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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2815-22**

**FREDERICK L. GOHLKE, IV,
a minor by his Guardians Ad
Litem, MARY LUCIANO,
FREDERICK L. GOHLKE, III,
MARY LUCIANO, and
FREDERICK L. GOHLKE, III,
individually,**

Plaintiffs-Appellants,

v.

**TRINITAS REGIONAL MEDICAL
CENTER,**

Defendant-Respondent,

and

**TRINITAL PERINATAL CENTER,
ORLY LANGER MOST, M.D.,
RICHARD TAI, M.D., and
ARIELLA LANDA, RDMS,**

Defendants.

Argued September 20, 2023 – Decided November 8, 2023

Before Judges Currier and Firko.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Union County, Docket No. L-2345-17.

Caleb J. Thomas argued the cause for appellants (Weiss & Paarz, PC, attorneys; Michael L. Weiss and Caleb J. Thomas, on the briefs).

Michael R. Ricciardulli argued the cause for respondent (Ruprecht Hart Ricciardulli & Sherman, LLP, attorneys; Michael R. Ricciardulli, of counsel and on the brief; Patricia E. Voorhis, on the brief).

PER CURIAM

On leave granted, we consider whether Michael R. Ricciardulli and his law firm, Ruprecht Hart Ricciardulli & Sherman, LLP (the firm), complied with Rule of Professional Conduct (RPC) 1.10, permitting them to avoid a conflict of interest in representing defendant Trinitas Regional Medical Center (Trinitas) after a lawyer, who previously represented plaintiffs, joined the firm. Although the trial court found Ricciardulli's representation of Trinitas was a conflict of interest, the court concluded the firm had complied with the mandates of RPC 1.10(c) and granted Ricciardulli's motion for leave to substitute as counsel.

After a review of the facts in light of the applicable principles of law, we reverse the order denying plaintiffs' reconsideration of the motion granting leave to substitute counsel. The record reflects Ricciardulli and his firm did not

comply with the RPC's requirement to provide written notice to plaintiffs of their former counsel's new affiliation with the firm.

Plaintiffs, through the law offices of Weiss & Paarz (W&P), instituted this medical malpractice and wrongful birth action (malpractice action) against Trinitas in June 2017. Plaintiffs allege Trinitas's employee, defendant Orly Langer Most, M.D., negligently "failed to test for the presence of fetal [Duchenne] Muscular Dystrophy after an amniocentesis." This negligence "deprived [plaintiffs] of information necessary in order to make a fully informed decision as to whether or not to continue a pregnancy carrying a fetus with" Duchenne Muscular Dystrophy. Frederick L. Gohlke, IV was born with "Duchenne Muscular Dystrophy, a permanent and debilitating condition." Michael L. Weiss (Weiss) was designated trial counsel.

Shortly thereafter, Trinitas, represented by the firm Decotiis, Fitzpatrick, Cole & Giblin, LLP (the Decotiis firm), filed its answer, designating Catherine J. Flynn as trial counsel.

In June 2018, David Weeks resigned as a partner from the firm of Ruprecht Hart Weeks and Ricciardulli, LLP.¹ The firm was not involved in the malpractice action at the time of Weeks's resignation.

On September 5, 2018, Weiss deposed Dr. Most who testified that Trinitas's sonographer, Ariella Landa, had the responsibility to assess and communicate to Dr. Most what fetal testing her patients needed. Weiss believed Dr. Most's testimony insinuated she would "blame" Landa at trial "for the failure to test for [Duchenne] Muscular Dystrophy." Therefore, plaintiffs filed an amended complaint naming Landa and various fictitious defendants as additional defendants.

On November 12, 2018, Weeks joined W&P. Weiss certified that Weeks began to work on plaintiffs' file "from the outset of his tenure." Weeks, by contrast, certified he "did some work on the file, the details of which [he has] no recollection." Weeks further certified he informed Weiss of his promise to his former firm not to participate in cases where the firm represented an adverse party. The firm was not involved in the malpractice action when Weeks joined W&P.

