

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. DA 22-0700

IN THE MATTER OF:

JEREMY LOOK, an individual person,

Cross-Claimant/Appellant,

v.

CASEY McGOWAN, MEGAN McGOWAN and KAREN
SPAWN McGOWAN, heirs to an estate,

Appellees.

RESPONSE TO MOTION TO DISQUALIFY

On Appeal from the Montana Ninth Judicial District Court, Glacier County, The
Honorable Robert G. Olson presiding.
Cause No. DV-21-60

APPEARANCES:

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Jackson, Murdo & Grant, P.C. (“JMG”), must respond to Look’s motion to correct the record. Mr. Look misrepresents the extent to which this motion is unopposed and has misrepresented the record in a way that prejudices the McGowans. The McGowans respond immediately to avoid the Court making its decision based on a false claim that his motion, in total, was unopposed.

Background

Mr. Talia joined JMG on February 1, 2023; his former firm is closing. He had previously represented Mr. Look after the district court issued the order that is on appeal. He did not file pleadings below.

Counsel for the McGowans timely informed Mr. Look’s counsel of the potential for a conflict, offered to screen Mr. Talia, and sought a waiver. Counsel for Mr. Look would not waive the conflict, and immediately, JMG agreed to “step away” from the case. Counsel for Mr. Look agreed it would be appropriate “if we can’t get something worked out today,” the date scheduled for the appellate mediation. That was eight days before he filed the instant motion. Email from Jette to Talia and Warhank of 2/2/2023, attached as Exhibit A.

Counsel for Mr. Look emailed JMG the day after mediation about the issue, and JMG again confirmed that it was getting out of the case. It indicated it was “looking for someone to take [the case] over.” On Monday, February 6, 2023, counsel for Mr. Look responded, “Thanks, keep me posted.” Email from Jette to

Warhank of 2/6/2023, attached as Exhibit B. He did not object to JMG assisting the McGowans in obtaining new counsel.

On Monday, days before Mr. Look filed this motion, JMG notified counsel that another firm was going to take the case over but that one of its clients was traveling until Wednesday. Email from Warhank to Jette of 2/6/ 2023, attached as Exhibit C. On Wednesday, JMG reported to counsel for Mr. Look that the new firm was working on its retainer agreement for the McGowans, but it may take a “day or so.” Email from Warhank to Jette of 2/8/2023, attached as Exhibit D. JMG asked if counsel objected to a motion permitting new counsel to get into the case and prepare the response brief. *Id.*

Counsel indicated that it would only agree to the motion for the McGowan’s first extension if JMG “agree[d] not to object to any motion we must file to disqualify you.” *Id.* JMG filed its motion for an extension with the Court on Friday, February 10, 2023. That motion notifies the Court that “Appellees are obtaining new counsel due to a conflict of interest issue.”

Five hours later, counsel for Mr. Look filed this motion after 4:30 p.m. on Friday, February 10, 2023. To that point, he never revealed he would seek to disqualify the firm that had agreed to represent the McGowans. Nevertheless, he falsely represented to the Court that JMG and the McGowans did not object to that relief.

Mr. Talia never divulged confidential information about Mr. Look. His only involvement in the case is to work through the conflict issue. Messrs. Talia and Warhank never discussed the case's merits since Mr. Talia has joined JMG, and Mr. Talia has been screened from the matter. Mr. Warhank never received confidential or privileged information regarding Mr. Look. He has taken no action on this matter since February 2, 2023, other than to attempt to extricate JMG from the case, as was Mr. Look's wish.

Discussion

First, Mr. Look contends that the undersigned counsel does not object to his motion. JMG indeed agreed that it would not oppose a “motion we must file to disqualify you.” See Exh. A (emphasis added). Mr. Look never asked the appellees' position on a motion to disqualify the firms with whom JMG checked. He also never raised the issue that he thought it was inappropriate for JMG to see if other attorneys would be interested in taking the case over. Nevertheless, counsel for Mr. Look falsely claims that this portion of the motion is unopposed.

JMG does oppose that portion of the motion. Mr. Look does not support his claim that firms discussing the matter with Mr. Warhank should be disqualified in his nine-page motion.¹ His intimations Mr. Talia has shared confidential

¹ Mr. Look does not include a Certificate of Compliance, but the body of his brief, when pasted into Word, contains more than 2,200 words, which violates Mont. R. App. P. 16(3).

information from Mr. Look are categorically false, as is his unsupported claim that Mr. Warhank somehow passed that information on to other lawyers. One wonders why someone concerned with timely counsel removal would vociferously oppose attempts to get him new lawyers on the matter.

Moreover, JMG owes a duty to the McGowans. Unfortunately, conflict issues arise. When they do, there is no prohibition on assisting clients in finding new counsel. Since JMG's client was traveling, its efforts to find a new lawyer, if anything, sped the process. Mr. Look seeks an outcome that would make it nearly impossible for anyone in McGowan's position to obtain new counsel. One wonders if that dynamic plays into the current motion.

Mr. Look also misrepresents the correspondence between the parties. Undersigned counsel raised this potential conflict issue within a day with Look's counsel before the appellate mediation. JMG agreed to step aside from the case as soon as Mr. Jette indicated that Mr. Look would not waive the conflict. Of note, however, Mr. Jette stated in an email on that date that the undersigned should step aside "if we can't get something worked out today [the mediation]." Exh. A. The written record belies his claim that it was inappropriate for JMG to continue representation during the mediation.

Mr. Look also indicates that JMG was "notified about the need to withdraw last Friday [February 3, 2023], and agreed to withdraw on Monday." That is false.

As discussed above, JMG agreed it would get out of the case on Thursday, 2 February 2023. It continued with the mediation based on counsel's statement. *Id.*

More importantly, the next day, counsel for Mr. Look did not state that JMG must withdraw. He asked if JMG was going to withdraw. *See* Exh. B. JMG responded quickly, confirming that it was "looking for someone to take [the case] over." On Monday, February 11, 2023, Mr. Jette responded, "Thanks, keep me posted." *Id.* JMG never promised to withdraw by Monday, February 6th, and counsel never indicated that it was unacceptable for JMG to discuss representation with other firms, as is done in most, if not all, similar circumstances throughout the state.

It is disheartening to have to file this response. An issue arose, and it is being addressed promptly. Mr. Look asked if JMG opposed a motion to disqualify it, and while JMG would prefer that he allowed the necessary time for new counsel to substitute into the case, it agreed not to oppose that motion. JMG did not agree to Mr. Look's additional relief. For whatever reason, Mr. Look misrepresented JMG's consent to that relief to the Court and myriad other material facts.

Therefore, while JMG has agreed since Day 1 to get out of the case, the Court should deny Mr. Look's unsupported attempt to disqualify the firm that will clear this conflict and allow the case to proceed to a decision. Counsel planning to

substitute into this matter for the McGowans asked JMG to request from the Court a 90-day extension due to the issues Mr. Look has raised.

DATED this 12th day of February 2023.

JACKSON, MURDO & GRANT, P.C.

/s/ Murry Warhank

Murry Warhank
Attorneys for Appellees

Certificate of Compliance

The body of this brief, checked with Microsoft Word, has 1,249 words.

DATED this 12th day of February 2023.

JACKSON, MURDO & GRANT, P.C.

/s/ Murry Warhank

Murry Warhank
Attorneys for Appellees

CERTIFICATE OF SERVICE

I, Murry Warhank, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 02-12-2023:

Mark Jette (Attorney)
PO Box 4423
Helena MT 59604
Representing: Jeremy Look
Service Method: eService

Electronically Signed By: Murry Warhank
Dated: 02-12-2023