

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DOUG COCHRAN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:12-cv-765-DRH-DGW
)	
JAMES MASSEY,)	
)	
Defendant.)	

ORDER

WILKERSON, Magistrate Judge:

Now pending before the Court is the Motion to Disqualify Plaintiff’s Attorney filed by Defendant, James Massey, on November 26, 2012 (Doc. 14). For the reasons set forth below, the Motion is **DENIED**.

The Complaint (Doc. 1) alleges that Defendant sent to Plaintiff an unsolicited facsimile transmission in violation of Telephone Consumer Protection Act, 47 U.S.C. § 227. Plaintiff seeks statutory damages, treble damages, and attorney fees and costs. Defendant claims that Plaintiff’s attorney, John D. Alleman, cannot serve as Plaintiff’s attorney because he is listed as a potential witness by Plaintiff and because he will “be required to testify on the basis of his personal knowledge of the events giving rise to this action” Defendant offers no specific information as to what he expects attorney Alleman to testify to as to the underlying claim in this suit, the facsimile transmission.

In any event, Illinois’ Rules of Professional Conduct of 2010 provide that a “lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless . . . the testimony relates to the nature and value of legal services rendered in the case.” *Id.* Rule 3.7. Attorney Alleman has presented an affidavit indicating that the only personal knowledge he has as

to the underlying facts of this case are through his representation of Plaintiff and that he will only testify as to attorney fees and costs in bringing this suit. In light of attorney Alleman's affidavit and the nature of this suit, Defendant's motion is without merit and must be **DENIED**.

DATED: December 13, 2012



DONALD G. WILKERSON
United States Magistrate Judge