Georgia State University
ScholarWorks @ Georgia State University

Georgia Business Court Opinions | College of Law

2-6-2008

Order on Defendants' Motion to Disqualify Counsel (JAMES & JACKSON LLC)

Alice D. Bonner
Superior Court of Fulton County

Follow this and additional works at: http://scholarworks.gsu.edu/col_businesscourt

Recommended Citation
Bonner, Alice D., "Order on Defendants' Motion to Disqualify Counsel (JAMES & JACKSON LLC)" (2008). *Georgia Business Court Opinions*. Paper 37.
http://scholarworks.gsu.edu/col_businesscourt/37

This Court Order is brought to you for free and open access by the College of Law at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JAMES & JACKSON LLC, individually and derivatively on behalf of MBC, GOSPEL NETWORK, LLC.,	)	
Plaintiffs,	)	Civil Action No.: 2006CV124372
v.	)	
EVANDER HOLYFIELD, JR., WILLIE E. GARY, CECIL FIELDER, LORENZO WILLIAMS, THOMAS WEIKSNAR, CHAN ABNEY, LORI METOYER-BROWN, and RICK NEWBERGER,	)	
Defendants.	)	

FILED IN OFFICE
FEB 06 2008
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER ON DEFENDANTS' MOTION TO DISQUALIFY COUNSEL

Defendants' Motion to Disqualify the Law Firm of Bickel & Brewer and Its Attorneys, Appearing Pro Hac Vice, filed December 4, 2007, after having been fully briefed, is now properly before this Court. After having considered the briefs submitted on this Motion, having consulted with the Georgia State Bar concerning Georgia's Rules of Professional Conduct and having reviewed the record of the case, the Court finds as follows:

Defendant Cecil Fielder and his wife initiated a lawsuit against their former interior decorator in 1991, which resulted in a two-week trial in 1994 (the "Interior Design Suit"). Bickel & Brewer attorneys[1], including Mr. William Brewer, Esq., represented the Fielders in the Interior Design Suit, and now represent Plaintiff James & Jackson LLC ("J&J") in this action. Defendant Fielder, as a former client, objects to Mr. Brewer's and Bickel & Brewer's representation of J&J. Specifically, Defendant Fielder raises concerns that private financial information provided to Mr. Brewer and the Bickel & Brewer attorneys in the course of the Interior Design Suit is relevant to and presents a conflict issue with their representation in the present suit.

[1] The attorneys named on the Interior Design Suit and who acted as lead counsel in the matter are no longer associated with Bickel & Brewer and have formed their own firm, where the Interior Design Suit file remains.

As a threshold matter, Defendants contend that the Texas Rules of Professional Conduct control the Court's analysis of the potential conflict. Plaintiff, however, asserts that this disqualification motion is governed by Georgia's Rules of Professional Conduct. The reality is that the rules, and thus the results, differ little between Texas and Georgia.[2] This Court, however, will evaluate the disqualification question in terms of Georgia's Professional Conduct Rules[3], under which the attorneys admitted *pro hac vice* operate, but will also be informed by Texas's rules[4]. Notwithstanding the

---

[2] See, for example, the expert affidavits analyzing the facts under both Georgia and Texas professional responsibility rules.

[3] Georgia **Rule 1.9: Conflict of Interest: Former Client**

> (a) A lawyer who has formerly represented a client in a matter shall not thereafter 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 consultation.
> (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:
>
> (1) whose interests are materially adverse to that person; and
> (2) about whom the lawyer had acquired information protected by Rules 1.6: Confidentiality and 1.9(c): Conflict of Interest: Former Client, that is material to the matter; unless the former client consents after consultation.
>
> (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
>
> (1) use information relating to the representation to the disadvantage of the former client except as Rule 1.6: Confidentiality of Information or Rule 3.3: Candor Towards the Tribunal would permit or require with respect to a client, or when the information has become generally known; or
> (2) reveal information relating to the representation except as Rule 1.6: Confidentiality of Information or Rule 3.3: Candor Towards the Tribunal would permit or require with respect to a client.

Georgia Rule 1.6: Confidentiality of Information

> (a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these rules or other law, or by order of the Court....
>
> (e) The duty of confidentiality shall continue after the client-lawyer relationship has terminated.

[4] Texas **Rule 1.09 Conflict of Interest: Former Client**

foregoing, should Defendant Fielder believe that a professional conduct rule has been violated, he is free to take disciplinary action in Texas, under its rules, in the state where Mr. Brewer is licensed to practice.

