

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

WOLF, BLOCK, SCHORR, & : CIVIL ACTION  
SOLIS-COHEN LLP ET AL. :  
 :  
v. :  
 :  
JEFFREY M. NAVON : NO. 05-6038

MEMORANDUM

Dalzell, J.

March 9, 2006

By the end of 2004, with proceedings in the Montgomery County Court of Common Pleas having ended, Jeffrey M. Navon and Celeste T. Navon were divorced. In the final months of 2005, Jeffrey, a New Jersey patent lawyer, is said to have repeatedly threatened to sue Celeste, as well as her divorce lawyer, Cheryl Young, and Young's firm, Wolf, Block, Schorr, & Solis-Cohen LLP, for allegedly violating his constitutional right to procedural due process. In response, on October 31, 2005,<sup>1</sup> Celeste, Young, and Wolf, Block filed a declaratory judgment action in the Montgomery County Court of Common Pleas.

On November 17, 2005, Jeffrey removed that action to this Court, and on December 19, 2005, he answered the complaint and filed a counterclaim against all three plaintiffs under 42 U.S.C. § 1983. Jeffrey claims that on September 16, 2004, the Pennsylvania Department of Public Welfare's State Collection and

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1. The date that plaintiffs filed the complaint is unclear. In Celeste's memorandum, counsel state that they brought the declaratory judgment action on November 28, 2005. Pl.'s Mem., at 3. That date is impossible, however, because Jeffrey removed the complaint to this Court on November 17, 2005. We deduce October 31, 2005 from page nine of the complaint.

Disbursement Unit (the "SCDU") improperly attached his wages. According to Jeffrey, Young wrote an ex parte letter to the SCDU that prompted this improper attachment; thus (so his argument goes) the improper attachment was Young's, Wolf, Block's, and Celeste's fault.<sup>2</sup>

On January 9, 2006, William T. Hangle, Michael Lieberman, and Hangle Aronchick Segal & Pudlin entered their appearance on behalf of Young, Wolf, Block, and, at no cost to her, Celeste. Wolf, Block has agreed that, if a judgment were entered against Celeste, the firm would indemnify her. Before accepting Hangle's representation and Wolf, Block's indemnification offer, Celeste consulted with Russell D. Henkin, Esq., her boss and a shareholder in the law firm of Berger & Montague. After reviewing the matter, Henkin advised Celeste that there was no actual or potential conflict of interest between her interests and Wolf, Block's. Henkin further explained that "the advantages of representation by the Hangle firm free of charge to Celeste far outweigh any disadvantages and also outweigh representation by another firm at substantial cost." Pl.'s Mem., Ex. 6 ¶ 24. According to Henkin, Celeste "then made an informed decision, again based on consultation with

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2. Young, Wolf, Block, and Celeste vigorously dispute Jeffrey's account. They submit two declarations from Gary W. Kline, the Director of Domestic Relations of the Montgomery County Court of Common Pleas, that Young's letter had nothing to do with the wage attachment. See Pl.s' Mot. for Leave to File an Am. Compl., Ex. 6 & Ex. 9.

me, to proceed in that manner." Id. ¶ 16.<sup>3</sup>

On February 6, 2006, Jeffrey -- in what was doubtless an act of pure altruism toward the ex-wife he is suing -- filed a motion to disqualify Hanglely from representing Celeste because of a supposed conflict of interest. Whatever Jeffrey's motive, his motion is unfounded, and we shall deny it.

