**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**
**DIVISION OF ST. THOMAS AND ST. JOHN**

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| **LEE J. ROHN AND ASSOCIATES, LLC AND CUNEO, GILBERT & LADUCA, LLC,** <br><br> Plaintiffs, <br><br> vs. <br><br> **CARY CHAPIN, BARBARA DUOMA, MARJORIE & PHILIP JONES, PAMELA GAFFIN, NINA HAHLER AND DEBORAH RAMSEY,** <br><br> Defendants. | ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) <br> ) | Case No. ST-16-CV-655 <br><br> ACTION FOR INTERPLEADER |

# MEMORANDUM OPINION

This matter is before the Court on Plaintiffs' Motion for Disqualification of Defendants' counsel Terri Griffiths. Plaintiffs have pending before the Court a second, related case alleging that Griffiths unlawfully interfered with Plaintiffs' contractual relations with Defendants in a third case before the District Court of the Virgin Islands, which interference led to the disputes underlying this case. Plaintiffs assert that Griffiths' liability and involvement in that second suit creates a conflict of interest that compels her disqualification in this matter. Defendants have not responded to the Motion to Disqualify, which was filed July 26, 2018.

For the reasons set forth below, the Court finds a conflict of interest, and will grant Plaintiffs' motion to disqualify Griffiths.

## BACKGROUND

Terri Griffiths, counsel for Defendants, was once employed by Plaintiff Lee J. Rohn and Associates, LLC. During her employment at that law firm, she was assigned to work on a case before the District Court of the Virgin Islands[1] (the "District Court case"). Rohn & Associates, along with the firm Cuneo, Gilbert, and LaDuca, LLP[2], represented in that case some 47 plaintiffs whose homes in the Virgin Islands had been damaged due to defective wood. Of those plaintiffs, six were the Defendants in the instant case. At some point Griffiths' work on the District Court case ended in conjunction with her employment with Rohn & Associates. Plaintiffs allege that after her employment ended, Griffiths tried to negotiate with them to continue working on the case. Plaintiffs refused to allow Griffiths to do so, and Griffiths' working relationship with the firm ended.

Plaintiffs eventually negotiated a settlement in the District Court case on behalf of their clients. According to Plaintiffs, all clients in that matter agreed in writing to the settlement and a net distribution to them.[3] Forty-two agreed to the distribution of their funds from the settlement, signed releases, and paid Plaintiffs attorneys' fees due.[4] However, Defendants herein—consisting of five of the 47

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[1] *Cary Chapin, et al v. Great Southern Wood Preserving, Inc., et al*, District Court of the Virgin Islands, Case No. 3:12-CV-0077.

[2] Despite the case caption, Cuneo, Gilbert & LaDuca is an LLP, Washington, D.C. firm, of which Charles LaDuca and Daniel Cohen were admitted *pro hac vice* to practice law in the Virgin Islands in *Chapin v. Great Southern*. First Amended Interpleader ("Interpl.") ¶ 3.

[3] Lee J. Rohn Affirmation, Ex. 4 to Plaintiff's Motion for Emergency Protection ¶ 3; Interpl. ¶¶ 10, 11.

[4] Interpl. ¶ 10.

homes[5]—refused to agree to the disbursement of their portion of the funds.[6] Plaintiffs assert that all Defendants had signed retainer agreements agreeing to pay Plaintiffs 40% of their gross settlement amounts as attorneys' fees and costs.[7] Defendants dispute certain costs incurred by Plaintiffs as well as attorneys' fees.

Seeking the attorneys' fees and costs they assert they are owed, Plaintiffs filed this case to interplead the funds due to Defendants and request that the Court determine what the parties are entitled to from those funds. Separately, Plaintiffs have filed the second suit before the Court alleging that Griffiths defamed them and interfered with their contractual rights with their clients in the District Court case, and that Griffiths' interference led to this dispute between Plaintiffs and Defendants over fees. Plaintiffs' specific allegations against Griffiths in that case, relevant to the Court's analysis here, are as follows.

**Plaintiffs' Allegations Against Griffiths in the Tortious Interference and Defamation Case Before this Court**

In the second case pending before the Court (the "Griffiths case"), Plaintiffs are suing Griffiths for tortious interference with contractual relations and defamation.[8] Plaintiffs allege in that case that after Griffiths stopped working at Rohn & Associates, she falsely told various persons that the firm had cheated her out of her

[5] Defendants Cary Chapin and Barbara Duoma are co-owners of one property, making the six Defendants owners of five of the homes in that suit.
[6] Lee J. Rohn Affirmation ¶ 3.
[7] Interpl. ¶ 13. Plaintiffs have provided as exhibits to their First Amended Interpleader "Retainer Agreements" for all Defendants except Pamela Gaffin, wherein Defendants agreed to 40% attorneys' fees. For Gaffin, Plaintiffs have submitted a Contingency Fee Agreement in Class Actions which does not specify an exact amount for attorneys' fees. *See* Ex. 2.
[8] *Lee J. Rohn and Associates et al. v. Griffiths*, ST-18-CV-314 (2018).