Under Rule 1.09, an attorney must obtain consent to represent a party adverse to the interests of a former client if the maters are substantially related. Additionally, in Georgia, an attorney is prohibited under Rule 1.09(c) from using or disclosing confidential information of the former client to her advantage or to the disadvantage of the former client. In Texas, the former's client's rights are

---

(a) Without prior consent, a lawyer who personally has formerly represented a client in a matter

shall not thereafter represent another person in a matter adverse to the former client:

(1) in which such other person questions the validity of the lawyer's services or work product for the former client;

(2) if the representation in reasonable probability will involve a violation of Rule 1.05; or

(3) if it is the same or a substantially related matter.

Texas Rule 1.05 Confidentiality of Information

(a) Confidential information includes both privileged information and unprivileged client information. Privileged information refers to the information of a client protected by the lawyer client privilege of Rule 5.03 of the Texas Rules of Evidence or of Rule 5.03 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 5.01 of the Federal Rules of Evidence for United States Courts and Magistrates. Unprivileged client information means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e), and (f), a lawyer shall not knowingly:

1) Reveal confidential information of a client or a former client to:

(i) a person that the client has instructed is not to receive the information; or

(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyers law firm.

2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultations.

(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

expanded to require informed consent for any adverse party representation that "in reasonable probability will involve" a violation of client confidentiality rules. The confidentiality rules of both Texas and Georgia protect whatever not-public information the Fielders provided to Mr. Brewer and Bickel & Brewer during the course of their representation. Thus, this Court's analysis will focus on whether the Interior Design Suit and this action are substantially similar and relevance and risk of utilizing the previously provided financial information.

First, there is nothing in the record nor that is apparent from the face of the pleadings demonstrating that this action is the same or substantially similar to the Interior Design Suit. On the other hand, Mr. Brewer and his firm had access to Mr. Fielder's financial information in association with the Interior Design Suit. Mr. Fielder, however, has not identified specific, non-public information that is relevant to the current proceeding and that either has resulted in a confidentiality violation, or "in reasonable probability" will result in a such a violation. The investment nature of this action (as opposed to the services transaction in the Interior Design Suit), the lapse of time between the actions, the changes in Mr. Fielder's financial position, and the public's access to information regarding his salary, earnings, and financial condition make the connection between this action and the Interior Design Suit too attenuated for this Court to take the drastic step of disqualifying counsel fifteen months into litigation.

Mr. Brewer and his firm, however, have not acted without consequence. Mr. Brewer and his firm could have avoided the cost and the delay associated with this Motion and its briefing by informing Mr. Fielder and his counsel upon filing this suit of their determination that there was no conflict. The Rules of Professional Conduct are in place not only to inform and safeguard the attorneys practicing under them, but are also there to protect clients, foster respect for the profession, and encourage robust and candid attorney client relationships. Mr. Brewer and his firm's actions, in avoiding addressing this issue, did not advance those goals.

Accordingly, Defendants' Motion to Disqualify if hereby **DENIED**. Mr. Brewer, however, is hereby **ORDERED** not to reveal, use, or store any information learned about Mr. Fielder during the

course of his representation in the Interior Design Suit. Additionally, looking to the Texas standards, to avoid the threat of using such information for the remainder of this action, Mr. Brewer is hereby **ORDERED** not to participate in any discussions relating to information gathering or strategies with regard to the all Defendants' financial information. **Within fifteen days of this Order**, Mr. Brewer shall so certify to the Court that he has not revealed/used Mr. Fielders' client information and that he will abstain from participating in discussions relating thereto. Finally, **within fifteen days of this Order**, Mr. Brewer and Bickel & Brewer shall certify to the Court that they have no files, electronic information, or other non-public information or documents relating to Mr. Fielder or to the Interior Design Suit in their possession.

SO ORDERED this 6 day of ~~January~~ February, 2008.

Alice D. Bonner

ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Jerry A. Landers, Jr.
GREEN JOHNSON & LANDERS LLP
33625 Cumberland Boulevard, Suite 600
Atlanta, GA 30339
(770) 690-8001 / (770) 690-8206 *(fax)*

Of Counsel
William Brewer III, Esq.
Michael Collins, Esq.
Eric Haas, Esq.
Andrew L. Poplinger, Esq.
Daniel C. Skinner, Esq.
C. Dunham Biles, Esq.
Bickel & Brewer
4800 Bank One Center
1717 Main Street
Dallas, Texas 75201
(241) 653-4000/ (214) 653-1025 *fax*

Chanthina Bryant Abney, Esq.
Mary Ann Diaz, Esq.
Maria P. Sperando, Esq.
GARY WILLIAMS PARENTI FINNEY LEWIS MCCANUS WATSON & SPERANDO PL
221 East Osceola Street
Stuart, Florida 34994
(772) 283-8260
(772-283-4996 *(fax)*

Of Counsel:
Anthony L. Cochran, Esq.
John K. Larkins, Esq.
CHILIVIS, COCHRAN, LARKINS & BEVER, LLP
3127 Maple Drive
Atlanta, Georgia 30047
(404) 233-4171
(404) 261-2842 *fax*