### Legal Discussion

As Judge Pollak so well put it, lawyers' ethical rules are "not intended as an addition to the depressingly formidable array of dilatory strategies already part of the litigator's arsenal." Caracciolo v. Ballard, 687 F.Supp. 159, 160-61 (E.D. Pa. 1988). Indeed, motions to disqualify opposing counsel are disfavored. This is so not only because disqualification robs one's adversary of her counsel of choice, but also because of the risk -- epitomized here -- that one could subvert the ethical rules in an attempt to use them as a procedural weapon See, e.g., Cohen v. Oasin, 844 F. Supp. 1065, 1067 (E.D. Pa. 1994); Commonwealth Ins. Co. v. Graphix Hotline, Inc., 808 F. Supp. 1200, 1203 (E.D. Pa. 1992); Hamilton v. Merrill Lynch, 645 F. Supp. 60, 61 (E.D. Pa. 1986); see also Pennsylvania Rules of Prof'l Conduct, Preamble and Scope ¶ 19 ("[T]he purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons."). Thus, our Court of Appeals has

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3. Henkin has agreed to monitor this case on Celeste's behalf and, if any conflict does arise, "ensure that her interests are protected." Id. ¶ 25.

stressed that a court "should disqualify an attorney only when it determines, on the facts of the particular case, that disqualification is an appropriate means of enforcing the applicable disciplinary rule." United States v. Miller, 624 F.2d 1198, 1201 (3d Cir. 1980).

Before we may consider the extreme remedy of disqualifying Celeste's counsel, we must first determine whether a conflict even exists. Pennsylvania Rule of Professional Conduct 1.7 guides our inquiry:<sup>4</sup>

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the

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4. Under Local R. Civ. P. 83.6, Rule IV.B, Pennsylvania's disciplinary rules govern.

assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

Because there is no actual conflict under Rule 1.7(a)(1), in his brief Jeffrey instead appears to claim that, under Rule 1.7(a)(2), there is a significant risk that the representation of Celeste will be materially limited by Hangle's responsibilities to Wolf, Block. Jeffrey claims that: Celeste's and Wolf, Block's defenses to his § 1983 claim are inconsistent, Def.'s Mem., at 6, 12, 14-15; Celeste has "latent" malpractice claims against Wolf, Block, id. at 7, 13; Celeste and Wolf, Block have antithetical settlement goals, id. at 12; Hangle's "first loyalties" are to Wolf, Block, not to Celeste, id. at 13; and Hangle's joint representation is "unfair" to Celeste, id. at 16.

We may quickly dispose of Jeffrey's contentions because the record belies them:

- Celeste and Wolf, Block have the same defenses. Both will argue that (1) the post-nuptial agreement immunizes them; (2) they played no role in the SCDU's attachment of Jeffrey's wages; (3) they lacked the requisite mens rea to commit a § 1983 violation, and (4) as private actors, they cannot violate one's constitutional rights, see Pl.'s Mem., at 8;
- Jeffrey predicates his "latent" malpractice claims

on speculative assumptions. Most notably, he assumes that he will win this lawsuit. He also assumes that, despite Wolf, Block's promise to indemnify Celeste, and her conclusion -- based on Henkin's independent advice -- that she has "no basis for, and no interest in, asserting claims against Wolf, Block," she will suddenly change her mind, see Pl.'s Ex. 6 ¶ 22; see also id. ¶¶ 19-21;

- Celeste and Wolf, Block both view Jeffrey's § 1983 claim as frivolous<sup>5</sup> and are committed to defeating him; thus, neither wants to settle, see Pl.'s Mem., at 12;
- Even if Hangle's "first loyalties" were to Wolf, Block -- an eyebrow-raising, unsupported allegation -- those "first loyalties" would benefit Celeste for the simple reason that she and Wolf, Block share the same goal, to defeat Jeffrey; and
- Hangle's joint representation could not be fairer to Celeste. Because Wolf, Block would indemnify her, she faces no financial risk. Moreover, Hangle is defending Celeste at no cost to her.

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5. On February 15, 2006, Celeste and Wolf, Block served a Fed. R. Civ. P. 11(c) motion on Jeffrey. Under Rule 11(c)(1)(a), Jeffrey's twenty-one day safe harbor expired yesterday.

