**Dated: July 19, 2011**
**The following is ORDERED:**

**Jennie D. Latta**
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT**
**WESTERN DISTRICT OF TENNESSEE**
**WESTERN DIVISION**

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| In re | EARL BENARD BLASINGAME and MARGARET GOOCH BLASINGAME, Debtors. | Case No. 08-28289-L Chapter 7 |

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EDWARD L. MONTEDONICO, CHAPTER 7 Trustee; CHURCH JOINT VENTURE, A Limited Partnership; and FARMERS & MERCHANTS BANK, Adamsville, Tennessee,
Plaintiffs,

v. Adv. Proc. No. 09-00482

EARL BENARD BLASINGAME and MARGARET GOOCH BLASINGAME,
Debtors/Defendants,

KATHERINE BLASINGAME CHURCH, EARL BENARD "BEN" BLASINGAME, JR.,
Necessary Parties,

BLASINGAME FAMILY BUSINESS INVESTMENT TRUST,
BLASINGAME FAMILY RESIDENCE GENERATION SKIPPING TRUST,
THE BLASINGAME TRUST,
Defendant Trusts,

FLOZONE SERVICES, INC.;
FIBERZONE TECHNOLOGIES, INC.;
BLASINGAME FARMS, INC.;
GF CORPORATION;
AQUA DYNAMICS GROUP CORPORATION;
Defendant Corporations.

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**ORDER GRANTING MOTION TO DISQUALIFY COUNSEL**

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BEFORE THE COURT is the motion of Plaintiffs Church Joint Venture and Farmers and Merchants Bank, Adamsville, Tennessee (collectively the "Movants"), to disqualify Tommy L. Fullen and Martin A. Grusin from representing the Defendants in this adversary proceeding. In order to decide the issues raised by the motion, the court has carefully reviewed the appearances made in this case on behalf of the Defendants as well as the factual statements made by counsel in their affidavits. After considering the record and arguments, the court makes the following findings of fact and conclusions of law. Fed. R. Bank. P. 7052. This is a core proceeding. 28 U.S.C. § 157(b)(2)(J).

## I. PROCEDURAL HISTORY

The complaint was filed on September 29, 2009. It sought, among other things, a declaration that the discharge of the Debtors should be denied. The court granted summary judgment to the Plaintiffs on the issue of discharge by memorandum entered February 22, 2011, and judgment entered February 23, 2011. The Debtor-Defendants filed a motion to alter or amend the judgment on March 8, 2011, and the court denied the motion by order entered May 9, 2011. The Movants

filed the pending motion to disqualify on April 19, 2011, based in substantial part upon affidavits filed in support of the motion to alter or amend the judgment. Responses to the motion to disqualify were filed by Fullen and Grusin on April 25, 2011.

The court heard oral argument on June 22, 2011. Present were Bruce W. Akerly as attorney for Church Joint Venture and Farmers & Merchants Bank, and Joseph T. Townsend, who announced that he was appearing on behalf of Fullen and Grusin. Neither Fullen nor Grusin was present, and no evidence was presented on behalf of Fullen or Grusin. Instead, Townsend announced that he would rely upon portions of the existing record established in connection with prior motions to support the opposition to the motion to disqualify. The court gave Townsend five days to identify portions of the record supporting his arguments and the Movants were given five days to respond.

On June 28, 2011, on behalf of Grusin and *Townsend(!)*, Townsend filed a "Motion to Supplement the Record in Response for the Court to Consider a Ruling on Plaintiffs' Motion to Disqualify Counsel for the Defendants," to which he attached not excerpts from the prior record, but new and undated affidavits of Earl Benard Blasingame and Joyce Long. Akerly filed a response on July 8, 2011, in which he asked that the affidavits be stricken.

