

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DEBORAH COLOCINO,

Plaintiff

vs.

DALE SMITH, SR.,

Defendant

:

: **No. 06-02669**

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: **CIVIL ACTION – LAW**

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: **Defendant’s Motion to Disqualify**

: **Plaintiff’s Counsel**

ORDER

AND NOW, this ___ day of March 2007, the Court DENIES Defendant’s motion to disqualify Plaintiff’s counsel. The Court does not believe counsel’s representation of Plaintiff violates Rule 1.18 of the Rules of Professional Conduct.

Dale Smith Jr. testified that in April 2002 he had a two to three minute phone conversation with Attorney Zicolello in which he told him: (1) he was fired by Deb Colocino because he was diabetic; (2) he was seeking an attorney to represent him so he could get his job back and/or file an unemployment compensation claim; (3) he was referred to Zicolello by Attorney Jeffrey Dohrmann; and (4) he needed an attorney right away. Attorney Zicolello allegedly responded by indicating he thought Dale Smith Jr. had a good case and he should set up a date and time to come into the office to go over everything. Dale Smith Jr. asked whether he could tell the Jersey Shore Borough that Attorney Zicolello was going to be his lawyer, and Attorney Zicolello said he could. When Dale Smith Jr. called back a couple of days later to set up an appointment, Attorney Zicolello said he could not represent him and referred him to the law offices of Michael J. O’Connor. Dale Smith Jr. could not recall the reason why Attorney Zicolello could not take the case.

The comment to Rule 1.18 makes it clear that the lawyer is not prohibited from representing a client with interests adverse to the prospective client “unless the lawyer has received from the prospective client information that could be **significantly harmful** if used in the matter.” Pa.R.Prof.Cond. 1.18, explanatory comment [6](emphasis added).

Attorney Zicoello has no recollection of any conversation with Dale Smith Jr. Even by Dale Smith Jr.’s testimony, he gave Attorney Zicoello the “exact same information” regarding his alleged firing that his father said in his statements. Neither defense counsel nor Dale Smith Jr. has specified any information that could be used to impeach Dale Smith Jr. or that would otherwise be significantly harmful if used in this matter. Assuming that Dale Smith Jr. had a phone conversation with Attorney Zicoello,¹ the Court finds he only gave Attorney Zicoello a general idea of why he was seeking an attorney and he did not give him details or specifics. Rather, Dale Smith Jr. was supposed to make an appointment to “go over everything” but that did not occur because Attorney Zicoello decided he could not to represent him. Since Attorney Zicoello did not receive any significantly harmful information from Dale Smith Jr., Rule 1.18 does not prohibit Attorney Zicoello from representing Plaintiff in this matter.

By The Court,

Kenneth D. Brown, P.J.

cc: Michael Zicoello, Esquire

¹ Attorney Zicoello did not recall having any telephone conversation with Dale Smith Jr. In a letter to Attorney Zicoello and in the motion to disqualify, Defendant asserted Dale Smith Jr. met with Attorney Zicoello and Defendant also was present and gave confidential information. At the hearing, Dale Smith Jr. acknowledged he did not meet with Attorney Zicoello. He explained that when he said he met the attorney he was thinking of Attorney Dohrmann. Nevertheless, he held fast to his belief that he gave Attorney Zicoello confidential information regarding his firing. The Court does not believe it needs to resolve the credibility issue of whether any phone conversation occurred, because even under Dale Smith Jr.’s version of the conversation, no confidential or harmful information was conveyed to Attorney Zicoello.

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Gary Weber, Esquire (Lycoming Reporter)