[Cite as *Marathon Hotels, Inc. v. Miller Goler Faeges Lapine, L.L.P.*, 2017-Ohio-959.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104301

MARATHON HOTELS, INC.

PLAINTIFF-APPELLEE

vs.

MILLER GOLER FAEGES LAPINE, L.L.P., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-836757

BEFORE: Kilbane, J., Jones, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: March 9, 2017

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MARY EILEEN KILBANE, J.:

{¶1} Defendants-appellants, Miller Goler Faeges Lapine, L.L.P. ("Miller Goler"), Steven Miller, Esq. ("Miller") and David Kunselman, Esq. ("Kunselman") (collectively referred to as "defendants"), appeal from the trial court's judgment granting plaintiff-appellee, Marathon Hotel's ("Marathon") motion to disqualify defendants' counsel. For the reasons set forth below, we reverse and remand.

{¶2} This appeal arises from a legal malpractice complaint filed by Marathon in December 2014 against the defendants and another Miller Goler attorney, Kenneth Lapine, Esq. (who is not a party to this appeal). Marathon's claims relate to the legal representation it received by Miller Goler in connection with an insurance coverage dispute arising from a separate lawsuit filed by a female guest of a hotel managed by Marathon. In this separate lawsuit, John and Jane Doe, on behalf of their minor daughter, Jean Doe ("Jean"), filed a complaint against Marathon, Landerhaven Hotel Ventures, L.L.C. ("Landerhaven Ventures"), and James Freeman ("Freeman"), alleging that Jean was raped by Freeman, a "maintenance man" employed by Marathon.[1] In October 2009, the Does were guests at a hotel managed by Marathon. Jean was speaking to Freeman outside of the hotel. The two of them discussed smoking marijuana. Freeman left momentarily and returned in his van. He asked Jean to get into his van,

[1]Landerhaven Ventures is the corporate entity that owns the hotel involved in the lawsuit. Landerhaven Ventures contracted with Marathon to manage and operate the hotel.

where they proceeded to smoke marijuana. Freeman had his van parked in the rear of the hotel parking lot, where he forced Jean to have intercourse with him. The Does alleged that Marathon and Landerhaven Ventures failed to provide adequate security to hotel guests and negligently hired Freeman. They further alleged causes of action for respondeat superior, loss of parental consortium, and intentional infliction of emotional distress.

{¶3} Marathon's and Landerhaven Ventures' commercial general liability insurer, Westfield Insurance ("Westfield"), filed a cross-claim, asking the trial court to decide if Westfield had to provide insurance coverage for all of the claims alleged by the Does against Marathon and Landerhaven Ventures. Marathon and Landerhaven Ventures hired Miller Goler to represent both of them against the cross-claim filed by Westfield. Marathon and Landerhaven Ventures filed a counter-cross-claim in response to Westfield's cross-claim. Westfield settled the claims set forth in the Does' lawsuit in July 2012. Thereafter, Miller Goler continued to represent Marathon and Landerhaven Ventures in Westfield's cross-claim. Westfield, Marathon, and Landerhaven Ventures entered into a confidential settlement in December 2013.

{¶4} In its malpractice complaint against defendants, Marathon contends that the settlement of the Does' lawsuit terminated Westfield's cross-claim for declaratory judgment. As a result, Marathon contends defendants continued to perform unnecessary legal services from July 2012 through December 2013. Marathon alleges that defendants engaged in negligent misconduct and breached the professional standard of care expected

of competent lawyers in the legal community by, inter alia, agreeing to contemporaneously represent two clients with adverse interests in the same litigation, pursuing an invalid counter-cross-claim against Westfield, and charging unnecessary and outrageously excessive legal fees.