## II. JURISDICTION

At the hearing, Townsend raised the question of the bankruptcy court's jurisdiction to decide the issue of disqualification in light of the pending appeal from the court's order denying the discharge of the Debtor-Defendants. Townsend offered no authorities to support his position. Akerly noted that the court had entered a final order with respect to the objection to discharge; that it was this order that was on appeal; and that the question of the disqualification of Fullen and Grusin applied with respect to the remaining issues before the court, that is, whether the non-Debtor

Defendants are the alter egos or reverse alter egos of the Debtors such that some or all of their assets should be treated as property of the bankruptcy estate.

As a general rule, upon the filing of a timely notice of appeal, the trial court loses jurisdiction over matters on appeal. *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 327 (6th Cir. 1993); *Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir. 1993). This general rule does not apply, however, in three instances: (1) over issues not involved in the appeal; (2) when the order appealed from is not appealable; and (3) when the court's action will aid the appeal. *In re Daufuskie Island Properties, LLC*, 441 B.R. 49, 55 (Bankr. D.S.C. 2010). When the matter before the trial court involves issues not the subject of the appeal, the trial court retains jurisdiction to hear it. Thus, for example, a trial court retains jurisdiction to entertain a motion for attorney fees or sanctions while an appeal on the merits of the underlying motion is pending. *Val-Land Farms, Inc. v. Third Nat'l Bank*, 937 F.2d 1110, 1117 (6th Cir. 1991).

In this instance, Akerly is correct: the motion before the court to disqualify counsel with respect to the remaining issues raised in the complaint is not implicated in the pending appeal from the court's order denying the discharge of the Debtors. The court specifically found that there was no just reason to delay entry of judgment as to the Debtors with respect to their discharge. *See* Doc. No. 120. This was because the remaining issues raised by the complaint seek to recover property for the bankruptcy estate based upon facts and circumstances not necessary to the determination that the Debtors' discharge should be denied. The motion before the court at this time seeks to disqualify counsel from participating in these further proceedings. The court has not previously ruled on the

issues raised by the motion and they are not the subject of the pending appeal. Thus, the court retains jurisdiction to consider the motion to disqualify.[1]

## III. THE MOTION TO STRIKE

The Movants have asked that the court strike the affidavits filed by Townsend after the hearing on the motion to disqualify on the bases that:

> a. They constitute hearsay testimony and statements which are not admissible under any exception;
>
> b. The Affidavits do not provide that they are made on personal knowledge;
>
> c. These witnesses should have been produced at the Hearing and Plaintiffs have not be[en] afforded any opportunity to address, contest and/or cross-examine their testimony; and
>
> d. The Affidavits are not dated.

Pltf's Resp., Doc. No. 186, p. 2.

The Movants are substantially correct. The affidavits do not indicate that they are made on personal knowledge, were not timely filed, and thus did not give the Movants the opportunity to cross-examine the witnesses. More to the point, the affidavits are not responsive to the court's directive. The court gave Townsend an opportunity to point to specific parts of the existing record made in connection with the motion for partial summary judgment and the motions to dismiss that supported his opposition to the motion to disqualify. The court did not reopen the record generally and declines to do so now.

Moreover, the proffered affidavits in many ways reinforce the need for disqualification of these counsel. For example, the Blasingame affidavit states:

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[1] The Movants have not sought to disqualify counsel in the pending appeal, and the court expresses no opinion concerning the continued participation of counsel in that appeal. Any motion to disqualify counsel with respect to the appeal should be addressed to the Bankruptcy Appellate Panel.

> 6. As President of the non-debtor entity corporations and as trustee of the trusts, I can state to the Court that it would cause a substantial hardship on these entities if Martin A. Grusin was removed as the counsel for these entities because **we** have been unable to pay him, except for a small amount, for the substantial amount of work that he has done in this case.

Blasingame Aff., p. 2 (emphasis added). The lack of separateness of the non-debtor entities is reinforced by Blasingame's apparent concern that "we" – he and his wife – will be unable to pay their counsel.

The motion to strike is granted.

