



Superior Court of California
County of Kern
Bakersfield Department 17

Date: 02/09/2022

Time: 8:30 AM - 12:00 PM

BCV-19-103514

TULARE LOCAL HEALTH CARE DISTRICT VS GREENE ET AL

Courtroom Staff

Honorable: Thomas S. Clark

Clerk: Linda K. Hall

Court reporter: Angela Olvera

Bailiff: Deputy Sheriff

Interpreter:

Language of:

ZOOM

NATURE OF PROCEEDINGS: MOTION TO DISQUALIFY COUNSEL

Hearing Start Time: 9:16 AM

The above entitled cause came on regularly on this date and time with parties and/or counsel appearing as reflected.

The Court appoints Angela Olvera from the Pro Tempore list as the Official Court Reporter for Motion to Disqualify. Oath on file.

Counsel Michael J. Lampe appeared on behalf of Plaintiff via audio/video communication.

Counsel Harlan B. Watkins appeared via ZOOM on behalf of Defendant(s) - Baker & Hostetler, LLP.

Counsel Thomas Feher appeared via ZOOM on behalf of Defendant(s) - Parmod Kumar, M.D.

Matter argued by counsel and submitted.

The Court makes the following findings and orders:

Defendant Baker Hostetler's Motion to Disqualify Michael J. Lampe as Counsel for Plaintiff - Granted.

After extensive oral argument and over the strenuous objections of Plaintiff, the Court found and ruled as follows:

The Court concluded that there is a dispute as to the relevance of any testimony that Mr. Lampe could offer. Moving Defendants represented that they intended to call Mr. Lampe as a witness, despite his protestations, and elicit or attempt to elicit testimony regarding allegations made by defendants that Lampe is the proximate cause of his client's \$2.3 million damages, and regarding allegations that he destroyed valuable material evidence. Lampe strenuously disputed this contention. For the court to side with Mr. Lampe on this point, the Court would have to

make factual determinations as to some of the merits of this case, which it is not in a position to do. For purposes of this analysis, the Court must accept at face value the representations of Defendants that they intend to call Mr. Lampe. The Court noted that Defendants have already deposed Mr. Lampe; he has already become a witness in addition to his role as advocate.

Even if the Court were to accept the argument that Mr. Lampe's testimony would not be adverse to the interests of his client, the Court remarked that the spectre of Plaintiff's advocate also sitting on the witness stand and being subject to hostile examination (as well as friendly examination) does pose the other dangers addressed by Defendants. There is a very real danger that the jury will be confused and have difficulty distinguishing between evidentiary statements of witness Lampe and advocacy statements of attorney Lampe. Even without a conscious desire to exploit this dual role as Defendants suggested, the danger exists and it would be very difficult for the Court to undo and untangle these issues at the time of final argument. The conflict or apparent conflict between Mr. Lampe's credibility as a witness and his credibility as an advocate is a factor that his client would have to deal with even if the jury ultimately concluded all credibility issues in favor of Mr. Lampe and Plaintiff. The Court advised that it had personal experience with a trial where Plaintiff's attorney was called as an adverse witness and then argued his own credibility to the jury. The Court cannot presently contemplate a situation where that would be an acceptable state of affairs.

The Court stated that, although it may not be the major point, in most jury trials, non-party witnesses are excluded from the trial and ordered not to discuss their testimony with other witnesses. If Mr. Lampe acted as attorney he would be an exception to this rule and he and his client would have an advantage not possessed by other parties and other clients. Even the appearances given by the possible conflict in these roles calls into question the integrity of the judicial process since Mr. Lampe's credibility is certainly relevant not only on the issue of underlying attorneys fees but on other issues as well, based upon the representations of moving Defendants.

The Court agreed that It may well be, as argued by Mr. Lampe, that these various issues will be resolved at trial in favor of Mr. Lampe and Plaintiff, but it will be too late to then address the situation without a great deal of prejudice not only to Plaintiff, but to other parties as well if that turns out not to be the case.

The Court recognized that the ultimate issue as to whether or not Mr. Lampe will be allowed to testify may not be made by the Court until the time of trial after an in limine and/or 402 hearing. If Mr. Lampe is allowed to testify, the testimony will undoubtedly be contentious. It would be an extreme hardship for all parties if Plaintiff was forced to replace counsel at that point (if the Court allowed substitution at that late date). If Mr. Lampe is ultimately not allowed to testify, much of the concern expressed by the Court today would be rendered moot, but that possibility does not justify forcing all parties and counsel to assume the risks of the concerns expressed by the Court today.

To at least some degree, the Court found, as argued by moving Defendants, that there is a real and substantial risk that the continued participation in the case by Mr. Lampe and the calling of Mr. Lampe as a witness by moving defendants will:

1. Cause juror confusion and allow exploitation of the dual role of advocate and witness and confusion between evidentiary statements and advocacy statements;
2. Call into question the integrity of the judicial process, particularly as the jury attempt to evaluate the credibility of Mr. Lampe's testimony as a witness, while, at the same time, tries to determine what weight to give to his statements and arguments as an attorney.
3. Prejudice moving Defendants by allowing witness Lampe the opportunity to testify after hearing and observing (and participating in) the testimony of other witnesses, thus providing Plaintiff and its attorney with an advantage

not shared by the other parties.