¹ After Weeks's departure, the firm was renamed Ruprecht Hart Ricciardulli & Sherman, LLP.

Two weeks later, plaintiffs filed a second amended complaint that included a gross negligence claim against Dr. Most and Trinitas. Weeks signed the Rule 4:5-1 certification; Weiss was designated as trial counsel.

In a certification, Weiss stated that, in December 2018, W&P assigned Weeks "primary responsibility for handling [plaintiffs'] file and preparing the matter for trial at least through the completion of factual discovery." Weiss stated he and Weeks "had extensive and detailed discussions regarding case preparation, key issues[,] and strategy" between December 2018 and March 2019. Weiss further certified that "[a]ll of the depositions during this time period were conducted by Weeks and no one else from" W&P. During January 2019, Weeks deposed three witnesses: Landa, who was then a defendant in the malpractice action; the clinical coordinator at Trinitas's prenatal center and Trinitas's lead sonographer. In late February, Weeks emailed Weiss confirming Weiss would be "responsible to complete the factual discovery" in the case.

On February 1, 2019, Flynn submitted answers to the first and second amended complaints on behalf of both Trinitas and Landa. Flynn was designated trial counsel for both defendants.

In March 2019, the firm filed a substitution of attorney for Landa with Ricciardulli replacing Flynn and the Decotiis firm. Decotiis continued to

represent Trinitas. Thereafter, as certified by Weiss, "Weeks was removed from handling any aspect of the file" at W&P.

Two years later, in April 2021, Dr. Most, defendant Dr. Richard Tai, and plaintiffs dismissed their claims and crossclaims against Landa. Trinitas did not dismiss its crossclaims against Landa and "reserve[d] the right to call at trial all three experts retained on . . . Landa's behalf." Therefore, the only outstanding claims remaining against Landa were the crossclaims brought by her employer, Trinitas. On April 30, 2021, the discovery end date expired.

On June 4, 2021, Weeks resigned from W&P. Weiss certified he understood that Weeks "was going to . . . retire" from the practice of law. On July 1, 2021, Weeks rejoined the firm. Weeks certified that his reunion with his former firm included an "express[]" agreement with the partners that [he] would not participate in any cases in which [W&P] represented a party." Weeks also certified he had not "discussed or divulged any information regarding [his] involvement in this case beyond what is set forth in []his [c]ertification and [he would] continue to be screened on all [W&P] matters." Ricciardulli certified that "[i]n accordance with RPC 1.10, . . . Weeks was screened from [this] matter" and "ha[d] not taken any action on the file" following his return to the firm.

In March 2022, Weiss sent Ricciardulli a letter questioning Flynn's "motivation" in refusing to dismiss Trinitas's crossclaims against its own employee and criticizing "the absence of any apparent effort on [Ricciardulli's] part to seek" the dismissal of the crossclaims. Shortly thereafter, Trinitas dismissed its crossclaims against Landa.

Weiss certified he learned during the summer of 2022 that Weeks had rejoined the firm. At the time, Weeks did not perceive a conflict because the firm was no longer involved in the malpractice action.

On February 8, 2023, thirteen days before trial, Ricciardulli and the firm filed a substitution of attorney as superseding counsel for Trinitas. The following day, Weiss emailed Flynn and Ricciardulli to express his "surprise[]" at Ricciardulli's substitution, alleging it was improper under the circumstances, because Weeks had deposed Landa while representing plaintiffs; Ricciardulli had represented Landa, who "presumably shared privileged information with" him; Weiss had received no prior notice of Ricciardulli's intent to substitute as Trinitas's trial counsel; and the substitution was served on the eve of trial.

Thereafter, Flynn moved on short notice to be relieved as counsel; the firm cross-moved on short notice for leave to file a substitution of counsel. Landa

executed an affidavit consenting to Ricciardulli's application to substitute as counsel for Trinitas. Plaintiffs opposed the cross-motion.

