

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

**ERNESTINE TAYLOR,  
Plaintiff,**

**v.**

**COUNTY OF BERKS, et al.,  
Defendants.**

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**CIVIL ACTION**

**No. 03-0002**

**MEMORANDUM AND ORDER**

**SCHILLER, J.**

**May , 2003**

Ernestine Taylor, represented by counsel, brought suit in this Court on January 2, 2003, alleging violations of Ms. Taylor’s rights under the United States Constitution and 42 U.S.C. § 1983 in connection with the entry into Ms. Taylor’s home by several law enforcement officers. The named Defendants in this case include: the District Attorney’s Narcotics Enforcement Team (“DANET”) of Berks County, Pennsylvania; Detectives of DANET; the City of Reading, Pennsylvania; Detectives of the Police Force of the City of Reading; William Heim, the Police Chief of the City of Reading; Detectives of the City of Reading; the Commonwealth of Pennsylvania Bureau of Narcotics Investigation and Drug Control; and Detectives of the Commonwealth of Pennsylvania Bureau of Narcotics Investigation and Drug Control.

From the outset of this case, Plaintiff’s counsel exhibited deficiencies in professional conduct that gave rise to concern on the part of the Court. On March 4, 2003, and March 24, 2003, respectively, Defendants County of Berks and the DANET Team and Defendants William Heim and the City of Reading filed motions to dismiss. On April 1, 2003, already fourteen days past the deadline under Local Rule 7.1 for filing a response to the March 4, 2003 motion, Plaintiff filed a Motion for Enlargement of Time to respond to both motions to dismiss. On April 11, 2003, still

without a response from Plaintiff, the Court convened a scheduling conference. There, Plaintiff's counsel displayed uncertainty as to whether she had filed any such response or whether she had confused the act of filing a response with the act of filing her motion for enlargement of time. As the Court verbally instructed Plaintiff's counsel during the April 11, 2003 conference, and as it subsequently set forth in an order issued on the same date, Plaintiff was required to file her response to both motions to dismiss by April 18, 2003. That date, a Friday, came and went with no filing or other communication from Plaintiff's counsel.

The Court's concern with Counsel's competence soon broadened to include concerns with her veracity. On Monday, April 21, 2003, the Court received a telephone voicemail from Plaintiff's counsel indicating that she had timely filed her response on April 18, 2003, a representation she later repeated during a May 13, 2003 hearing in this matter. Yet, as of April 23, 2003, neither the Court, nor the Office of the Clerk of Court, nor opposing counsel had received the document in question.

On April 24, 2003, Plaintiff's counsel sent by facsimile to the Court a copy of Plaintiff's response. Attached was a "Proof of Service," signed by Sophia C. Green, Legal Assistant, stating that on April 24, 2003, she served by mail a "second" copy of the response on opposing counsel and the Court. On April 25, 2003 the Plaintiff's response was filed for the first time with the Clerk of Court. Attached was Ms. Green's "Proof of Service," indicating that this was the "second" copy.

Troubled by the absence of any evidence that a first copy had ever been filed or sent, the Court issued an Order requiring Plaintiff's counsel to submit documentation demonstrating that a first copy of Plaintiff's response was filed and served prior to April 24, 2003. On April 29, 2003, Plaintiff filed a "Proof of Service," signed "Shannon K. Fells, Paralegal," stating that on April 18, 2003, Ms. Fells served by mail a copy of Plaintiff's response on opposing counsel and the Court.

Still, as of May 14, 2003, neither the Court, nor the Office of the Clerk of Court, nor counsel for Defendants have received the purported “first” copy of Plaintiff’s response.

Deeply concerned that Plaintiff’s counsel may have engaged in a breach of ethics, the Court convened a meeting on the record of Plaintiff’s counsel and Ms. Fells to further elucidate the facts surrounding the filing and service of Plaintiff’s response. There, Counsel reiterated that she had filed the response on the April 18, 2003, and had mailed copies, but was unable to provide any documentation to support that assertion or to offer any explanation as to why it had not been received by the Clerk of Court or why none of the three purported copies had been received by the Court and defense counsel. Plaintiff’s counsel explained that she had placed the responsibility for mailing copies of the response with Ms. Fells. Ms. Fells explained to the Court that she was Counsel’s daughter and had worked for her in the past, but was no longer regularly employed, and, on the relevant dates, was under a doctor’s order not to work due to medication. Ms. Fells stated that she was “pretty sure” that she had mailed the aforementioned copies on April 18, 2003.

