



Alerts

Fifty-Percent Owner of Partnership Has Standing to Seek Disqualification of Partnership Counsel to Protect Partnership Interests

March 28, 2019

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Jarvis v. Jarvis, No. H044930, 2019 Cal. App. LEXIS 224 (Ct. App. Mar. 19, 2019)

Brief Summary

A general partner has standing to seek disqualification of an attorney who was being paid and directed by the other general partner. Further, the trial court did not abuse its discretion by ordering the disqualification, because the representation may not have been in the partnership's best interest.

Complete Summary

This matter came before the Sixth Appellate District of the Court of Appeal of California following an appeal of the trial court's order disqualifying an attorney who represented a partnership. The attorney was paid and directed by one of the general partners ("General Partner 1"). The second general partner ("General Partner 2") objected to the attorney's representation alleging his partner was electing to "render [the underlying litigation] as needlessly complex and wasteful as possible."

The trial court granted the motion to disqualify. On appeal, General Partner 1 alleged, *inter alia*, General Partner 2 did not have standing to bring the disqualification motion and the trial court abused its discretion by disqualifying the attorney.

The appellate court determined General Partner 2 had standing to seek the attorney's disqualification despite the fact that General Partner 2 did not have a current or former attorney-client relationship with the attorney. The disqualification motion was based on the attorney's lack of authority to act on behalf of the partnership, as opposed to disqualification based on a conflict of interest which would require a current or former attorney-client relationship.

To show standing under these circumstances, General Partner 2 was required to demonstrate he had an "interest in the question of whether [the attorney] was properly authorized to represent the Partnership." General Partner 2 was able to meet this burden by showing the majority of the partners did not retain the

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attorney (which was inevitable given that each partner had a fifty-percent interest). Further, because of his 50% ownership interest in the partnership, General Partner 2 owed the partnership a duty to protect its interests, which was sufficient to give him standing to seek the attorney's disqualification.

Next, the appellate court evaluated whether disqualification was proper under the circumstances of this representation. In analyzing this issue, the court reviewed the partnership agreement, partnership law, ethical considerations, and practical concerns. The court noted the "paramount concern in evaluating a motion to disqualify counsel must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar." (Internal citations omitted).

The court concluded disqualification was not an abuse of the trial court's discretion because facts lend support to General Partner 2's contention that because the attorney was acting only under General Partner 1's direction, the attorney may advance General Partner 1's interest over the interest of the partnership and the attorney may deplete the partnership's assets. Therefore, the court affirmed the attorney's disqualification.

Significance of Decision

Lawyers and law firms should have a baseline understanding of the partnership's requisite authority to hire counsel prior to consenting to represent the partnership. This baseline inquiry and understanding will minimize the likelihood of a lawyer or law firm consenting to represent a partnership without the proper authorization from the partnership and risking a dispute and potential disqualification at a later date.