During oral argument on the motion, Ricciardulli did not dispute the firm had not notified W&P or plaintiffs in writing or otherwise that Weeks was now a member of the firm. Instead, Ricciardulli stated Weiss should have been aware Weeks had rejoined the firm because his name was on the letterhead, and because "it's a small medical malpractice community," and "[e]verybody knows everybody's business."

In an oral decision issued March 3, 2023, the court reviewed RPCs 1.9 and 1.10(c) and found Ricciardulli's substitution was a conflict of interest due to his prior representation of Landa and from Weeks's "involvement" in plaintiffs' case. However, the court determined the substitution did not violate RPC 1.10 because Landa was dismissed from the case, and she "ha[d] consented to Ricciardulli's representation of Trinitas."

In discussing RPC 1.10(c), the court stated it was "satisfied" the firm had screened Weeks from the case upon his return. In addition, the court found Weeks did not have primary responsibility for plaintiffs' case during his tenure at W&P because Weiss was the designated trial attorney and, although Weeks took several depositions, he was responsible for discovery per Weiss's email.

Weeks was later screened from the case after the firm entered an appearance for Landa, and he left W&P in June 2021.

In addressing the written notice requirement under RPC 1.10(c)(3), the court stated:

With respect to notice, . . . it is just beyond—it's just that Mr. Weeks left . . . [W&P] and then went to [the firm], and it's just not credible to believe that [W&P] did not know where Mr. Weeks was going when he left, particularly given that the community of medical malpractice lawyers is fairly, fairly limited.

The court granted Ricciardulli's motion for leave to substitute as counsel in a March 3, 2023 order. The court scheduled trial for June 5, 2023.

Plaintiffs subsequently moved to reconsider the March 3, 2023 order, asserting the court erred in finding Ricciardulli provided the required written notice under RPC 1.10(c)(3).

The court denied the motion for reconsideration, finding Weeks had no primary responsibility over plaintiffs' case because his "role was very limited for a very limited period of time"; Weeks "was screened" after returning to the firm; and W&P "clearly had notice as to where . . . Weeks went" after he left its office. A written order denying reconsideration was issued on March 31, 2023.

On June 2, 2023, we granted plaintiffs' motion for leave to appeal the March 3 and March 31, 2023 orders and granted a stay of the trial.

On appeal, plaintiffs contend the trial court erred in granting Ricciardulli's motion to substitute as counsel for Trinitas and denying plaintiffs' subsequent motion for reconsideration. Plaintiffs assert the court erred in finding Weeks did not have primary responsibility for their case while he was an attorney with W&P, and in finding Ricciardulli satisfied the written requirement notice under RPC 1.10(c)(3).

As an issue of law, our review of a trial court's determination of whether counsel should be disqualified is de novo.² City of Atlantic City v. Trupos, 201 N.J. 447, 463 (2010). We have recognized that "[d]isqualification of counsel is a harsh discretionary remedy which must be used sparingly." Dental Health Assocs. S. Jersey, P.A. v. RRI Gibbsboro, LLC, 471 N.J. Super. 184, 192 (App. Div. 2022) (quoting Cavallaro v. Jamco Prop. Mgmt., 334 N.J. Super. 557, 572 (App. Div. 2000)). Motions for disqualification therefore "call[] for [the court] to balance competing interests, weighing the 'need to maintain the highest standards of the profession' against 'a client's right freely to choose [their] counsel.'" Ibid. (second alteration in original) (quoting Dewey v. R.J. Reynolds

² As stated, this matter was presented to the court initially by Ricciardulli as a motion for leave to substitute as counsel. Plaintiffs opposed the motion. We consider the issue before us on appeal as the denial of an application to disqualify counsel as it was governed by RPCs 1.9 and 1.10.

Tobacco Co., 109 N.J. 201, 218 (1988)). However, "[a]lthough persons are entitled to retain qualified counsel of their own choice, there is no right to demand to be represented by an attorney disqualified because of an ethical requirement." Alam v. Ameribuilt Contractors, 474 N.J. Super. 30, 36 (App. Div. 2022), (quoting Reardon v. Marlayne, Inc., 83 N.J. 460, 477 (1980)).

