COURT OF APPEALS
DECISION
DATED AND FILED

September 9, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP2555 **Cir. Ct. No. 2007CV15848**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

GUSTAVO MONTALVO,

PLAINTIFF-APPELLANT,

V.

WILLIAM M. JUDGE, U.S. TITLE & CLOSING SERVICES, LLC, CHARISSA J. CARRIER, CARMEN RODRIGUEZ A/K/A CARMEN MONTALVO, JOSE C. NANEZ, ROLANDO NANEZ, NANEZ ENTERPRISES, LLC AND ROBBINS & LLOYD MORTGAGE CORPORATION,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Reversed and cause remanded for further proceedings consistent with this opinion.*

Before Fine, Kessler and Brennan, JJ.

¶1 Kessler, J. This is an interlocutory appeal of a trial court order granting a motion filed by defendants William M. Judge and U.S. Title & Closing

Services, LLC (collectively, "the Defendants"),[1] to disqualify plaintiff Gustavo Montalvo's counsel, William R. Steinmetz, from this action. Montalvo argues we should reverse the order on three bases: (1) the doctrines of waiver and/or laches bar the Defendants from disqualifying plaintiff's counsel; (2) SCR 20:1.9 (effective July 1, 2007) does not bar Steinmetz from representing the plaintiff; and (3) the trial court erred in disqualifying Steinmetz without holding an evidentiary hearing on disputed facts. We reverse and remand for reinstatement of Steinmetz as Montalvo's counsel because we conclude that waiver and laches bar the Defendants' motion to disqualify Steinmetz, which was not filed for over five months after the case began. Because we decide this case based on application of the doctrines of waiver and laches, we do not consider Montalvo's other arguments. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground").

BACKGROUND

¶2 Montalvo filed this civil action concerning the sale of a home he previously owned with his now-ex-wife, Carmen Rodriguez. Montalvo alleged that Rodriguez conspired with the following people in order to defraud Montalvo: the alleged purchasers of the home (Jose C. Nanez, Rolando Nanez and Nanez Enterprises); U.S. Title; U.S. Title's President, Judge, who is also an attorney; and Charissa J. Carrier, a U.S. Title employee.

[1] Only defendants William M. Judge and U.S. Title & Closing Services, LLC, filed a brief in response to Montalvo's interlocutory appeal. Because only their actions are relevant to this appeal, we do not discuss the other defendants.

¶3 This action was filed in December 2007 on behalf of Montalvo by Steinmetz, an attorney at Shellow & Shellow, S.C. The Defendants, represented by Bass & Moglowsky, S.C., answered the complaint on January 3, 2008. Discovery ensued.

¶4 In February 2008, the Defendants changed counsel. A scheduling order issued on April 9, 2008, required that pleadings be amended by May 12, 2008; set deadlines for the naming of lay and expert witnesses (July 11, 2008, for the plaintiff and September 12, 2008, for the Defendants); required discovery to be completed by October 31, 2008; and required dispositive pretrial motions to be filed by October 31, 2008.

¶5 Numerous depositions were taken, including those of Judge on May 27, 2008; Jose and Rolando Nanez on June 20, 2008; and Carmen Rodriguez on July 24, 2008.

¶6 On June 26, 2008, the Defendants moved for summary judgment.[2] On that same day, they also moved to disqualify Steinmetz. In the memorandum of law that they subsequently filed on July 21, 2008, the Defendants asserted that Steinmetz should be disqualified because until December 2007, he worked for the law firm of Reinhart Boerner Van Deuren S.C. ("Reinhart"), a firm that represented U.S. Title, and because Judge had communicated with Steinmetz concerning issues related to the sale of the Montalvo/Rodriguez property while Steinmetz was still an attorney at Reinhart.

[2] Although the Defendants filed a memorandum of law in support of their motion for summary judgment on July 21, 2008, and the plaintiff filed his response on August 7, 2008, the summary judgment motion was deferred pending resolution of the disqualification motion and this appeal.

¶7 Numerous affidavits were filed in support of and in opposition to the motion for disqualification, including affidavits from Steinmetz and Judge. Steinmetz's affidavit stated the following. In early 2007, he agreed to represent Montalvo, on a *pro bono* basis, to challenge a divorce judgment that awarded the family home to Rodriguez. Steinmetz filed a motion to modify the divorce judgment, alleging that Montalvo had never been served with divorce papers, even though Rodriguez knew where Montalvo was living in New York. On March 30, 2007, the family court granted Montalvo's motion to modify the judgment, granting Montalvo one-half of the proceeds from the already completed sale of the home.

