

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUAN BARRERA, JOSE CABRERA,	:	
DANIEL CHAVEZ, JOSE DUMA,	:	
JOSE LLIBISUPA, ISAAC	:	
MALDONADO, EDGAR REDROVAN,	:	
NICHOLAS SEGUNDO SANCHEZ,	:	
JUAN CARLOS SIMBANA, and	:	
DANILO BRITO VARGAS,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL NO. 3:07CV1436 (RNC)
	:	
MARK BOUGHTON, ALAN BAKER,	:	
JOSE AGOSTO, RICHARD DEJESUS,	:	
JAMES FISHER, JAMES LALLI,	:	
CRAIG MARTIN, JOSEPH NORKUS,	:	
JOHN DOES, CITY OF DANBURY,	:	
RONALD PREBLE, RICHARD	:	
McCAFFREY, JAMES BROWN,	:	
JOHN DOES and USA,	:	
	:	
Defendants.	:	
	:	

RULING ON MOTIONS TO DISQUALIFY

Defendant Mark Boughton, Mayor of the City of Danbury, has filed a Motion for Disqualification of the Jerome N. Frank Legal Services Organization and its affiliated attorneys (hereafter referred to as "Frank Legal Services") from representing the plaintiffs. Doc. # 48. Defendant City of Danbury has joined that motion. Doc. # 50.

The defendants' objection relates to asserted attorney-client relationships among Frank Legal Services, The Connecticut Coalition for Justice in Education Funding (hereinafter the

"Connecticut Coalition"), and Mayor Boughton. In addition to representing the plaintiffs here, Frank Legal Services also represents the Connecticut Coalition in an "education adequacy" lawsuit begun in late 2005. See generally Doc. # 48 at 2.

According to the defendants, Mayor Boughton has been president of the Connecticut Coalition since December 2006 and otherwise has held a key leadership position in the Coalition. Frank Legal Services provided legal advice to the Connecticut Coalition and to Boughton, in his capacity as the Connecticut Coalition former president. Since the filing of the motion, Boughton ended his term as president of the Connecticut Coalition.¹

The defendants further explain that Frank Legal Services' representation of the plaintiffs in this suit places it in an adverse relationship with its former client, past Connecticut Coalition president Boughton. They argue: "[Frank Legal Services], in the course of its discussions with Mayor Boughton in the [Connecticut Coalition] litigation has had occasion to gain insights into the Mayor's thinking with respect to litigation strategies, his method of dealing with litigation, and his attitude toward different legal issues, which may benefit [Frank Legal Services] in the Barrera litigation." Doc. # 48 at

¹ Boughton's tenure as president of the Connecticut Coalition expired on February 29, 2008. See Affidavit of Dianne Kaplan deVries (appended as Exh. 4 to Doc. # 64) at para. 16 ("Mayor Boughton did not run for reelection" when his term of office expired . . .).

4.

Frank Legal Services counters that its representation of the plaintiffs in this suit does not constitute a conflict of interest under the Connecticut Rules of Professional Conduct. See generally Doc. # 64. "[T]his Court recognizes the authority of the 'Rules of Professional Conduct,'" as approved by the Judges of the Connecticut Superior Court as expressing the standards of professional conduct expected of lawyers practicing in the District of Connecticut." Rule 83.2(a) of the Local Rules of the United States District Court for the District of Connecticut. Accordingly, with certain exceptions not relevant in this matter, in this District, the standards for attorney conduct are set by the Rules of Professional Conduct. See Colorpix Sys. of America v. Broan Mfg. Co., Inc., 131 F. Supp. 2d 331, 335 (D. Conn. 2001); see also Local Rule 83.2(a)(1) ("changes" made by Connecticut Superior Court are not binding on District Court "unless such changes are expressly adopted . . .").

Connecticut Rule of Professional Conduct 1.7 provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest," including a situation where "the representation of one client will be directly adverse to another client." Similarly, under Rule 1.9(a), "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in . . . a

substantially related matter in which that person's interests are materially adverse to the interests of the former client” In addition, Rule 1.13(a) specifies that “[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”

The defendants maintain that the Connecticut Rules of Professional Conduct effectively render Mayor Boughton, in his capacity as former president of the Connecticut Coalition, a client of Frank Legal Services. This position is not well taken; on its face, Rule 1.13 indicates a lawyer represents the “organization,” thereby making the Connecticut Coalition, not Boughton, the actual client of Frank Legal Services.

