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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |
| DATE F | ILED: December 20, 2016 1:56 PM |
| Court Address: Denver County Court FILING1437 Bannock St., Room 256 CASE N | ID: 43EC06C9743E2 UMBER: 2015CV31709 |
| Denver, CO 80202 |  |
| (720) 865-8301 |  |
| Plaintiffs: ROBERT ABRAMS and ABRAMS & |  |
| ASSOCIATES, LLC, a Colorado limited liability |  |
| company; |  |
| v. | **COURT USE ONLY** |
| Defendant: SHAWN BEESON |  |
| Attorneys for Plaintiffs: |  |
|  | Case Number: 2015CV31709 |
| Nathan SilverSilver Law Firm, LLC 700 17th Street, Suite 650Denver, Colorado 80202Phone: (303) 328-8510E-mail: nathan@silverlawdenver.com Atty. Reg. # 28836 | Division: 275 |
| ABRAMS & ASSOCIATES, LLCRobert Abrams, Atty. Reg. # 37950 700 17th St., Suite 650Denver, CO 80202Phone #: (303) 322-4115Fax #: (303) 333-0708E-mail: Robert@AbramsLaw.net |  |
| **PLAINTIFFS’ REPLY TO DEFENDANT’S RESPONSE TO MOTION TO DISQUALIFY DEFENDANT’S COUNSEL** |

COMES NOW, Plaintiffs Robert Abrams and Abrams & Associates, LLC, by their attorneys at Silver Law Firm, LLC and Abrams & Associates, LLC, and hereby file their Reply to Defendant’s Response to Motion to Disqualify Defendant’s Counsel. In support thereof, Plaintiffs state and allege as follows:

# INTRODUCTION

1. Plaintiffs file this Reply to clarify and address the false statements of fact and law averred in Defendant’s Response.
2. Defendant alleges in his response to Plaintiffs’ Motion for Disqualification that the motion is “baseless.” Plaintiffs disagree.
3. Prior to moving to Colorado and working for Plaintiffs, Mark Malone was a licensed attorney in the Commonwealth of Pennsylvania who practiced under PA Bar No. 314314 for approximately three years.
4. Mr. Malone came to Plaintiffs’ as a law clerk to work while his admission in the state of Colorado was pending. While his job title was law clerk, his license in Pennsylvania remained active and he remained subject to the ethical standards of an attorney.
5. By Mr. Malone’s own admissions in his affidavit, he worked for Abrams & Associates, in the work environment with Nico Pento and Carin Reidel, and was privy to the small office work environment where the instant case was being prepared for litigation. Accordingly, it would be impossible for him not to learn plaintiffs’ work product, legal thinking, evidence and trial strategy.

# LEGAL AUTHORITY

1. C.R.C.P. Rule 205.1 provides:
	1. Eligibility. An attorney who meets the following conditions is an out- of-state attorney for the purpose of this rule:
		1. The attorney is licensed to practice law and is on active status in another jurisdiction in the United States;
		2. The attorney is a member in good standing of the bar of all courts and jurisdictions in which he or she is admitted to practice;
		3. The attorney has not established domicile in Colorado; and
		4. The attorney has not established a place for the regular practice of law in Colorado from which the attorney holds himself or herself out to the public as practicing Colorado law or solicits or accepts Colorado clients.
	2. Scope of Authority. An out-of-state attorney may practice law in Colorado except that an out-of-state attorney who wishes to appear in any state court of record must comply with C.R.C.P. 205.3 concerning *pro hac vice* admission and an out-of-state attorney who wishes to appear before any administrative tribunal must comply with C.R.C.P. 205.4 concerning *pro hac vice* admission before state agencies. An out-of-state attorney who engages in the practice of law in Colorado pursuant to this rule shall be deemed to have obtained a license for the limited scope of practice specified in this rule.
	3. Discipline and Disability Jurisdiction. An out-of-state attorney practicing law under this rule is subject to the Colorado Rules of Professional Conduct; C.R.C.P. 251.1 *et seq.* (Rules of Procedure Regarding Attorney Discipline and Disability Proceedings); and C.R.C.P. 210 (Revocation of License). In addition to the forms of discipline contained in C.R.C.P. 251.6, the attorney may also be enjoined from further practice of law in Colorado.