¶8 Next, Steinmetz obtained copies of recent transfers of the property. Two quit claim deeds were drafted by Judge and notarized by Carrier. Steinmetz could not locate Carrier but found Judge by looking up his contact information through the State Bar of Wisconsin. He sent Judge a letter on April 17, 2007, seeking information about the transactions.

¶9 When Steinmetz did not hear from Judge, he called Judge at his office, on April 27, 2007. At Judge's request, Steinmetz faxed him a copy of the letter that Steinmetz had previously sent to him. When Steinmetz again received no response, he called Judge on May 3, 2007. Judge told Steinmetz to come over to pick up some documents, which Steinmetz did. According to Steinmetz, he met with Judge for ten minutes, accepted two documents[3] and listened as Judge tried to convince Steinmetz not to pursue the investigation of the property's sale because

[3] One was a land contract between Rodriguez and Rolando Nanez and the other was a loan settlement statement from the December 2006 sale of the home to Jose Nanez.

there had been no equity in the home and the original divorce judgment had transferred the home to Rodriguez. Steinmetz did not ask any questions. Steinmetz also claims that Judge never mentioned that Reinhart provided representation to U.S. Title.

¶10 Steinmetz met with Montalvo's daughter later that day to show her the documents.[4] Steinmetz said she and Montalvo were upset that Steinmetz had not secured more documents and immediately terminated the legal representation.

¶11 Steinmetz's affidavit indicates that in November 2007, he received an email from someone at Reinhart asking whether he had ever represented Montalvo, who had recently filed a complaint against Judge with the Office of Lawyer Regulation (OLR).[5] According to Steinmetz, that was the first time he learned that U.S. Title was a client of Reinhart. Steinmetz's affidavit also indicated that he had never obtained client confidences of U.S. Title while he worked as an attorney at Reinhart.

¶12 Steinmetz left Reinhart in December 2007. When Montalvo sought representation from Steinmetz again, Steinmetz agreed to the representation based on his examination of SCR 20:1.9 (effective July 1, 2007). In his argument to the trial court opposing the motion to disqualify him, Steinmetz asserted that, consistent with SCR 20:1.9, Reinhart's prior representation of U.S. Title did not

[4] Montalvo does not speak English. Thus, throughout the representation, his daughter translated for him and worked with Steinmetz.

[5] Based on Steinmetz's representation of Montalvo, Reinhart declined to represent Judge in the disciplinary action.

bar Steinmetz, now working at a different firm, from representing Montalvo in a suit against U.S. Title and Judge.

¶13 Steinmetz also argued that the disqualification motion should be denied based on application of the doctrines of waiver and laches. He asserted that Montalvo would be prejudiced because Steinmetz had already completed substantial work preparing the case for trial, including participating in scheduling proceedings before the trial court and providing requisite disclosures. Steinmetz contended that Montalvo would be prejudiced if Steinmetz were disqualified because Steinmetz had agreed to represent him on a contingency-fee basis and the representation is "difficult and demanding" given that Montalvo speaks only Spanish and Steinmetz, who does not speak Spanish, must communicate through Montalvo's daughter, Maria. Finally, Steinmetz argued that the Defendants could have brought the disqualification motion at any time because Judge "had all the knowledge necessary the day he was served with [the] complaint to move to disqualify" Steinmetz. Steinmetz explained:

> [T]hey waited and filed the motion to disqualify simultaneously with the summary judgment motion, and I think that's a waiver and I think that's [] laches and I think it results … [in] severe prejudice to my client, and for that reason alone the motion should be denied.

