See Morrison Knudsen Corp., 69 Cal. App.
5 4th at 235 (substantial relationship found between two
6 successive cases about soil issues: (1) former case
7 concerned with "placement of a clay pad in an unstable
8 location" and (2) present case about "whether corrosive
9 sand could be used above metal culverts that pass under a
10 roadway.").

11

12 **b) Legal Similarities**

13 Libby's 2003 case sought damages and injunctive
14 relief for injury suffered "as a result of the wrongful
15 retaliation for lawful exercise of individual civil
16 rights and liberties, free expression and association,
17 labor organizational, social, and political activities."
18 (Def's Ex. A.) In this case, Holm seeks money damages
19 and injunctive relief for the alleged retaliation,
20 harassment, and wrongful termination he suffered because
21 he exercised his free speech rights. (See Compl.) These
22 claims are nearly identical, and both assert the alleged
23 wrongdoer is the same entity. Thus, the Court finds the
24 legal claims satisfy the similarity prong of the
25 substantial relationship test.

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c) Attorney Involvement

Lackie argues that its former representation of Libby resulted in no confidential information being conveyed to the firm and that no information adverse to Libby was communicated either. (Opp'n at 9.) Alternatively, the firm argues that, if confidential information was imparted to the attorneys representing Libby in 2003, it was not conveyed to Plaintiff Holm's current lawyer, Steven J. Brock ("Brock"), because of the firm's screening methods. (Id. at 13; Brock Decl. at ¶¶ 2, 14, 16, 19, 20, 24-27.)

In Rosenfeld Construction Co. v. Superior Court, 235 Cal. App. 3d 566, 573 (1991), the California Court of Appeal held that "knowledge obtained by one member of a firm of lawyers is imputed to all the other members." Moreover, the California Supreme Court has indicated the presumption of shared confidences in this context is not rebuttable. See Flatt, 9 Cal. 4th at 283-84 ("[W]here an attorney is disqualified because he formerly represented and therefore possesses confidential information regarding the adverse party in the current litigation, vicarious disqualification of the entire firm is compelled as a matter of law.") (quoting Henriksen v. Great Am. Sav. & Loan, 11 Cal. App. 4th 109, 117

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1 (1992)).² Accordingly, knowledge and confidences
2 obtained by the associates who represented Libby in his
3 former case are imputed to the entire Lackie firm.

4
5 Given the factual and legal similarity between
6 Libby's 2003 case and Holm's present case, a presumption
7 arises that the law firm "possesses confidential
8 information about [Libby] which would be compromised if
9 [the firm] were allowed to take an adverse position after
10 the representation ended." Styles v. Mumbert, 164 Cal.
11 App. 4th 1163, 1167 (2008); see also Fox Searchlight
12 Pictures, Inc. v. Paladino, 89 Cal. App. 4th 294, 300
13 (2001).

14
15 That Brock did not work at Lackie until after the
16 departure of the attorneys who had previously represented
17 Libby is immaterial. The law firm had an imputed
18 conflict by nature of its 2003 representation of Libby;

19 _____
20 ² The cases Lackie cites do not support a contrary
21 conclusion. (See Opp'n at 13-14 (citing cases).)

22 In San Gabriel Basin Water Quality Authority v.
23 Aerojet-General Corp., the court reasoned that "[i]n
24 cases where the disqualification request is not based on
25 an attorney-client relationship the better
26 approach is to examine the circumstances of each case."
105 F. Supp. 2d 1095, 1103 (C.D. Cal. 2000) (citations
and quotation marks omitted). That case, however,
confirmed that "[v]icarious disqualification of a firm is
required [] where an attorney is disqualified because he
represented the adverse party." See id.

27 Similarly, the court in Adams v. Aerojet-General
28 Corp., did not question this rule. See 86 Cal. App. 4th
1324, 1333 (2001).

1 that imputed conflict did not dissolve once the lawyers
2 who personally had performed the work left the firm.³
3 Since Lackie's 2003 representation of Libby and its
4 current representation of Holm are substantially related
5 factually and legally, the Court presumes the firm was
6 privy to confidential information⁴ and must be
7 disqualified; by nature of Brock joining Lackie, he too
8 is disqualified as a member of the firm, from
9 representing Holm in the present action.

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15 ³ On this point, the Court finds persuasive ABA Model
16 Rule 1.10(b), which states: "When a lawyer has terminated
17 an association within a firm, the firm is not prohibited
18 from thereafter representing a person with interests
19 materially adverse to those of a client represented by
20 the formerly associated lawyer and not currently
21 represented by the firm, unless: (1) the matter is the
22 same or substantially related to that in which the
23 formerly associated lawyer represented the client; and
24 (2) any lawyer remaining in the firm has information
25 protected by [confidentiality] rules that is material to
26 the matter."

