

**Case Number:
HG14720131**

**Title: Pacifica Directors For Good G VS Pacifica
Foundation Radio,**

Date

Action

This Tentative Ruling is made by Judge Ioana Petrou Plaintiff's Motion to Disqualify Siegel & Yee as Opposing Counsel is DENIED. The Court finds that Plaintiff lacks standing to bring this Motion. In order to have standing to bring a motion to disqualify opposing counsel, a party must demonstrate either a prior attorney-client relationship with opposing counsel, or some breach of a duty of confidentiality that opposing counsel owed to the complaining party. (See *Great Lakes Construction Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356-1358.) Rules of Professional Conduct, Rule 3-310(E), cited in Plaintiff's opening brief, never becomes applicable when the party seeking disqualification fails to establish that it was ever represented by opposing counsel. (See *Oaks Management Corporation v. Superior Court* (2006) 145 Cal.App.4th 453, 465.) Here, it is undisputed that Plaintiff (an unincorporated association) was never a client of Siegel & Yee ("S&Y"), Dan Siegel, or Jose Luis Fuentes, nor were any of the nine individuals that comprise Plaintiff. Although S&Y and Dan Siegel have represented Defendant Pacifica Foundation Radio ("PFR") in various lawsuits at times when those nine individuals were officers or board members of PFR, S&Y and Siegel never represented them in their individual capacities. Rather, at all times S&Y and Siegel represented PFR and its board members in their representative capacities. (See, e.g., *Responsible Citizens v. The Superior Court of Fresno County* (1993) 16 Cal.App.4th 1717, 1726-1727.) Plaintiff further fails to establish that S&Y or Siegel would have obtained any confidential information from Plaintiff or any of its nine members in the course of any prior legal representation of PFR that could be used advantageously against Plaintiff in this action. (See, e.g., *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1205.) In short, Plaintiff fails to demonstrate that either itself or the nine individuals comprising Plaintiff have a "legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical" that would be threatened by S&Y's continued representation of PFR and the other Defendants. (See *Great Lakes Construction, supra*, 186 Cal.App.4th at 1358.) But even if the Court were to find that Plaintiff has standing to bring this Motion - which it doesn't - Plaintiff has not established that any of the asserted grounds for disqualification apply here. First, Plaintiff fails to demonstrate, or even identify, any purported conflict of interest that should bar S&Y or Dan Siegel from representing PFR in this case. In particular, Plaintiff fails to demonstrate that there is a "substantial relationship" between any prior action in which S&Y or Dan Siegel represented PFR and the present case. The fact that Dan Siegel and certain other members of the S&Y firm have served in various roles on the PFR board or as counsel for PFR over the years does not create any conflict of interest that bars S&Y from representing PFR in this case. Second, Plaintiff does not demonstrate why either Dan Siegel or Jose Luis Fuentes would need to be a witness in this case. Although Dan Siegel helped to draft Summer Reese's employment offer

Date**Action**

letter, Plaintiff does not demonstrate why testimony as to the drafting of that letter would have any relevance to this case. Similarly, the majority of the PFR board voted to terminate Reese's employment, and Jose Luis Fuentes' personal views on whether Reese could serve as Executive Director without a social security number appears at most tangential to the board's decision. Third, Plaintiff has failed to demonstrate any "ethical transgressions" that would justify disqualification of S&Y or Dan Siegel. Even accepting as true the evidence submitted by Plaintiff (much of which is disputed by Dan Siegel), Plaintiff's evidence suggests Dan Siegel is rude and vulgar in communications with opposing counsel and parties, but not "unethical" in a manner that supports disqualification. Fourth, Plaintiff fails to demonstrate how S&Y's representation of PFR in this case would lead to any "appearance of impropriety". Finally, the evidence submitted by PFR demonstrates that a majority of the non-interested members of the PFR board authorized board chair Margy Wilkinson to hire S&Y to represent PRF, after excluding any board members with actual or potential conflicts of interest (including Jose Luis Fuentes). Plaintiff fails to demonstrate, with competent evidence, that the decision violated PFR bylaws or the California Corporations Code or that it constituted "self-dealing" in violation of Corporations Code Â§ 5233. But even if the decision to hire S&Y did violate Â§ 5233, Plaintiff does not demonstrate why that would give Plaintiff standing to disqualify S&Y from representing PFR, or that the proper remedy for a violation of Â§ 5233 would be disqualification of S&Y. PLEASE NOTE: This tentative ruling will become the Court's order, and no hearing will be held, unless either party contacts the opposing counsel or unrepresented party, along with the Clerk of Department 15, by 4:00 p.m. on the court day before the scheduled hearing, to state an intent to appear at the hearing to contest the tentative ruling. The Clerk of Department 15 may be contacted by email to Dept.15@alameda.courts.ca.gov. PLEASE ALSO NOTE that the court no longer provides court reporters for civil law and motion hearings. See amended Local Rule 3.95.