Clerk of the Superior Court
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06/26/2024 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005545 06/25/2024

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
S. Motzer
Deputy

SHEILA JANISCH FRANK M FOX

v.

SCOTTSDALE MOUNTAIN COMMUNITY ASSOCIATION NICHOLAS C NOGAMI

JUDGE MOSKOWITZ

MINUTE ENTRY

Pending before the Court is Plaintiff's Motion to Disqualify Defense Counsel ("the Motion"). It was filed on May 29, 2024. It is fully briefed. Although Defendant requested oral argument, the Court does not need oral argument to resolve the Motion.

Plaintiff seeks to disqualify the entire CBDH law firm from representing the Defendant based on interactions one of CBDH's partners, Mr. Bolen, had with Plaintiff while he was a patient getting medical treatment at a facility at which Plaintiff worked.

"Only in extreme circumstances should a party to a lawsuit be allowed to interfere with the attorney-client relationship of his opponent …. The burden should be upon the moving party to show sufficient reason why an attorney should be disqualified from representing his client. Whenever possible the courts should endeavor to reach a solution that is least burdensome upon the client or clients." *Alexander v. Superior Ct. In & For Maricopa Cnty.*, 141 Ariz. 157, 161 (1984) (citations omitted).

Here, Plaintiff has not met her burden of showing sufficient reason why the entire CBDH law firm should be disqualified from representing the Defendant. This is not a case of extreme

circumstance that would justify disqualifying the entire CBDH law firm, let alone Mr. Bolen. Plaintiff claims having an attorney-client relationship with Mr. Bolen, who has provided a written declaration to the contrary. Plaintiff, however, has not provided any evidence of an attorney-client relationship with Mr. Bolen or CBDH. She did not submit a written declaration. At best, her counsel referenced certain attached notes in her Reply in an attempt to discredit Mr. Bolen's declaration, but the Court did not find any such attached notes. There is simply insufficient evidence for the Court to find a direct conflict of interest that would disqualify Mr. Bolen and the entire CBDH law firm.

To the extent Plaintiff seeks a disqualification based upon the appearance of impropriety, the Court should consider the following: "(1) whether the motion is being made for the purposes of harassing the defendant, (2) whether the party bringing the motion will be damaged in some way if the motion is not granted, (3) whether there are any alternative solutions, or is the proposed solution the least damaging possible under the circumstances, and (4) whether the possibility of public suspicion will outweigh any benefits that might accrue due to continued representation." *See id*. at 165.

Here, both sides are alleging harassment by the other. Plaintiff however has not articulated how she will be damaged if the Motion is not granted. Plaintiff also failed to address whether there are any alternative solutions or whether the proposed solution is the least damaging possible under the circumstances and whether the possibility of public suspicion will outweigh any benefits that might accrue due to continued representation. It does not appear that Mr. Bolen is representing the Defendant in this case. His absence as counsel of record in this case is a *de facto* alternative and less draconian solution than disqualifying the entire CBDH law firm. His absence as defense counsel also addresses any concerns the Court may have with the fourth factor. Since Mr. Bolen does not appear to be representing the Defendant in this case, there is no possibility of public concern to weigh against any benefits that might accrue due to his continued representation.[1]

On this limited record,

IT IS ORDERED denying the Motion and any requests for sanctions or fees at this juncture of the case.

[1] Plaintiff also vaguely complains about attorneys Marcus Martinez and Allison Preston in her Reply. Those attorneys are also not counsel of record for Defendant in this case. Mr. Martinez was removed as a counsel of record for Plaintiff as of May 20, 2024 [*See* Notice of Substitution of Counsel Within Same Firm, filed May 20, 2024] It does not appear that Ms. Preston was ever counsel of record for Defendant.