

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2021-CA-003459-XXXX-MB

ANDREW M. RESS & ASSOCIATES, M.D., P.A.,
d/b/a LIV PLASTIC SURGERY, a Florida corporation;
and ANDREW M. RESS, M.D., an individual,

Plaintiffs,

vs.

ARINA LOREN, an individual,

Defendant.

**ORDER DISQUALIFYING RODERICK F. COLEMAN AS COUNSEL FOR
DEFENDANT**

THIS CAUSE came before the Court on Plaintiffs' ANDREW M. RESS & ASSOCIATES, M.D., P.A., d/b/a LIV PLASTIC SURGERY ("LIV") and ANDREW M. RESS, M.D.'S ("Ress") (Ress and LIV collectively "Plaintiffs") Verified Corrected Motion to Disqualify Roderick F. Coleman as Counsel for Defendant ("Motion to Disqualify"). The Court heard argument of counsel and received evidence during a three (3) hour evidentiary hearing on September 15, 2021. Plaintiffs were represented by Jordan A. Shaw, Esq. and Kimberly A. Slaven, Esq. from Zebersky Payne Shaw Lewenz, LLP, and Defendant, ARINA LOREN ("Loren") was represented by Roderick F. Coleman, Esq. ("Coleman").

In making the findings of fact and conclusions necessary to ruling on the Motion to Disqualify, the Court has carefully considered, compared, and weighed all of the evidence provided including the exhibits accepted into evidence. The Court has observed the candor and demeanor of the witnesses and determined their credibility. The Court has resolved all of the conflicts in the evidence.

In making the determinations set forth below, the Court has attempted to distill the testimony and salient facts together with the findings and conclusions necessary to a resolution of the Motion to Disqualify. In summarizing the substance of the witnesses' testimony, the Court has not included every detail of their testimony, nor attempted to state non-essential facts; however, because the Court has not done so, does not mean that it has failed to consider all of the evidence.

In addition to all of the exhibits offered into evidence, the Court has considered all argument of counsel, the court file, the testimony of the witnesses.

Based on the foregoing, the Court makes the following findings of fact and conclusions of law:

EVIDENCE PRESENTED

1. On September 15, 2021, this Court heard live testimony from four (4) witnesses and accepted seven (7) items into evidence. Plaintiffs presented evidence that Roderick F. Coleman, Esq. (“Attorney Coleman” or “Coleman”) had previously represented Plaintiff Ress and Plaintiff LIV in multiple matters from 2017 through 2019. Specifically, Plaintiffs’ evidence shows that Coleman represented Plaintiffs in at least six (6) matters, including two (2) Fair Labor Standards Act (“FLSA”) cases, one (1) post-dissolution action between Plaintiff Ress and his former wife, two (2) cases against Plaintiff Ress’ homeowner’s association and country club which were interrelated with the post-dissolution proceeding, one (1) collection action against a former patient of Plaintiffs’, and (1) defamation action against a different former patient of Plaintiffs’. The evidence suggests that Attorney Coleman may still be counsel of record for Ress in at least one matter.

2. Plaintiffs’ first witness was Attorney Coleman who also testified in his own case in chief. Plaintiff’s counsel’s, Mr. Shaw, examination of Attorney Coleman revealed that Attorney Coleman read and reviewed Plaintiff Ress’ Marital Settlement Agreement, received and reviewed Plaintiff Ress’ bank account and financial information, and filed a Motion to Modify the Marital Settlement Agreement, as part of Attorney Coleman’s representation of Plaintiff Ress. *See also* Plaintiffs’ Exhibit 1.

3. Attorney Coleman’s testimony as well as Plaintiffs’ Composite Exhibit 2 revealed that he received a financial affidavit and a net worth statement from Plaintiff Ress as part of his representation in the post-dissolution action with said documents including extremely detailed financial information about both Plaintiffs as well as Ress’ family and estate planning.

