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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MONTANA
 MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,
 CITY OF HAMILTON, LEE
 ENTERPRISES, INC., and BOONE
 KARLBERG P.C.

Defendants.

Cause No. CV-11-064-M-DWM

**RESPONSE OF THE CITY AND
 LIBRARY DEFENDANTS AND
 BOONE KARLBERG P.C. TO
 PLAINTIFF'S NOTICE OF FRAUD
 AND MOTION TO APPOINT
 LEAD DEFENSE ATTORNEY**

INTRODUCTION

Plaintiff's notice of fraud (Doc. 29), filed May 13, 2011, ends with the Plaintiff asking the Court to order Defendant Bitterroot Public Library to retain counsel separate from Boone Karlberg P.C. [Plaintiff's Notice (Doc. 29), 5/13/11, p. 5.] Likewise, on May 17, 2011, Plaintiff filed his motion to appoint lead defense counsel. It seeks to have the Court "order consolidation of defense counsel" and appoint Jeffrey B. Smith as lead counsel of the Defendants in this action. [Plaintiff's Motion (Doc. 36), 5/17/11, p. 3.] For the reasons stated in the response (Doc. 44) of Defendant Lee Enterprises, Inc., to Plaintiff's Motion to Appoint Lead Counsel, the request in Plaintiff's notice of fraud and his motion to appoint lead defense counsel should both be denied. Also, as a practical matter, the notice and motion represent a motion to disqualify Boone Karlberg P.C. However, any request to disqualify Boone Karlberg P.C. is not supported by the law or the facts.

DISCUSSION

The regulation of attorney conduct in federal courts is within the province of the Court. *Paul E. Iacono Structural Engineer, Inc. v. Humphrey*, 722 F.2d 435, 439 (9th Cir. 1983); *Trust Corp. of Montana v. Piper Aircraft Corp.*, 701 F.2d 85, 87 (9th Cir. 1983). Such control falls within the inherent powers of the Court.

In re Snyder, 472 U.S. 634, 645 n. 6 (1985). Here, it would be an abuse of discretion to disqualify Boone Karlberg P.C. or to grant the requests in Plaintiff's notice of fraud or motion to appoint lead defense counsel.

The disqualification of counsel is a drastic measure which a court should hesitate to impose unless absolutely necessary. *See U.S. for Use and Benefit of Lord Elec. Co., Inc. v. Titan Pacific Const. Co.*, 637 F. Supp. 1556, 1562 (W.D. Wash. 1986). Here, Plaintiff has not demonstrated the application of any particular Montana Rule of Professional Conduct or American Bar Association Model Rule of Professional Conduct. L.R. 83.13, Rules of Procedure, United States District Court, District of Montana.

According to Plaintiff, public fraud is being committed by Defendant Bitterroot Public Library by accepting ineligible funds as a municipality in this cause of action, and Boone Karlberg P.C. is accepting those funds in representing this Defendant. [Second Amended Complaint, p. 1.] In other words, as understood, Plaintiff maintains Defendant Bitterroot Public Library and its employees are ineligible for defense or indemnity by the Montana Municipal Interlocal Authority ("MMIA") since the Library is not a City. [Plaintiff's Notice, 5/13/11, p. 2 (Doc. 29).] However, Plaintiff has not supported his contention with any facts.

In this and other actions filed by Plaintiff, the allegations in Plaintiff's complaint were reviewed by MMIA, and MMIA made a determination as to whether the Library was entitled to a defense. Having made that determination, MMIA retained Boone Karlberg P.C. to provide a legal defense. Further, Boone Karlberg P.C., Bitterroot Public Library and its employees have no role in determining whether a defense or indemnity is extended. [Affidavit of William L. Crowley, ¶¶ 2-3 (Exh. A hereto); *see, e.g., In re Rules of Professional Conduct and Insurer Imposed Billing Rules and Procedures*, 2 P.3d 806 ¶ 38 (Mont. 2000) (“We hold that under the Rules of Professional Conduct, the insured is the sole client of defense counsel.”).] In any event, Plaintiff has no standing to raise his “public fraud” theory as a cognizable claim, and there is no wrongful act or omission by the Bitterroot Public Library, its employees or Boone Karlberg P.C. in connection with a determination of whether coverage exists for a particular claim. [City and Library Defendants’ Brief in Opposition to Motion to File Second Amended Complaint, 5/9/11, pp. 4-9 (Doc. 24).]

