

STATE OF NORTH CAROLINA  
COUNTY OF JACKSON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
11 CVS 180

INTERNATIONAL FOREST  
PRODUCTS CORPORATION,  
INTERNATIONAL FOREST  
PRODUCTS CORPORATION as assignee  
of STONEWALL PACKAGING LLC, and  
COOPER CONTAINER  
CORPORATION,

Plaintiffs,

v.

JACKSON PAPER MANUFACTURING  
COMPANY, JEFFERY L. MURPHY,  
TIMOTHY L. CAMPBELL, THOMAS C.  
DAVIS, and CAPSTONE PARTNERS  
LLC,

Defendants.

**ORDER**

**THIS MATTER** is before the Court upon (1) Plaintiffs' Motion to Disqualify Gregory Brow, Claire Carothers and the law firm of McKenna Long & Aldridge, LLP as counsel for Defendants Jackson Paper Manufacturing Company, Jeffrey Murphy and Timothy Campbell (collectively, "Defendants") and (2) Defendants' Motion for Admission *Pro Hac Vice* of Gregory Brow, Claire Carothers and the law firm of McKenna Long & Aldridge, LLP. Plaintiffs move the Court to deny Defendants *pro hac vice* motion and to disqualify Gregory Brow, Claire Carothers and McKenna Long & Aldridge, LLP (collectively, "McKenna Long") from acting as counsel for Defendants pursuant to Rules 1.9, 1.10 and 3.7 of the North Carolina Rules of Professional Conduct.

The issue of disqualification of counsel is wholly within the trial court's discretion. *Robinson & Lawing, LLP v. Sams*, 161 N.C. App. 338, 339, 587 S.E.2d 923, 925 (2003); *see*

*also Cottages of Stonehenge Condo. Homeowner's Assoc., Inc., v. Dominion Mid-Atl. Properties, II, LLC*, No. 08-CVS-18768 (N.C. Super. Ct. May 14, 2009) (Order on Motion to Disqualify Counsel), *available at* <http://www.ncbusinesscourt.net/TCDDotNetPublic/default.aspx?CID=3&caseNumber=08CVS18768>. When addressing issues of disqualification, the North Carolina Business Court has repeatedly enforced the principle that “the goal of maintaining public confidence in our system of justice demands that courts prevent even the appearance of impropriety and thus resolve any and all doubts in favor of disqualification.” *Id.* (citing *Chemcraft Holdings Corp. v. Shayban*, 2006 NCBC 13 ¶ 34 (N.C. Super. Ct., Oct. 5, 2006), <http://www.ncbusinesscourt.net/opinions/2006%20NCBC%2013.htm>).

Rule 1.9 of the North Carolina Rules of Professional Conduct provides that “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.” N.C.R. Prof'l Conduct 1.9. The spirit of Rule 1.9 is to create a duty of loyalty that a lawyer owes to a former client with respect to confidentiality and conflicts of interest. N.C.R. Prof'l Conduct, R. 1.9. Pursuant to Rule 1.10, a lawyer's duty of loyalty can be imputed to every lawyer at his firm. N.C.R. Prof'l Conduct, R. 1.9, cmt. 1. Under Rule 1.9, matters are considered substantially similar if there is a “substantial risk that information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.” N.C.R. Prof'l Conduct, R. 1.9.

Rule 1.9 and its commentary, however, make clear that a duty of loyalty attaches *to a client*, and *not to a claim or transaction*. The lawyer-client relationship is a personal one and cannot be assigned. In the present matter, a lawyer-client relationship existed between McKenna Long and Stonewall Packaging, LLC (“Stonewall”). Thus, McKenna Long's duty of loyalty and

confidentiality are owed to Stonewall, not to Stonewall's claims or interests. This personal duty, therefore, did not transfer to Plaintiff International Forest Products Corporation ("International Forest") when it acquired certain of Stonewall's claims. As an assignee, International Forest cannot claim protection under the duty of loyalty because it is not a former client of McKenna Long itself. Therefore, Rules 1.9 and 1.10 are inapplicable.

Additionally, Plaintiffs move the Court to disqualify McKenna Long pursuant to Rule 3.7 of the North Carolina Rules of Professional Conduct. Rule 3.7(a) prevents a lawyer from acting as advocate at a trial in which the lawyer is likely to be a necessary witness. N.C.R. Prof'l Conduct, R. 3.7(a). However, part (b) of Rule 3.7 explicitly provides that other lawyers in a lawyer-witness's firm may continue to act as advocate unless the lawyer-witness's testimony would be adverse to the client's interests. N.C.R. Prof'l Conduct, R. 3.7(b). Thus, Rule 3.7(a)'s prohibition is not imputed to all lawyers at a firm. Because McKenna Long's duty of loyalty to Stonewall does not transfer to International Forest as an assignee of Stonewall's claims, the only concern for the Court in this matter is whether the testimony of lawyer-witnesses from McKenna Long would be adverse to the interests of Defendants (as McKenna Long's clients). Defendants make no contention that McKenna Long lawyer-witnesses' testimony will adversely affect their interests in this action. The Court, therefore, concludes that Rule 3.7 does not prohibit McKenna Long from representing Defendants.

After considering the Court file, Plaintiffs' Motion and the parties' briefs and submissions, the Court concludes that there is no conflict under Rules 1.9, 1.10 and 3.7 between McKenna Long's current representation of Defendants in this action and their prior representation of Stonewall. Absent such a conflict, the Court concludes that disqualification is unwarranted and therefore, **DENIES** Plaintiffs' Motion.

Further, *pro hac vice* admission of an out-of-state attorney to practice in North Carolina is governed under Section 84-4.1 of the North Carolina General Statutes. The statute, however, explicitly states that compliance with the requirements for *pro hac vice* admission “does not deprive the court of the discretionary power to allow or reject the application.” N.C. Gen. Stat. § 84-4.1 (2011). The right of an out-of-state attorney to practice in the North Carolina forum is a permissive, not an absolute, right “subject to the sound discretion of the Court.” *Hill v. Hill*, 181 N.C. App. 69, 71, 638 S.E.2d 601, 603 (2007) (quoting *State v. Hunter*, 290 N.C. 556, 568, 227 S.E.2d 535, 542 (1976)) (internal quotation marks omitted).

Gregory Brow and Claire Carothers have submitted *pro hac vice* motions in compliance with Section 84-4.1 of the North Carolina General Statutes requesting the Court’s permission to be admitted in North Carolina to represent Defendants in this matter. The Court, in the exercise of its sound discretion, hereby **GRANTS** the *pro hac vice* motions.

**WHEREFORE**, the Court **DENIES** Plaintiffs’ Motion to Disqualify Counsel and **GRANTS** Defendants’ Motion for *Pro Hac Vice* Admission of Gregory Brow, Claire Carothers and McKenna Long & Aldridge, LLP, subject to payment of the statutory admission fees.

The Court **ORDERS** Lee M. Whitman and Sarah M. Johnson to forward, within thirty (30) days of the entry of this Order, a specified registration statement, as required by 27 N.C.A.C. 1H, Section .0100, together with a copy of the necessary documentation, to the North Carolina State Bar, P.O. Box 25908, Raleigh, North Carolina 27611.

**SO ORDERED**, this the 25th day of July, 2011.

/s/ Calvin E. Murphy  
Calvin E. Murphy  
Special Superior Court Judge