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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3336-21**

MICHELE COLÓN, a New  
Jersey resident,

Plaintiff-Respondent,

v.

WORLD MISSION SOCIETY,  
CHURCH OF GOD, a NJ nonprofit  
corporation, TARA BYRNE, a/k/a  
TARA WHALEN, and RICHARD  
WHALEN,

Defendants-Appellants,

and

WORLD MISSION SOCIETY  
CHURCH OF GOD, a South Korean  
corporation, GIL JAH CHANG, a/k/a  
GIL JAH ZHANG, a South Korean  
resident, JOO CHEOL KIM, a South  
Korean resident, DONG IL LEE, a/k/a  
DANIEL LEE, a New Jersey resident,  
VICTOR LOZADA, a New Jersey  
resident, and JUN SEOK LEE, a/k/a  
JOHN LEE, a New Jersey resident,

Defendants,

and

WORLD MISSION SOCIETY,  
CHURCH OF GOD, a NJ nonprofit  
corporation,

Defendant/Third-Party  
Plaintiff-Appellant,

v.

RAYMOND GONZALEZ, a New  
Jersey resident,

Third-Party Defendant-  
Respondent.

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Submitted December 5, 2022 – Decided August 17, 2023

Before Judges Whipple, Mawla, and Smith.

On appeal from an interlocutory order of the Superior  
Court of New Jersey, Law Division, Bergen County,  
Docket Nos. L-3007-13 and L-6490-16.

Nissenbaum Law Group, LLC, attorneys for appellants  
(Steven L. Procaccini, of counsel and on the briefs).

Peter L. Skolnik, LLC, attorneys for respondents (Peter  
L. Skolnik, of counsel and on the brief).

PER CURIAM

Defendants World Mission Society, Church of God (Church), Tara  
Whalen and Richard Whalen appeal from a May 20, 2022 order denying their

motion to disqualify Peter L. Skolnik, counsel for plaintiff Michele Colón and third-party defendant Raymond Gonzalez. Defendants argue Skolnik's representation of plaintiff and third-party defendant is violative of the Rules of Professional Conduct (RPC) 1.7, and that under RPC 1.9, Skolnik should not be permitted to represent either party. We affirm for the reasons that follow.

## I.

Plaintiff and the Church have a lengthy and contentious history of litigation, which began over a decade ago.<sup>1</sup>

Plaintiff was a member of the Church from 2009 to 2011. Gonzalez's time as member of the Church overlapped, as he was a member from 2005 to 2012. During his time as a member, Gonzalez created several websites to attract critical posts about the Church. He infiltrated a Facebook group comprised of former members by pretending to be a Church critic. His goal was to spy on and eventually regain control over Church critics who had been former members. Gonzalez created websites critical of the Church which required users to supply an email address and password to post content. The Church maintained a list of

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<sup>1</sup> "Colón I" and "Colón II," Dkt. No. BER-L-5274-12 were initiated by the church against Colón alleging defamation based on Colón's online criticisms of the church and its practices. "Colón I" was filed in Virginia and dismissed for lack of personal jurisdiction, and "Colón II" was dismissed on summary judgment.

the passwords Gonzalez collected from its critics. Using this login information, Gonzalez determined that plaintiff had been posting critical content about the Church. He used plaintiff's credentials to gain access to her accounts on other websites. Gonzalez admitted to his role in hacking plaintiff's accounts but has maintained he did so at the direction of the Church at all times.

In the underlying litigation, plaintiff alleges the Church and certain individual members engaged in wrongful conduct that caused her harm. The alleged conduct included a claim that defendants invaded her privacy via the internet. Plaintiff has not named Gonzalez as a defendant in her action against the Church, and she has taken the position that she will not seek to prove at trial that Gonzalez caused her any damage. Both Colón and Gonzalez have signed conflict waivers agreeing to be represented Skolnik. The Church denies any knowledge of or involvement in Gonzalez's hacking schemes. The Church maintains that if it is found liable, it has a claim for contribution and indemnification from Gonzalez.

In February 2021, while defending Colón's suit against them, defendants successfully moved for leave to file a third-party complaint against Gonzalez. The complaint against Gonzalez sought contribution and indemnification. Defendants theorize that if they are found liable for damages resulting from the

hacking scheme, Gonzalez is partially liable due to the role he played. Defendants were on notice about Gonzalez' position that the Church forced him to hack plaintiff's social media and his intent to testify on behalf of Colón for several years prior to the filing of the third-party complaint.

In March 2022, defendants moved to disqualify Skolnik as counsel for Gonzalez and Colón, arguing that Skolnik's representation amounts to a conflict of interest. The motion was denied by the trial court. The court found:

Everything was known [in 2017] with regard to Mr. Gonzalez in terms of what he was going to be saying vis-à-vis his experience at the Church and what he did with regard to working in the IT department at the Church . . . .

. . . .

The causes of action for contribution and indemnification . . . [do] not have to necessarily be litigated in this case at the same time plaintiff's action is being litigated . . . . This did not have to be brought now. It was chosen to be brought now.

. . . .