¶14 In support of his motion to disqualify Steinmetz, Judge submitted testimony from his deposition and an affidavit. According to Judge, Reinhart represented U.S. Title from 2003 through 2007. Judge said he spoke with an attorney at Reinhart (J. Bushnell Nielsen) on March 12, 2007,[6] concerning a

[6] Subsequently, after Nielsen filed an affidavit indicating that he spoke with Judge on April 17, 2007, Judge filed a supplemental affidavit stating that the advice was received "sometime between March 12 and April 17, 2007."

problem he was having with an employee, Carrier, but did not discuss the Montalvo/Rodriguez property.[7] Judge's affidavit said that discussion included "alleged claims of dishonesty, attendance and misappropriation of funds" and that he received legal advice concerning "employment misconduct and later termination of employment." Judge received the letter from Steinmetz requesting to review U.S. Title's files concerning the Montalvo/Rodriguez property. Judge claims he was aware Steinmetz worked at Reinhart but never sought legal advice from him directly.

¶15 Judge's affidavit stated that he contacted Steinmetz regarding the letter and made copies of the U.S. Title files as requested, providing to Steinmetz the "Unrecorded Land Contract for the Subject Property" and "a Settlement Statement for the transfer of the Subject Property from Nanez to Rodriguez." Judge's affidavit contradicts Steinmetz's assertion that Steinmetz was unaware Reinhart represented U.S. Title. Judge's affidavit states:

> It was my understanding that Mr. Steinmetz was aware of the fact that U.S. Title was a client of Reinhart and I brought that fact to his attention when Mr. Steinmetz appeared at U.S. Title's offices. I was under the impression that I was merely providing documents to assist in a dispute between Gustalvo Montalvo and his wife/former wife…. I was not aware of any potential claims that could be asserted against Carrier, U.S. Title, or myself.

¶16 In a supplemental affidavit, Judge said that he met with Nielsen on November 9, 2007, regarding Montalvo's OLR complaint. Judge said he provided Nielsen with detailed information concerning "the [home] refinances by Ms. Rodriguez, the sale of the Subject Property and the role of Ms. Carrier."

[7] Carrier is the same individual that Montalvo named in the complaint in this case.

¶17 The Defendants also argued that their motion to disqualify should not be denied based on waiver or laches. Counsel for the Defendants responded to the assertion that the Defendants unnecessarily delayed moving to disqualify Steinmetz, stating:

> We were substituted in in February of [2008]…. [I]mmediately Mr. Steinmetz served discovery, and we discussed for some periods of weeks getting that information together according to the local rules in a manner that worked for both of us. We provided that within a month.
>
> In the course of going through those documents and discussing with my client, we learned that there was this contact. Mr. Judge's deposition was taken….
>
> So when Mr. Judge's deposition was taken, I questioned him at the end of the deposition under oath. I wanted to make a record of what transpired in March of '07 to form the basis for a motion if his testimony reflected what we had talked about.

Counsel also noted in his affidavit and at the motion hearing that he had contacted Steinmetz in early June to let him know he planned to file a motion to disqualify him. Counsel said he delayed filing the motion to accommodate Steinmetz's vacation plans.

¶18 At the hearing on the Defendants' motion to disqualify Steinmetz, the trial court did not take testimony or make findings of fact resolving the inconsistencies in the affidavits. The trial court expressed concern about the prior contacts between Judge and Steinmetz and said: "[T]hat's the problem and … that's the risk, that I can't take a chance on." The trial court concluded that "under the totality of the record in this case, I have no choice but to remove" Steinmetz from the case. The court explained that Steinmetz had a conflict because he was a

member of the Reinhart firm that was representing U.S. Title and the "knowledge of the firm is imputed to you as a member of that firm."

¶19 The trial court also briefly addressed Montalvo's argument that the Defendants' motion was barred by laches, implicitly finding that the time needed for the Defendants' counsel to gather information, get transcripts of Judge's deposition and make a determination "that there was a basis for the motion in question" was a reasonable delay.

¶20 The trial court granted the motion disqualifying Steinmetz and gave Montalvo sixty days to find new counsel. Montalvo (still represented by Steinmetz) filed a petition for leave to appeal and for temporary relief from the court's order. We granted interlocutory review and stayed the trial court's disqualification order pending further order of this court. This appeal follows.

DISCUSSION

¶21 Montalvo argues we should reverse the order on three bases: (1) the doctrines of waiver and/or laches bar the Defendants from disqualifying plaintiff's counsel; (2) SCR 20:1.9 (effective July 1, 2007) does not bar Steinmetz from representing the plaintiff; and (3) the trial court erred in disqualifying Steinmetz without holding an evidentiary hearing on disputed facts. We conclude the first argument is dispositive and, therefore, we do not address the other two. *See* ***Blalock***, 150 Wis. 2d at 703.