## IV. FINDINGS OF FACT

### A. Conflicting Representations

The attorneys for the various Defendants attempt to separate their roles in the bankruptcy case and in this adversary proceeding. In their responses to the motion to disqualify, they suggest that Fullen represents the Debtors in the bankruptcy case, Townsend represents the Debtor-Defendants in the adversary proceeding, and Grusin represents the other Defendants in the adversary proceeding. These nice distinctions are not supported by the record, however. A review of documents filed on behalf of the various Defendants in this adversary proceeding reveals the following:

1. The Voluntary Petition which commenced the bankruptcy case was signed by Fullen as attorney for the Debtors. Bankruptcy Case, Doc. No. 1.

2. In this adversary proceeding, a "Consent Order to Extend Time to File Answers" was signed by Fullen as attorney for the Debtor-Defendants and Grusin as attorney for the remaining Defendants, and served by Fullen. Adversary Proceeding, Doc. No. 32.

3. The "Answer to Plaintiffs' Complaint to Recover Property of the Bankruptcy Estate for Declaratory and Injunctive Relief, to Object to and Avoid Discharge and to Object to Claimed Exemptions" was signed by Townsend as attorney for the Debtor-Defendants, and Grusin as attorney for Defendant Margaret Gooch Blasingame and

"Blasingame Trusts." Townsend identifies himself with the "Law Offices of Tommy L. Fullen." The Answer was filed and served by Townsend. AP Doc. No. 33.

4. Three motions to dismiss were filed as follows:

(a) "Motion to Dismiss Aqua Dynamics Group Corporation, Flozone Services, Inc., Fiberzone Technologies, Inc., G F Corporation and Blasingame Farms, Inc. as Defendants in Adversary Action Number 09-00482," signed by Townsend as attorney for the Debtor-Defendants and Grusin as attorney for Aqua Dynamics Group Corp., Flozone Services, Inc., Fiberzone Technologies, Inc., G F Corporation, Blasingame Farms, Inc., but submitted for filing and served by Townsend. AP Doc. No. 33.

(b) "Motion to Dismiss Katherine Blasingame Church and Earl Bernard Blasingame,Jr. as Defendants in Adversary Action Number 09-00482," signed by Townsend as attorney for the Debtor-Defendants and Grusin as attorney for Katherine Blasingame Church and Earl Benard Blasingame, Jr., but submitted for filing and served by Townsend. AP Doc. No. 34.

(c) "Motion to Dismiss Blasingame Family Business Investment Trust, Blasingame Family Residence Generation Skipping Trust and The Blasingame Trust as Defendants in Adversary Action Number 09-00482," signed by Townsend as attorney for the Debtor-Defendants and Grusin as attorney for Blasingame Family Business Investment Trust, Blasingame Family Residence Generation Skipping Trust, and The Blasingame Trust, but submitted for filing and served by Townsend. AP Doc. No. 35.

5. A "Joint Affidavit in Support of Amended Motion to Dismiss Aqua Dynamics Group Corporation, Flozone Services, Inc., Fiberzone Technologies, Inc., G F Corporation, Blasingame Farms, Inc., The Blasingame Family Business Investment Trust, The Blasingame Family Development Generation Skipping Trust, The Blasingame Residence Trust, The Blasingame Trust, Katherine Blasingame Church and Earl Benard Blasingame, Jr. as Defendants In Adversary Action Number 09-00482," was signed by Townsend as attorney for the Debtors and Grusin as attorney for "Corporations," Attorney for "Trusts," Attorney for Katherine Blasingame Church and Earl Benard Blasingame, Jr., but filed and served by Townsend. AP Doc. No. 73.

6. A "Consent Order Regarding (1) Amended Motion to Dismiss Filed by Defendants Katherine Blasingame Church and Earl Benard Blasingame Jr., (2) Amended Motion to Dismiss Filed by Defendants Aqua Dynamics Group Corporation, Flozone Technologies, Inc., Fiberzone Technologies, Inc., G F Corporation and Blasingame Farms, Inc., and (3) Amended Motion to Dismiss Filed by Defendants Blasingame Family Business Investment Trust, Blasingame Family Generation Skipping Trust

and The Blasingame Trust," was signed by Townsend as attorney for the Debtors and Grusin as "Attorneys for Corporations/Trusts/and Children Defendants." AP Doc. No. 78.