4. Attorney Coleman’s testimony, as well as Plaintiff’s Exhibit 3, further shows that he received and maintained confidential and proprietary information regarding Plaintiff LIV during his representation, including Plaintiff LIV’s employee handbook. Plaintiffs also presented evidence that Attorney Coleman had discussions with Plaintiff Ress’ accountant.

5. Plaintiffs’ second witness was Ms. Elaine Hill (“Hill”). Attorney Coleman acknowledged in his testimony that Hill would have a better knowledge of the facts than Coleman himself would. Hill testified that she was Attorney Coleman’s paralegal at the time he represented Plaintiffs. Hill also testified that she would have better knowledge of the documents in Attorney Coleman’s file, partly because she also had access to his emails.

6. Mr. Shaw’s examination of Hill confirmed that Plaintiff Ress disclosed personal financial information to Attorney Coleman and his firm. Hill testified that Attorney Coleman and Ress discussed Plaintiff LIV’s policies and procedures, settlement and litigation strategies, and other confidential information—Hill also confirmed that Attorney Coleman received and maintained extremely detailed and confidential financial information about LIV, Ress, and his family because of Attorney Coleman’s representation of Ress in his post dissolution matter. Plaintiffs presented evidence that Attorney Coleman and his firm represented Plaintiff Ress with

regard to, *inter alia*, child custody issues, personal belongings in the former marital residence, bills in the former marital residence, the child's medical bills, and alimony and marital support issues.

7. Plaintiffs' third witness was Dr. Andrew Ress. Plaintiff Ress testified that after meeting Attorney Coleman through Defendant Loren in approximately September 2017, Attorney Coleman was Plaintiffs' lawyer and he retained him for all manner of litigation matters, including business matters, family issues, employment issues, extra-contractual issues, homeowners' association issues, and malpractice and defamation matters. Plaintiff Ress testified that Attorney Coleman requested and received Plaintiff LIV's policies and procedures, time clock records, and presented evidence that Attorney Coleman had discussions with Plaintiff LIV's accountant and bookkeeper, and advised Plaintiff Ress on settlement. Plaintiff Ress also testified that Attorney Coleman met with and had discussions with Plaintiff Ress' father, whereby Attorney Coleman learned information regarding his estate planning documents, specifically the Ress family trust and Plaintiff Ress' inheritance. Mr. Coleman also testified to meeting with Ress' father.

8. Plaintiff Ress also testified that he worked with Attorney Coleman to prepare a financial affidavit, and during that process Attorney Coleman had discussions with Plaintiff Ress' business accountant, personal accountant, and bookkeeper, gained knowledge regarding Plaintiff Ress' assets and asset protection strategies, and his inheritance. Plaintiff Ress further testified that he provided Attorney Coleman and his firm with a litigation DropBox containing 10 years of tax returns, and other sensitive information.

9. Plaintiff Ress introduced additional evidence that Attorney Coleman participated in litigation strategy discussions, prepared pleadings, discussed the merits of affirmative defenses, with Plaintiff Ress and Plaintiff Ress' father regarding Plaintiffs' on-going litigation, including the post-dissolution action, the home-owners' association actions, and the California action. *See* Plaintiffs' Exhibit 4, Exhibit 5, Exhibit 6. Mr. Coleman testified that he has never been sued for professional malpractice, which prompted Plaintiffs to present evidence that Coleman is, in fact, currently being sued for professional malpractice. *See* Plaintiffs' Exhibit 7.

