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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE ESTATE OF  
BERNADITA A. MANGLONA  
Deceased.  
CIVIL ACTION NO. 13-0195  
ORDER DENYING  
MOTION TO DISQUALIFY  
ATTORNEY PAMELA BROWN

I. INTRODUCTION

THIS MATTER came before the Court on November 7, 2016, at 10:30 a.m. in Courtroom 223A, for a motion hearing. The undersigned pro tempore judge presided over the hearing telephonically. Co-Trustees for PB Manglona Family Trust (Co-Trustees) were represented by attorney Pamela Brown. Co-Administrators and Heirs Priscilla M. Torres and Thomas A. Manglona (Co-Administrators), in their capacity as Co-Administrators of the Estate of Bernadita A. Manglona (BAM Estate), were represented by attorney Samuel I. Mok. Heir Paul A. Manglona was represented by attorney Jennifer Dockter. Heir John A. Manglona appeared pro se.

The Court heard arguments on Co-Administrators' motion to disqualify attorney Pamela Brown. Co-Administrators as well as Heir John A. Manglona argued that per the American Bar Association Model Rules of Professional Conduct (MRPC) attorney Pamela Brown should be disqualified from any further representation in this matter due to alleged conflicts of interest. Co-Trustees responded that there is not a conflict that warrants disqualification and that Co-

1 Administrators' motion is a mere litigation tactic. On November 28, 2016, the Court issued its  
2 tentative order indicating that the motion to disqualify attorney Pamela Brown is **DENIED**. *In re*  
3 *the Estate of Bernadita A. Manglona*, Civ. No. 13-0195 (NMI Super. Ct. Nov. 28, 2016) (Tentative  
4 Order). This decision details the Court's reasoning for its earlier order.

## 5 **II. LEGAL STANDARD**

6 Pursuant to NMI R. ATT'Y DISC. & P. Rule 3(1), attorneys practicing within the  
7 Commonwealth are required to adhere to the standards of professional conduct articulated in the  
8 MRPC. Rule 1.7 of the MRPC (Rule 1.7) generally prohibits an attorney from representing a client  
9 if the representation of that client would result in direct adversity between current clients or if there  
10 would be a significant risk that the attorney's representation would be materially limited as a result  
11 of another attorney-client relationship. Rule 1.7 also provides that a client can waive a conflict if the  
12 attorney receives informed consent in writing from the affected client.<sup>1</sup> Rule 1.7 is designed to  
13 ensure that a client receives quality legal representation from his attorney and that he is informed of  
14 possible conflicts of interest.

15 The Court has inherent authority to supervise the conduct of attorneys before it; the Court  
16 has the power to disqualify an attorney from further representation if there is a Rule 1.7 conflict  
17 and/or a violation of the MRPC. *See Dela Cruz v. Hotel Nikko Saipan*, 1997 MP 16 ¶18; *S.E.C. v.*  
18 *King Cheun Tang*, 831 F. Supp. 2d 1130, 1142 (N.D. Cal. 2011). Yet, while the Court can  
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20 <sup>1</sup> Specifically, Rule 1.7 states: "(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the  
21 representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation  
22 of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or  
23 more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person  
24 or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a  
client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation  
to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the  
assertion of a claim by one client against another client represented by the lawyer in the same litigation or other  
proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing."

1 disqualify an attorney the Court is by no means required to do so because conflicts and MRPC  
2 ethics issues are extremely case and fact specific inquiries. *See Carlyle Towers Condo. Ass'n v.*  
3 *Crossland Sav., FSB*, 944 F. Supp. 341, 345 (D. N.J. 1996). Moreover, the key inquiry under Rule  
4 1.7 is whether an attorney's client is satisfied with the representation he is receiving. *See In re Yarn*  
5 *Processing Patent Validity Litig. v. Leeson Corp.*, 530 F.2d 83, 89–90 (5th Cir. 1976). If the client  
6 is uncomfortable with their attorney having a conflict of interest then that weighs heavily in favor of  
7 disqualification. *Id.* Yet, if the client is aware of a potential conflict and still wants the lawyer to  
8 represent them then that weighs heavily against disqualification. *Id.*