7. A "Motion to Extend Deadline to Respond to Plaintiffs' Motion for Partial Summary Judgment on Discharge Claims," was signed by Fullen and Townsend as attorneys for the Debtors, and filed and served by Townsend. AP Doc. No. 80.

8. A "Response to Plaintiffs Church Joint Venture and Farmers and Merchants Bank's Request Oral Argument in Connection with Pending Dispositive Motions and/or Status Conference," was signed by Townsend as Attorney for the Debtors and Grusin as "Attorney for Benard Blasingame and Margaret Blasingame, et al.," but filed and served by Townsend. AP Doc. No. 112.

9. A "Motion to Alter or Amend Judgment Pursuant to Federal Rules of Civil Procedure 59(e) and Federal Rules of Bankruptcy 9023 and for Relief from Judgment or Order Entered on February 23, 2011 and Pursuant to Federal Rules of Civil Procedure 60(b)(1)and 60(b)(6) and Federal Rules of Bankruptcy 9024," was signed by Fullen and Townsend and filed and served by Townsend. Doc. No. 126. This motion was accompanied by the Affidavits of Grusin and Fullen, which are identical except for the names of the affiants. AP Doc. No. 126.

10. The "Response of Tommy L. Fullen to Motion to Disqualify Counsel for Defendants" (AP Doc. No. 146), and "Response of Martin Grusin to Motion to Disqualify Counsel for Defendants" (AP Doc. No. 147), were each signed by Fullen and Townsend as "Attorney for the Debtors" and Grusin as "Attorney for 'Corporations,' Attorney for 'Trusts,' Attorney for Katherine Blasingame Church and Earl Benard Blasingame, Jr.," but filed and served by Fullen.

In Fullen's response to the motion to disqualify, he claims that Townsend is attorney of record for the Debtors in the adversary proceeding and that he is attorney of record in the main bankruptcy case. Notwithstanding his denial that he represents the Debtors in this adversary proceeding, Fullen has signed pleadings as attorney for the Debtors in this adversary proceeding on numerous occasions. *See* Docs. No. 32, 80, 126, 146. The court finds that Fullen is one of the attorneys of record for the Debtors in this adversary proceeding.

In Grusin's response to the motion to disqualify, Grusin asserts that he does not represent the Debtors. Despite this denial, Grusin signed two documents as attorney for the Debtors. *See*

Docs. No. 33 (for Margaret Gooch Blasingame only) and No. 112 (as attorney for "Benard Blasingame and Margaret Blasingame, et al."). In addition, the Debtors filed an amendment to their Statement of Financial Affairs on April 9, 2009, indicating that approximately $20,000 was assigned to Grusin on August 8, 2008, for "payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case." Amended Statement of Financial Affairs, Item 9, Bankruptcy Case, Doc. No. 224. This sworn statement indicates that the Debtors believed that Grusin had been retained to represent them. Further, in his sworn affidavit filed in support of the motion to alter or amend, Grusin repeatedly described the attorney-client relationship that he enjoyed with the Debtors:

> ¶ 3. ". . . at all times **from the first time I was contacted by the Debtors**, they fully disclosed their positions in the various Corporations and their interests in the Trusts."

> ¶ 5. "Of my own personal knowledge, I am fully aware that the Corporations and/or Trusts were fully disclosed to Tommy L. Fullen, who was engaged to represent the Debtors in the bankruptcy case, having met with Mr. Fullen and the Debtors **in their initial meetings** and **in helping Mr. Fullen to prepare the Petition for Bankruptcy**."