¶22 Our conclusion that the Defendants' claim is barred by the doctrines of waiver and laches is based on our decision in ***Batchelor v. Batchelor***, 213 Wis. 2d 251, 570 N.W.2d 568 (Ct. App. 1997), where this court applied the doctrines of waiver and laches in an attorney disqualification case. *See* ***id.*** at 256-

57. ***Batchelor***, which presented a case of first impression in Wisconsin, discussed the application of those doctrines in an attorney disqualification case:

> Waiver of an attorney disqualification claim has not been addressed in Wisconsin case law. However, in other jurisdictions it has been widely held that in attorney disqualification matters the failure to raise a timely objection may result in waiver. The rationale behind this rule was explained succinctly in ***Central Milk Producers Coop. v. Sentry Food Stores, Inc.***, 573 F.2d 988, 992 (8th Cir. 1978), when the court held that "[t]his court will not allow a litigant to delay filing a motion to disqualify in order to use the motion as a later tool to deprive his opponent of counsel of his choice after substantial preparation of a case has been completed."
>
> Additionally, the related but distinct equitable doctrine of laches has been held to apply to an attorney disqualification claim because it is "an equitable, not a legal, matter." In applying the doctrine of laches, our supreme court has held that for laches to arise there must be unreasonable delay, knowledge of the course of events and acquiescence therein, and prejudice to the party asserting the defense. *See* ***Paterson v. Paterson***, 73 Wis. 2d 150, 153, 242 N.W.2d 907 (1976).

Batchelor, 213 Wis. 2d at 256-57 (one citation and footnote omitted). ***Batchelor*** concluded that to resolve the attorney disqualification question, it was appropriate to "apply each of the three ***Paterson*** elements, the second of which is consistent with the requirements of waiver, to th[e] case." ***Batchelor***, 213 Wis. 2d at 257.

¶23 ***Batchelor*** was a divorce case. Three months after the divorce action began, the wife objected to having a particular law firm represent her husband. *See* ***id.*** at 253-54. The basis for her objection was the fact that before the divorce case began, she had a fifteen-minute telephone conversation with an attorney at that law firm concerning her relationship with her husband. *See* ***id.*** at 254-55. The trial court granted the motion, and we granted the husband's petition for leave to appeal the disqualification order. ***Id.*** at 256.

¶24 Our analysis began with the first ***Paterson*** prong, which "relates to whether the delay was unreasonable." ***Batchelor***, 213 Wis. 2d at 257. We noted that in order to determine if the wife's delay in moving to disqualify was unreasonable, we had to "look to the facts." ***Id.*** Because "the principal facts and reasonable inferences drawn therefrom [were] undisputed," we concluded that we were not bound by the trial court's findings of fact. *See* ***id.*** Based on those undisputed facts, we concluded that the delay was unreasonable where the wife: (1) had twice appeared at divorce hearings where the firm represented the husband and had not raised the disqualification; (2) was continuously aware that the firm was representing her husband from the time she was served with divorce pleadings, which contained the firm's name and address, through the time she raised her objection; (3) brought a contempt motion against the firm and responded directly to the firm in a contempt motion brought against her; and (4) did not object to the firm's representation of her husband for several months after the divorce action was commenced. ***Id.*** at 258.

¶25 Next, we considered "the second prong of the ***Paterson*** laches test—knowledge of the course of events and acquiescence therein." ***Batchelor***, 213 Wis. 2d at 258. We noted that a "'slight delay, accompanied by circumstances of negligence, apparent acquiescence, or change of defendant's position, has been held sufficient' to sustain a defense of laches." ***Id.*** at 258-59 (citation omitted). Applying that prong, we concluded that the wife "had notice and knowledge" that the firm was representing her husband and "that her failure to raise the issue at the outset of the proceedings leads to the inference that she had acquiesced to the firm's representation" of her husband. ***Id.*** at 259. Thus, we concluded, the wife's "timely knowledge of the firm's representation and her conduct in failing to take prompt action also support waiver as a matter of law." ***Id.***

¶26 Finally, we considered ***Paterson***'s third prong: "prejudice to the other party." ***Batchelor***, 213 Wis. 2d at 259. We discussed the prejudice related to time and money:

> We are satisfied upon this record that substantial preparation was done on [the husband's behalf by the firm] prior to [the wife's] belated disqualification motion. There were multiple court appearances, motions filed, motions responded to, witnesses subpoenaed, documents drafted (including the divorce pleadings) and consultations with [the wife] and her counsel…. We conclude that [the wife's] failure to file a timely objection to [the firm's representation of the husband] is prejudicial to him in terms of time and money.

