

PROFESSIONAL LIABILITY UPDATE

April 24, 2007

Issue No. 254

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ATTORNEY DISQUALIFICATION

CALIFORNIA LAW

By Glen R. Olson

Knight v. Ferguson 07 C.D.O.S. 4203 (March 22, 2007)

The Second District affirms the disqualification of an attorney based upon a brief representation as to a partnership and lease agreement.

Laura Knight decided to open a new branch of an existing restaurant that she owned. Steven Sponder agreed to be a financing partner for the project. Knight met with attorney Richard Wideman to discuss the partnership and the details of a new restaurant lease.

Knight did not form a partnership with Sponder, but instead found two other investors, Perry and Paula Ferguson. The Fergusons, who were already clients of Wideman, agreed to finance the venture.

In 2005, Knight sued the Fergusons for breach of contract and dissolution of the restaurant corporation. She alleged that the Fergusons had breached their duties as corporate directors and had improperly removed her from managing and overseeing the restaurant's operation. The Fergusons cross-complained against Knight alleging causes of action for fraud, breach of contract, and breach of fiduciary duty.

The Fergusons were initially represented by the firm of Cappello & Noel but then substituted Wideman in as their counsel.

Knight moved to disqualify Wideman from representing the Fergusons. She declared in support of the motion that Knight had discussed with Wideman her feelings about litigation and her position relative to the restaurant lease. She had also discussed her relationship with Sponder and her plans to purchase the ground lease for the restaurant.

In response, Wideman declared that he had not obtained confidential information from Knight. He noted that, at the time, Knight had retained an attorney of her own, Burkhardt, at the request of the Fergusons. Wideman claimed that he had told Knight that he was the Fergusons' attorney, and that the Fergusons had asked him to help her.

The trial court noted that Wideman's role as litigation counsel was brief but that it was not peripheral. The court, in disqualifying Knight, ruled that the

nature of the former representation was such that confidential material relative to the current dispute would have normally been imparted to the attorney.

The Court of Appeal affirmed the ruling observing that, where an attorney acquires knowledge about the former client's attitudes, practices, business customs, litigation philosophy, strengths, weaknesses or strategy, disqualification may be required. **Jessen v. Hartford Causality Insurance Co.** (2003) 111 Cal.App.4th 698, 712. The Court indicated that the issue was not whether the communications between Knight and Wideman were necessarily subject to the attorney-client evidentiary privilege. The Court held that even where the issue of disclosure of privileged information is absent, an attorney may be properly disqualified for violating the separate and independent duty not to represent conflicting interests. **Western Continental Operating Co. v. Natural Gas Corp.** (1989) 212 Cal.App.3d 752, 762.

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