

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

ROBIN BLAYLOCK

CIVIL ACTION  
NO. 02-CV-8251

v.

PHILADELPHIA HOUSING  
AUTHORITY, et al.

O'Neill, J.

March , 2003

**MEMORANDUM**

Plaintiff Robin Blaylock has sued defendants Philadelphia Housing Authority (“PHA”), Carl Greene, and Jacqueline McDowell for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and the U.S. Housing Act, 42 U.S.C. § 1437 for failure to process and administer her tenancy rights to public housing. Presently before me is defendants’ motion to disqualify plaintiff’s counsel, Michael Pileggi, Esquire, a former PHA attorney from representing plaintiff.<sup>1</sup> For the reasons stated below I will deny defendants’ motion.

From 1991 to 2002, Pileggi was employed with PHA as in-house counsel working, *inter alia*, on landlord-tenant disputes. From 1998 on, he served in a supervisory capacity as an Associate General Counsel for PHA. In May of 2001, PHA promoted him to the position of

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<sup>1</sup> 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. Philadelphia Housing Auth., Civ. A. No. 03-116 (Schiller, J.); McQueen v. Philadelphia Housing Auth., Civ. A. No. 02-8941 (Yohn, J.); Wisdom v. Philadelphia Housing Auth., Civ. A. No. 02-8369 (J. M. Kelly, J.). In the interest of judicial economy, joint argument of PHA’s motions took place on February 10, 2003 before Judges Yohn, Schiller, O’Neill, and Kelly .

Directing Counsel, which greatly expanded his supervisory responsibilities. PHA terminated Pileggi on April 10, 2002. On September 26, 2002, Pileggi sued PHA in federal court, alleging wrongful termination in violation of federal anti-discrimination statutes and state law.<sup>2</sup>

In July of 1999, while employed at PHA as Associate General Counsel, Pileggi received a letter from Blaylock requesting an administrative grievance hearing because PHA was attempting to evict her from public housing. In an affidavit, Pileggi asserts that he does not remember reading the letter. However, according to standard practice at that time, Pileggi contends that he would have given the request to the Grievance Coordinator, who was responsible for scheduling hearings. After leaving PHA, Pileggi acquired Blaylock as a client. Pileggi filed a complaint against PHA on her behalf on October 31, 2002.

Now, defendants assert that because Pileggi served in a supervisory role at PHA during the early stages of Blaylock's dispute (and apparently had some contact with her claim), I should disqualify him from the present case pursuant to Pennsylvania Rule of Professional Conduct 1.9.<sup>3</sup>

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<sup>2</sup> Pileggi's claim against PHA is pending before Judge J. Curtis Joyner. See Pileggi v. PHA, Civ. A. No. 02-7537.

<sup>3</sup> Under 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 Wisdom v. Philadelphia Housing Auth., No. Civ. A 02-CV-8369, 2003 WL 303945, at 1 n.2 (E.D. Pa. Feb. 12, 2003); 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). Additionally, I concur with Judge Kelly's conclusion in Wisdom 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, is applicable to the instant case. See 2003 WL 303945, at 1 n.4.

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which

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 a 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.

Defendants contend that although Pileggi does not specifically recall any matters relating to Blaylock's dispute with PHA, he might have acquired confidential information substantially related to the present litigation during his employment at PHA. Defendants note that although the burden is on the moving party, they need not produce direct evidence that Pileggi is using confidential information in the current action that was acquired in course of his prior representation of PHA. See Richardson v. Hamilton Intern. Corp., 469 F.2d 1382, 1385 (3d Cir. 1972). Instead, defendants need only show that Pileggi might have acquired substantially related material. See id.

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that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

Pa. R. Prof'l Conduct 1.11. However, as Judge Kelly noted, because PHA pursues its claim only under Rule 1.9, I will review Pileggi's alleged violation pursuant to this Rule. Id.

("[W]e do not believe that [an attorney] should be permitted to place himself in a position where, even unconsciously, he will be tempted, or it appears to the public and his former clients that he might be tempted, in the interests of his new client, to take advantage of information derived from confidences placed in him by [his former client]"). In addition to the original letter from Blaylock to Pileggi, defendants specifically point to an affidavit by one of the attorneys that Pileggi supervised at PHA as evidence of the sort of information to which Pileggi had access:

4. During the period November 1998 to approximately May of 2001, all PHA landlord tenant matters were divided for handling amongst myself, Chotiner and Pileggi. In his supervisory capacity, Pileggi assigned cases for handling to both myself and Chotiner.

5. In recognition of Pileggi's supervisory capacity and his vast knowledge of both public housing landlord tenant law and PHA's general approach and strategy to landlord tenant litigation matters, on occasion I would consult with Pileggi about cases I was handling. Such consultation included: (i) discussing litigation strategy, (ii) soliciting Pileggi's opinion and advice with respect to the handling of particularly complex or sensitive matters, and (iii) providing Pileggi with case status and settlement information.

6. On occasion I would receive requests for information on various landlord tenant issues from PHA's executive and general management team. Often, these requests would involve inquires as to how PHA could best effectuate an eviction of a PHA resident or squatter or the termination of Section 8 benefits. On occasion, if I was unsure about an issue, I would consult with Pileggi and solicit his advice prior to providing a response.

7. With respect to squatters, it is my recollection that Pileggi and I discussed whether squatters would be afforded the opportunity to be heard at a grievance hearing.

(Aff. of Roger K Ciafre, Esq.)

Defendants have failed to produce any evidence that Pileggi might have acquired confidential information from his representation of PHA substantially related to the present litigation. Ciafre's affidavit contains no information specifically pertaining to Pileggi's involvement in the present dispute, or other matters substantially relating to Blaylock before leaving PHA. At most, the Ciafre's affidavit describes in general terms that Pileggi engaged in

landlord-tenant disputes similar to Blaylock's while at PHA. However, the accompanying commentary to the Rule of Professional Conduct makes clear that engaging in similar litigation does not violate Rule 1.9. :

The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client.

Pa. R. Prof'l Conduct 1.9, cmt. Although the letter from Blaylock to Pileggi demonstrates that he had at least nominal contact with the case, there is no indication from the letter that he was directly involved in her dispute with PHA. Moreover Ciafre's affidavit clearly shows that, given Pileggi's supervisory role, Pileggi would have been the natural recipient of an initial complaint such as Blaylock's but that he mostlikely delegated the specific investigation to lower-ranking attorneys on PHA's staff. In addition, as an officer of this Court, Pileggi has provided an affidavit disavowing any contact with Blaylock's case beyond the initial letter:

13. In July of 1999, Robin Blaylock sent me a letter requesting an administrative grievance hearing. I do not remember ever seeing or reading the letter. However, according to the standard or practice at that time, I would give the grievance request to the Grievance Coordinator for scheduling of a hearing. The Grievance Coordinator was responsible for scheduling hearings.

14. I did not represent PHA at the administrative grievance hearing. Another attorney in the Management Services group Roger Ciafre, Esquire represented the PHA at the administrative grievance hearing.

15. I do not ever remember discussing the matter with anyone at PHA or the overall squatter issue relating to Ms. Blaylock with any other PHA employee.

16. Other than an occasional squatter issue over my 11 year tenure at PHA, I do not remember litigating a squatter issue.

17. I never heard of Robin Blaylock nor talked to her or discussed any aspects of her circumstances with anyone before representing Plaintiff in this matter.

(Aff. Michael Pileggi, Esq.) I conclude that Pileggi did not represent PHA in Blaylock's dispute

or a substantially related matter.