Id.

¶27 We summarized our application of the doctrines of waiver and laches:

> In sum, we conclude that [the wife] waived her right to raise the conflict of interest issue because: (1) she had knowledge of [the husband's] divorce counsel [when the action was filed] in May, (2) her objection in August was untimely, (3) the delay in objecting was unreasonable, (4) her failure to object earlier resulted in an inferred acquiescence to [the firm's] involvement, and (5) [the husband] would be prejudiced by the disqualification of the … firm. Because [the wife's] waiver of her right is supported by both the application of the legal requirements for a finding of waiver and under the doctrine of laches, we reverse and remand for reinstatement of [the husband's law firm].

Id. at 259-60.

¶28 The Defendants urge us not to be guided by ***Batchelor***. They attempt to limit the application of the ***Batchelor*** analysis to cases where the court also concludes that the attorney need not be disqualified under the substantial relationship test, which has been established as the test for analyzing conflict of interest claims on their merits. *See* ***Berg v. Marine Trust Co.***, 141 Wis. 2d 878,

884-85, 416 N.W.2d 643 (Ct. App. 1987). They note that in ***Batchelor***, we not only decided the case based on waiver and laches, but we also considered the substantive question of whether the disqualification was required under the substantial relationship test. *See* ***id.***, 213 Wis. 2d at 260-63. We disagree with the Defendants' analysis. In ***Batchelor***, we explicitly recognized that our holding concerning waiver and laches "dispose[d] of the appellate issue," but we elected to also consider a second basis for denying the motion to disqualify counsel. *See* ***id.*** at 260 ("[B]ecause the trial court considered the disqualification on substantive grounds, we will also address the issue of whether the Rules of Professional Conduct require that [the firm] be disqualified."). ***Batchelor*** did not require consideration of both the waiver/laches issues and the substantive issue, and we decline to address both here.

¶29 The Defendants also argue that ***State v. Medina***, 2006 WI App 76, 292 Wis. 2d 453, 713 N.W.2d 172, mandates that a court consider whether there was an actual conflict of interest before deciding if a party waived his or her right to move to disqualify opposing counsel. We disagree. In ***Medina***, a criminal case, we considered a motion to disqualify a prosecutor brought both prior to trial and in a postconviction motion. *See* ***id.***, ¶14. We concluded that a trial court could, "in the proper exercise of its discretion, deny a motion to disqualify a prosecutor under the 'substantial relationship' standard on the ground that the motion is untimely." ***Id.***, ¶2. We recognized that "[i]n the context of a motion to disqualify a prosecutor under the substantial relationship standard, a non-exclusive list of factors to consider in deciding if the motion is timely brought." ***Id.***, ¶24. That list included the following factors:

> [W]hen the defendant knew who the prosecutor was and that the prosecutor had previously represented the defendant; whether and when the prosecutor realized he or

> she had previously represented the defendant; applicable time periods established in scheduling orders; at what stage in the proceeding the motion is brought; reasons why the motion was not brought sooner; prejudice to the State because of the timing of the motion if the motion is granted; and prejudice to the defendant if the motion is denied.

Id. (citing ***Batchelor***, 213 Wis. 2d at 256-60).

¶30 In analyzing the potential prejudice to the defendant if the disqualification motion were to be denied, we recognized that "the district attorney could not remember anything from the prior representation and Medina presented little detail about the prior case." ***Id.***, ¶25. We then stated that "the likelihood of an actual conflict of interest is an appropriate factor to take into account in deciding whether to deny as untimely a disqualification motion against a prosecutor based on the substantial relationship standard." ***Id.***

¶31 We are unconvinced that ***Medina***'s discussion of the factors to consider when analyzing motions to disqualify a prosecutor in a criminal case modified the test ***Batchelor*** established for civil cases. Indeed, the court of appeals lacks authority to overrule, modify or withdraw language from a prior published decision of the court of appeals. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). We decline to consider "the likelihood of an actual conflict of interest" between Steinmetz and the Defendants in deciding whether, based on application of the doctrines of waiver and laches, the Defendants waived their right to seek to disqualify Steinmetz.