commission and percentage of attorneys' fees in the District Court case.[9] Plaintiffs allege that Griffiths continued communicating with clients from the District Court case, and that she attempted to undermine Plaintiffs' relationship with those clients, including by defaming Plaintiffs and giving out false information. Plaintiffs allege Griffiths began to "unethically solicit some of her former clients in [that case] to discontinue their contractual relationships with the Plaintiffs . . . and to hire her as their counsel" instead.[10] Plaintiffs allege that Griffiths falsely represented to those clients that Plaintiffs had pocketed part of clients' settlement money, and that Plaintiffs had engaged in certain inappropriate practices in negotiating the settlement.[11] Plaintiffs allege further that, "[a]s part of [Griffiths'] interference . . . [she] falsely represented that she was owed fees from the [District Court] case and if those persons breached their contract with Plaintiffs and joined a grievance drafted by [her] that was based on false facts . . . she would get them money for no fees."[12] Griffiths' intention, Plaintiffs assert, was "to use the false grievance and its ramifications to extort the Plaintiffs to pay her money" related to the settlement in the District Court case.[13]

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[9] Plaintiffs assert that Griffiths demanded that she be allowed to continue to work on the District Court case and be given a percentage of fees received from that case, but that Rohn & Associates refused and specifically made clear that there was no way that Griffiths would complete any more work on that case (nor, presumably, earn any portion of the fees from the case). Compl. in ST-18-CV-314 ("Griffiths Case Compl.") ¶ 10-11.
[10] *Id.* ¶ 14-15.
[11] *Id.* ¶ 19.
[12] *Id.* ¶ 16.
[13] *Id.* ¶¶ 14, 17.

As a result of Griffiths' actions, Plaintiffs contend that, "[Griffiths] convinced Cary Chapin to send out emails that contained documents drafted by [Griffiths] to get those persons to breach their contract with Plaintiffs and get those persons to join in on the false grievance and terminate their contracts with the Plaintiffs;"[14] and that Defendants filed a frivolous grievance against Plaintiffs, terminated their contractual relations with Plaintiffs, and refused to pay Plaintiffs their attorneys' fees due. In this way, Plaintiffs allege that Griffiths tortuously interfered with their contractual relations with Defendants.

Plaintiffs seek Griffiths' disqualification based on conflicts of interest that they allege arise because of Griffiths' involvement in both that case and this matter.

## STANDARDS

"The Court is tasked with supervising the conduct of attorneys that appear before it; and has inherent power to disqualify any attorney if it finds such action is warranted." *Farrell v. Hess Oil V.I.*, 2012 V.I. LEXIS 40, *6 (Super. Ct.). "It is at the Court's discretion to determine whether disqualification is warranted." *Id.* (citing Annotated Model Rules of Professional Conduct (6th Ed. 2007) p.9). "The underlying principle in considering motions to disqualify counsel is safeguarding the integrity of the court proceedings and the purpose of granting such motions is to eliminate the threat that the litigation will be tainted." *Fenster v. Dechabert*, 2017 V.I. LEXIS 149,

[14] Griffiths Case Compl. ¶ 18.

*4 (Super. Ct.) (quoting *Rodriguez v. Spartan Concrete Prods., LLC*, 2017 U.S. Dist. LEXIS 62923, *5 (D.V.I. 2017)). At the same time, "'[m]otions to disqualify are viewed with disfavor and disqualification is considered a drastic measure which courts should hesitate to impose except when absolutely necessary.'" *Fenster*, 2017 V.I. LEXIS 149, *5 (quoting *Denero v. Palm Horizons Mgmt., Inc.*, 2015 U.S. Dist. LEXIS 25864, *7 (D.V.I.). Thus while "'doubts are to be resolved in favor of disqualification, [a] party seeking disqualification must carry a heavy burden and must meet a high standard of proof before a lawyer is disqualified.'" *Fenster*, 2017 V.I. LEXIS 149, *4-5 (quoting *Farrell*, 57 V.I. at 57); *see also Hull v. Celanese Corp.*, 513 F.2d 568, 571, (2d Cir. 1975) ("[I]n the disqualification situation, any doubt is to be resolved in favor of disqualification."). "'Vague and unsupported allegations are not sufficient to meet this standard.'" *Fenster*, 2017 V.I. LEXIS 149, *5 (quoting *Denero v. Palm Horizons Mgmt., Inc.*, 2015 U.S. Dist. LEXIS 25864, *8 (D.V.I. 2015).