> ¶ 8. "Based upon my knowledge of the formation of the Trusts and the ownership of the Corporations, upon my advice, in my opinion, **I advised there was no need for the Debtors to add those Trusts and/or Corporations nor the benefits they receive from those Trusts and/or Corporations, on their Petition for Bankruptcy.**"

> ¶ 9. "**Admittedly, I am not a bankruptcy expert nor do I routinely practice in Bankruptcy Court**; therefore, my referral to Mr. Fullen."

> ¶ 11. With respect to the assignment of Mrs. Blasingame's interest in a Judgment in McNairy County Circuit Court, "**I did not consider that to be part of the bankruptcy estate nor necessary for disclosure since it was compensation for my services** . . . ."

> ¶ 12. "The Debtors' omission of the assets and sources of income and the Trusts and Corporations were omitted from the bankruptcy application upon **advice given by both myself** and Mr. Fullen. Most, if not all, of the omissions cited by the Court stem from the

> **advice given by myself** and Mr. Fullen **regarding the preparation of the bankruptcy application.**"
>
> ¶ 13. ". . . **Based upon the opinions of both me** and Mr. Fullen most, if not all, of the assets listed as omitted by the Court **stemmed from our advice and the clients' reliance thereon.**"

Grusin Affidavit, March 4, 2011. Emphasis added by the court.[2] All of these statements are inconsistent with Grusin's declaration that he does not represent the interests of the Debtors. The court finds that Grusin does, in fact, represent the Debtor-Defendants in this adversary proceeding.

The remaining Defendants clearly are represented by Grusin, notwithstanding their conflicting interests. The complaint seeks to recover assets from each of the remaining Defendants for the benefit of the creditors of the Debtors. The interests of each of these Defendants and their creditors are therefore at odds with those of the Debtors and their creditors. It is also very possible that the interests of the various Defendants conflict with each other.

Notwithstanding these conflicts of interest, one attorney, Grusin, attempts to represent both of the Debtors and all of the remaining Defendants. To be sure, none of the remaining Defendants has complained, but then none of them has separate counsel to advise them of their rights, including the right to obtain independent counsel, and none of the non-Debtor Defendants has produced a written waiver of these conflicts of interest. If these Defendants have not been informed of these conflicts of interest and been provided the opportunity to seek independent counsel, this would be consistent with the Debtors' past pattern of treating the assets of their children and their children's trusts as if they were their own.

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[2] The following paragraphs of the affidavits of Grusin are identical to paragraphs in the Fullen affidavit: paragraphs 1, 3, 4, 7, 8, 12 = 10 in Fullen, 13 = 11, 14 = 12. The differences in the remaining paragraphs are interesting. Whereas Grusin's paragraph 9 disclaims any expertise in bankruptcy law, Fullen's paragraph 9 claims extensive experience and expertise in bankruptcy law. Notwithstanding his alleged lack of expertise, Grusin claims to have given extensive advice to the Debtors concerning the filing of their bankruptcy case.

### B. Conflicting Statements Concerning Underlying Issues

Fullen and Grusin have made conflicting statements concerning their knowledge of the Debtors' affairs. In their responses to the motion to disqualify, Fullen and Grusin claim that neither of them had knowledge of the Debtors' affairs until shortly before the bankruptcy petition was filed. In their affidavits, however, Fullen and Grusin appear to state the opposite. Compare paragraph 9 of the Fullen and Grusin Responses to paragraph 5 of Fullen's affidavit and paragraph 10 of Grusin's affidavit :

> . . . Neither Tommy Fullen nor Martin Grusin had knowledge of the trusts or corporations' operations until shortly before the filing of the bankruptcy after being contacted by the Debtors. Additionally, they did not have knowledge of the clearing accounts prior to the filing of the bankruptcy petition. Tommy Fullen's and Martin Grusin's knowledge of the other trusts and corporations comes from their reading of the trusts and corporate documents performed shortly before filing the bankruptcy petition and during the process of preparing and helping provide responses to the discovery requests from the Plaintiffs in this case.

