

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

In re: : CIVIL ACTION
JOSEPH B. MARRONE, :
Appellant :
: :
: :
: :
: No. 02-9364

MEMORANDUM AND ORDER

McLaughlin, J.

October ____, 2003

Mr. Joseph Marrone ("Marrone") has appealed the Bankruptcy Court Order of November 19, 2002, which disqualified Marrone's counsel, David A. Scholl ("Scholl"), from representing him pursuant to the Pennsylvania Rules of Professional Conduct. The Court will affirm the Bankruptcy Court Order.

The appellant filed a voluntary bankruptcy petition under Chapter 13 on September 6, 2002. Scholl, who previously served as a bankruptcy judge in this district, entered his appearance as the appellant's attorney on October 15, 2002.

Mr. Kenneth Staiger ("Staiger"), a creditor, filed a motion to dismiss the case or, in the alternative, for relief from the automatic stay. He maintained that he held a security interest in the debtor's real property and that Marrone's current bankruptcy case, his fifth bankruptcy case, was filed in bad faith. Scholl filed an opposition to the motion, asserting that Marrone's fifth bankruptcy filing was made in good faith.

An evidentiary hearing was subsequently held by the Honorable Kevin J. Carey of the Bankruptcy Court of the Eastern District of Pennsylvania. During that hearing, Bankruptcy Judge Carey learned that Marrone had consulted with his former law partner some years before. Bankruptcy Judge Carey recused himself from the bankruptcy case.

Marrone's case was assigned to the Honorable Bruce Fox. Bankruptcy Judge Fox, upon reviewing the record, discovered that Marrone had filed numerous prior bankruptcy cases. The first two of these cases were assigned to the docket of Scholl, who had previously served as a bankruptcy judge. The first of these cases was filed by Marrone under Chapter 11 on November 7, 1997. The second case was a Chapter 11 reorganization case, filed on February 17, 2000.

The second case was dismissed by former Bankruptcy Judge Scholl within two months of its filing. The first case lasted almost one year.

Given Scholl's involvement as a judicial officer in Marrone's previous bankruptcy cases, Bankruptcy Judge Fox held a hearing on November 14, 2002 for Marrone to show why his counsel should not be disqualified pursuant to Rule 1.12(a) of the Pennsylvania Rules of Professional Conduct. At the hearing, Staiger objected to Scholl's representation of Marrone and reported that the Royal Bank of Pennsylvania ("Royal Bank"), a

creditor, also opposed the representation.

At the hearing, Marrone testified that he did not realize that Scholl had been the judicial officer of his prior cases. Scholl stated that he had no memory of the earlier bankruptcy proceedings.

Marrone also stated that he filed the instant bankruptcy case to prevent a tax sale of two commercial real properties. His 1997 bankruptcy filing was undertaken to prevent the foreclosure of commercial properties by Bryn Mawr Trust. Marrone later sold some of these properties.

On November 19, 2002, Bankruptcy Judge Fox ordered that Scholl was disqualified from representing Marrone pursuant to Pennsylvania Rule of Professional Conduct 1.12(a) ("PRC 1.12(a)"). Marrone filed a notice of appeal on November 26, 2002.

Marrone asserts that the Bankruptcy Court improperly disqualified his counsel under PRC 1.12(a).¹ The rule provides

¹Disqualification of counsel is an interlocutory order for purposes of appeal. An appeal from an interlocutory order may be taken only with leave of the district court. 28 U.S.C. § 158(a). Courts in the Third Circuit have accepted appeals from interlocutory rulings which grant and deny motions to disqualify an attorney because of an alleged conflict of interest, holding that the issue is too important to be denied review and too independent of the cause itself to be deferred. Kramer v. Scientific Control Corp., 534 F.2d 1095, 1088 (3d Cir. 1976), cert. denied, 429 U.S. 830 (1976); In re Fine Paper Antitrust Litigation, 617 F.2d 22, 26 (3d Cir. 1971). This Court will exercise its discretion to hear this appeal.

that "a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless all parties to the proceeding consent after disclosure."

The appellant's main argument is that Marrone's 1997 bankruptcy case is not the same "matter" as the present case. The Bankruptcy Court correctly noted that this rule "generally parallels Rule 1.11," and the Court can turn to PRC 1.11 for guidance. Pa. Rules of Professional Conduct 1.12 cmt. See also Isodor Paiewonsky Assoc., Inc. v. Sharp Properties, Inc., 1990 WL 303427, *7 (D. V.I. 1990).

PRC 1.11(d) defines "matter" to include:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Bankruptcy Judge Fox carefully reviewed cases and the facts surrounding the current and prior bankruptcies and concluded that disqualification was appropriate. The Court has carefully reviewed the Bankruptcy Court's decision and the

appellant's challenges to that decision and concludes that Bankruptcy Judge Fox properly applied the correct legal standard. The Bankruptcy Court's November 19, 2002 Order will be affirmed.

An appropriate Order follows.

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ORDER

AND NOW, this ____ day of October, 2003, upon consideration of Joseph Marrone's appeal of the Bankruptcy Court's Order of November 19, 2002 in Bankruptcy No. 02-32611BIF, it is HEREBY ORDERED that said Order is AFFIRMED, for the reasons discussed in a memorandum of today's date.

BY THE COURT:

MARY A. McLAUGHLIN, J.

