

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

FILED
OCT 20 2021

**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

ST. LOUIS REGIONAL)	
CONVENTION AND SPORTS)	
COMPLEX AUTHORITY, et al.,)	
)	No. 1722-CC00976
Plaintiffs,)	
)	Division No. 19
vs.)	
)	
NATIONAL FOOTBALL LEAGUE,)	
et al.,)	
)	
Defendants.)	

ORDER

The Court has before it Defendants' Motion to Disqualify Attorney Robert Blitz and Preserve Their Right To Call Him As a Witness At Trial. The Court now rules as follows.

Rule 4-3.7(a)(3) contains a prohibition against an attorney acting as an advocate at a trial in which he or she is "likely to be a necessary witness," unless "disqualification of the lawyer would work substantial hardship on the client." Although the trial court does have the power to enforce Rule 4-3.7 by disqualifying an attorney, it must be exercised judiciously based on the facts and circumstances of each individual case. State ex rel. Wallace v. Munton, 989 S.W.2d 641, 645 (Mo.App. S.D. 1999). In doing so, the trial court should cautiously review any requests

to disqualify counsel and guard against the Rule being used as a means of harassment or as a procedural weapon. Id.

The disqualification of an attorney is a matter that lies within the sound discretion of the trial court. Raster v. Ameristar Casinos, Inc., 280 S.W.3d 120, 133 (Mo.App. E.D. 2009). The burden is on the Defendants, as the moving parties, to prove their allegations and establish a disqualification ground. Defendants must show that counsel is the only person who can testify to the stated matters, and there is an absence of other fact witnesses who can so testify. Id. at 133-34.

When determining whether to grant a motion to disqualify counsel, a trial court may consider the motion's timeliness. Polish Roman Catholic St. Stanislaus Par. v. Hettenbach, 303 S.W.3d 591, 599 (Mo.App. E.D. 2010). A timeliness requirement ensures that the Rules of Professional Conduct are applied for their intended purpose, to regulate the conduct of counsel, and not as a weapon against an attorney's client. Id. Accordingly, "[a] motion to disqualify should be made with reasonable promptness after the party becomes aware of the conflict to prevent the party from using disqualification as a strategic tool to deprive his opponent of counsel of his choice after substantial preparation has been completed." Id. A party who

knowingly refrains from asserting a prompt objection to opposing counsel is deemed to have waived the objection. Id.

Although Defendants had previously objected to Mr. Blitz's involvement in this case, no motion to disqualify was filed until September 14, 2021. In addition to seeking to disqualify Mr. Blitz from acting as Plaintiffs' advocate at trial, Defendants also seek to bar the use of the nine depositions that were taken by Mr. Blitz over Defendants' objection. The depositions include Roger Goodell, Kevin Demoff, Art Rooney, Jerry Jones, Clark Hunt, Robert Kraft, Stanley Kroenke, Eric Grubman, and John Mara. Mr. Blitz also questioned Steve Stenger.

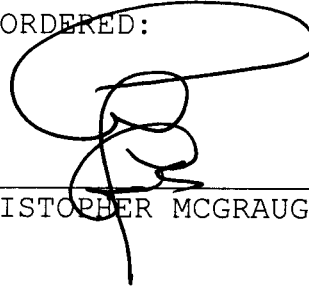
Rule 4-3.7 states only that a lawyer "shall not act as an advocate at a trial" in which the lawyer is likely to be a necessary witness, it does not state that any depositions taken by the lawyer cannot be used. Rule 4-3.7 governs the ethical conduct of attorneys and is not a rule of evidence. Carmed 45, LLC v. Huff, No. ED108990, 2021 Mo. App. LEXIS 683, at *35 (Mo.App. E.D. July 13, 2021). Defendants cite World Youth Day v. Famous Artists Merch. Exch., 866 F. Supp. 1297, 1303 (D. Colo. 1994), for the proposition that an attorney disqualified as a trial advocate may not participate in pretrial activity which includes obtaining evidence which, if admitted at trial, would reveal the attorney's dual role.

The Court reasoned that the opposing party could suffer prejudice and the trial could be tainted by jury confusion if the attorney was allowed to take or defend depositions in the case. Id. at 1304. However, in World Youth Day, the opposing party had moved to disqualify the attorney *before* the depositions were taken, preventing the disqualified attorney from taking the depositions. Defendants have cited no case where a Court had ruled that a party could not use a deposition taken by a later-disqualified attorney as evidence in the trial.

Here, the Court finds that Defendants have shown that Mr. Blitz is likely a necessary witness at trial. Mr. Blitz was one of only two members on the Stadium Task Force, and was the sole representative of Plaintiffs in key meetings and communications. Therefore, the Court GRANTS the motion to disqualify Mr. Blitz from acting as an advocate at trial. The Court DENIES the motion to exclude any prior discovery based on Mr. Blitz's prior involvement, however. The Court finds the motion is untimely and is being used as an improper procedural weapon in that regard.

THEREFORE, it is Ordered and Decreed that Defendants' Motion to Disqualify Attorney Robert Blitz and Preserve Their Right To Call Him As a Witness At Trial is GRANTED.

SO ORDERED:

A handwritten signature in black ink, appearing to read 'C. McGraugh', is written over a horizontal line. The signature is stylized with a large loop at the top and a long vertical stroke at the bottom.

CHRISTOPHER MCGRAUGH, Judge

Dated: October 20, 2021