

Exhibit - Conflict of Interest Order 11-20-2007

IN THE COURT OF COMMON PLEAS BUTLER COUNTY, PENNSYLVANIA

JOSEPH G. MYERS, : CIVIL DIVISION
 : A.D. No. 04-10707
 :
 Plaintiff, :
 :
 vs. :
 :
 JOSEPH CHIVERS, :
 :
 Defendant. :

Attorney for Plaintiff: Pro Se
Attorney for Defendant: Graydon R. Brewer, Esquire

Yeager, J.

November 20, 2007

MEMORANDUM OPINION

Before this Court for consideration is the Plaintiff's, Joseph G. Myers, (hereinafter "Plaintiff") Conflict of Interest pleading. For the following reasons, the Court finds that there is a Conflict of Interest and hereby removes Graydon R. Brewer, Esquire, as counsel for the Defendant, Joseph Chivers (hereinafter "Defendant").

I. Background

This case arises from the Plaintiff's termination from employment at AK Steel Corporation. In 2001, John W. Murtaugh, Jr., Esquire, presented the union's position at an Arbitration concerning the Plaintiff's discharge. The Plaintiff was a member of a union, known as Butler Armco Independent Union (hereinafter "BAIU"). The Arbitrators upheld the decision to terminate the Plaintiff's employment.

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The Plaintiff retained the Defendant to represent him sometime in April of 2001. Following the Arbitration, the Plaintiff requested that the Defendant appeal the Arbitrator's Decision on his behalf. The above-captioned matter arises from allegations regarding the Defendant's actions following the Arbitration.

The Defendant retained Graydon R. Brewer, Esquire, to represent him in the present matter. Mr. Brewer has a principal office located in Pittsburgh, Pennsylvania. Mr. Brewer also shares office space located in Wexford, Pennsylvania, with Mr. Murtaugh. At the office located in Wexford, Pennsylvania, Mr. Murtaugh and Mr. Brewer share space, a telephone number, and a fax number. Mr. Brewer also shares a secretary with Mr. Murtaugh at the Wexford location to the extent that she informs anyone who calls that location to instead reach Mr. Brewer at his principal office in Pittsburgh.

At the hearing on the Plaintiff's Conflict of Interest pleading scheduled for November 16, 2007, Mr. Murtaugh testified that he and Mr. Brewer discussed the fact that the Plaintiff was suing the Defendant, however, according to the testimony of Mr. Murtaugh, the conversation did not go any further than that.

II. Rule of Law

"When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter unless: (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is promptly given to the appropriate client to enable it to ascertain compliance with the provisions of this rule.

Rule 1.10(b) of the Rules of Professional Conduct.

“Whether two or more lawyers constitute a firm within this definition depends on specific facts.” *Explanatory Comment [1] to Rule 1.10 of the Rules of Professional Conduct.*

“Matters are ‘substantially related’...if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” *Explanatory Comment [3] to Rule 1.9 of the Rules of Professional Conduct.*

III. Discussion


The initial matter that must be examined is whether Mr. Brewer and Mr. Murtaugh were associated with the same firm. Based upon the fact that Mr. Brewer and Mr. Murtaugh share space, a telephone number, a fax number, and a secretary, for limited purposes, at the Wexford, Pennsylvania, location this Court finds that Mr. Brewer and Mr. Murtaugh were associated in the same firm. Regardless of the fact that Mr. Brewer’s principal office was located somewhere other than the Wexford, Pennsylvania, location, the men are associated in the same firm at the Wexford office.

Secondly, this Court must determine whether the matter in which Mr. Murtaugh represented his client, BAIU, on behalf of the Plaintiff, and the matter in which Mr. Brewer is currently representing his client, the Defendant, are substantially related. Although Mr. Murtaugh states that he did not actually represent the Plaintiff in the Arbitration matter, he presented the position of BAIU on behalf of the Plaintiff and gained confidential information about the Plaintiff’s case in the process of doing so. Mr. Brewer is presently representing the Plaintiff’s former attorney who

represented the Plaintiff around the time that the Arbitrators made their decision upholding the Plaintiff's discharge.

The information obtained by Mr. Murtaugh in his previous representation of the Plaintiff in the course of presenting BAJU's position at the Plaintiff's Arbitration hearing could be used to the advantage of Mr. Brewer in the course of preparing a defense for his client, the Defendant. Moreover, the previous matter in which Mr. Murtaugh provided representation and the present matter in which Mr. Brewer is counsel for the Defendant arose from the same occurrence, the Plaintiff's termination from his employment at AK Steel Corporation. Therefore, there is a conflict of interest with Graydon R. Brewer, Esquire, representing the Defendant due to the fact that he is associated in the same firm as John W. Murtaugh, Jr., Esquire, who previously represented the BAJU on behalf of the Plaintiff in a substantially related matter.

Accordingly, We Find As Follows:



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vs. :
JOSEPH CHIVERS, :
Defendant. :

Attorney for Plaintiff: Pro Se
Attorney for Defendant: Graydon R. Brewer, Esquire

Yeager, J.

November 20, 2007

ORDER OF COURT

AND NOW, this 20th day of November, 2007, upon consideration of Plaintiff's, Joseph G. Myers, Conflict of Interest pleading, oral argument thereon, and in accordance with the foregoing Memorandum Opinion, it is hereby Ordered that there is a Conflict of Interest in Graydon R. Brewer's representation of the Defendant, Joseph Chivers.

Defendant, Joseph Chivers, shall have thirty (30) days from the date of this Order of Court to obtain new counsel. Such retained counsel is then to immediately enter their appearance of record and thereafter confer with the Plaintiff, Joseph G. Myers, regarding the status of this case.

BY THE COURT,


S. MICHAEL YEAGER
JUDGE