*C.R.C.P. Rule 205.1.*

1. C.R.C.P. 205.6 provides as follows:
	1. **General Statement and Eligibility.** An attorney who currently holds an active license to practice law in another jurisdiction in the United States, and who has been engaged in the active practice of law for three of the last five years, may provide legal services in Colorado through an office or other place for the regular practice of law in Colorado for no more than 365 days, provided that the attorney:
		1. Is a licensed attorney in good standing in all courts and jurisdictions in which he or she is admitted to practice;
		2. Is not currently subject to an order of attorney discipline or the subject of a pending formal disciplinary or disability investigation in any jurisdiction;
		3. Has not previously been denied admission to practice law in Colorado, has not failed the Colorado bar examination within the last three years, and has never been denied admission on character and fitness grounds in any jurisdiction;
		4. Has first submitted a complete application for admission on motion by qualified out-of-state attorney (C.R.C.P. 203.2), on motion based upon UBE score transfer (C.R.C.P. 203.3), or by examination (C.R.C.P. 203.4);
		5. Reasonably expects to fulfill all of Colorado's requirements for that form of admission;
		6. Associates with and is supervised by an attorney who is admitted to practice law in Colorado, and discloses the name, address, and membership status of that attorney;
		7. Provides a signed verification form from the Colorado attorney certifying the applicant's association with and supervision by that attorney;
		8. Affirmatively states in all written communications with the public and clients the following language: “Practice temporarily authorized pending admission under C.R.C.P. 205.6”; and
		9. Pays the required fee.

**(5) Discipline and Disability Jurisdiction.** Any attorney practicing under this rule shall be subject to all applicable provisions of the Colorado Rules of Professional Conduct, except for the provisions of Colo. RPC 1.15A through 1.15E that require an attorney to have a business account and a trust account in a financial institution doing business in Colorado; and the Colorado Rules of Civil Procedure, except C.R.C.P. 227 (general registration fees) and C.R.C.P. 260 (mandatory continuing legal education).

*C.R.C.P. Rule 205.6*

1. Colo. RPC 1.9 provides as follows:
2. A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
3. A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
	1. whose interests are materially adverse to that person;

and

* 1. about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.
1. A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
	1. use information relating to the representation to the disadvantage of the former client except as these Rules would

permit or require with respect to a client, or when the information has become generally known; or

* 1. reveal information relating to the representation except as these Rules would permit or require with respect to a client.

*C.R.P.C. Rule 1.9*.

1. **Penn. R.P.C. 1.9. provides as follows** (Pennsylvania law):
2. A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent.
3. A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
	1. whose interests are materially adverse to that person; and
	2. about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent.
4. A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
	1. use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
	2. reveal information relating to the representation except as these Rules would permit or require with respect to a client.

*P.R.P.C. Rule 1.9*

# ARGUMENT

1. **Mark Malone was an attorney when he contracted with Plaintiffs**
2. Defendant’s counsel is correct in stating that the Rules of Professional Conduct apply to attorneys.
3. Prior to coming to Colorado and working for Plaintiffs, Mark Malone was a licensed attorney in the Commonwealth of Pennsylvania who practiced under PA Bar No. 314314 for approximately three years.
4. Mr. Malone came to Plaintiffs’ as a law clerk engaging in substantive legal work while his admission in the state of Colorado was pending. While his job title was law clerk, his license in Pennsylvania remained active, and he remained subject to the ethical standards of an attorney.
5. Plaintiffs are without knowledge as to Mr. Malone’s domicile status during his time with Plaintiffs. However, as Defendant notes in his Response, Mr. Malone was merely a “part- time independent contractor” with Plaintiffs who had not “established a place for the regular practice of law in Colorado from [he held] himself …out to the public as practicing Colorado law.
6. For the above reasons, the Court should treat Mr. Malone as an “out-of-state” attorney, pursuant to C.R.C.P. 205.1. As the rule clearly states, “An out-of-state attorney practicing law under this rule is subject to the Colorado Rules of Professional Conduct.” C.R.C.P. 205.1(3).
7. Alternatively, the Court should find that Mr. Malone satisfied the conditions of

C.R.C.P. 205.6, and should be subject to the Colorado Rules of Professional Conduct as an out- of-state attorney awaiting admission in Colorado.

1. Even if the Court finds that 205.1 and 205.6 do not apply, contrary to Defendant’s assertions, one’s ethical obligations as an admitted member of the bar of one state do not evaporate when one crosses the boundary thereof. At minimum, Mr. Malone would be subject to an almost identical Pennsylvania Rule 1.9 governing against conflicts of interests.
2. As the Court is aware, Colorado’s Rules of Professional Conduct are adopted from the American Bar Association’s Model Rules of Professional Conduct with minimal substantive

alterations. Pennsylvania has adopted these Model Rules as well. The rules of both jurisdictions are substantially similar and are cited above for the Court’s own comparison.

