

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD E. HANNAN, JR. and	:	NO. 03-01,644
JOHN C. BOWER, JR.,	:	
PlaintiffS	:	
	:	
vs.	:	
	:	CIVIL ACTION – LAW AND EQUITY
JOHN C. BOWER and JO-ANNE M.	:	
M. BOWER, his wife,	:	
Defendants	:	Cross-motions to Disqualify Counsel

OPINION AND ORDER

Before the Court are cross-motions to Disqualify Counsel, filed by Plaintiff Bower on March 26, 2004, and Plaintiff Hannan on April 12, 2004, each seeking to disqualify counsel representing the other. A hearing at which the facts were presented as “case-stated” was held May 27, 2004.

This matter arises from an attempted business venture between Plaintiff Hannan, a builder, and Plaintiff Bower, an excavator, whereby both discussed and investigated forming a business entity together and further, negotiated together an agreement for the purchase from Plaintiff Bower’s parents, Defendants herein, a tract of land, for the purpose of developing such. According to the testimony presented in support of each motion, Plaintiff Hannan initially consulted with Attorney Michael Casale, Jr., of Casale and Bonner, respecting the form of the business entity proposed between he and Plaintiff Bower, and during that consultation also shared details respecting the proposed land purchase. Plaintiff Hannan did not retain Attorney Casale. Thereafter he and Plaintiff Bower retained Attorney Peter Facey, of McNERNEY PAGE, to set up the business entity between them and to negotiate the land purchase with Defendants. The parties did enter an agreement of sale, and Attorney Facey assisted both Plaintiffs with matters related to the purchase. After certain difficulties not pertinent hereto, Defendants indicated they were terminating the agreement. When Plaintiff Hannan decided to institute the instant action for, inter alia, specific performance, Plaintiff Bower expressed unwillingness to join such. Once the action was filed and Plaintiff Bower was named as a plaintiff, he retained Attorney Casale to represent him.

Both motions claim continued representation constitutes a conflict of interest. The Court agrees in both respects.

Rule of Professional Conduct 1.9 provides, in pertinent part:

A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client

Although Hannan and Bower Jr. are both plaintiffs in this matter, the Court believes Plaintiff Bower's unwillingness to join the lawsuit against his parents, and thus his apparent disagreement with the claims made or the remedies sought, creates an adverse interest between them. Since Plaintiff Bower is a former client of McNerney Page, that firm may not continue to represent Plaintiff Hannan with respect to the instant matter. With respect to Attorney Casale's representation of Plaintiff Bower, the same holds true: since Plaintiff Hannan is a former client of Casale and Bonner,¹ that firm may not now represent Plaintiff Bower.

ORDER

AND NOW, this 28th day of May 2004, for the foregoing reasons, both motions to disqualify are hereby GRANTED. McNerney Page shall discontinue representation of Plaintiff Hannan in this matter. Casale and Bonner shall discontinue representation of Plaintiff Bower in this matter.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Cynthia R. Person, Esq.
Joseph F. Orso, III, Esq.
J. Michael Wiley, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

¹ The Court notes with interest that Plaintiff Hannan asserts this status as a former client even though he refused to pay the bill sent to him by Attorney Casale, objecting that he had simply been "interviewing" him.