"Adherence to the [RPCs] serves not only a client's interests but also the 'broader societal interest [in] the integrity of the trial process itself.'" State v. Davis, 366 N.J. Super. 30, 38 (App. Div. 2004) (second alteration in original) (quoting State v. Jimenez, 175 N.J. 475, 485 (2003)). The rules regarding conflicts of interest derive from the principle that no person "can serve two masters[.]" N.J. Div. of Child Prot. & Permanency v. G.S., 447 N.J. Super. 539, 564 (App. Div. 2016) (alteration in original) (quoting State ex rel. S.G., 175 N.J. 132, 139 (2003)). Moreover, "the court maintains an independent interest in assuring that conflict-free representation occurs, since the existence of conflict undermines the integrity of the court" and exposes it to "unjustified attacks over the fairness of the proceedings." Davis, 366 N.J. Super. at 38 (citing S.G., 175 N.J. at 140).

"RPC 1.9(a) prohibits a lawyer who formerly represented a client from representing another client 'in the same or a substantially related matter in which

that client's interests are materially adverse' to the former client's interests unless the former client provides written informed consent." Dental Health Assocs. S. Jersey P.A., 471 N.J. Super. at 193 (quoting RPC 1.9(a)). "RPC 1.9 is strictly construed because '[i]f there be any doubt as to the propriety of an attorney's representation of a client, such doubt must be resolved in favor of disqualification.'" Ibid. (alteration in original) (quoting Herbert v. Haytaian, 292 N.J. Super. 426, 438-39 (App. Div. 1996)).

In this case, Weeks represented plaintiffs during his time at W&P. His representation occurred "in the same . . . matter in which" the firm now seeks to represent Trinitas, a defendant whose interests are obviously "adverse" to plaintiffs'. Ibid. (quoting RPC 1.9(a)). The trial court found it was a conflict of interest for Weeks to represent Trinitas once he rejoined the firm. The parties do not dispute that RPC 1.9 prevents Weeks from representing Trinitas. The issue was, and is, whether that conflict of interest is imputed to the firm to disqualify all its attorneys from representing Trinitas.

Under RPC 1.10, a conflict of interest under RPC 1.9(a) generally "is 'imputed to all members of a law firm, disqualifying all if any one would be disqualified.'" G.S., 447 N.J. Super. at 565 (quoting S.G., 175 N.J. at 138).

Another lawyer in the disqualified attorney's firm may represent the client only if three requirements are met:

- (1) [T]he matter does not involve a proceeding in which the personally disqualified lawyer had primary responsibility;
- (2) [T]he personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
- (3) [W]ritten notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

[RPC 1.10(c).]

Ricciardulli did not present the court with any evidence that he or any member of the firm gave written notice to plaintiffs or W&P that Weeks had rejoined the firm. That alone requires Ricciardulli's disqualification.

In discussing the notice requirement, the court stated, "[I]t's just not credible to believe that [W&P] did not know where Mr. Weeks was going when he left, particularly given that the community of medical malpractice lawyers is fairly, fairly limited." In its decision on plaintiffs' motion for reconsideration, the court found plaintiffs "clearly had notice as to where . . . Weeks went" after he left W&P.

The court mistakenly determined that W&P's actual or constructive notice of Weeks's return to the firm satisfied the written notice requirement under RPC 1.10(c)(3).³ But that is a misapprehension of the RPC which clearly states that "written notice" must be "promptly given" to any affected client.

RPC 1.0(o) specifically defines the term "written" to mean "a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, electronic communication, and embedded information (metadata) in an electronic document." It is undisputed that neither Ricciardulli nor the firm gave plaintiffs or W&P written notice. Therefore, the plain text of RPC 1.10(c)(3) requires the imputation of disqualification to all of the attorneys in the firm.

We reverse the March 3 and March 31, 2023 orders. The firm and its attorneys are precluded from representing Trinitas in this matter. In light of our determination, we need not address any remaining arguments.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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³ We also note there was no evidence of actual notice and any constructive notice was speculative argument.