## ANALYSIS

### I. The Conflicts of Interest that Plaintiffs Allege

Plaintiffs assert that Griffiths' representation in this matter is tainted because of a "multi-faceted conflict of interest."[15] They assert that, "Griffiths' success in this matter depends upon her ability to convince Defendants to continue to . . . mislead the Court, and it is impossible for Griffiths to provide her clients with detached

[15] Mem. 7.

advice." They assert that, "[i]n order to defend [herself] in the tortious interference action, Griffiths will be required to cross-examine Defendants in depositions to be taken by Plaintiffs, which will result in Griffiths being *directly adverse* to those Defendants."[16] They assert that, "Griffiths would have a conflict not only between her own interests and the interests of Defendants, but also with respect to Defendants interest vis-à-vis one another (because each Defendant will presumably be inclined to shift blame toward the others)."[17] Finally, Plaintiffs assert that, "Griffiths has a compelling personal interest in impeaching Defendants in the tortious interference action," because, "Defendants will have to testify truthfully that Griffiths improperly told them she could not solicit Plaintiffs' clients but they could do it for her; that they solicited clients on her behalf; that she promised them they would get additional funds if they filed a false grievance; and that she advised them (falsely) that Plaintiffs in this case had entered into an improper settlement—all of which subjects her to civil liability."[18]

## II. The Court Finds Disqualification of Griffiths is Appropriate.

Among other grounds, "[i]ndividual judges and magistrates are . . . expected to disqualify licensed attorneys from representation if [the representation] results in an

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[16] *Id.*
[17] *Id.* at 8.
[18] *Id.* Plaintiffs also briefly allege in their motion that Griffiths violated Rule of Professional Conduct 211.1.4 by communicating with persons represented by counsel. However, Plaintiffs do not explain how they believe that would disqualify Griffiths, and since the Court believes that allegation is more appropriately dealt with through a disciplinary proceeding, it will not address that allegation here.

impermissible conflict of interest" in violation of the Virgin Islands Rules of Professional Conduct. *In the Matter of V.I. Bar Ass'n Comm. on the Unauthorized Practice of Law*, 59 V.I. 701, 727 (V.I. 2013). Under those rules, a lawyer "*shall not* represent a client if the representation involves a concurrent conflict of interest." V.I. S. Ct. R. 211.1.7(a) (emphasis added). Rule 211.1.7(a) states that a concurrent conflict of interest exists where:

> (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.

Discussing conflicts of interest, Comment 6 to Rule 1.7 of the ABA Model Rules of Professional Conduct[19] says that, "a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit." Also, there is a risk that, "[b]ecause [of] an attorney's duties of loyalty and confidentiality to h[er] clients . . . the attorney cannot vigorously cross-examine [a] client or question the client's credibility during summation without

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[19] The Virgin Islands Rules of Professional Conduct, codified in Supreme Court Rule 211, went into effect on February 1, 2014, and replaced the ABA Model Rules of Professional Conduct which were formerly applicable in the V.I. However, because the V.I. rules are "substantively identical to the ABA rules," the comments to the ABA rules remain instructive. *See In the Matter of Suspension of Maynard*, 68 V.I. 632, 641 n.8 (V.I. 2018) ("Because the Virgin Islands rules are substantively identical to the ABA rules, previous decisions interpreting and applying the ABA rules remain equally applicable in the interpretation and application of the Virgin Islands rules.").

violating [her] obligations." *United States. v. Yannotti*, 358 F. Supp. 2d 289, 295 (S.D.N.Y. 2004).

Although Plaintiffs' tortious interference case does not involve another client but instead involves the attorney herself, Griffiths nevertheless has her own interests in prevailing in that matter. There is a significant likelihood that Plaintiffs will depose or call to testify in that case some or all Defendants in this case regarding Griffiths' alleged interference with Plaintiffs' contractual relations or with the settlement reached in the District Court case. There is a reasonable likelihood that Griffiths would then elect to cross-examine and perhaps try to impeach those witnesses—her clients in this matter—to protect her own interests. In that way, there is a significant risk of a directly adverse conflict arising if Griffiths continues her representation of Defendants.

Second, "[e]ven where there is no direct adverseness," Model Rule 1.7 Comment 8 suggests, "a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests." "'The lawyer's interest,' within the context of [a conflict of interest], denotes a financial or familial interest or *an interest arising from the lawyer's exposure to culpability*." *In re Marriage of Wixom*, 182 Wn. App. 881, 898 (2014) (quoting *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 740 (Wash. 2001)) (emphasis added). Griffiths has an interest in the tortious interference matter in proving that she didn't defame Plaintiffs, that Defendants' qualms about Plaintiffs originated from Defendants themselves and not from her, and that she didn't encourage Defendants to terminate their contracts with Plaintiffs. It is plausible that some of the Defendants will assert the contrary and testify that Griffiths solicited them and encouraged them to dispute their fee arrangements with Plaintiffs[20] (Plaintiffs are confident Defendants will do so).[21] The potential that Griffiths and Defendants might be at odds raises doubts about whether Griffiths would always be able to recommend and steer Defendants toward a right course of action. Thus, there is a risk that Griffiths' own interests would negatively and materially impact her ability to represent Defendants.