{¶5} In December 2014, the defendants retained David Schaefer, Esq. ("Schaefer") and the law firm of McCarthy, Lebit, Crystal & Liffman Co., L.P.A. ("McCarthy Lebit") as personal legal counsel in the Marathon malpractice litigation. Shortly thereafter, Schaefer sent an email to Marathon's attorney, Charles Longo, Esq. ("Longo"), on December 26, 2014, with the subject line that read "miller goler." In that email, Schaefer states: "I am told you are away, but if you are picking up voicemails, I would appreciate a call." Subsequent to that email, Schaefer and Longo exchanged a few short scheduling emails and telephone calls. On January 7, 2015, Longo and Schaefer had a meeting at Longo's office. At the meeting, which lasted just over one hour, Schaefer and Longo discussed the facts of the Marathon case, Marathon's position, and possible settlement of the malpractice case. Schaefer told Longo that he would not be entering an appearance in the action. Schaefer explained that he did not initially enter an appearance because Miller Goler's legal malpractice insurer, CNA Insurance ("CNA"), had its own preferred counsel list and he was not on its panel list. CNA had retained Reminger Co., L.P.A. ("Reminger") at the time as counsel for defendants.

{¶6} In March 2015, defendants, through Reminger, filed a motion to enforce settlement. In their motion, defendants allege that Marathon offered to dismiss its

malpractice complaint against defendants in exchange for Miller Goler withdrawing its request for payments of legal fees. Defendants allege that they accepted that offer, and Marathon failed to comply with it.

{¶7} Thereafter, Longo called Schaefer and advised him that he would be called as a witness at the hearing on the motion to enforce settlement because of his involvement in the malpractice case. Longo issued a subpoena for Schaefer to testify at the evidentiary hearing on the motion. At Schaefer's request, Longo released Schaefer from the subpoena because Schaefer was unavailable because of a scheduled mediation. The trial court denied defendants' motion to enforce settlement in July 2015.

{¶8} Thereafter, Marathon raised its first of three separate objections to defendants' counsel. First, Marathon argued that Reminger had a conflict of interest in representing defendants and Lapine because of Lapine's interest in Landerhaven Hotels. Reminger voluntarily withdrew as counsel for all of the defendants, including Lapine, in August 2015. As a result, on August 21, 2015, McCarthy Lebit substituted its appearance for the defendants and the law firm of Vorys, Sater, Seymour and Pease L.L.P. ("Vorys Sater") entered its appearance for Lapine.

{¶9} Then in September 2015, Marathon raised its second and third objections to defendants' counsel, this time by filing a motion to disqualify McCarthy Lebit as counsel for defendants and a separate motion to disqualify Vorys Sater as counsel. In its motion against McCarthy Lebit, Marathon claimed that Schaefer was acting as a "third-party neutral" during his conversations and meeting with Longo. This was Marathon's first

mention of Schaefer acting as a third-party neutral. Marathon argued that Schaefer was barred from acting as legal counsel for defendants based on Prof.Cond.R. 1.12 and 2.4, which provide as follows:

> RULE 1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR, OR OTHER THIRD-PARTY NEUTRAL
>
> (a) Except as stated in division (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and *substantially* as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give *informed consent, confirmed in writing*.
>
> RULE 2.4: LAWYER SERVING AS ARBITRATOR, MEDIATOR, OR THIRD-PARTY NEUTRAL
>
> (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter. (Emphasis sic.)

{¶10} Defendants opposed Marathon's motion for disqualification. Defendants argued that they retained Schaefer as their personal legal counsel in December 2014. As a result, defendants maintained that Schaefer never acted as a mediator or "third-party neutral."

{¶11} The trial court held a hearing on the matter in January 2016, at which the following evidence was adduced.

{¶12} Schaefer testified that he is a civil litigator for McCarthy Lebit. He also does alternate dispute resolution work. Schaefer and Longo have known each other as professional acquaintances for approximately 30 years. Longo has retained Schaefer in

the past as a mediator, with good results. Schaefer testified that the phrase "third-party neutral" is not frequently used in northeast Ohio. He defined the phrase as a third person who, without a client, tries to bring together other persons to assist in the resolution of a dispute.

{¶13} Schaefer was first contacted by Miller in December 2014. Miller hired him as personal counsel for Miller Goler in the Marathon malpractice case. Schaefer opened a file for this matter and began providing defendants with advocacy services. The client number assigned to the defendants' file did not contain the prefix number Schaefer uses for private mediations. He recorded his hours for the purpose of billing them. McCarthy Lebit billed defendants as clients for Schaefer's legal services as their personal counsel, beginning December 2014. Defendants then paid McCarthy Lebit as billed for the legal services that Schaefer performed on their behalf as personal counsel. These documents were submitted into evidence at the hearing.

