

**CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
DuPage County, Illinois**

505 N. County Farm Road
Wheaton, IL 60187



KENNETH L. POPEJOY
Circuit Judge

May 20, 2016

Jonathan P. Remijas, Esq.
Law Offices of Jonathan Remijas
17 N. State St., Ste. 1600
Chicago, IL 60602

Shawn M. Collins, Esq.
The Collins Law Firm, P.C.
1770 Park St., Ste. 200
Naperville, IL 60563

David Gibbs, Esq.
Gibbs Law Firm, P.A.
2648 FM 407, Ste. 240
Bartonville, TX 76226

Glenn R. Gaffney, Esq.
Gaffney & Gaffney, P.C.
1771 Bloomingdale Road
Glendale Heights, IL 60139

RE: Gretchen Wilkinson, et al. vs. Institute in Basic Life Principles, Inc. and William W. Gothard, Jr.
Case No. 2015 L 980

LETTER OF OPINION

This cause came to be heard for a contested hearing and oral arguments on Tuesday, May 3. The hearing pertained to both defendants' Motions to Disqualify Gibbs Law Firm, P.A. and attorney David C. Gibbs, III as counsel for plaintiffs and for Illinois Supreme Court Rule 137 Sanctions. Defendant Institute in Basic Life Principles, Inc. (IBLP) filed their motion on February 17, defendant William W. Gothard, Jr. (Gothard) filed his amended motion on February 17, with plaintiffs filing a combined response and both defendants filing subsequent replies.

The Court has read all of the motions, attachments and exhibits appended thereto as well as reviewed all exhibits and affidavits. The Court has further considered the content of those sworn affidavits, arguments of counsel, applicable case law and statutory law.

As was referenced by the plaintiffs, the Court finds the case of *Schwartz v. Cortelloni*, 177 Ill.2nd 166 (1997) as the controlling authority pertaining to the factual situation where one litigant seeks the disqualification of another litigant's attorney. The Illinois Supreme Court adopted the three part inquiry as set for in *LaSalle National Bank vs. County of Lake*, 708 F.2nd 252 (7th Cir. 1983).

Under the *LaSalle* inquiry, "the Court must first make a factual reconstruction of the scope of the former representation. Then it must determine whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing their client in those matter. Finally, the Court must consider whether the information is relevant to the issues raised in the litigation pending against the former client." (*LaSalle*, 708 F.2nd at 256). The Court in *Schwartz* specifically went on to discuss Rule 1.9 of the Illinois Rules of Professional Conduct and stated that "the appearance of impropriety test fails to adequately consider the interplay between the subject matter of former and subsequent representation. In deciding whether a substantial relationship exists between two representations, a careful examination of the factual content is required. (*Schwartz*, 177 Ill.2d at 180). There is no question that attorney disqualification is a drastic measure and the Court should never allow motions to disqualify to be used as tools for harassment. Both of these principles are reference within the plaintiff's response.

The Court has also, in considering the nature and extent of any alleged "ethical violation" that might have occurred in this situation, has reviewed the following Illinois Rules of Professional Conduct ("RPC"), which forbid a lawyer from:

- Suing his own client (RPC 1.7; Conflict of Interest – Duties to Former Clients RPC 1.9);
- Talking to a person, if he knows that person is represented by another lawyer, unless that other lawyer consents (RPC 4.2);
- Giving legal advice to a unrepresented person other than to advise that person to secure counsel, if the lawyer knows that the interest of the unrepresented person may be in conflict with those of the lawyer's client (RPC 4.3); and
- Making misrepresentations to a court (RPC 3.3) and suing as a lawyer in a case where he is likely to be a necessary witness (RPC 3.7).

In this particular case, there was a large amount of factual interplay and interaction between attorney David Gibbs (counsel for the plaintiff in our pending cause of action) and IBLP (defendant in our pending action), either through discussions with either their officers or members of their Board in particular Jared Stancil/John Stancil, John being a member of the Board for IBLP and Gothard (defendant in our pending action). It is uncontested that there were issues of dispute between the board members of defendant IBLP and defendant Gothard. Those issues were in some manner unrelated to the direct issues brought by the plaintiff in our pending case against both of those defendants but yet are also indirectly, tangentially and, at worst, the beginnings of a greater dispute between the defendants themselves that was enlarged even further by the introduction of our plaintiffs' causes of action.