9 Further, determining who is and is not the attorney's client is critical to any MRPC inquiry  
10 because the client is the key constituency to be protected under the MRPC. *Id.* Moreover, whether a  
11 person is a client or a non-client is critical to the standing analysis for a motion to disqualify. *See*  
12 *Dela Cruz*, 1997 MP 16 ¶18; *Coyler v. Smith*, 50 F. Supp. 2d 966, 971 (C.D. Cal. 1999). “As a  
13 general rule, courts do not disqualify an attorney on the grounds of conflict of interest unless the  
14 former client moves for disqualification.” *Coyler*, 50 F. Supp. 2d at 971; *Kasza v. Browner*, 133  
15 F.3d 1159, 1171 (9th Cir. 1998); *United States v. Rogers*, 9 F.3d 1025, 1031 (2d Cir. 1993); *In re*  
16 *Yarn*, 530 F.2d at 88. In the Commonwealth, non-client litigants do not have standing to bring a  
17 motion to disqualify based on the MRPC unless “the non-client litigant demonstrates personal  
18 detriment or misconduct which taints the fairness of the proceeding.” *Dela Cruz*, 1997 MP 16 ¶18.  
19 Moreover, a non-client litigant would have standing to challenge a conflict if:

20 the ethical breach so infects the litigation in which disqualification is sought that it  
21 impacts the moving party's interest in a just and lawful determination of her claims,  
22 she may have the constitutional standing needed to bring a motion to disqualify  
23 based on a third-party conflict of interest or other ethical violation. In such a case,  
24 moreover, the prudential barrier to litigating the rights and claims of third parties  
should not stop a district court from determining the motion, because such a  
limitation would be overcome by the court's inherent administration of justice.

*Coyler*, 50 F. Supp. 2d at 971–72.

1 **III. DISCUSSION**

2 Per its previous order, the Court is of the position that Co-Administrators’ motion to  
3 disqualify attorney Pamela Brown should be **DENIED**. Co-Administrators’ inability to show that  
4 the purported ethical breaches prejudice their interests makes denial of the motion appropriate.

5 **A. Status of Trust Beneficiaries**

6 An attorney’s duty to exercise reasonable care is owed only to a fiduciary client. *See, e.g.,*  
7 *Goldberg v. Frye*, 217 Cal. App. 3d 1258 (1990); *Allen v. Stoker*, 61 P.3d 622 (Idaho App. 2002);  
8 *Borissoff v. Taylor & Faust*, 120 Cal. Rptr. 2d 429 (2004). Numerous courts have held that a  
9 beneficiary of an estate and/or trust is not the fiduciary client of an attorney representing the trust  
10 and/or trustees. *E.g., Goldberg*, 217 Cal. App. 3d at 1269; *Thompson v. Vinson & Elkins*, 859  
11 S.W.2d 617, 623–24 (Tex. App. 1993); *Spinner v. Nutt*, 631 N.E.2d 542, 544–45 (Mass. 1994). The  
12 seminal *Goldberg* case articulated the general principle that an attorney representing an estate  
13 and/or trust does not have an attorney-client relationship with the individual beneficiaries of said  
14 estate and/or trust. 217 Cal. App. 3d at 1269. Specifically, the *Goldberg* court stated:

15 [p]articularly in the case of services rendered for the fiduciary of a decedent's estate,  
16 we would apprehend great danger in finding stray duties in favor of beneficiaries . . .  
17 the attorney by definition represents only one party: the fiduciary. It would be very  
18 dangerous to conclude that the attorney, through performance of his service to the  
19 administrator and by way of communication to estate beneficiaries, subjects himself  
to claims of negligence from the beneficiaries. The beneficiaries are entitled to  
evenhanded and fair administration by the fiduciary. They are not owed a duty  
directly by the fiduciary's attorney . . . .

20 *Id.* American Bar Association Formal Opinion 94-380 endorses the majority *Goldberg* approach: a  
21 beneficiary of an estate and/or trust is not considered to be a client of an attorney representing an  
22 estate and/or trust.

23 In this case, attorney Pamela Brown is alleged to have represented the PB Manglona Family  
24 Trust, Co-Trustees for PB Manglona Family Trust, as well as various beneficiaries of the PB

1 Manglona Family Trust in their personal capacities. Yet, no information has been submitted that  
2 attorney Pamela Brown has ever undertaken representation of Co-Administrators, in either their  
3 capacity as Co-Administrators of the BAM Estate or in their personal capacities. Since there is no  
4 indication that attorney Pamela Brown has formally represented Co-Administrators, the Court  
5 considers them to be non-client litigants moving to disqualify. As such, the analysis turns to  
6 whether Co-Administrators can satisfy their standing burden.