Third, on personal interest conflicts, Comment 10 to Model Rule 1.7 says, "[t]he lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice." The probity of Griffiths' conduct in this matter is in question—it is in fact the source of the separate suit against her—and the question arises whether she will be able to give Defendants detached advice. In particular,

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[20] *See, e.g.*, Cary Chapin E-mails, Exhibits to Griffiths Case Compl. ("You might be interested in giving Terri a call today! Ethically she can't initiate the call but she said she's happy to discuss what's happening with you. . . . Please call Terri and at least hear her out.").

[21] The Court cannot make determinations of fact—whether Plaintiffs' allegations hold weight—at this point in the proceedings and does not do so here. However, a central tenet of Plaintiffs' lawsuit against Griffiths is that Griffiths "unethically solicit[ed] some of her former clients in the [District Court] case to discontinue their contractual relationship with the Plaintiffs in [that] case and to hire her as counsel." Griffiths Case Compl. ¶ 15. The Court need not make a finding as to the truth of that allegation for purposes of this motion; the important thing is that, because of the nature of these two suits and the allegations against Griffiths, there is a reasonable *likelihood* that some Defendants will offer testimony along those lines, i.e. testimony at odds with Griffiths' interests.

there is a risk that Griffiths' ability to give Defendants advice in *this* matter would be impacted by her interest in protecting herself against liability in the tortious interference case. It is not hard to envision that the suit against Griffiths will be in the back of her mind when rendering advice to Defendants, and it is plausible that her advocacy will be impacted as a result.

Finally, Griffiths appears to have her own commission dispute with Plaintiffs over the same settlement money that forms the basis of the fee dispute between Plaintiffs and Defendants.[22] She thus has a direct pecuniary interest in the same sum of money that her clients do. Plaintiffs assert that Griffiths interfered with the settlement and convinced Defendants to challenge their fees because of that interest. Whether or not that is true, the Court is leery of the ways Griffiths' own pecuniary interest is tangled up with the interests of Defendants in the outcome of their dispute.

Without deciding whether any one of these facets independently creates a significant risk that Griffiths' representation of Defendants will be materially limited by her personal interests (and lawsuit against her), the Court finds that collectively they assuredly do. While all conflicts of interest are to some extent concerning, a court must be particularly vigilant of the risk of an attorney's professional judgment colliding with her own interests in representing a client. "A supreme commandment of attorney ethics is undivided loyalty to a client and the shunning of any self-interest

[22] "So although I would like to collect my 20% on this case, after some discussion and sleeping on it, I have agreed to represent you and anyone who joins you at no charge." E-mail from Terri Griffiths to Cary Chapin (Undated), Ex. 1 to Mot.

that would conflict with the interests of the client." *Marriage of Wixom*, 182 Wn. App. at 884. Plaintiffs have raised significant concern that Griffiths cannot set aside her own interests here, and hence have met their burden of showing disqualification. The Court will exercise its discretion and disqualify Griffiths in this matter.[23]

## CONCLUSION

A court has inherent power to disqualify an attorney if it finds such action is warranted. Plaintiffs have moved for disqualification of Defendants' counsel on the ground of a conflict of interest. Under the Virgin Islands Rules of Professional Conduct, an attorney shall not represent a client if the representation involves a concurrent conflict of interest. Plaintiffs have met their burden of proving that there is a significant risk that Griffiths representation of Defendants will be materially limited by her personal interests, and thus have met their burden of proving Griffiths has a conflict of interest. Because of the nature of that conflict of interest, the Court will exercise its power to disqualify Griffiths from representing Defendants from this matter.

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[23] Furthermore, the Court finds that a waiver of conflict would not be sufficient to remedy the conflict in this case. The conflict is one personal to Griffiths—Griffiths has a significant interest in the outcome of the tortious interference case—and the Court doubts Griffiths' (or any other lawyer similarly situated) ability to put aside those interests to such an extent that her representation of Defendants would not be impacted by them.
The Court is left without a persuasive argument to the contrary: Griffiths did not respond to Plaintiffs' Motion and accompanying arguments, even though the Motion was filed July 26, 2018 and some four months have passed since.

An order consistent with this Memorandum will follow.

DATED: December 18, 2018

**Kathleen Mackay**
Judge of the Superior Court
of the Virgin Islands

**ATTEST:**
**ESTRELLA H. GEORGE**
Clerk of the Court

**BY:**
for **DONNA DONOVAN**
Court Clerk Supervisor 12/18/2018