¶32 Having rejected the Defendants' interpretations of ***Batchelor*** and ***Medina***, we turn to application of the ***Batchelor*** analysis. We begin with the first ***Paterson*** prong: whether the delay in moving to disqualify was reasonable. *See* ***Batchelor***, 213 Wis. 2d at 257. It is undisputed that the complaint was filed on

December 18, 2007, and that the Defendants secured counsel by December 28, 2007. However, it was not until early June 2008 that the Defendants' new counsel contacted Steinmetz to indicate that the Defendants intended to move to disqualify Steinmetz.[8] Counsel for the Defendants asserted that "the facts substantiating such a motion were revealed after preparing Mr. Judge for his deposition and obtaining testimony from Mr. Judge at his deposition that allowed for a good faith basis to bring this motion." We are unconvinced that such a delay was reasonable.

¶33 Judge was aware as of at least May 2007 that Steinmetz was representing Montalvo. Judge met briefly with Steinmetz in May 2007 and gave him two documents related to the Montalvo/Rodriguez home. These same two documents were attached to the complaint filed against the Defendants, and Steinmetz was the attorney of record filing the lawsuit. Judge has submitted no evidence that he had any doubt that Steinmetz was representing Montalvo. Judge—himself a lawyer—did not raise this issue with the trial court through his first counsel. Rather, he participated in discovery and, represented by his second counsel, gathered enough information to file a substantive summary judgment motion at the same time as the disqualification motion. Judge had all the information available to him to raise the issue of disqualification much earlier; the fact he may not have immediately shared that information with his second attorney does not justify a delay in bringing a disqualification motion. We conclude the first prong of the ***Paterson*** test has been satisfied.

[8] As noted, counsel for the Defendants has asserted that he delayed bringing the disqualification motion until the end of June 2008 in order to accommodate Steinmetz's vacation plans. We will accept that assertion as true for purposes of this opinion; it does not change our analysis.

¶34 The second ***Paterson*** prong considers "knowledge of the course of events and acquiescence therein." ***Batchelor***, 213 Wis. 2d at 258. As noted above, the Defendants "had notice and knowledge" that Steinmetz was representing Montalvo as of December 2007. *See* ***id.*** at 259. As in ***Batchelor***, we conclude that the Defendants' "failure to raise the issue at the outset of the proceedings leads to the inference that [they] had acquiesced" to Steinmetz's representation of Montalvo. *See* ***id.*** The Defendants' knowledge of Steinmetz's representation of Montalvo and their failure to take prompt action "support waiver as a matter of law." *See* ***id.***

¶35 Finally, we consider the third ***Paterson*** prong: "prejudice to the other party." *See* ***Batchelor***, 213 Wis. 2d at 259. There are a number of ways that Montalvo could be prejudiced if Steinmetz is removed. First, Steinmetz argues that Montalvo will have difficulty finding a new attorney to take the case. Because that assertion was contested by the Defendants and there was no resolution of the facts, we do not consider that factor to be the basis for our conclusion that Montalvo would suffer prejudice if denied his counsel of choice. Rather, we rely on the undisputed expenditure of time, money and resources over the first five months of the case as sufficient prejudice to deny the motion to disqualify Steinmetz. As in ***Batchelor***, there were multiple court appearances (a motion hearing and two scheduling conferences, all by April 2008), motions filed, motions responded to, witnesses subpoenaed and documents drafted. *See* ***id.*** There were also at least four depositions taken. As a result, there are already hundreds of pages of documents in the record. The Defendants' failure to file a timely objection to Steinmetz's representation is prejudicial to Montalvo "in terms of time and money." *See* ***id.***

¶36 For the foregoing reasons, applying the three-prong analysis from ***Batchelor***, we conclude that the Defendants are barred from seeking Steinmetz's disqualification, based on application of the doctrines of waiver and laches. Accordingly, we reverse the order disqualifying Steinmetz and remand for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded for further proceedings consistent with this opinion.

Not recommended for publication in the official reports.