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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY WATER CASES

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.

Defendants.

Judicial Council Coordination
Proceeding No. 4408

(Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

Case No.: BC391869

**NOTICE OF MOTION AND MOTION
FOR ORDER DISQUALIFYING THE
LAW FIRM OF LEMIEUX & O'NEIL**

Date: July 10, 2009
Time: 11:00 a.m.
Dept.: 17C

1 TO THE COURT AND ALL INTERESTED PARTIES:

2 PLEASE TAKE NOTICE that on July 10, 2009, at 11:00 a.m., or as soon
3 thereafter as the matter may be heard, plaintiff Richard Wood on behalf of himself and
4 others similarly situated, will and hereby does move to disqualify the law firm of
5 Lemieux & O'Neil ("Lemieux") from representing any party in this coordinated
6 proceeding. The motion is made on the ground that Lemieux is currently and
7 simultaneously representing multiple adverse parties in an irreconcilable conflict of
8 interest. The interests of justice and fairness mandate Lemieux's immediate
9 disqualification.

10 More specifically, Lemieux is currently representing Littlerock Creek Irrigation
11 District and Palm Ranch Irrigation District, two cross-complainants in the First Amended
12 Cross-Complaint of the Public Water Suppliers. At the same time, Lemieux is
13 representing cross-defendants Llano-Del Rio Water Company, Little Baldy Mutual Water
14 Company, Big Rock Mutual Water Company, and Llano Mutual Water Company.
15 Lemieux has filed answers to the First Amended Cross-Complaint on behalf of these later
16 four parties. In other words, on behalf of one group of clients, Lemieux has answered a
17 complaint it filed on behalf of a different group of clients. It is simultaneously
18 representing plaintiffs and defendants in the same case.

19 This motion is based on this Notice, the attached Memorandum of Points and
20 Authorities, the attached declarations and exhibits, and such other and further evidence as
21 the Court adduces at the hearing.

22 DATED: June 10, 2009

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

23
24
25 By: _____ //s//

26 Michael D. McLachlan
27 Attorneys for Plaintiff
28

1 **I. INTRODUCTION**

2 As a basic hallmark of the adversarial system, a lawyer cannot represent opposite
3 sides in the same case. “Common sense dictates that it would be unthinkable to permit an
4 attorney to assume a position at trial or hearing where he could not advocate the interests
5 of one client without adversely injuring those of the other.” (*Tsakos Shipping & Trading,*
6 *S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, 97.)

7 Here, one law firm, Lemieux & O’Neill (“Lemieux”) represents both cross-
8 complainants and cross-defendants in the Public Water Suppliers cross-complaint for
9 declaratory and injunctive relief. This situation cannot stand without raising serious
10 questions about the genuineness of this proceeding. Indeed, while Lemieux must have
11 been aware of its conflict since it filed answers to the cross-complaint (in 2007), the firm
12 has refused requests to exit the proceeding voluntarily. Thus, this motion follows.

13 While it would not ordinarily be Mr. Wood’s concern about the arrangements
14 between various parties and their counsel, the inappropriateness of the same attorneys
15 representing opposing parties in the same litigation is so clear, and raises so many
16 concerns about the enforceability of any judgment or resolution arising out of this
17 proceeding, that Wood feels compelled to bring this matter to the Court. Lemieux must
18 be disqualified to maintain both the appearance and actuality of fairness.

19
20 **II. STATEMENT OF FACTS**

21 On March 13, 2007, Lemieux (and other counsel for the Public Water Suppliers)
22 filed the operative “First Amended Cross-Complaint of Public Water Suppliers For
23 Declaratory and Injunctive Relief and Adjudication of Water Rights.” According to the
24 caption, Lemieux filed this complaint on behalf of its clients Littlerock Creek Irrigation
25 District and Palm Ranch Irrigation District. (Exhibit A.) On September 26, 2007,
26 Lemieux filed four separate answers to this cross-complaint on behalf of four of its
27 mutual water company clients. (Exhibits B, C, D, and E.) Interestingly, each of answers
28 contains a general denial pursuant to Code of Civil Procedure section 431.30(d), meaning

1 that Lemieux apparently has a good faith basis to dispute each and every allegation of its
2 own complaint. In other words, Lemieux simultaneously represents two cross-
3 complainants and four cross-defendants on the same cross-complaint. This is an
4 irreconcilable conflict of interest. (See *Tsakos Shipping & Trading, S.A. v. Juniper*
5 *Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, 97; *Klemm v. Superior Court* (1977)
6 75 Cal.App.3d 893, 898; ABA Model Rule 1.7(b)(3) & comm. 17.)