{¶14} Schaefer emailed Andrew Feldman ("Feldman"), the insurance adjuster at CNA, Miller Goler's legal malpractice insurer. The subject line read, "Legal/Confidential/Privileged." In the email, he advised Feldman that he has been a mediator in the past in order to establish credibility with him. Thereafter, Schaefer called Longo's office to speak with Longo, but was advised that Longo was out of the office. Schaefer has known Longo for 30 years, and as such, he felt comfortable emailing Longo on December 26, 2014, asking Longo for a call. This email was sent 24 days after the complaint was filed. The subject line of the email read "miller goler." In the email,

Schaefer states: "I am told you are away, but if you are picking up voicemails, I would appreciate a call."

{¶15} Schaefer then called Longo on either January 2 or January 3, 2015. He told him that he was calling on behalf of Miller, who asked him to contact Longo. He wanted to gather facts, get information about litigation, and discuss settlement. The two of them met at Longo's office on January 7, 2015. At the meeting, which lasted just over an hour, they discussed the case and attempted to explore the possibility of a settlement of the malpractice case. Schaefer testified that Longo was adamant about seeking punitive damages, which Schaefer felt were unattainable. At that point, Schaefer testified that further discussions about the status of settlement would not be fruitful.

{¶16} Two days later, on January 9, 2015, there was a brief telephone conversation between Schaefer and Longo. During that call, Longo asked Schaefer to get defendants' insurance policy information and provide it to him. On January 12, 2015, another brief telephone conversation took place between Schaefer and Longo. Then, Schaefer and Longo had no other contact with each other about the instant case until March 12, 2015, when Longo called Schaefer to discuss defendants' motion to enforce settlement, which was filed by Reminger. During the call, Longo informed Schaefer that he would be a witness at a hearing on defendants' motion to enforce. Schaefer testified that at no time during that call did Longo express that he thought that Schaefer had acted as "a third-party neutral." Schaefer received a subpoena from Longo to testify at the hearing on the motion to enforce settlement. When Schaefer informed Longo that he was not

available to testify on the day of the hearing, Longo released Schaefer from the subpoena. He confirmed this in a letter to Longo dated April 16, 2015.

{¶17} Schaefer testified that at no time during those communications did Longo express that he thought Schaefer had acted as a "third-party neutral." On August 21, 2015, Schaefer filed a notice of substitution as counsel for defendants in place of Reminger, the counsel originally retained by CNA. On August 25, 2015, Longo emailed Schaefer contending that he might be called as a witness at trial and thus might be subject to disqualification, but did not express in the email that he thought Schaefer had acted as a "third-party neutral" in the case. The first time Marathon alleged that Schaefer was acting as a "third-party neutral" was in its motion to disqualify McCarthy Lebit as counsel, which was filed in September 2015, ten months after Schaefer's initial contact.

{¶18} Schaefer further testified that when he is retained as an arbitrator or a mediator, the rules of arbitration require a written agreement between him and all counsel for the parties who jointly have requested his services. This agreement establishes the engagement of Schaefer as an arbitrator or a mediator, the time and place for the arbitration or mediation, when written briefs or mediation statements are due, whether opening statements will be given, and the fee charged by McCarthy Lebit for Schaefer's arbitration or mediation services. Schaefer testified that he never executed a written agreement with any of the involved parties to serve as a mediator or third-party neutral in the Marathon malpractice case.

{¶19} Longo testified that when they spoke in the beginning of January 2015, Schaefer said Miller told him about the case and asked Schaefer to give Longo a call to try to settle the case. During the telephone call, Longo testified that Schaefer told him he was not representing any of the defendants and he would not be entering an appearance in this case. On January 7, 2015, Schaefer appeared in Longo's office. Longo testified that at the meeting, Schaefer did not tell Longo that he was representing any party in the litigation, but was there as a friend of Miller's. Longo further testified that, based on Schaefer's representations and omissions, he revealed confidential information that he would not have disclosed had he known Schaefer was representing any of the parties. He testified that at no time prior to filing the notice of substitution of counsel did Schaefer indicate to Longo that he was representing any parties in the litigation.