Grusin and Fullen Response ¶ 9.

> Of my own personal knowledge, I was fully aware that the Corporations and/or Trusts were fully disclosed to me, Tommy L. Fullen. I was engaged to represent the Debtors in the filing of the bankruptcy case and I had several meetings with the Debtors and Martin A. Grusin, Esq. in preparing the petition for bankruptcy.

Fullen Affidavit ¶ 5.

> As I have stated, Mr. Fullen and I were fully aware of the facts regarding the Debtors' interests in these Corporations and Trusts.

Grusin Affidavit ¶ 10.

The record does not reflect when the Debtors first met with Fullen, but their Amended Statement of Financial Affairs indicates that Mrs. Blasingame transferred her interest in the funds on deposit with the McNairy County Circuit Court to Grusin on August 8, 2008. The petition was filed seven days later, August 15, 2008. The Disclosure of Compensation of Attorney for Debtor,

dated August 14, 2008, but filed August 15, indicates that Fullen received $5,001 from a source other than the Debtors prior to the filing of the petition. Fullen and/or the Debtors failed to disclose the date and source of the payment to Fullen in the Statement of Financial Affairs, item 9.

The statement that Fullen and Grusin's knowledge of the affairs of the Debtors was limited to that gained "shortly before the filing of the bankruptcy" is inconsistent with the statements of Fullen and Grusin that they were "fully aware" of the Corporations and/or Trusts and that there were "several meetings" prior to the filing of the bankruptcy petition. Fullen and Grusin have placed their knowledge and advice squarely at issue in this adversary proceeding.

**C. Other Evidence of Attorney Entanglements**

Counsel for the Movants indicates that he intends to take the depositions of Fullen and Grusin in connection with the claims against the non-debtor Defendants in light of their statements concerning the breadth of their knowledge concerning the formation and operation of the Defendant-Trusts and Defendant-Corporations. In addition to the statements made by Fullen and Grusin in their affidavits, Akerly introduced records from Dun & Bradstreet, Inc., indicating that Grusin is the secretary for Aqua Dynamics Systems, Inc., a corporation for which Earl Benard Blasingame serves as president and that bears a name substantially similar to that of the Defendant Aqua Dynamics Group Corporation, and from the Secretary of State of Arkansas indicating that Grusin is the secretary for Aqua Dynamics Group Corp., a corporation for which Earl Benard Blasingame serves as president, and which may or may not be one of the defendants in this adversary proceeding. *See* Tr. Exs. 5 and 6. Akerly also asserts that Fullen and Grusin have inserted themselves into the litigation to such an extent that any attorney-client privilege that attached to communications between the various Defendants and these counsel has been waived and that these counsel are

expected to be factual and expert witnesses in the trial of the claims against the non-debtor Defendants. Fullen and Grusin have not contested this assertion.

Townsend made a number of unsubstantiated claims at the hearing on the motion to disqualify, including the claim that it is the intention of the Movants to pursue claims of an unspecified nature against the attorneys as individuals. Towsend seemed to infer that this explained why the present motion had been filed. Townsend also stated that he is not being compensated for his work in this adversary proceeding because "there is no more money." The court does not understand why Townsend felt compelled to begin or to continue the representation if he is not being paid. Townsend stated that he is not a partner of Fullen. The motion to disqualify named Fullen and Grusin as its targets, not Townsend. Nevertheless, Townsend appeared at the hearing on the motion on behalf of Fullen and Grusin (apparently without compensation), and stated that if Fullen is disqualified from representing any of the Defendants in this case, he also will be disqualified. In light of Townsend's multiple appearances in this case – as counsel for the Debtor-Defendants, the non-debtor Defendants, and Fullen and Grusin, the court agrees.

