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New Horizon Kids Quest III, Inc., v. The Eighth Judicial District Court of the State of Nevada, 133 Nev., Adv. Op. 409 (Apr. 6, 2017)

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PROFESSIONAL RESPONSIBILITY: DISQUALIFICATION OF COUNSEL

Summary

When an attorney's former firm represented a now adverse client, Nevada Rule of Professional Conduct 1.9(b) requires disqualification only when the moving lawyer actually obtained confidential, adverse information while at the prior firm. Further, RPC 1.9(b) does not impose a presumption that an attorney obtained actual knowledge of confidential information while employed by the former firm. Rather, whether an attorney gained confidential information while at prior firm is a factual matter for the court to resolve.

Background

Attorney Jordan Schnitzer's firm, Kravitz, Schnitzer & Johnson, Chtd., represents real parties in interest Isabella and Victoria Godoy in their claim against petitioner Kids Quest. Before Schnitzer's employment at his current firm, he was an associate at Hall, Jaffee & Clayton. In 2007, HJC represented Kids Quest in an unrelated tort action. In 2011, Schnitzer left HJC to join Kravitz, Schnitzer & Johnson. Three years later, Kravitz filed the current action against Kids Quest on behalf of Isabella and Veronica Godoy. Kravitz questioned Schnitzer about his involvement with HJC's 2011 representation of Kids Quest. But, Schnitzer claimed he did not gain any confidential information about Kids Quest during his time at HJC.

In 2015, Kids Quest learned that Schnitzer previously worked for HJC. Kids Quest then moved to disqualify Schnitzer and his firm under RPC 1.9(b), which governs duties to former clients.² Schnitzer denied obtaining any confidential information during his time at HJC and provided an affidavit from HJC that confirmed Schnitzer did not work on the prior Kids Quest case. The district court declined to disqualify Schnitzer or his firm. Kids Quest appealed.

Discussion

Kids Quest contends the Nevada Rules of Professional Conduct impose a presumption in favor of imputing disqualification when an attorney's former firm represented a now adverse party. This imputation, Kids Quest argues, disqualifies both Schnitzer and his current firm from representing the current real parties in interest. Conversely, real parties in interest Isabella and Veronica Godoy argue there is no presumption favoring imputation. Further, the Godoys assert there is no evidence that Schnitzer obtained confidential, adverse information while employed at his former firm.

Nevada Rule of Professional Conduct 1.9(b) governs the duty lawyers owe former clients.³ Rule 1.9(b) requires disqualification when: (1) the current representation is materially adverse to the former client, and (2) the attorney acquired confidential information about the

¹ By Andrew S. Clark.

² NEV. R. PROF'L CONDUCT § 1.9(b).

³ *Id.*

former client.⁴ This conflict may be cured by the former client's informed consent.⁵ In tandem, RPC 1.10(a) requires that a disqualification under RPC 1.9(b) be imputed to the disqualified attorney's current firm.⁶

At issue is whether Schnitzer obtained confidential information about Kids Quest while employed at his former firm. Whether a lawyer obtained confidential, adverse information about a client while at a prior firm is a matter of fact for the court to determine. Absent evidence of actual confidential information, disqualification under RPC 1.9(b) is improper. It follows that absent a disqualification under RPC 1.9(b), there is no conflict to impute under RPC 1.10(a).

The ABA's comments to the identical model rules 1.9 and 1.10 and the Court's prior decisions support the actual knowledge requirement. The ABA comment to model rule 1.9(b) disqualifies a lawyer who moves to another firm when that lawyer has actual knowledge of confidential information.⁷ Further, the Court previously determined that prior employment at a firm who represented a now adverse client does not violate RPC 1.9(b).⁸ In fact, "mere access to the adverse party's files during former employment is insufficient to warrant disqualification."⁹

Here, there is no evidence that Schnitzer obtained confidential information adverse to Kids Quest while at his former firm. Thus, there is no violation of RPC 1.9(b). And, absent a RPC 1.9(b) violation, there is no disqualification to impute to Schnitzer's current firm.

Conclusion

Nevada Rule of Professional Conduct 1.9(b) does not require disqualification when an attorney previously worked for a firm that represented a now adverse client. Disqualification is proper when there is evidence that the lawyer obtained confidential, adverse information about the client while employed by the former firm. There is no evidence that Schnitzer obtained confidential information while at his former firm. Therefore, the district court properly applied RPC 1.9(b), and their decision is affirmed.

⁴ *Id.*

⁵ *Id.*

⁶ NEV. R. PROF'L CONDUCT § 1.10(a).

⁷ MODEL RULES OF PROF'L CONDUCT r. 1.9 cmt. 5 (AM. BAR. ASS'N 2016).

⁸ *Leibowitz v. Eighth Jud. Dist. Ct.*, 78 P.3d 515, 519 (Nev. 2003).

⁹ *Id.*