

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM R. CAMERER, JR. and NORMA	:	NO. 04-00,557
DOEBLER CAMERER, on behalf of Doebler	:	
Farmland, Inc., and individually,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	CIVIL ACTION
DOEBLER FARMLAND, INC., a Pennsylvania	:	
Corporation, TAYLOR DOEBLER, III,	:	
MELANIE DOEBLER, PATRICE DOEBLER and	:	
CHRISTOPHER J. McCracken,	:	
Defendants	:	Motion to Disqualify Counsel

**OPINION AND ORDER**

Before the Court is Defendants’ Motion to Disqualify Plaintiffs’ Counsel, filed April 7, 2005. A hearing and argument on the motion was held May 20, 2005. Plaintiffs filed a brief in opposition to the motion that date and Defendants were given the opportunity to respond; their brief was filed May 27, 2005.

Defendants contend Plaintiffs’ counsel’s continued representation would violate Rule of Professional Conduct 1.9(a), which provides as follows:

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter 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 unless the former client gives informed consent.

The Court does not agree with Defendants.

There is no dispute that Plaintiffs’ counsel, J. David Smith, Esquire, by way of his association with the McCormick Law Firm, formerly represented Defendant Doebler Farmland, Inc.<sup>1</sup> That representation ran from the corporation’s inception in 1986 through October 1998. The Court does not believe the current representation is with respect to “the same or a substantially related matter”, however. The Comment to the rule indicates matters are “substantially related” “if they involve the same transaction or legal dispute or if there is

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<sup>1</sup> Actual representation of the corporation was by William Knecht, Esquire, of that firm.

otherwise 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." The instant lawsuit challenges the level of salaries paid to the officers of the corporation. Defendants argue that since the McCormick Law Firm drafted the corporation's by-laws, which authorize the payment of salaries, the subject matter of Plaintiffs' claims here and the prior representation are identical. Plaintiffs do not challenge the authority of the directors to pay salaries to the officers, however, only the level of such, an issue not at all addressed during the former representation. With respect to the second part of the test, the evidence adduced at the hearing indicates no confidential information was obtained; any information about the salary issue was discussed in the presence of Plaintiffs as well as their counsel. Thus, the Court sees no violation of the rule.

Defendants also assert an intention to call Plaintiffs' counsel as a witness at trial, with an eye to invoking the prohibition of Rule 3.7.<sup>2</sup> Without addressing the issue of whether Plaintiffs' counsel would be a "necessary" witness, the Court simply notes the case is not at the trial stage, and thus invocation of such rule is premature.

**ORDER**

AND NOW, this 24<sup>th</sup> day of June 2005, for the foregoing reasons, Defendants' motion to disqualify Plaintiffs' counsel is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: J. David Smith, Esq.  
Rees Griffiths, Esq., 100 E. Market St., York, PA 17405-7012  
J. Michael Wiley, Esq.  
Gary Weber, Esq.

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<sup>2</sup> That rule provides: (a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness... . Pa.R.P.C. 3.7.