

CLEK OF COURT  
SUPERIOR COURT  
FILED

94 JUL 6 A7:42

DEPUTY CLERK OF COURT

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

COMMONWEALTH DEVELOPMENT AUTHORITY	)	Civil Action No. 93-1255
	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER DENYING MOTION</u>
	)	<u>TO DISQUALIFY</u>
MICRONESIAN YACHTS CO., LTD.,	)	<u>DOUGLAS CUSHNIE</u>
DOUGLAS CUSHNIE, Individually	)	
and as President of Micronesian)	)	
Yachts Co., Ltd., and REGINA	)	
DELEON GUERRERO,	)	
	)	
Defendants.	)	

Plaintiff Commonwealth Development Authority filed a motion to disqualify defendant Douglas Cushnie from representing both himself and the additional defendants in the above-captioned matter.

The threshold issue before this Court is whether the Plaintiff has standing to contest Mr. Cushnie's representation. In *Iglesias v. Realty Trust Corp.*, Civ. Act. No. 88-704 (Super. Ct. July 15, 1993), this Court held that a non-litigant may only have standing in a disqualification motion where that non-litigant

FOR PUBLICATION

1 has proven a **"personal** detriment or misconduct which taints the  
2 fairness of the proceeding." Id.; citing Appeal of  
3 Infotechnology, Inc., 582 A.2d 215, 219 (Del. 1990). Moreover,  
4 the Official Comments to Rule 1.7 provide that resolving conflict  
5 of interest issues are **"primarily** the responsibility of the lawyer  
6 undertaking the **representation.**" Opposing counsel may raise the  
7 question of a conflict where the conflict clearly calls **"in**  
8 **question** the fair or efficient administration of justice . . . ."  
9 Model R. Prof. Conduct 1.7. However, where an opposing counsel  
10 raises the issue of disqualification, the Comments direct courts  
11 to view these objections with caution. Id. See Board of Educ. of  
12 N.Y. City v. Nyquist, 590 F.2d 1241, 246 (2d Cir. 1979) (courts  
13 are reluctant **"to** disqualify attorneys despite misgivings about  
14 the **attorney's conduct**" because disqualifications are frequently  
15 requested for tactical reasons). The effect of limiting  
16 disqualification motions by opposing counsel is to protect the  
17 right of a party to obtain counsel of choice and to limit the use  
18 of disqualification orders for tactical purposes, such as  
19 harassment. Bd. of Educ., 590 F.2d at 1246.

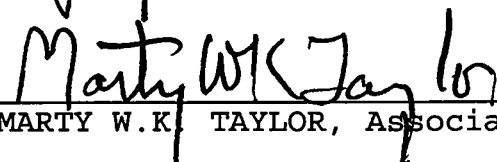
20 In Iglesias, the plaintiff argued that the **defendant's** law  
21 firm should be disqualified because the firm represented clients  
22 with potentially adverse interests. The Iglesias court denied the  
23 motion finding that the plaintiff failed to show how the  
24 representation would interfere with the plaintiff's right to a  
25 fair judicial proceeding, and thus taint the underlying trial.

26 Similarly, in the present case, the Plaintiff failed to prove  
27 it has standing to disqualify Mr. Cushnie from representation. In  
28 the Plaintiff's memorandum, it stated that Mr. **Cushnie's**

1 representation of both himself and the defendants could  
2 potentially raise a conflict of interest. However, the Plaintiff  
3 failed to first address the threshold issue of standing.<sup>1/</sup>  
4 Specifically, the Plaintiff failed to show how Mr. Cushnie's  
5 representation would cause *the Plaintiff* a personal detriment or  
6 misconduct, resulting in the interfere with its right to a fair  
7 trial.

8  
9 Therefore, the Plaintiff's motion to disqualify Mr. Cushnie  
10 from representation is hereby DENIED.

11  
12 So ORDERED this 5<sup>TH</sup> day of July, 1994.

13  
14   
15 MARTY W.K. TAYLOR, Associate Judge

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 \_\_\_\_\_  
27 <sup>1/</sup> On June 8, 1994, this Court forwarded to the parties the  
28 order filed in *Iglesias v. Realty Trust Corp.*, Civ. Act. No. 88-  
704 (Super. Ct. July 15, 1993), and extended to the parties  
additional time to respond to the applicability of the *Iglesias*  
order to the present action. Although the Court provided the  
parties with this opportunity to show standing, neither party  
addressed the issue.