By naming Mr. Gonzalez as a third-party defendant now defense counsel can make [the] argument, which is being made, that there is a conflict for Mr. Skolnik to represent Ms. Colón and Mr. Gonzalez. This [c]ourt finds that one party cannot, through its own actions and litigation decisions, manufacture a conflict of counsel in order to make argument that counsel must now be relieved for an opposing party, and in this particular

case counsel must be relieved for the plaintiff and third-party defendant.

....

Based on everything before this [c]ourt, Colón and Gonzalez do not take positions adverse to one another.

After the court's denial of the motion, defendants brought this appeal. Defendants argues on appeal that Skolnik's representation of plaintiff and Gonzalez is violative of RPC 1.7 because it constitutes a concurrent conflict of interest and that if Skolnik is disqualified from representing one client, he is necessarily disqualified from representing the other pursuant to RPC 1.9.

## II.

"The review of a motion for disqualification requires a court 'to balance competing interests, weighing the "need to maintain the highest standards of the profession" against "a client's right to freely choose his [or her] counsel."' "Comando v. Nugiel, 436 N.J. Super. 203, 213 (App. Div. 2014) (alteration in original) (quoting Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988)). A client's "right to retain counsel of his or her choice is limited in that 'there is no right to demand to be represented by an attorney disqualified because of an ethical requirement.'" Ibid. (quoting Dewey, 109 N.J. at 218). Our "evaluation of an appeal from an order granting or denying a disqualification

motion invokes our de novo plenary review in light of the fact that a decision on such a motion is made as a matter of law." Twenty-First Century Rail Corp. v. N.J. Transit Corp., 210 N.J. 264, 274 (2012).

### III.

Defendants first argue Skolnik's representation of both plaintiff and Gonzalez amounts to a concurrent conflict of interest in violation of RPC 1.7. Defendants contend Skolnik's representation of plaintiff is directly adverse to his representation of Gonzalez because plaintiff's claim against the Church asserts that it brought its defamation cases against her without cause and by doing so, invaded her privacy. Defendants posit that Gonzalez admitted to committing the offending acts, therefore, if they are found liable, Gonzalez should be found responsible for indemnification and/or contribution. It follows, according to defendants, that Gonzalez and plaintiff are direct adversaries and that their conflict cannot be waived. Finally, defendants argue that a finding in favor of either plaintiff or Gonzalez would be "directly disadvantageous" to the other. Defendants further argue there is a significant risk that concurrent representation will materially limit Skolnik's responsibilities to each of his clients.

RPC 1.7 states in pertinent part:

(a) . . . a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Our Supreme Court has addressed RPC 1.7, stating:

Our general rule in respect of conflicts of interest is clear: "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." RPC 1.7(a). We countenance only one exemption from this general rule: dual representations involving conflicts of interest that are (1) waived in writing by the clients, based on informed consent after full disclosure; (2) based on the lawyer's reasonable belief that the dual representation can be undertaken competently and diligently; (3) not otherwise prohibited by law; and (4) not representations involving actual adversity, that is, the assertion of a claim by one client directly against the other client. RPC 1.7(b).

[In re Sup. Ct. Advisory Comm. on Pro. Ethics Op. No. 697, 188 N.J. 549, 558-59 (2006) (emphasis added).]

The record shows the positions of plaintiff and Gonzalez are not "directly adverse" as required to find conflict under RPC 1.7(a)(1). Plaintiff's position



is that the Church is liable for the damages she suffered when it created websites to obtain information "regarding the plaintiff and other critics of the [C]hurch," and then hacking into plaintiff's email accounts. Gonzalez' position is that the Church, through coercive tactics, effectively forced him to participate in the hacking. Plaintiff does not assign fault to Gonzalez and takes the position that her proofs at trial will reflect this strategic choice.

Defendants urge us to apply the same logic to this case as was applied in Debolt v. Parker, 234 N.J. Super. 471 (Law Div. 1988). Debolt held:

[i]n automobile accident cases[,] suits by passengers against drivers are common. Parties in such suits are "directly adverse" to each other; consequently, each must be represented by independent counsel. When it is clear, however, that the driver was not responsible for the accident, our rules permit the passenger and driver to be represented by a single attorney who complies with certain disclosure and consent conditions.

[Id. at 479.]

Defendants ask us to treat plaintiff and Gonzalez the same way we treat a driver and passenger in an accident. We decline to do so and note it is not binding upon us.

On this record, there is no "significant risk" that the plaintiff or Gonzalez' representation will be "materially limited" by Skolnik's responsibility to the other. If plaintiff prevails against defendants on liability, it does not

automatically follow that Gonzalez will be held liable by a finder of fact if defendants pursue the third-party complaint against him to completion.

We discern no conflict of interest under RPC 1.7.

We briefly turn to defendants' conflict argument under RPC 1.9, which states in relevant part:

(a) A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing.

.....

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Defendants argue if Skolnik is disqualified from representing either plaintiff or Gonzalez under RPC 1.7, he is necessarily disqualified from representing the

other client pursuant to RPC 1.9. Because we have found no conflict warranting disqualification under RPC 1.7, defendants' theory under RPC 1.9 is unavailing.

Our thorough review of the record leads us to conclude there is no conflict requiring disqualification of Skolnik. To the extent we have not addressed appellants' remaining arguments, we deem them without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION