

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUDITH WISDOM,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
PHILADELPHIA HOUSING	:	
AUTHORITY, et al.,	:	
Defendants.	:	No. 02-CV-8369

MEMORANDUM AND ORDER

J. M. KELLY, J.

FEBRUARY 12, 2003

Presently before the Court is a Motion to Disqualify filed by Defendants Philadelphia Housing Authority, Carl Greene, and Jacqueline McDowell (collectively, the "PHA"). PHA petitions this Court to disqualify Michael Pileggi, Esquire ("Pileggi"), a former PHA attorney, from representing Plaintiff Judith Wisdom ("Wisdom") in her 42 U.S.C. § 1983 ("Section 1983") claim, which alleges that PHA violated her due process rights by denying her an administrative hearing after PHA terminated her Section 8 housing benefits. Beginning in 1991, Pileggi was employed with PHA in an in-house counsel position. He continued to serve as PHA's counsel for nearly 12 years until his employment was terminated on April 10, 2002. On September 26, 2002, Pileggi filed suit in federal court against PHA for alleged violations of federal anti-discrimination statutes and state law in connection with his termination.¹

¹ Pileggi's own claim against PHA, currently pending before Judge J. Curtis Joyner, challenges PHA's assertion that Pileggi

On November 7, 2002, Pileggi, on behalf of his client, Wisdom, filed the above-captioned case against PHA. PHA alleges that since Pileggi maintained a supervisory role while serving as PHA's Associate General Counsel and, for roughly a year, acting as PHA's Directing Counsel, as well as advising and representing PHA for almost 12 years in, inter alia, landlord-tenant disputes, this Court should disqualify him from representing Wisdom pursuant to Pennsylvania Rule of Professional Conduct 1.9.² See Pa. R. Prof'l Conduct 1.9. PHA asserts that Pileggi may have acquired confidential information during his representation of PHA that is relevant to the Wisdom litigation and detrimental to PHA if revealed during the course of the pending litigation. Upon review of the briefs submitted by both parties and after considering the arguments presented to the Court at a hearing held on February 10, 2003,³ this Court concludes that Pileggi's

was terminated because he did not live in Philadelphia as mandated by PHA's personnel policy. See Pileggi v. PHA, Civ. A. No. 02-7537 (Joyner, J.).

² Pursuant to Local Rule of Civil Procedure 83.6, the United States District Court for the Eastern District of Pennsylvania has adopted the Pennsylvania Rules of Professional Conduct. See E.D. Pa. R. Civ. P. 83.6, Rule IV(B); see also Henry v. Delaware River Joint Toll Bridge Commission, Civ. A. No. 00-6415, 2001 U.S. Dist. LEXIS 13462, at *3 (E.D. Pa. Aug. 24, 2001); Rickards v. Certainteed Corp., Civ. A. No. 94-1756, 1995 U.S. Dist. LEXIS 3339, at *7 (E.D. Pa. Mar. 10, 1995).

³ PHA has filed motions seeking to disqualify Pileggi as counsel in two other landlord-tenant civil rights actions and an employment "whistleblower" claim brought against PHA. See Cavicchia v. PHA, Civ. A. No. 03-116 (Schiller, J.); McQueen v.

continued representation of Wisdom does not present a violation of Rule 1.9.⁴

Rule 1.9 provides:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after a full disclosure of the circumstances and consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

Pa. R. Prof'l Conduct 1.9. This Rule seeks to prevent the possible disclosure of confidential information obtained through representation of past clients by prohibiting an attorney from accepting subsequent representation where there "may be the appearance of a possible violation of confidences even though this may not be true in fact." INA Underwriters Insurance Co. v. Nalibotsky, 594 F. Supp. 1199, 1205 (E.D. Pa. 1984) (citations

PHA, Civ. A. No. 02-8941 (Yohn, J.); Blaylock v. PHA, Civ. A. No. 02-8251 (O'Neill, J.). In the interest of judicial economy, PHA's motions were consolidated and a hearing before Judges O'Neill, Kelly, Yohn and Schiller took place on February 10, 2003.

