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Nelson v. Eighth Jud. Dist. Ct., 138 Nev. Adv. Op. 82 (Dec. 22, 2022)

Shannon Chao

Nelson v. Eighth Jud. Dist. Ct., 138 Nev. Adv. Op. 82 (Dec. 22, 2022)[1]

CLARIFYING LAW FIRM DISQUALIFICATION REQUIREMENTS BASED ON NONLAWYER EMPLOYEE'S IMPUTED CONFLICT OF INTEREST

Summary

A law firm is not automatically disqualified based on a paralegal's imputed conflict of interest unless there is actual disclosure of confidences or ineffective screening measures. Additionally, district courts have broad discretion in determining whether a law firm must be disqualified,[2] and whether to hold an evidentiary hearing to determine adequacy of screening measures.[3]

Background

Petitioner Jane Nelson sued Dr. Muhammad Saeed Sabir and Pioneer Health Care, LLC (collectively, "Sabir") for medical malpractice. McBride Hall represents Sabir. Adam Breeden represents Nelson. Breeden owns a small solo practice, Breeden & Associates, PLLC. Kristy Johnson worked full time as Breeden's sole paralegal for four years, and Breeden allegedly shared his impressions of every case with her.

Johnson was working at Breeden & Associates during Nelson's malpractice case against Sabir. While Nelson's case was ongoing, Johnson interviewed with and began working as a paralegal for McBride Hall. McBride Hall did not withdraw from the cases that Johnson had worked on while at Breeden's firm, and instead implemented screening measures. Specifically, McBride Hall conducted a conflicts check to screen Johnson off conflicting matters, instructed Johnson not to discuss the cases that she worked on at Breeden's firm with McBride Hall staff, limited Johnsons' file access, circulated two internal memos describing the screening mechanisms, and assigned Johnson to different cases.

Nelson moved to disqualify McBride Hall from representing Sabir because of Johnson's alleged involvement in the case while working for Breeden and her knowledge of Breeden's legal conclusions. Nelson argued that McBride should be presumptively disqualified, and that Sabir could only overcome this presumption by meeting their burden of showing sufficient screening measures during an evidentiary hearing. Accordingly, Nelson asked the district court to hold an evidentiary hearing or immediately disqualify McBride Hall. Sabir argued that the screening mechanisms were effective and that they would suffer undue prejudice if McBride Hall were disqualified.

The district court held a non-evidentiary hearing and denied the motion to disqualify McBride Hall. The court reasoned that McBride Hall properly screened Johnson, and Nelson did not allege or establish any specific prejudice. Nelson filed a petition for writ of mandamus.

Discussion

The Court elected to entertain the writ petition

Nelson argues that the Court should consider the petition on its merits because a writ of mandamus is appropriate to "compel the performance of an act that the law requires or to control

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[1] By Shannon Chao.

[2] Leibowitz v. Eighth Jud. Dist. Ct., 119 Nev. 523, 529, 78 P.3d 515, 519 (2003).

[3] Ryan's Express Transp. Services, Inc. v. Amador Stage Lines, Inc., 128 Nev. 289, 299, 279 P.3d 166, 172 (2012).

an arbitrary or capricious exercise of discretion,"[4] "challenge a district court order regarding disqualification of a lawyer,"[5] or clarify important issues of law.[6] The Court agrees with Nelson and entertains the writ petition.

Given McBride Hall's screening mechanisms, the district court did not err in denying the motion

Nelson argues that the Court should automatically disqualify McBride Hall because of Johnson's previous work on the case. Sabir argues that McBride Hall's screening measures are explicitly permitted under Nevada caselaw.

The Court agrees with Sabir, relying primarily on its prior decision in *Leibowitz*.[7] The Court held in *Leibowitz* that imputed disqualification is a harsher consequence for nonlawyers than attorneys, because nonlawyers are not able to practice their "profession regardless of an affiliation to a law firm."[8] Thus, screening may be available to resolve imputed disqualification, and the Court provided a non-exhaustive list of screening requirements. However, automatic disqualification is necessary where: "(1) information about the representation of the adverse client was disclosed to the new employer, or (2) screening would be ineffective or the nonlawyer would be required to work on the other side of the same matter."[9]

Here, Nelson did not allege, nor did the record show, that either of the factors necessary for automatic disqualification was present. Further, McBride Hall's screening mechanisms were "timely and satisf[ied] *Leibowitz*'s 'instructive minimum.'" Thus, the district court did not abuse its discretion in denying the motion.

The district court did not abuse its discretion in ruling on the motion without holding an evidentiary hearing

Nelson argues that *Ryan's Express* requires an evidentiary hearing on disqualification motions regarding a nonlawyer's imputed conflict of interest. Sabir argues that any such requirement is limited to a lawyer's imputed conflict.

The Court finds for Sabir, explaining that *Ryan's Express* ultimately leaves the decision to disqualify and decision to hold an evidentiary hearing in the district court's discretion.[10] The trial court should hold an evidentiary hearing when there are fact and credibility determinations necessary to balance the parties' and the public's interests, or to determine whether screening measures were sufficient. However, the district court has discretion in determining whether such issues exist. Additionally, any mandatory requirement in *Ryan's Express* does not apply to nonlawyers.

Here, the district court did not abuse its discretion in ruling on the motion without holding an evidentiary hearing, because Nelson did not allege specific factual or credibility disputes.

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[4] Nev. Yellow Cab Corp. v. Eighth Jud. Dist. Ct., 123 Nev. 44, 49, 152 P.3d 737, 740 (2007).
[5] *See* Liapis v. Second Jud. Dist. Ct., 128 Nev. 414, 418, 282 P.3d 733, 736 (2012).
[6] *See* City of Mesquite v. Eighth Jud. Dist. Ct., 135 Nev. 240, 243, 445 P.3d 1244, 1248 (2019) (quoting Int'l Game Tech., Inc. v. Second Jud. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).
[7] *Leibowitz* partially overruled the Court's holding in Ciaffone v. Eighth Jud. Dist. Ct., 113 Nev. 1165, 1168–69, 945 P.2d 950, 953 (1997), in which the Court did not allow screening of nonlawyers.
[8] *Leibowitz*, 119 Nev. at 532, 78 P.3d at 521.
[9] *Id.* at 533, 78 P.3d at 521–22.
[10] *Ryan's Express*, 128 Nev. at 299, 279 P.3d at 172.

Conclusion

The Court denied Nelson's writ petition. Automatic disqualification was not necessary because McBride Hall implemented sufficient screening mechanisms and there was no evidence that Johnson disclosed information related to Nelson's representation. Thus, the district court did not abuse its discretion in denying the motion, nor did it abuse its discretion by ruling without holding an evidentiary hearing.