1. The most significant difference between the two states is that Colorado requires written informed consent, whereas Pennsylvania does not require a writing. Here, no informed consent of any sort was given to clear the conflict and plaintiffs maintain Mr. Malone is in possession of trial strategy, work product, evidentiary foundation in support of numerous motions and attorney client privileged information.
2. To allow Mr. Malone to escape conflict on the grounds that he was only subject to Pennsylvania rules of conduct until his licensure in Colorado and that his identical obligations to former clients under both states’ rules are so distinct they cannot be considered in tandem to form the basis of a violation, is to undermine the entire system of ethics that governs our profession.
3. Mr. Muhaisen’s cursory dismissal of Plaintiffs’ allegations “without need of further analysis or inquiry” is demonstrative of the lack of importance these serious allegations have been given in Defendant’s Response. Plaintiffs believe that Defendant’s counsel is subject to several Rules of Professional Conduct, both Colorado and Pennsylvania’s and is in clear violation thereof. Mr. Malone is well aware of the attorney client privileged information he obtained while working in the law firm of plaintiffs, yet fails to admit such obvious conduct to this court, as if to hide the very nature of his involvement. Specifically, Mr. Malone sat in on staff meetings, discussing to-do lists regarding every single case at the firm with Mr. Abrams, Brittany Hayes and Nico Pento. From these to-do lists, Mr. Malone was assigned work on various cases. At the to- do list meetings Mr. Beeson’s current work needs were discussed with the full legal thinking of plaintiffs at the time. To pretend he was not at the meetings gaining this information about the instant case is preposterous. And, his denials thereto are even more troubling, as everyone witnessed him in at the meetings.
4. Plaintiffs’ claims are not made lightly and should not be taken so. Plaintiffs respectfully request the Court grant a hearing to address the facts and circumstances, as well as the applicability of the Rules of Professional Conduct to the matter at hand.

# While Plaintiffs are unable to conclusively prove the contents of Mr. Malone’s mind, Plaintiffs have pled sufficient facts to establish that Defendant’s counsel failed to disclose a known, substantial conflict of interest.

1. Plaintiffs pled in their Motion, and Defendant cited in his Response, that Mr.

Malone was privy to attorney work product, evidentiary defenses, foundation for motions, trial strategy and other privileged information.

1. Plaintiffs also pled, and Defendant again cited, that Plaintiffs believe Defendant acted upon the same information in amending its pleadings.
2. Specifically, Plaintiffs pled, with support from four affidavits, that Mr. Malone was able to hear the substantive discussions involving this matter. *See Exhibit 1, 2, and 3 to Plaintiffs’ Motion to Disqualify; see also Amended Affidavit of Nicoli Pento.*
3. Plaintiffs pled that Mr. Malone attended staff “to-do” meetings, wherein Plaintiffs would discuss this matter in depth; Mr. Malone had access to the file at all times; Mr. Malone must have heard the conversations by the small nature of the office environment and proximity to Brittany Hayes desk (10 feet away from Malone) where defendant’s matter was repeatedly discussed over Mr. Malone’s 5 month tenure; and, Mr. Malone himself admitted to Plaintiffs that he remembered some minimal level of personal involvement in the case.
4. Were Plaintiffs not engaged in the business of practicing law and simple laypersons, the facts Plaintiffs pled would suffice to raise a serious claim of impropriety regarding Defendant’s counsel. No party should be expected to prove a claim of this nature from pleadings, and thus Plaintiffs again respectfully request the Court grant a hearing to address the matter.
5. Defendant counsel’s cursory dismissal and characterization that Plaintiffs’ motion is “desperate,” “dilatory,” or “tactical” simply insults the integrity of the profession and the obligations attorneys share across jurisdictions; not to mention, Mr. Muhaisen calling Mr. Abrams a liar in his Response meets equally with desperation and unprofessionalism.
6. “Speculation,” as Mr. Muhaisen puts it, of this nature should be taken seriously by those practicing in a self-governing profession. Plaintiffs argue it would be if Plaintiffs were laymen clients.

# Plaintiffs are raising an issue of dishonesty and unprofessionalism regarding Defendant’s counsel

1. Defendant’s counsel argues that even if Mr. Malone were subject to the Rules of Professional Conduct, Mr. Malone did not actually share privileged information in violation of Rule 1.6. This “no harm, no foul” argument simply has no basis at law.
2. Assuming Mr. Malone is subject to the Rules of Professional Conduct, the violation alleged here is an undisclosed conflict of interest pursuant to Rule 1.9. It is simply the acquisition of privileged knowledge that creates the conflict and the nondisclosure or request for informed consent that creates the violation. Mr. Malone knew he had some level of knowledge of the facts surrounding the case and failed to contact Plaintiffs for informed consent, written or otherwise. Arguably, because he knew it would be withheld by plaintiffs. Factually, the issue remained hidden and unknown to plaintiffs, until Mr. Malone and Mr. Muhaisen got caught when Mr. Malone began filing pleadings in this matter with the court.
3. Under both Colorado and Pennsylvania Rules of Professional Conduct, Defendant’s argument in Part C of his Response proves the significance of Plaintiffs’ claims.
4. To accuse Plaintiffs of lying to the Court with their Motion is “plainly” as unprofessional as Mr. Malone’s conduct. Judging by Defendant’s response, the environment in

which he currently works seemingly fosters this type of conduct and places very little importance on professional responsibility.