## V. LEGAL ANALYSIS

The Sixth Circuit Court of Appeals has noted that "with the wide-spread acceptance of the American Bar Association's Model Rules of Professional Conduct," the federal courts now look to those rules for guidance. *National Union Fire Ins. Co. v. Alticor*, 466 F.3d 456, 457 (6th Cir. 2006), *vacated on other grounds*, 472 F.3d 436 (6th Cir. 2007). The Model Rules of Professional Conduct limit the ability of a lawyer to appear as both a witness and an advocate on behalf of a client.

> Rule 3.7 Lawyer As Witness
> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
> (1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7[3] or Rule 1.9.[4]

American Bar Association, Model Rules of Professional Conduct, 2010, accessed at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_pr

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[3] RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

(c) A lawyer shall not represent more than one client in the same criminal case or juvenile delinquency proceeding, unless:

(1) the lawyer demonstrates to the tribunal that good cause exists to believe that no conflict of interest prohibited under this Rule presently exists or is likely to exist; and

(2) each affected client gives informed consent.

[4] RULE 1.9: DUTIES TO FORMER CLIENTS

(a) 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.

(b) Unless the former client gives informed consent, confirmed in writing, 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 RPCs 1.6 and 1.9(c) that is material to the matter.

(c) 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 reveal information relating to the representation or use such information to the disadvantage of the former client unless (1) the former client gives informed consent, confirmed in writing, or (2) these Rules would permit or require the lawyer to do so with respect to a client, or (3) the information has become generally known.

ofessional_conduct/model_rules_of_professional_conduct_table_of_contents.html. July 18, 2011. Rule 3.7 of the Tennessee Rules of Professional Conduct is the same. *See* Tenn. S. Ct. R. 8, RPC 3.7***, as amended*** September 29, 2010, *effective* January 1, 2011.

***Disqualification of Fullen and Grusin***

In evaluating a motion to disqualify, the trial court must balance many competing interests. Although confronting a criminal case rather than a civil one, the Sixth Circuit's statements in *United States v. Mays*, 69 F.3d 116 (6th Cir. 1995), are instructive here.

> When presented with a motion to disqualify, the district court must make a careful inquiry, balancing the constitutional right of the defendant to representation by counsel of his choosing with the court's interest in the integrity of the proceedings and the public's interest in the proper administration of justice. The inquiry will ordinarily require a hearing at which both parties will be permitted to produce witnesses for examination and cross-examination. (Citation omitted.)

*Id*. at 121. The parties were permitted a hearing, but neither Grusin and Fullen nor their clients decided to attend. The court is surprised that none of these persons felt that the hearing was worth the expenditure of their time. Had the Blasingames appeared at the hearing, the court could have heard their testimony about their relationship with Fullen and Grusin, and how and whether provision had been made for their children and the other Defendants to obtain separate counsel. As it is, the court is left to rely upon the written evidence presented by the Movants and the arguments presented by Townsend, whose own role in this proceeding is in question.

In order to avoid disqualification, Fullen and Grusin maintain that if they are called as witnesses in the trial of the remaining issues in this proceeding, the substance of the testimony they would be called to give falls outside of that which would require their disqualification. The court disagrees.

First, their knowledge relates directly to central contested issues that remain to be decided in this case: whether they were fully informed concerning the Debtors' financial affairs prior to the filing of the bankruptcy petition; whether they gave the Debtors advice about how to structure their affairs in order to avoid payments to creditors; whether some or all of the assets in the possession of the Debtors are in fact the assets of their children; whether the trusts and corporations are merely the alter egos of the Debtors. In their affidavits, Fullen and Grusin claim substantial knowledge of the formation, funding and purpose of the Defendant Trusts and Corporations. Each of them gives his opinion that:

> Upon review and consultation with [the Debtors and Mr. Grusin/Mr. Fullen], I was of the opinion and still am of the opinion that none of the Corporations or Trusts were part of the bankruptcy estate as none of them were self-settled trusts, with the exception of the Blasingame Trust, which Mr. Grusin formed in 1985. The other Trusts were formed and funded solely from the assets of Mrs. Mauvoreen Blasingame. The Blasingame Trust was formed in 1985 at a time when the Debtors were fully solvent, and they are not, nor have they ever been, trustees or beneficiaries of the Blasingame Trust, nor have the Debtors ever received benefits from the Blasingame Trust.

