

Alerts

Court Rejects a Mandatory Disqualification Rule for a Law Firm's Current-Client Conflict of Interest, and Denies Motion to Disqualify the Firm

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Wyeth v. Abbott Laboratories, 2010 WL 502995 (D.N.J. 2010)

Brief Summary

Even though a law firm was deemed to have a current-client conflict of interest under Rule of Professional Conduct ("RPC") 1.7, disqualification in a major patent infringement case was not an appropriate remedy. Rather than automatically disqualifying the firm, the court assessed a number of factors including: prejudice to the parties; complexity of the case; whether the two matters were related or there was any risk of use of confidential information; whether there was any overlap in the firm's personnel working on each matter; the amount of time the firm had invested in each matter and the cost and time involved with retaining new counsel; and, whether both matters were active.

Complete Summary

Plaintiff Wyeth sued defendants Abbott Laboratories and Boston Scientific Corporation ("BSC") for patent infringement. BSC was represented by law firm Howrey LLP ("Howrey"). Wyeth moved to disqualify Howrey based on RPC 1.7 because Howrey was concurrently representing Wyeth in a patent matter in Europe. Finding a violation of RPC 1.7, the rule regulating current-client conflicts of interest, a United States Magistrate Judge granted Wyeth's motion, holding that such violations result as a matter of law in mandatory disqualification.

On appeal to the United States District Judge, the district judge reversed, concluding that adoption of the mandatory disqualification rule was clearly erroneous. The court's holding mirrored that of another federal judge in Delaware, who had ruled on the same issue in a companion case involving the same parties.

The district judge applied a fact-specific approach that involved a range of factors. The court first found that Howrey's independent professional judgment would not be impaired by the conflict. Notably, the two matters were unrelated, continents apart, and Howrey had created an ethical screen between personnel working on each matter. Wyeth also failed to identify any confidential information available to Howrey that could be used in the present matter. The court further relied on the fact that Howrey had only billed 70 hours to Wyeth in

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the overseas matter — all of which was from 2008, and that Wyeth planned to replace Howrey as counsel in that matter.

The court held that the risk of potential prejudice to the parties weighed in favor of BSC. For example, Howrey had built expertise specific to both BSC and the complex technology at issue in the present matter by serving as BSC's litigation counsel for 10 years. Disqualifying Howrey, the court held, would deprive BSC of Howrey's depth of experience, and BSC would further suffer the delay and expense of transitioning to new counsel. Wyeth, on the other hand, failed to identify any prejudice it would suffer as a result of Howrey's continuing representation of BSC.

Importantly, the court held that its interests in maintaining public confidence in the legal system and protecting the integrity of the proceeding would not be served by disqualifying Howrey. In fact, a mandatory disqualification rule, the court noted, could encourage the filing of vexatious disqualification motions and unduly limit clients' choice of counsel.

Significance of Opinion

This court joined a growing majority of courts that treat the question of the appropriate remedy for a conflict of interest as a separate legal question, the answer to which is not automatic but rather depends on a range of factors and facts that go well beyond the basic determination that a conflict of interest may exist under the RPCs. This opinion also demonstrates how the nationalization and globalization of law firms can affect application of ethical rules. The court in effect recognized that in a world where law firms and their clients operate on such large scales, strictly applying the conflicts rules to automatically disqualify counsel could cause more harm than the underlying conflict itself.

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