

STATE OF MAINE
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET
Location: West Bath
Docket No. BCD-WB-RE-07-02
BCD-WB-CV-08-01

Carl & Lynn Gross,

Plaintiffs

v.

Wilmington Finance, Inc., et al.,

Defendants

ORDER

This matter is before the Court on the Motion to Dismiss Based on Violation of Maine Bar Rules 3.4(d)(1) and 3.4(b)(3)(i), which motion was filed by Defendants Sally Tornquist and Tornquist Appraisals, Inc. Through their motion, Defendants contend that dismissal is warranted because Plaintiffs' counsel violated the bar rules regarding successive representation.

Regardless of the merits of Defendants' allegation that Plaintiffs' counsel violated the bar rules, dismissal is not appropriate. Even if Plaintiffs' attorneys violated the bar rules by accepting representation against a former client, Plaintiffs are not subject to the ultimate sanction. In *Linquist v. Bangor Mental Health Institute*, 2001 ME 72, ¶ 6, 770 A.2d 616, 618, the Law Court concluded that where "a court disqualifies an attorney ... the disqualification is not a basis for dismissal of that lawsuit." The appropriate motion where a party contends that an attorney should be disqualified is a "motion to disqualify". *Id.* Because the Court concludes that dismissal is not an appropriate sanction even if Defendants' substantive allegations are meritorious, the Court denies the Motion to Dismiss Based on Violation of Maine Bar Rules 3.4(d)(1) and 3.4(b)(3)(i).¹

¹ The Court notes that as part of their written argument, Defendants maintain that Plaintiffs' counsel should be disqualified from representing Plaintiffs because of a violation of the bar rules regarding successive representation. Defendants do not, however, move for disqualification in the motion. Indeed, Defendants' motion is entitled "Motion to *Dismiss* Based on Violation of Maine Bar Rules 3.4(d)(1) and 3.4(b)(3)(i)". (emphasis supplied). The Court further notes that Defendants did not file any affidavits or other evidence of record to support the factual allegations contained in the written motion. Even if the Court construed Defendants' motion to request disqualification, the Court could not,

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Order into the docket by reference.

Date: 8/15/08



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in the absence of any record evidence, make the factual findings necessary to disqualify counsel. *See e.g., Casco Northern Bank v. JBI Associates*, 667 A.2d 856 (Me. 1995). Finally, the Court recognizes that when Defendants filed the motion, Defendants requested an evidentiary hearing. An evidentiary hearing is not necessary on Defendants' request for dismissal. If the Court were to construe the motion to seek disqualification, or if Defendants request disqualification in any subsequent motion, given that a "motion for disqualification can be abused as a litigation tactic" (*Adam v. MacDonald Page & Co.*, 644 A.2d 461, 464 (Me. 1994)), before the Court would require the parties to incur the expense of such a hearing, the Court would first require Defendants to establish by way of affidavit that the financial information alleged to have been provided to Plaintiffs' counsel constitutes "confidential information" as contemplated by M. Bar R. 3.4(d)(1)(i).