10. Importantly, Mr. Shaw's examination of Ress, Hill, and Attorney Coleman revealed that Attorney Coleman represented Ress and LIV in a near identical defamation action. During that representation Ress discussed settlement strategies, provided medical records, medical practice policies and other information to assist Attorney Coleman in his prosecution of the matter. Like this matter, Ress testified that there was a threatened medical malpractice action, which again prompted discussions and the exchange of confidential and attorney client privileged information between Ress and Coleman. Mr. Coleman acknowledged the similarities between this matter and the matter in which he represented LIV and Ress, and when asked by Mr. Shaw if he would utilize his representation of Ress against him in this matter, Mr. Coleman testified "you bet."¹

¹ Mr. Shaw: And you know what strategies and what he pulled in that case because you were his lawyer?
Coleman: Look, anybody who reads that case and reads Ms. Loren's case will see they are the exact same case (indiscernible) come on, this is not rocket science here.
Mr. Shaw: And that's the same position you are going to take in this case against him, right?
Mr. Coleman: Absolutely. You bet.

See September 15, 2021, Hearing Transcript at 112:6—13.

11. Mr. Coleman, in his presentation of evidence, called two (2) witnesses, himself and Defendant Loren. Relevant portions of Attorney Coleman's testimony is summarized above. Coleman also testified that while he did represent Ress and LIV, and may have received confidential information, he does not remember specifics and does not intend to access those files. It is worthy of note that during Mr. Shaw's examination of Attorney Coleman, Coleman was able to and did in fact access those files in real time and was able to view confidential information. Upon the beginning of Attorney Coleman's examination of Loren, Mr. Shaw objected based on relevance and harassment. The Court sustained the objection and Mr. Coleman elected not to proceed with his examination of Loren. In addition, while Attorney Coleman referenced certain documents during the hearing, he did not move to admit any documents into evidence.

LEGAL STANDARD

12. The Rules Regulating the Florida Bar provide the standard for determining whether counsel should be disqualified in a given case. *Young v. Achenbauch*, 136 So. 3d 575 (Fla. 2014). According to the Florida Bar, "[a] lawyer who has formally represented a client in a matter must not afterwards: represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent." R. Reg. Fla. Bar 4-1.9(a). Matters are "substantially related" if they involve the same transaction or legal dispute, or if the current matter would involve the lawyer attacking work that the lawyer performed for the former client. *In Re Amendments to the Rules Regulating the Florida Bar*, 933 So. 2d 417, 445 (Fla. 2006).

13. Opposing counsel may seek counsel's disqualification where a conflict of interest clearly calls into question the fair or efficient administration of justice. *Zarco Supply Co. v. Bonnell*, 658 So. 2d 151 (Fla. 1st DCA 1995). Furthermore, disqualification can be required when a party to litigation retains counsel who gained confidential information through a prior attorney-client relationship because our "legal system cannot function fairly or effectively if an attorney has an informational advantage in the form of confidences gained during a former representation of his client's current opponent." *State Farm Mut. Auto. Ins. Co. v. KAW*, 575 So. 2d 630, 632 (Fla. 1991) (citing to *Developments in the Law: Conflicts of Interest in the Legal Profession*, 94 Harv.L.Rev. 1315-1316 (1981)). If attorney/client relationship existed, an irrefutable presumption arises that the client disclosed confidences to the attorney. *See Anderson Trucking Service, Inc. v. Gibson*, 884 So. 2d 1046, 1049 (Fla. 5th DCA 2004).

FINDINGS

Based on the evidence received by the Court on September 15, 2021, the Court finds as follows:

14. In making its ruling, the Court does not cast doubt on Mr. Coleman's integrity or fitness to practice law. However, the Court finds that because of the substantial relationship that existed between Ress, LIV, and Attorney Coleman, and because of the number and scope of the matters in which Attorney Coleman represented Ress, not only in for business, but also for personal matters, that Attorney Coleman must not continue in his representation of Loren in this matter. Were Attorney Coleman to be permitted to continue his representation of Loren the conflict would call into question the fair or efficient administration of justice. Further, whether Attorney Coleman

recalls precisely the level and extent of confidential information that was received is not the metric that governs disqualification. The proper metric is that he was exposed to that information and whether he recalls it or not, it is undisputed based on the evidence presented, that Attorney Coleman has information in his files that would give him an unfair informational advantage. The information that most concerns the Court is the personal financial information disclosed and discussed in connection with the marital settlement agreement. While that information, *per se*, may not be particularly relevant to the merits of this case, it becomes exceedingly relevant to the potential issues involved in collection and so forth. Therefore, if Attorney Coleman were to continue to represent Ms. Loren in connection with a counterclaim for malpractice, it would give her and her attorney an advantage by having inside information about Ress and LIV, which would not be obtained in the scope of normal discovery.