Concerning Plaintiff's motion to appoint lead defense counsel, the City and Library Defendants disagree with Plaintiff that the use of a library is a liberty interest based on the circumstances of this case. *Smith v. Sumner*, 994 F.2d 1401, 1405-06 (9th Cir. 1983); MCA § 22-1-311. In any event, whether or not Plaintiff is

actually asserting a liberty interest or a property interest does not mitigate in favor of disqualifying defense counsel.

Along these lines, the fact that Plaintiff is facing two defense law firms does not violate Plaintiff's equal protection rights. Plaintiff chose to sue multiple Defendants. In such lawsuits, it is not unusual to have multiple defense attorneys. Stated differently, Plaintiff is not being subjected to different treatment from others similarly situated. *Nelson v. City of Selma*, 881 F.2d 836, 838-39 (9th Cir. 1989). Likewise, contrary to Plaintiff's argument, Boone Karlberg P.C. has not violated 42 U.S.C. § 1983. [See Boone Karlberg Motion to Defense Brief (Doc. 12), and Boone Karlberg Motion to Dismiss Reply Brief (Doc. 41).]

Next, there is no basis for Plaintiff to argue defense counsel has been vexatious or overzealous in the defense of this case. Indeed, compared to the numerous motions and requests filed by Plaintiff, the Defendants have only filed two motions at this point. On the other hand, the Montana Supreme Court has warned Plaintiff, "We caution Michael from using this matter as a means of harassing Roddy. Further pleadings filed before this Court in this matter without good cause may be sanctioned by the imposition of costs, attorney's fees and/or other monetary or non-monetary penalties under M.R.Civ.P. 19(5)." [See Doc. 12-1, p. 12.] In this connection, as he has in other proceedings, Plaintiff

raised his “public fraud” allegations in Cause No. DA-11-0017 in the Montana Supreme Court. [See Doc. 12-1, p. 10.]

Still, in the event the conduct of defense counsel becomes unacceptable, the Court has the authority under Rule 16, Fed. R. Civ. P., the Court’s Local Rules of Procedure and the inherent power of the Court to undertake appropriate measures. However, Plaintiff has not demonstrated such conduct has occurred, and Plaintiff has not explained why separate representation should be nullified by the Court.

As it relates to Defendant Bitterroot Public Library and Boone Karlberg P.C., Plaintiff’s notice of fraud and motion to appoint lead defense counsel are improperly asserted as a tactical maneuver. *See, e.g., Murray v. Metropolitan Life Ins. Co.*, 583 F.3d 173, 178 (2nd Cir. 2009). It is similar to Plaintiff’s argument to the Montana Supreme Court. [See Doc. 12-1, p. 10.] It is also similar to Plaintiff’s motion in *Spreadbury v. Bell and the City of Hamilton*, Cause No. DV-10-639, in the Ravalli County District Court, Twenty-First Judicial District, to have Mr. Crowley and Ms. Jones charged with the crime of criminal contempt for filing a motion to compel and a motion *in limine*. In support of his motion, Plaintiff asserted his “public fraud” theory and suggested Mr. Crowley and Ms. Jones were the subject of a criminal investigation by the FBI. [Leave File Information, 5/9/01, pp. 2-3, Cause No. DV-10-639.]

Plaintiff's notice of fraud and motion to appoint lead defense counsel in this Court are simply further attempts to threaten and intimidate those people who oppose him in some way. [See Plaintiff's Notice, 5/9/11, p. 4 ("Agent at Federal Bureau of Investigation (FBI) Helena, Montana office asked Plaintiff to inform honorable judge of fraud . . .").] The Court should not accommodate or encourage Plaintiff by granting his requests.

CONCLUSION

The request in Plaintiff's notice of fraud (Doc. 29), page 5, to order Defendant Bitterroot Public Library to retain counsel separate from Boone Karlberg P.C. and the motion to appoint lead defense counsel should be denied. In effect, they are motions to disqualify Boone Karlberg P.C. They are not supported by the facts or the law.

DATED this 23rd day of May, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for Defendants
Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 1,254 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 23rd day of May, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot
Public Library, City of Hamilton and
Boone Karlberg P.C.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 23rd day of May, 2011, a copy of the foregoing document was served on the following persons by the following means:

- 1 CM/ECF
- Hand Delivery
- 2 Mail
- Overnight Delivery Service
- Fax
- E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
 700 South Fourth Street
 Hamilton, MT 59840

/s/ William L. Crowley
William L. Crowley
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