The Court found that the opposition failed to sufficiently show that the requirements of Rule 3.7 of the Rules of Professional Conduct have been met. Rule 3.7 provides the general rule that a lawyer should NOT act as an advocate where he is "likely to be a witness" UNLESS: (1) the testimony relates to an uncontested matter; (2) the testimony relates to the value of legal services rendered in the case; OR (3) the lawyer has obtained formal written consent of the client.

(1) Without question the subject matter of the testimony is contested. The opposing papers in support of and in opposition to this motion show that.

(2) The offer of proof shows that the scope of the proposed testimony goes far beyond the value of any legal services rendered by Mr. Lampe.

(3) There are a number of factors which must be met before a client's written consent can be considered to be an informed and voluntary consent. The comments to the Rule require the lawyer to make full and appropriate disclosure. Simple submission of the document in this case does not itself satisfy the burden of demonstrating fully informed, knowing and voluntary consent. This is an issue (or series of related issues), the waiver of which should not be taken lightly. Furthermore, notwithstanding a client's "informed written consent", courts retain discretion to disqualify a lawyer in a situation such as this to protect the trier of fact from being misled or the opposing party from being prejudiced. *Lyle v. Superior Court* (1981) 122 Cal.App.3d 470. This is exactly what happened in the Court's previous experience.

Mr. Lampe argued that the motion is being brought purely for tactical reasons. The Court responded that even if there is some truth to that accusation, Defendants have already actually deposed Mr. Lampe and made it clear that they intend to elicit the referenced testimony at trial. This triggers the issues discussed herein.

The Court stated that it had considered the interest of Plaintiff in being represented by counsel of its choice and in avoiding duplication of time and expense necessarily incurred in substituting counsel. The Court acknowledged that granting the motion will involve some hardship to Plaintiff, but found that hardship will not be insurmountable at this point and, in the Court's view, is a better alternative than proceeding with Mr. Lampe acting in a dual role.

The Court found, in this instance, moving Defendant has made a substantial showing of good cause to disqualify Mr. Lampe. Given the inherent dangers exposed in the dual role, and the accusations which Defendant intends to make, the Court found that the risks discussed above were too great. The Court stated that it was not inclined to accept Plaintiff's proffered "waiver". Even if the "waiver" was demonstrated to meet legal requirements, the other factors referenced compel the Court to avoid putting the Court, the jury, the other parties and other counsel in the position of having to sort out the inherent conflicts between Mr. Lampe's role and statements as a witness and his role and statements as an advocate.

For all of these reasons, and after having considered all of these factors, the Court GRANTED the motion and disqualified attorney Lampe from representing any party in this action.

Counsel for moving parties was directed to prepare a formal Order consistent with this ruling, pursuant to C.R.C. Rule 3.1312 and to provide Notice of Entry. The Court stated that the Clerk's Minutes and the Reporter's transcript would memorialize its Order in the meantime effective February 9, 2022 and would memorialize the fact the moving Defendants and Plaintiff and Plaintiff's counsel received verbal notice of the Court's ruling.

Further notice waived.

SUPPLEMENTAL MINUTES:

SUPPLEMENTAL MINUTES OF FEBRUARY 9, 2022 TO CORRECT MISINFORMATION RE: STAY ORDER

At the hearing on Defendants' Greene and Baker & Hofstetler's motion to Disqualify Counsel on February 9, 2022, attended remotely by counsel Michael Lampe, Harlan Watkins and Thomas Feher, and reported by Angela Olvera, the Court erroneously advised that it had no record of a formal stay being previously entered in this action.

The Court wishes to correct this misinformation.

By order signed December 3, 2020, this Court stayed all discovery propounded upon Defendant BRUCE R. GREENE until the criminal action against Defendant GREENE is concluded or until Defendant Greene elects to revoke the invocation of the Fifth Amendment, whichever occurs first.

The December 3, 2020 order further provides that discovery will remain open as to all other parties and third-party witnesses and that all applicable pre-trial and discovery deadlines are to be governed by the new trial date to be set by the Court.

The Clerk is directed to serve a copy of these Minutes on all parties.

Copy of clerk's minutes emailed to all counsel as stated on the attached declaration.

Minute order notice.

FUTURE HEARINGS:

April 26, 2022 8:15 AM Case Status Conference
Clark, Thomas S.
Bakersfield Department 17
Sheriff, Deputy

MINUTES FINALIZED BY:

LINDA HALL

ON: FEBRUARY 09, 2022

**TULARE LOCAL HEALTH CARE DISTRICT VS GREENE ET AL
BCV-19-103514**

CERTIFICATE OF MAILING AND/OR EMAIL*****

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Minutes dated February 09, 2022* attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

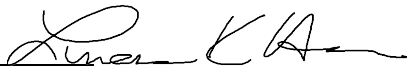
Date of Mailing: February 09, 2022

Place of Mailing: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tamarah Harber-Pickens
CLERK OF THE SUPERIOR COURT

Date: February 09, 2022

By: Linda Hall 
Linda Hall, Deputy Clerk
Signed: 2/9/2022 04:38 PM

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