By virtue of his status as Connecticut Coalition president, Mayor Boughton, at best, is considered a “vicarious client.” A vicarious client relationship arises here because Boughton was an officer and member of the association represented by Frank Legal Services. See Discotrade Ltd. v. Wyeth-Ayerst Int’l, Inc., 200 F. Supp. 2d 355, 359 (S.D.N.Y. 2002) (strict disqualification standards need not always be applied when a firm brings suit against a member of an association it represents).

“[W]hen an adverse party is only a vicarious client by virtue of membership in an association, the risks against which Canon 5 [prohibiting representation of one client in a suit against another] guards will not inevitably arise.” Glueck v.

Jonathan Logan, Inc., 653 F.2d 746, 749 (2d Cir. 1981). As an example, Glueck notes that “[a] law firm that represents the American Bar Association need not decline to represent a client injured by an automobile driven by a member of the ABA.” Id.

The issue is not whether Boughton’s former relationship with Frank Legal Services “is in all respects that of attorney and client, but whether there exist sufficient aspects of an attorney-client relationship” to inquire as to whether there is a potential conflict involved in Frank Legal Services’ role as plaintiffs’ counsel in this action. Id. at 748-49 (footnote and quotation marks omitted). The Second Circuit applies a “substantial relationship” test to situations where, as here, an alleged problem arises from “vicarious or attenuated representation.” Anderson v. Nassau County Dep’t of Corr., 376 F. Supp. 2d 294, 298 (E.D.N.Y. 2005). When applying the substantial relationship test, a court seeks to prevent the possibility that former client confidences will be used to his disadvantage or will otherwise taint the trial. Glueck, 653 F.2d at 748-49.

Where, however, a disqualification motion is based upon an attorney’s representation of a currently adverse party that it had previously represented as “a vicarious client by virtue of membership in an association,” disqualification is not automatic. Id. at 749. As explained in Glueck,

[d]isqualification will ordinarily be required whenever the subject matter of a suit is sufficiently related to the scope of the matters on which a firm represents an association as to create a realistic risk either that the plaintiff will not be represented with vigor or that unfair advantage will be taken of the defendant. Moreover, once that risk appears, it is appropriate to assess the risk that prosecution of a plaintiff's lawsuit by an association's law firm will inhibit the free flow of information from the defendant to the firm that is necessary for the firm's proper representation of the association.

Id. at 750; accord Evans v. Artek Sys. Corp., 715 F.2d 788, 792 (2d Cir. 1983) ("he may not serve the corporation in a particular matter and then represent a plaintiff in a suit against it or its officers in a substantially related matter.").

Here, disqualification of Frank Legal Services is unwarranted. As an initial observation, Mayor Boughton's tenure as Connecticut Coalition president recently expired. In any event, Mayor Boughton is simply an indirect or vicarious client. See Glueck, 653 F.2d at 749 (a party "is only a vicarious client by virtue of membership in an organization"); see also Doc. # 64 at 2, 12. In addition, there appears to be no substantial relationship between this litigation and the litigation involving the Connecticut Coalition. This action concerns the City of Danbury, Connecticut and its law enforcement policies as applied to non-citizens; the Connecticut Coalition litigation is a suit under the Connecticut Constitution involving the rights of Connecticut school children to an adequately-funded education.

See Doc. # 64 at 29.

Furthermore, the movants present no persuasive claim that Frank Legal Services learned relevant confidences from Mayor Boughton, as president of the Connecticut Coalition, or that any trial in this case may be tainted as a result of Frank Legal Services' former involvement with him. The claimed "appearance of impropriety is simply too slender a reed on which to rest a disqualification order except in the rarest cases." Bd. Of Ed. Of City of New York v. Nyquist, 590 F.2d 1241, 1247 (2d Cir. 1979).

The Motions to Disqualify (Doc. # 48 and 50) are DENIED.

SO ORDERED.

Dated at Hartford, Connecticut, this 3rd day of July, 2008.

_____/s/ DFM _____
Donna F. Martinez
United States Magistrate Judge