{¶20} Longo confirmed that he called Schaefer in March 2015 on defendants' motion to enforce settlement. A subpoena was issued for Schaefer to testify at the evidentiary hearing on the motion. At Schaefer's request, Longo released Schaefer from the subpoena based upon Schaefer's unavailability because of a mediation he had scheduled. Longo further testified that Schaefer told him on at least three occasions that he was not representing anyone, he was not getting paid, and he was doing Miller a favor. Even though Longo retained Schaefer's mediator services in the past and was aware of the required mediation agreement, Longo was perplexed and believed that Schaefer was acting as a "third-party neutral." Marathon did not submit into evidence any documents

indicating that Schaefer was retained as a third-party neutral or that the parties executed a mediation agreement.

{¶21} Deborah Coleman, Esq. ("Coleman") testified as an expert called by the defendants. Coleman is a certified mediator and has worked in mediation since 1991. She also has served as Chair of the ethics committees of the Cleveland Metropolitian Bar Association and the America Bar Association. Coleman was asked by McCarthy Lebit to opine if Longo could reasonably believe that Schaefer was acting as a "third-party neutral" when Schaefer emailed Longo in December 2014 and met with him on January 7, 2015. Coleman testified it was not objectively reasonable for an attorney to believe that Schaefer was acting as a "third-party neutral" in this case because: (1) Schaefer did not represent himself to Longo as a mediator or third-party neutral; (2) Schaefer was not appointed or assigned by the court; (3) there was no contract; and (4) Schaefer was not paid as a mediator.

{¶22} In March 2016, the trial court issued an opinion and journal entry granting Marathon's motion to disqualify McCarthy Lebit. The trial court issued a separate opinion and journal entry denying Marathon's motion to disqualify Vorys Sater. With respect to McCarthy Lebit, the trial court found that "the evidence demonstrates that Longo could reasonably believe that Schaefer had approached him and attended the January 7, 2015 meeting as a third party neutral."

{¶23} It is from this decision that defendants appeal, raising the following single assignment of error for review.

Assignment of Error

> The trial court committed reversible error when it granted [Marathon's] motion to disqualify [defendants'] legal counsel based on Ohio Professional Conduct Rules 1.12 and 2.4.

{¶24} Defendants contend trial court erred when it granted Marathon's motion to disqualify because the uncontroverted evidence establishes that beginning in December 2014, Schaefer was engaged as personal counsel for defendants and he later entered appearance in the matter as counsel of record in August 2015. Defendants further contend that Schaefer's conduct from the outset established that he was representing them as clients of his law firm and not serving multiple persons, who were not his clients, in a "third-party neutral" capacity.

{¶25} In reviewing a trial court's decision to disqualify a party's counsel, we apply an abuse of discretion standard. *155 N. High, Ltd. v. Cincinnati Ins. Co.*, 72 Ohio St.3d 423, 426, 1995-Ohio-85, 650 N.E.2d 869, citing *Royal Indemn. Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 501 N.E.2d 617 (1986); *Mentor Lagoons, Inc. v. Rubin*, 31 Ohio St.3d 256, 510 N.E.2d 379 (1987). "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable.'" (Citations omitted.) *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980).

{¶26} We are mindful that "[d]isqualification of an attorney is a drastic measure, which should not be imposed unless absolutely necessary." *Quiros v. Morales*, 8th Dist.

Cuyahoga No. 894274, 2007-Ohio-5442, ¶ 15; *Roth v. Roth*, 8th Dist. Cuyahoga No. 89141, 2008-Ohio-927, ¶ 70. Disqualification interferes with a client's right to choose counsel. *Kala v. Aluminum Smelting & Ref. Co.*, 81 Ohio St. 3d 1, 5-6, 688 N.E.2d 258, 1998-Ohio-439, citing *Manning v. Waring, Cox, James, Sklar & Allen*, 849 F.2d 222 (6th Cir.1988); *A.B.B. Sanitec W., Inc. v. Weinsten*, 8th Dist. Cuyahoga No. 88258, 2007-Ohio-2116.