⁴ As a preliminary matter, we note that Pennsylvania Rule of Professional Conduct 1.11, which addresses conflicts of interest that arise when a former government attorney chooses to pursue private employment, would have applied to the instant case. See Pa. R. Prof'l Conduct 1.11. However, because PHA pursues its claim only under Rule 1.9, we review Pileggi's alleged violation pursuant to this Rule.

omitted); see also Rickards, 1995 U.S. Dist. LEXIS 3339, at *14. With this policy in mind, courts in the Eastern District of Pennsylvania employ a three-prong test in analyzing possible violations under Rule 1.9(a): (1) whether the prior and present matters are substantially related; (2) whether the clients have materially adverse interests; and (3) whether the clients consent after consultation to prevent disqualification. See Imbesi v. Imbesi, Civ. A. No. 01-1259, 2001 U.S. Dist. LEXIS 17689, at *6 (E.D. Pa. Oct. 30, 2001); Rickards, 1995 U.S. Dist. LEXIS 3339, at *9; Reading Anthracite Co. v. Lehigh Coal & Navigation Co., Civ. A. No. 91-1898, 1991 U.S. Dist. LEXIS 10765, at *4 (E.D. Pa. Aug. 1, 1991). The movant bears the burden of demonstrating that each aspect of Rule 1.9 weighs in its favor. See Foley v. IBEW Local Union 98, Civ. A. No. 98-906, 1998 U.S. Dist. LEXIS 16742, at *10 (E.D. Pa. Oct. 16, 1998); INA Underwriters, 594 F. Supp. at 1206.

We conclude that PHA has not satisfied its burden of demonstrating that Pileggi may have acquired relevant confidential information during his tenure at PHA sufficient to preclude him from representing Wisdom in her Section 1983 claim against PHA. It is clear that Pileggi represented PHA in various matters for nearly 12 years and was likely privy to confidential information and discussions addressing PHA's strategy in dealing with cases involving landlord-tenant matters. However, it is

unclear what confidential information was acquired that would be relevant to the Wisdom litigation. Although Pileggi supervised other attorneys in matters involving landlord-tenant litigation and Section 8 housing issues, PHA does not allege that Pileggi was personally involved with or supervised any attorney on the Wisdom case while employed at PHA. Moreover, while Pileggi may have knowledge of PHA's general approach and strategy as to landlord-tenant litigation matters, as PHA alleges, this information would likely be irrelevant to the instant case, as it seemingly involves only factual issues about when Wisdom petitioned PHA for a hearing. Since PHA cannot point to any discernable knowledge Pileggi may have acquired through his representation of PHA that would work to PHA's detriment in the Wisdom matter, we conclude that Pileggi's continued representation of Wisdom does not present a violation of Rule 1.9(a).

However, we must also take precautionary measures to alert Pileggi to this Court's concerns about possible violations of Rule 1.9(b), which forbids an attorney from using "information related to the representation to the disadvantage of the former client." See Pa. R. Prof'l Conduct 1.9(b). Although Pileggi is not disqualified from representing Wisdom, we must ensure that no confidential information regarding PHA would be jeopardized by Pileggi's continued representation. In accordance with Rule

1.9(b), Pileggi is prohibited from eliciting testimony about PHA's confidential policies or practices or otherwise revealing or relying on confidential information he was privy to by virtue of his past representation of PHA. Additionally, Pileggi is prohibited from disclosing that he was previously employed by PHA. Pileggi shall seek permission from this Court if he seeks to introduce any evidence that questionably comes within this prohibition.

Based on the foregoing analysis, it is **ORDERED** that PHA's Motion to Disqualify (Doc. No. 10) is **DENIED** and Pileggi **SHALL** comply with the directives set forth above in the course of the instant representation.

BY THE COURT:

JAMES MCGIRR KELLY, J.