21 ⁴ The parties contest whether Lackie in fact received
22 confidential information. While the firm insists that it
23 did not, Libby declares that he did impart such
24 information. Libby states in his declaration: "I
25 consulted with attorneys Michael Morguess and Saku Ethir
26 of th[e] [Lackie] firm. In those consultations I
27 provided these attorneys with confidential information
28 concerning my employment and in particular my knowledge,
understanding and involvement in the development and
implementation of Barstow Police Department policies,
practices, and procedures." (Libby Decl. at ¶ 3.)
Because the Court finds a substantial relationship
between the two representations, it need not resolve this
question.

1 **C. Canon 9 of American Bar Association's Model Code of**
2 **Professional Responsibility**

3 Canon 9 of the American Bar Association's Model Code
4 of Professional Responsibility states: "a lawyer should
5 avoid even the appearance of professional impropriety."
6 As Libby correctly points out, the Ninth Circuit has held
7 that the violation of Canon 9 is an independent basis for
8 disqualification. See In re Coordinated Pretrial
9 Proceedings in Petroleum Products Antitrust Litigation,
10 658 F.2d 1355, 1360 (1981) ("If Canon 9 were not
11 separately enforceable, it would be stripped of its
12 meaning and significance."). Canon 9 violations, alone,
13 will be grounds for disqualification when "[t]he
14 impropriety [] affect[s] the public's view of the
15 judicial system or the integrity of the court." Id.

16
17 The Court finds Lackie's representation of Holm in
18 this case gives a strong and clear "appearance of
19 professional impropriety." Lackie represented Libby five
20 years ago and now has turned around and sued him on a
21 substantially related matter. Lackie has violated Canon
22 9 and this presents further evidence of grounds for
23 disqualifying Lackie from representing Holm in this case.

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1 **D. Prejudice to Plaintiff Holm**

2 The Court is aware that disqualification of Lackie
3 will prejudice Plaintiff Holm to some degree. Balancing
4 the equities, however, the Court must grant Libby's
5 motion to disqualify Lackie.

6
7 Lackie argues that Libby delayed unnecessarily in
8 bringing this Motion. (See Opp'n at 5-7.) The Court
9 will deny disqualification motions brought for purely
10 strategic purposes to delay the litigation, harass the
11 opposing party, or pressure a more favorable settlement.
12 See H.F. Ahmanson & Co., 229 Cal. App. 3d at 1454; River
13 West, Inc. v. Nickel, 188 Cal. App. 3d 1297, 1308-09
14 (1987) (undue delay in bringing disqualification motion
15 may foreclose former's client's claim of conflict of
16 interest). In evaluating the effect, if any, of a
17 party's delay in bringing a motion to disqualify, a court
18 considers when the client obtained knowledge of the
19 conflict. See River West, Inc., 188 Cal. App. 3d at
20 1309, 1311.

21
22 The Court finds Lackie's argument unpersuasive. Holm
23 filed this action on February 29, 2008 and Libby's
24 counsel, Mr. Meneses ("Meneses"), first raised the
25 subject of a possible conflict of interest with
26 Plaintiff's counsel on May 21, 2008. (See Reply at 2.)
27 According to Meneses' declaration, he first learned of
28

1 the potential conflict of interest from his client on May
2 20, 2008. (See Meneses Reply Decl. at ¶ 7.) From May
3 until July, counsel met and conferred regarding the
4 conflict of interest.⁵ Meneses filed his motion on
5 August 12, 2008.

6
7 Meneses did not unduly delay before bringing the
8 disqualification motion. In fact, after continuous
9 communications with Lackie regarding the issue, Libby's
10 counsel appears to have put off filing his motion out of
11 professional courtesy. (Id. at ¶ 13 ("I told Mr. Brock
12 in my email that because of his vacation plans, I would
13 attempt to accommodate him by not setting the hearing on
14 the motion to disqualify at a time where he would be
15 unavailable to either prepare an opposition or attend the
16 hearing.")) Thus, Lackie's argument that Libby delayed
17 filing his disqualification motion as some sort of
18 gamesmanship is disingenuous.

19
20 In light of the substantial relationship between the
21 two representations; the fact that Mr. Meneses did not
22 delay bringing his motion to disqualify; the fact that
23 Lackie did not obtain a waiver despite Rule 3-310(E); and
24 the harm that will result to Libby if Lackie is not

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26
27 ⁵ Apparently, there was a forty day delay between
28 Meneses's request for a copy of Libby's 2003 complaint
and his receipt of said complaint, due to the file being
misplaced. (See Reply at 3; Meneses Reply Decl. at ¶ 9.)

1 disqualified, the Court finds disqualification is
2 appropriate here.

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IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Libby's Motion to Disqualify Lackie. Lackie is directed to cease all representation of Plaintiff and to turn over all files relating to the prosecution of Plaintiff's action.

IT IS SO ORDERED.

Dated: September 16, 2008



VIRGINIA A. PHILLIPS
United States District Judge