15. The Court further finds that, although the parties are not the same, this matter and the defamation matter wherein Attorney Coleman represented Ress and LIV are substantially related, thus requiring disqualification. Indeed, if Mr. Coleman were permitted to continue his representation of Loren in this matter, he would be attacking the position he formerly took in the previous defamation action on behalf of Ress and LIV. Though not identical, they are certainly similar enough to give Attorney Coleman what the Court views as an unfair information advantage in this case and the prosecution of any potential medical malpractice case. The Court notes that while Mr. Coleman testified that he did not have certain information about LIV or Ress, for example LIV's office manual, Plaintiffs' exhibits revealed that Coleman did in-fact receive and maintain this information. Again, the Court is not suggesting that Mr. Coleman would go back read those files in order to gain an advantage. But again, that is not the measure for disqualification. On the other hand, the Court does have to consider how Ress will feel if the attorney on the other side, his prior attorney, is representing a party and has access to the information that Mr. Coleman has access to, whether he takes advantage of that or not.

For the forgoing reasons and for all the reasons stated on the record, it is thereby

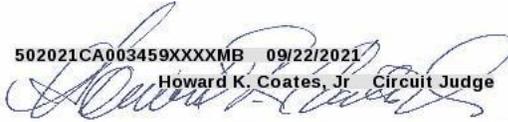
ORDERED and ADJUDGED as follows:

- A. Plaintiffs' Motion to Disqualify is **GRANTED** and, therefore, Roderick F. Coleman, Esq. is immediately disqualified as counsel for Defendant ARINA LOREN. The Court directs Mr. Coleman to henceforth cease, desist, and refrain from assisting ARINA LOREN in this matter in any capacity.
- B. Defendant ARINA LOREN, within twenty (20) days from the signing of this Order, shall either retain a new attorney and have the attorney file a written appearance or file a written notification with the Clerk of the Courts advising the Court that Defendant ARINA LOREN wishes to represent herself. (Note: This option is not available to corporations, to trustees of trust, to personal representatives of estates, or to other such persons named in a representative capacity which may only appear through counsel). *See Nicholson Supply Co. v. First Federal Savings & Loan Association of Hardee County*, 184 So.2d 438, (Fla. 1966); *EHQF Trust v. S & A Capital Partners, Inc.*, 947 So.2d 606 (Fla. 4th DCA 2007).
- C. Until new counsel appears, Defendant may be noticed at the address shown at the bottom of this Order: **7770 Lakeside Blvd, Ste. G302, Boca Raton, FL 33434**. Failure of

Defendant to comply with the above provisions will create a presumption that said Defendant no longer desires to have her position represented in the lawsuit, and sanctions may be imposed by the Court, either on the Court's own motion or on the motion of the opposing counsel including the dismissal of the above-styled lawsuit and/or entry of a default. *See Masot v. Hoteles Doral, C.A.*, 645 So.2d 184 (Fla. 3rd DCA 1994).

- D. The terms of this Order shall be enforceable by way of contempt and imposition by the Court of such other sanctions as may be appropriate to the circumstances.

DONE AND ORDERED in Palm Beach County, Florida.

502021CA003459XXXMB 09/22/2021

Howard K. Coates, Jr. Circuit Judge

502021CA003459XXXMB 09/22/2021
Howard K. Coates, Jr
Circuit Judge

HONORABLE HOWARD COATES
Circuit Court Judge

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