## **II. DISCUSSION**

The power to disqualify an attorney from a particular action emanates from the “inherent powers of any federal court [over the] admission and discipline of attorneys practicing before it.” *In re Corn Derivatives Antitrust Litig.*, 748 F.2d 157, 160 (3d Cir.1984); *see also Fineman v. Armstrong World Indus., Inc.*, Civ. A. No. 84-3837, 1993 U.S. Dist. LEXIS 17390, 1993 WL 414752, at \*5 (D.N.J. July 30, 1993) (“Inherent in this Court’s power to manage the cases on its docket is the power to impose sanctions where an attorney’s misbehavior is prejudicial to an adversary . . . or threatens the orderly administration of justice . . .”); *Kleiner v. First Nat’l Bank of*

*Atlanta*, 751 F.2d 1193, 1209 (11th Cir. 1985) (“A trial judge possesses the inherent power to discipline counsel for misconduct, short of behavior giving rise to disbarment or criminal censure, without resort to the powers of civil or criminal contempt.”); *United States v. Miller*, 624 F.2d 1198, 1201 (3d Cir. 1980) (noting that “district court’s power to disqualify an attorney derives from its inherent authority to supervise the professional conduct of attorneys appearing before it”). Thus, while as a general matter courts “exist to resolve disputes, and not to discipline lawyers who come before them,” district courts have a “duty to supervise members of its bar.” *Papanicolaou v. Chase Manhattan Bank, N.A.*, 720 F.Supp. 1080, 1082-83 (S.D.N.Y.1989) (quoting *NCK Org. Ltd. v. Bregman*, 542 F.2d 128, 131 (2d Cir.1976)); see also *Kevlik v. Goldstein*, 724 F.2d 844, 847 (1st Cir.1984); *Meat Price Investigators Ass’n v. Spencer Foods, Inc.*, 572 F.2d 163, 165 (8th Cir.1978). The exercise of this inherent authority in determining whether an attorney should be disqualified is committed to the sound discretion of this Court. See *Miller*, 624 F.2d at 1201; *Fineman*, 1993 WL 414752 at \*5.

In the instant matter, the facts compel the conclusion that Plaintiff’s counsel engaged in misconduct at a level that warrants her disqualification as counsel for the Plaintiff. The Court generously tolerated Counsel’s failure to file her response in accordance with the Local Rules prior to April 18, 2003, and her extraordinary inability during the scheduling conference to recall whether she had, in fact, filed such a response. Thereafter, however, Plaintiff’s counsel was in violation of a Court Order to file her response and to serve copies thereof on defense counsel.

More importantly, Rule 3.3 of the Pennsylvania Rules of Professional Conduct and Rule 3.3 of the ABA Model Rules of Professional Conduct prohibit a lawyer from knowingly making false statements of material fact or law to the court. Here, Plaintiff’s counsel, on more than one occasion,

represented to the Court that she had filed a “first” copy of her response by April 18, 2003, and had mailed copies to defense counsel and the Court. Yet, as of May 14, 2003, the document has not reached any of these destinations. Thus, I can only conclude that Plaintiff’s counsel breached her duty of candor to the tribunal.

Moreover, Counsel displayed low regard for the standards of professional conduct when she asked her daughter, who had not been in her employ for some time, to perform, unsupervised, a paralegal’s functions under penalty of perjury.

Given the totality of the facts, I disqualify Plaintiff’s counsel and require her to find new counsel for Plaintiff. If she is unable to do so, the Court will endeavor to obtain counsel for Plaintiff. An appropriate Order follows.

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**No. 03-0002**

**ORDER**

**AND NOW**, this      day of May, 2003, following a meeting with counsel for Plaintiff on May 13, 2003, it is hereby **ORDERED** that:

1. Plaintiff's counsel is disqualified and shall be removed from the docket.
2. Plaintiff's counsel shall find suitable replacement counsel for Plaintiff and obtain Plaintiff's agreement to retain said counsel by May 20, 2003.
3. In the event that Plaintiff's counsel is unable to find replacement counsel by May 20, 2003, the Court will endeavor to obtain new counsel for Plaintiff.

**BY THE COURT:**

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**Berle M. Schiller, J.**