

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JL,		:	NO. 11-20,431
	Plaintiff	:	
		:	
vs.		:	
		:	
AL,		:	
	Defendant	:	IN DIVORCE

ORDER

AND NOW, this 20th day of **June, 2011**, after a hearing in regards to the Motion to Recuse filed May 23, 2011 by Husband. At which time Husband was present with his counsel Bradley Hillman, Esquire and Wife was present with her counsel, Janice Yaw, Esquire.

Wife has retained Attorney Janice Yaw to represent her in a divorce proceeding. Wife signed the retainer agreement as well as the terms and conditions of representation statement on October 16, 2010. Subsequently, Husband called Attorney Yaw's office for a divorce consultation. At the time Husband called Attorney Yaw's office a conflict check was done by Attorney Yaw's secretary and no conflict was discovered. Husband thereafter he met with Attorney Yaw regarding divorce. At the initial client intake meeting the conversation between Husband and Attorney Yaw involved the topics of finances, custody, divorce and counseling. During the conversation, Husband showed Attorney Yaw a picture of his family. Attorney Yaw recognized Wife as being a client, at that time Attorney Yaw left her office in order to speak with her secretary Traci Williams. Ms. Williams determined that Attorney Yaw did in fact represent Wife but that her name had never been placed on the firm's conflict

system. Due to the fact that Wife had already retained Attorney Yaw, Husband was asked to leave the office. Attorney Yaw has continued to represent Wife.

At issue is whether Attorney Yaw should be disqualified from the case due to her meeting with Husband. *Pennsylvania Rule of Professional Conduct 1.18* Duties to Prospective Clients states:

- (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information which may be significantly harmful to that person learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

This Court finds that Husband never retained Attorney Yaw; therefore a client-lawyer relationship never existed between the two parties. However, Attorney Yaw was privy to information provided from Husband for the reason of seeking counsel. “Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information which may be significantly harmful to that person learned in the consultation . . .” Pa. R. Prof. Cond. 1.18 (b). There is Lycoming County precedent on this issue in the Honorable Judge Kenneth Brown’s opinion in *Colocino v. Smith* filed March 7, 2007 to case number 06-02669. In *Colocino* the court referenced explanatory comment six of

Pennsylvania Rule of Professional Conduct 1.18 and held that “. . . the lawyer is not prohibited from representing a client with interest 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.’” In the present case this Court finds that because the client intake interview between Husband and Attorney Yaw involved discussions of finances, custody, divorce and counseling, it did in fact contain information that could be “significantly harmful” towards Husband if used against him.

As this Court finds that *Pennsylvania Rule of Professional Conduct 1.18* prohibits Attorney Yaw from continuing as Wife’s counsel in this divorce proceeding Husband’s Motion to Recuse is **GRANTED** and Attorney Janice Yaw is **DISQUALIFIED** from representation in this case.

By the Court,

Joy

Reynolds McCoy, Judge