7 Counsel for the Wood class discovered Lemieux's conflict very recently, in the
8 course of attempting to obtain lists of mutual water company shareholders to generate a
9 list of class members. Upon discovering the problem, counsel initiated a meet-and-confer
10 with Lemieux out of a concern that Lemieux's conflict would not only taint its co-counsel
11 among the other plaintiffs in the Water Purveyor cross-complaint, but make a mockery of
12 the entire proceeding. In written correspondence, Lemieux was unwilling to concede the
13 obvious point that a conflict even existed among its clients.¹

14 15 **III. LEGAL ANALYSIS**

16 When an attorney simultaneously represents clients with conflicting interests,
17 California courts apply a *per se* rule of disqualification by which the conflicted attorneys
18 are prohibited from continuing with the representation. (*People v. Speedee Oil Change*
19 *Systems, Inc.* (1999) 20 Cal.4th 1135, 1147.) An attorney, in other words, cannot wear
20 two hats: "Attorneys have a duty to maintain undivided loyalty to their clients **to avoid**
21 **undermining public confidence in the legal profession and the judicial process.**"
22 (*Id.*, 20 Cal. 4th at 1146 (emphasis added.)

23 Here, Lemieux is attempting to represent opposing parties on the Public Water
24 Suppliers' cross-complaint. That situation cannot stand, particularly if any physical
25

26
27
28 ¹ Lemieux's posture in the proceeding raises obvious questions of collusion. Do the
firm's cross-defendant clients have a deal in place with the Public Water Purveyors?

1 solution stemming from this proceeding is to have any chance at wide public support
2 within the Area of Adjudication.

3 **A. The Court Should Disqualify Lemieux.**

4 As a threshold matter, the Court has authority to disqualify Lemieux and force its
5 clients to obtain new (and separate) counsel.

6 Courts dealing with disqualification motions have frequently noted that such
7 motions “involve a conflict between the clients’ right to counsel of their choice and the
8 need to maintain ethical standards of professional responsibility. The paramount concern
9 must be to preserve public trust in the scrupulous administration of justice and the
10 integrity of the bar. The important right to counsel of one’s choice must yield to ethical
11 considerations that affect the fundamental principles of our judicial process.” (See
12 *People v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145-46; citations
13 omitted.)

14 Thus, the desires of Lemieux’s clients must give way to the interest in maintaining
15 at least the appearance of a bona fide adversarial stance among parties on opposite sides
16 of this lawsuit. Whatever other “fundamental principles” exist in the civil justice system,
17 one fundamental principle is that a lawyer cannot represent both the plaintiff and the
18 defendant in a lawsuit. Indeed,

19 [t]he most egregious conflict of interest in representation of clients whose interest
20 are directly adverse in the same litigation. Such patently improper dual
21 representation suggests to the clients—and to the public at large—that the attorney
22 is completely indifferent to the duty of loyalty and the duty to preserve
23 confidences.

24 (*Speedee Oil Systems, supra.*, 20 Cal.4th at 1147.)²

26 ² Immediately following this quote, the Supreme Court stated [in anticipated
27 rejoinder to Lemieux’s opposition] “the attorney’s actual intention and motives are
28 immaterial, and the rule of automatic disqualification applies.” (*Speedee Oil Systems*, 20
Cal.4th at 1147.)

1 Under these circumstances, Lemieux must be disqualified from further
2 representation of any clients in this proceeding.

3
4 **B. Wood Has Standing to Seek Lemieux’s Disqualification.**

5 As Wood noted in the Introduction, it is not ordinarily his concern what
6 agreements parties have with their attorneys. However, when the entire legitimacy of the
7 process can be questioned because of an obvious and irremediable conflict, action must
8 be taken. And, indeed, non-clients have standing (and perhaps an obligation) to raise the
9 question of disqualification by motion, as long as the non-client has a “personal stake” in
10 the motion. (*Concat LP v. Unilever, PLC* (N.D.Cal. 2004) 350 F.Supp.2d 796, 818.)