{¶27} Moreover, '"[w]hile motions to disqualify may be legitimate and necessary under certain circumstances, they "should be viewed with extreme caution for they can be misused as techniques of harassment."'" *Cliffs Sales Co. v. Am. S.S. Co.*, N.D. Ohio No. 1:07-CV-485, 2007 U.S. Dist. LEXIS 74342, at 7 (Oct. 4, 2007), quoting *SST Castings, Inc. v. Amana Appliances, Inc.*, 250 F.Supp.2d 863, 865-866 (S.D.Ohio 2002), citing *Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715, 722 (7th Cir.1982). "It is the burden of the party moving for disqualification of an attorney to demonstrate that * * * disqualification is necessary." *Id.*, citing *Mentor Lagoons v. Teague*, 71 Ohio App.3d 719, 595 N.E.2d 392 (11th Dist.1991).

{¶28} Prof.Cond.R. 2.4(a) defines a "third-party neutral" as lawyer who "assists two or more persons *who are not clients of the lawyer* to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as a [mediator] or in such other capacity as will enable the lawyer to assist the parties to resolve the matter." *Id.* (Emphasis added.) Prof.Cond.R. 1.2(a) prohibits a lawyer from representing anyone in connection with a matter in which the lawyer

participated personally and substantially as a mediator or "third-party neutral," unless all parties to the proceeding give informed consent, confirmed in writing.

{¶29} In the instant case, a review of the record demonstrates that Marathon sought to establish a conflict of interest or disqualification of three separate law firms representing the defendants. The defendants' insurer first retained Reminger as counsel. Reminger voluntarily withdrew after a conflict of interest issue was raised by Marathon. In the interim, defendants retained McCarthy Lebit as personal counsel, and Lapine retained Vorys Sater. In September 2015, Marathon filed separate motions to disqualify McCarthy Lebit as well as Vorys Sater as counsel. The trial court denied the disqualification with respect to Vorys.

{¶30} With respect to McCarthy Lebit, defendants retained Schaefer as personal counsel in December 2014. Schaefer opened a file for the instant case under a McCarthy Lebit client number, which did not contain the prefix numbers he uses for private mediations. McCarthy Lebit submitted billing statements confirming Miller Goler's non-mediation client status and listed the professional services Schaefer provided to Miller Goler. After being retained as defendants' personal counsel, Schaefer began providing lawyer services to defendants as his clients. Schaefer recorded his hours for the purpose of billing defendants, and defendants paid McCarthy Lebit for the personal counsel services he performed on their behalf.

{¶31} When Schaefer sent his December 26, 2014 email to Longo, the subject line read "miller goler," which referenced his clients. If Schaefer had been contacting Longo

as a favor to Steve Miller, the email subject line might have read "Steve Miller." As counsel for Miller Goler, this was Schaefer's first attempt to contact Longo in writing. When Schaefer first spoke with Longo, he stated to Longo that he was calling on behalf of Miller. Schaefer testified this meant that he was representing Miller. He did not believe that he had to make a formal announcement when he spoke with Longo. Schaefer had known Longo for over 30 years in a professional capacity and had never called Longo for a favor before.

{¶32} Schaefer continued to act as defendants' counsel during the early January 2015 telephone calls and on January 7, 2015, when he met with Longo. Schaefer attended the meeting on behalf of his already existing clients and was not there as a "third-party neutral" to assist persons not his clients to resolve a dispute among them. The January 7, 2015 meeting was to discuss the facts of the case and Marathon's position so that Schaefer could better understand the status of settlement. At the meeting, it became apparent that it was impossible to discuss settlement in any meaningful way because of Longo's position on punitive damages. The totality of Schaefer's interactions with Longo's counsel during December 2014 through January 2015 comprised less than two hours of time.