# Nico Pento amended his affidavit to correct misstatements after Mr. Malone confronted Mr. Pento about his testimony therein

1. Nico Pento reviewed and signed both the initial and amended affidavits, testifying to their veracity.
2. As Defendant’s counsel notes, Mr. Malone confronted Mr. Pento about his initial affidavit. Mr. Pento has no interest in being involved in this matter. After the conversation, Mr. Pento contacted Plaintiffs to alter the language in his affidavit and refile, which Plaintiffs did.
3. The amendment changed no facts relating to the violations of Rule 1.9. Simply, the amendment altered the level of activity Mr. Malone personally had working the case, not that he did not work on the case or gain information thereto. Those facts are undisputed by plaintiffs’ entire staff and admitted to, at least at some level, by Mr. Malone.
4. The amendment still notes that it would have been impossible for Mr. Malone not to have heard the substantive discussions on this case. As such, Mr. Pento still alleges that Mr. Malone must be privy to privileged information protected by Rule 1.6. *See Amended Affidavit of Nicoli Pento*, ¶¶ 6-8.
5. Plaintiffs respectfully request the Court exercise its discretion and grant Plaintiffs’ Motion to Disqualify Defendant’s Counsel on the basis of conflict of interests under C.R.P.C. 1.9(a) and (b) and Rule 1.6. *See comment 5 to Rule 1.9* (“Para. (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules

1.6 and 1.9(c).”). This is the case here.

# CONCLUSION

Mr. Malone was at all relevant times an attorney of either Pennsylvania or Colorado. Mr. Malone meets the definitions for an “out-of-state attorney” and an attorney practicing pending

admission, pursuant to C.R.C.P. 205.1 and 205.6. As an attorney, Mr. Malone was at all times governed by the Rules of Professional Conduct of either Pennsylvania or Colorado, if not both. Both are substantially similar with respect to conflicts of interest, as explained herein. For the foregoing reasons, Mr. Malone should not be able to skirt professional responsibility based upon his brief lapse of unlicensed practice in Colorado in light of his identical professional responsibilities that governed his active out-of-state license. Mr. Malone, nor Defendant’s counsel, ever reached out to Plaintiffs to disclose the conflict or attempt to gain written or verbal informed consent to waive the same. Under either state’s rule, Mr. Malone patently violated his ethical obligations. Plaintiffs have a right to their attorney client privileged information, work product, trial strategies, evidence foundation and motion’s foundation; and, to have same maintained in confidentiality. Mr. Malone and Mr. Muhaisen are in violation of both as neither has plaintiffs’ informed written consent in the matter.

WHEREFORE, Plaintiffs respectfully request the Court grant the Motion and disqualify Mr. Muhaisen and his firm, as counsel for Defendant, in the above-captioned case. The disquali- fication is necessary to protect the integrity of the adversarial process and to avoid prejudice to the parties, in particular to Plaintiffs Robert Abrams and Abrams & Associates, LLC. Plaintiffs are unopposed to a hearing on this matter to resolve the claims between the parties.

RESPECTFULLY SUBMITTED this 20th day of December, 2016.

SILVER LAW FIRM, LLC

*/s/ Nathan Silver*

Nathan Silver, Attorney at Law

*(Original signature on file at Silver Law Firm, LLC, pursuant to C.R.C.P. 121 § 1-26)*

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY I have this 20th day of December, 2016, via ICCES, served a true and correct copy of the foregoing PLAINTIFFS’ REPLY TO DEFENDANT’S RESPONSE TO MOTION TO DISQUALIFY DEFENDANT’S COUNSEL upon:

Wadi Muhaisen

Muhaisen & Muhaisen, LLC 1435 Larimer Street, Suite 203

Denver, Colorado 80202

*Attorney for Defendant*

*/s/ Neil S. Sullenberger*

Neil S. Sullenberger, Attorney at Law

*(Original signature on file at Silver Law Firm, LLC, pursuant to C.R.C.P. 121 § 1-26)*