11 Here, every party—both landowner and purveyor—should be united in desiring a
12 process that does not lend itself to attack in the future. While it may be the case that
13 Lemieux’s cross-defendant clients have not present intention to appeal from an adverse
14 result, their intentions could change. As things now stand, those cross-defendants could
15 not, as a matter of law, have adequately given informed consent to Lemieux’s conflicted
16 representation.

17 More fundamentally, it should not matter whether or how Lemieux sought conflict
18 waivers from its clients: joint representation of clients whose interests actually conflict is
19 automatic. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 284-86.)

20
21 **C. Lemieux’s Continued Involvement Risks Tainting The Entire**
22 **Proceeding.**

23 When Wood’s counsel sought to have Lemieux address the conflict without court
24 intervention, Lemieux took the position that various factual issues mitigated its conflict.
25 For example, the firm’s water purveyor clients and mutual water company clients are
26 apparently geographically separated. Thus, goes the argument, whatever pumping the
27 cross-complainant clients do cannot affect the cross-defendants, and vice versa. But in
28 making this argument, Lemieux assumes a set of circumstances that may not bear out as

1 the proceeding unfolds. One could just as easily assume that the cross-complainant
2 clients will at some point want to minimize the historical pumping of all overlying
3 landowners, including the cross-defendant clients. Under this scenario, Lemieux may
4 well possess confidential information obtained from one group of clients that it would be
5 ethically obligated to use to those clients' detriment.

6 This is an unacceptable situation, particularly since a civil judgment may be
7 reversed if an attorney's concurrent representation of clients precluded one client from
8 receiving a fair trial. (*Hammett v. McIntyre* (1952) 114 Cal.App.2d 148, 155-58.) Since
9 nobody knows how the proceeding will unfold or what form a physical solution may
10 take, no party should tolerate Lemieux's ongoing conflict.

11 In fact, Wood is already concerned that Lemieux's access to confidential
12 information from opposing parties has tainted its purveyor co-counsel. Obviously, this
13 concern will become more acute the longer Lemieux is permitted to continue with its
14 representation. Thus, the Court should grant this motion and order that, consistent with
15 all law on the subject, Lemieux cannot represent opposing parties on the Water
16 Purveyors' cross-complaint.

17 18 **IV. CONCLUSION**

19 For the foregoing reasons, Richard Wood respectfully requests that the Court grant
20 this motion and order the disqualification of the firm of Lemieux & O'Neill from all
21 further representation in this proceeding.

22 DATED: June 10, 2009

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

23
24
25 By: _____ //s//

26 Michael D. McLachlan
27 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the
3 age of 18 and am not a party to the within action. My business address is 523 West Sixth
4 Street, Suite 215, Los Angeles, California 90014.

5 On June 10, 2009, I caused the foregoing document(s) described as **NOTICE OF**
6 **MOTION AND MOTION FOR ORDER DISQUALIFYING THE LAW FIRM**
OF LEMIEUX & O'NEIL

7 be served on the parties in this action, as follows:

- 8 (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the
9 Santa Clara County Superior Court website: www.scefilng.org regarding the
Antelope Valley Groundwater matter.
- 10 () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and
11 processing of documents for mailing. Under that practice, the above-referenced
12 document(s) were placed in sealed envelope(s) addressed to the parties as noted
13 above, with postage thereon fully prepaid and deposited such envelope(s) with the
United States Postal Service on the same date at Los Angeles, California,
14 addressed to:
- 15 () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express
16 or other overnight delivery service, for delivery on the next business day. Each
17 copy was enclosed in an envelope or package designed by the express service
18 carrier; deposited in a facility regularly maintained by the express service carrier
or delivered to a courier or driver authorized to receive documents on its behalf;
with delivery fees paid or provided for; addressed as shown on the accompanying
19 service list.
- 20 () (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's
21 practice of facsimile transmission of documents. It is transmitted to the recipient
on the same day in the ordinary course of business.
- 22 (X) (STATE) I declare under penalty of perjury under the laws of the State of
23 California that the above is true and correct.
- 24 () (FEDERAL) I declare under penalty of perjury under the laws of the United
25 States of America that the foregoing is true and correct.

26 _____//s//
27 Carol Delgado