Fullen Affidavit ¶ 7; Grusin Affidavit ¶ 7. This paragraph claims a wide breadth of knowledge beyond that of an attorney only recently employed to represent a bankruptcy debtor. It is possible that the paragraph was hastily or sloppily drafted. Only the questioning of Fullen and Grusin will reveal the actual extent of their personal knowledge and involvement. Because Fullen and Grusin inserted themselves into the substance of the dispute, the Movants are entitled to inquire into the source and actual breadth of their knowledge. Their claimed knowledge relates to contested matters that are at issue in this adversary proceeding.

Second, the testimony which Fullen and Grusin will be called upon to give does not relate to the nature and value of the legal services rendered in this case.

Third, the disqualification of Fullen and Grusin will not work a substantial hardship on the Debtors and the other Defendants. No claim was made that it would until the late-filed and stricken affidavits of Blasingame and Long. To the contrary, it is the opinion of this court that the disqualification of these attorneys can only help the Debtors and other Defendants. As the court has previously shown, there are serious conflicts of interest by and among the various Defendants in this adversary proceeding, which provide grounds for preventing related attorneys from representing all of the Defendants. The basic premise of the complaint is that the Debtors and other Defendants should be treated as one legal entity. The fact that they all share the same attorneys adds credence to this position. Moreover, the court is very concerned about potential conflicts of interest between the adult children of the Debtors and the Debtors. The adult children would seem to have substantial assets at stake and require separate representation. They have never appeared before the court, except through Grusin, to express their own wishes in this matter.

Fourth, the disqualification of Grusin seems to be required as the result of his admitted lack of competence. Model Rule of Professional Conduct 1.1 provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Grusin was paid a substantial sum by Mrs. Blasingame prior to the filing of the bankruptcy petition. Although the Chapter 7 Trustee has agreed that these funds may be retained by Grusin,[5] the court is ill at ease about the services Grusin has provided given his admitted lack of knowledge and experience in bankruptcy representation.

***Disqualification of Townsend***

[5] *See* Order Granting Motion to Approve Compromise and Settlement Pursuant to Federal Rule of Bankruptcy Procedure 9019(a), entered June 16, 2010. Bankruptcy Case Dkt. No. 280.

Although not specifically requested by the Movants, the court feels that it must address the continuing representation of the Debtors by Townsend. Townsend has signed numerous pleadings in this case over the name, "Law Offices of Tommy L. Fullen." The record does not reveal the precise relationship between Townsend and Fullen. Townsend indicated that he is not a partner of Fullen, but that he receives a Form 1099 from Fullen at the end of each year indicating his earnings from his legal work. This would indicate that Townsend is treated as a independent contractor or contract employee. It is clear that Fullen and Townsend share the same address and have signed pleadings as if they were members of a single law firm. Model Rule of Professional Conduct 3.7(b) permits a lawyer to serve as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness, unless he is precluded from doing so as the result of a conflict of interest with a current or former client.[6] Townsend has attempted to represented the Debtor-Defendants, the non-debtor-Defendants, and attorneys Fullen and Grusin in this adversary proceeding. Such multiple representation, in light of the allegations of the complaint, raises conflicts of interest with respect to current clients. Townsend, too, is disqualified from representing the Defendants in this adversary proceeding.

## VI. CONCLUSIONS

For the foregoing reasons, the motion of the Plaintiffs Church Joint Venture and Farmers and Merchants Bank to disqualify Tommy L. Fullen and Martin A. Grusin is **GRANTED.** Further, the court is of the opinion that Joseph T. Townsend is also disqualified from representing the Defendants in this adversary proceeding as the result of his association with Tommy L. Fullen.

[6] The text of these exceptions is set out in footnotes 2 and 3.