{¶33} Schaefer and Longo did not have contact with each other about the Marathon case again until March 2015, when Longo called Schaefer to discuss defendants' motion to enforce settlement, which was filed by Reminger. Sixty days of no communication between Schaefer and Longo is inconsistent with any effort by a

"third-party neutral" to help persons, not his clients, reach a resolution of a dispute between them. Then, when Schaefer filed his notice of substitution in August 2015, which was seven months after their initial meeting, Longo sent Schaefer an email stating that Schaefer might be called as a witness at trial because of their January 2015 interactions, and may be subject to disqualification. Longo did not mention in his email his theory of Schaefer acting as a friend or a "third-party neutral." Marathon's theory that Schaefer was a "third-party neutral" did not first arise until September 2015, when it filed its motion to disqualify McCarthy Lebit.

{¶34} Longo testified that he has retained Schaefer's mediation services in the past. Thus, he is aware of the mediation process. However, Marathon did not submit any written documentation indicating that Schaefer was retained as a mediator. The record further demonstrates that Schaefer did not enter into a written agreement with Marathon for him to act as a "third-party neutral," and Marathon did not receive any billing statements or make any payment to Schaefer for any "third-party neutral" services.

{¶35} The record further demonstrates that Schaefer had communications with the insurance adjuster at CNA in December 2014, which supports defendants' position that they were Schaefer's clients at the time. The emails to the insurance adjuster included in the subject heading the phrase "Legal/Confidential/Privileged."

{¶36} Moreover, the only expert opinion evidence that was presented to the trial court was from Coleman, the defendants' expert. She opined that the proper standard is an objective one — that is, what a reasonable Cuyahoga County lawyer would have

believed under the circumstances. Coleman further opined that it was not objectively reasonable for an attorney to believe that Schaefer was acting as a "third-party neutral" in his interactions with Longo because: (1) Schaefer did not represent himself to Longo as a mediator or third-party neutral; (2) Schaefer was not appointed or assigned by the court; (3) there was no contract; and (4) Schaefer was not paid as a mediator.

{¶37} Schaefer testified that he acts only as a mediator or arbitrator after a written agreement with all counsel is completed. While Schaefer originally told Longo that he would not be filing a notice of appearance in this case because he was personal counsel, Schaefer never told Longo that he was acting as a mediator or a friend in the case. Longo never inquired with Schaefer about his role as defendants' personal counsel and never referred to Schaefer as a mediator or "third-party neutral" during their interactions in December 2014, January 2015, and March 2015. Longo also did not instruct Schaefer to keep any of the information he shared with Schaefer private from disclosure.

{¶38} We are mindful that the disqualification of an attorney can be misused as techniques of harassment and is a drastic measure that should not be imposed unless absolutely necessary. Here, Marathon has raised a conflict or disqualification issue with each of the three law firms retained to represent the defendants in this case. Other than Longo's testimony, Marathon did not provide any evidence to substantiate Longo's belief that Schaefer was acting as a "third-party neutral." Whereas, McCarthy Lebit submitted billing statements confirming Miller Goler's non-mediation client status and the professional services rendered by Schaefer on defendants' behalf, and submitted

documents indicating the lateness of Longo's "third-party neutral" assertion. McCarthy Lebit also submitted expert testimony from Coleman, who opined that it was not objectively reasonable for an attorney to believe that Schaefer was acting as a "third-party neutral" in this case. Marathon did not set forth any evidence to rebut McCarthy Lebit's supporting evidence.

{¶39} Based on the foregoing, it is reasonable to conclude that Schaefer was acting as personal counsel for defendants. As personal counsel, Schaefer could not also be a "third-party neutral" as defined in Prof.Cond.R. 2.4(a) and would not be prohibited from representing defendants as set forth in Prof.Cond.R. 1.2(a). Schaefer could not have been a "third-party neutral" to assist others who were not his clients to reach a resolution of their dispute because defendants already were his clients. Therefore, we find that Marathon failed to meet its burden, and under these circumstances, the trial court abused its discretion in granting the motion to disqualify.

{¶40} Accordingly, the sole assignment of error is sustained.

{¶41} Judgment is reversed and the matter is remanded for further proceedings consistent with this opinion.

It is ordered that appellants recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

LARRY A. JONES, SR., P.J., and
EILEEN T. GALLAGHER, J., CONCUR