As the record is bereft of anything but, at most, imagined conflicts, we need not consider whether disqualification would be the proper remedy.<sup>6</sup>

### Conclusion

In filing this motion, it is unclear whether (1) Jeffrey's emotion clouded his objectivity or (2) he instead has an improper purpose. In support of the first possibility, we have his September 14, 2005 letter to Celeste, Young, Mark Alderman, Esq., the Managing Partner of Wolf, Block, and Lynne Gold-Bikin, Esq., the Chairman of Wolf, Block's Norristown Office. In that letter, which is attached as the first exhibit to Jeffrey's answer and counterclaim, he wrote:

Accordingly, I demand that you immediately pay over to me \$500,000 as compensation for your unlawful actions. Additionally, I demand that Wolf Block formulates and implements a prophylactic program aimed at remedying the past instances of civil rights

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6. We do note, however, that even if an actual or potential conflict arose, Hangley would be protected under Rule 1.7(b). Because Celeste and Wolf, Block share the same goal, counsel "reasonably believe[] that [they] will be able to provide competent and diligent representation to each affected client." Rule 1.7(b)(1). Further, the representation is legal, and neither Celeste nor Wolf, Block intends to sue each other. See Rule 1.7(b)(2) & (3).

It also bears noting that Celeste's boss, Russell D. Henkin, Esq., a shareholder in the law firm of Berger & Montague, declared, "Celeste and I discussed Wolf, Block's agreement to indemnify her, the proposed joint representation and potential conflicts of interest, and she then made an informed decision, again based upon consultation with me, to proceed in that manner." Pl.'s Mem., Ex. 6 ¶ 16. Henkin has agreed to monitor this case on Celeste's behalf. To use his own words, he "will be in a position to determine if a conflict arises during the course of this litigation, and [he] will consult with Celeste about this and will ensure that her interests are protected." Id. ¶ 25.

violations outlined above, and preventing future instances of such violations. I will require that you report back to me on a periodic basis concerning this program so that I may monitor its progress.

Def.'s Answer & Countercl., Ex. E, at 4-5. Jeffrey's motion to disqualify Hangley would be consistent with the self-importance he appears to display in this excerpt.

In support of the second possibility -- that Jeffrey acts from spite -- we have the penultimate paragraph of Mr. Henkin's declaration:

Jeffrey Navon has shown nothing but aggravated hostility toward Celeste Navon. In my view, this lawsuit itself, which violates the release he provided to Celeste in the Postnuptial Agreement, demonstrates that this hostility remains unabated and an active motivating factor. Any suggestion therefore in his moving papers that he is looking out for Ms. Navon's interests is disingenuous and incredible. Mr. Navon's motion to disqualify clearly has been interposed solely to harass Celeste Navon and Wolf, Block, to increase their costs, and to attempt to divide their common interest in defeating what in my opinion are his completely baseless claims.

Pl.'s Mem., Ex. 6 ¶ 27. Under this view, Jeffrey filed this motion as (part of) a vendetta.

While Jeffrey's purpose may be relevant later -- see, e.g., Turner Constr. Co. v. First Indemnity of America Ins. Co., 829 F.Supp. 752 (E.D. Pa. 1993), aff'd 22 F.3d 303 (3d Cir. 1994) (Table) -- we need delve no further now. Either way, Jeffrey has failed to demonstrate an actionable conflict under Rule 1.7, and

we shall accordingly deny his motion.

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JEFFREY M. NAVON : NO. 05-6038

ORDER

AND NOW, this 9th day of March, 2006, upon consideration of defendant's pro se motion to disqualify William T. Hangle, Michael Lieberman, and Hangle Aronchick Segal & Pudlin (collectively, "Hangle") from representing Celeste T. Navon (docket entry # 8) and Ms. Navon's response (docket entry # 9), and for the reasons articulated in our Memorandum of Law, it is hereby ORDERED that defendant's pro se motion to disqualify Hangle from representing Celeste T. Navon is DENIED.

BY THE COURT:

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Stewart Dalzell, J.