7 **B. A Non-Client Litigant’s Standing to Raise MRPC Issues**

8 “As a general rule, courts do not disqualify an attorney on the grounds of conflict of interest  
9 unless the former client moves for disqualification.” *Coyler*, 50 F. Supp. 2d at 971; *Kasza*, 133 F.3d  
10 at 1171; *Rogers*, 9 F.3d at 1031; *In re Yarn*, 530 F.2d at 88. In order for a non-client litigant, such  
11 as Co-Administrators, to properly move for disqualification based on the MRPC the non-client  
12 litigant must demonstrate a “personal detriment or misconduct which taints the fairness of the  
13 proceeding.” *Dela Cruz*, 1997 MP 16 ¶18. Put another way, the non-client litigant has the burden to  
14 show that “the ethical breach so infects the litigation in which disqualification is sought that it  
15 impacts the moving party's interest in a just and lawful determination of her claims," *Tang*, 831 F.  
16 Supp. 2d at 1142. Further, merely referring to general concepts of law, such as administration of  
17 justice and/or maintaining the ideals of the legal profession, is not enough to overcome the general  
18 rule that a non-client litigant does not have standing to move for an attorney’s disqualification  
19 pursuant to the MRPC. *See Coyler*, 50 F. Supp. 2d at 973.

20 Here, Co-Administrators have raised a litany of purported conflicts of interest and ethical  
21 violations against attorney Pamela Brown. Yet, Co-Administrators’ only arguments as to prejudice  
22 are that this matter and related matters have been particularly litigious and that allowing attorney  
23 Pamela Brown to continue in this case and related matters undermines the integrity of the legal  
24 profession.

1            Yet, from the arguments presented by Co-Administrators, the Court is not convinced that  
2 they have firmly established how they would be prejudiced by allowing attorney Pamela Brown to  
3 continue representing her clients in these matters. From the information available to the Court at  
4 this stage there has not been any suggestion that attorney Pamela Brown's clients are dissatisfied  
5 with her continuing to represent them. The client is the key gatekeeper for the MRPC. *See In re*  
6 *Yarn*, 530 F.2d at 89–90. Even assuming that attorney Pamela Brown has a conflict of interest  
7 and/or violated a provision of the MRPC, the fact that her clients continue to want her involved in  
8 this matter and related matters weighs heavily against disqualifying her.

9            The rationale underlying the general rule that a non-client is unable to move to disqualify an  
10 attorney is that the cost and inconvenience to affected clients is a heavy burden. *Coyler*, 50 F. Supp.  
11 2d at 973. Here, if the Court were to disqualify attorney Pamela Brown Co-Trustees would have to  
12 spend time and money finding another lawyer who would then have to get up to speed on these  
13 matters. The Court is extremely wary of imposing such a burden on Co-Trustees at this stage in the  
14 litigation.

15            Additionally, there is the ever present concern that a motion to disqualify could be used as a  
16 litigation tactic by a party in order to upset the other side's litigation strategies. Here, the Court is  
17 not saying that Co-Administrators filed their motion for mere tactical reasons, which Co-Trustees  
18 claim in their opposition brief. Instead, the Court is noting that while the Court has discretion to  
19 oversee the attorney's before it, clients are generally the gatekeepers of MRPC conflicts. *See In re*  
20 *Yarn*, 530 F.2d at 89–9. At this time, the Court does not find it appropriate to rule on the substance  
21 of Co-Administrators' motion because they have failed to show the Court how they would be  
22 prejudiced if attorney Pamela Brown is allowed to continue representing her clients in this matter  
23 and related matters.

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**IV. CONCLUSION**

Based on the foregoing and for good cause, the Court **DENIES** Co-Administrators motion to disqualify attorney Pamela Brown. As a non-client litigant, Co-Administrators have failed to establish the requisite standing to raise their conflicts and MRPC concerns. The Court reserves its right to revisit this matter should circumstances change.

**SO ORDERED** this 2nd day of December, 2016.

/s/  
David A. Wiseman, Judge Pro Tempore