Of particular factual concern to this Court is the interactions of the parties back in May of 2015. Apparently going back to 2013, there were some very public allegations or discussions on the internet and the like against Gothard pertaining to alleged acts of molestation that he allegedly engaged in with members of IBLP church. As was argued in open court by attorney Gibbs, he was fully aware of all of those allegations and was somewhat nationally recognized as an attorney who is proficient in regard to such difficult circumstances. Attorney Gibbs also argued in open court that one of the underlying principles of this church, IBLF, is that where

issues of conflict exist, the congregation attempts all reasonable measures to mediate, to settle, to workout any such issues before resorting to litigation. It is in that spirit that attorney Gibbs, after being contacted by various entities involved with these issues, became involved in allegedly attempting to work out some satisfactory relationship/dispute resolution between our defendants, IBLP and Gothard. Exhibit 9 of the Amended Affidavit of Gothard attached an email from attorney Gibbs dated May 15, 2015, to Jared Stancil who apparently is the nephew and “spokesperson” for John Stancil who is a member of the board of IBLP. The first line of his email to Jared Stancil from attorney Gibbs reads “Please forward these bullet points to Dr. Gothard from Dr. Stancil. Please remove my name from the documents or I will no longer be able to be called as a possible witness.” This email was then forwarded from Jared Stancil to Gothard on May 16, 2015. Following that, attorney Gibbs in fact met face-to-face with defendant Gothard on May 19 of 2015. Now exactly what was the specific subject matter of the discussions between defendant Gothard and attorney Gibbs, the affidavits conflict in regard to same. But there is no question that following that meeting, there were various communications that existed between Gibbs, III, Gothard and IBLP through the remaining portion of 2015.

Just looking at the May 15/16 emails referenced herein as Exhibit 9 to the Gothard amended affidavit, the Court can clearly see from the first sentence quoted herein that attorney Gibbs **has then** a concern about being called “as a possible witness.” In looking at all the pleadings, the affidavits, the attachment and exhibits thereto, there is no question in this Court’s mind that attorney Gibbs clearly would not only be a “possible witness” but clearly will be a witness in regard to a number of the interactions that did exist between the two defendants! A number of the bullet points that Gibbs references in the May 15 email are referenced directly or indirectly within the pleadings of the subsequent lawsuit filed by attorney Gibbs on behalf of the alleged victims against both defendants, IBLP and Gothard. The Court next takes into account

Exhibit 13 to Gothard's amended affidavit, a letter from the Gibbs Law Firm dated June 8, 2015, addressed to IBLP, its board members and officers as well as defendant Gothard "founder of IBLP." In this letter, attorney Gibbs states "although I want to make it clear I do not represent Dr. Gothard, he has personally contacted my office and committed to attend the mediation and interestingly, as founder of the organization and the one who personally hired Mr. Barth and installed each board member, he agrees with many of the concerns expressed in my letter to the IBLP board." When you read the entire content of that letter, it is obvious that in June of 2015, attorney Gibbs is, at that time, representing clients who would subsequently become plaintiffs in the lawsuit pending before this Court. In that letter, he tells members of the defendant IBLP. that "the founder of the organization has stated he will testify that it is his opinion that you men are violating the trust of the donors." Later on in the letter, attorney Gibbs states "Dr. Gothard, the founder of IBLP, believes that you men are alluding and mismanaging the organization in a manner that violates the law. His testimony alone will most likely allow this litigation to move forward to a jury for adjudication."

So, therefore, following a May 15 email from attorney Gibbs to Jared Stancil where he has obviously talked to a member of the board of defendant IBLP, Dr. Stancil, and where he is forwarding bullet points from Dr. Stancil to defendant Gothard, the Court can only draw the conclusion that Gibbs has had detailed discussions with a member of the board of defendant IBLP pertaining to defendant Gothard and that a member of the board of defendant IBLP has discussed with Gibbs concerns in regard to defendant. Then attorney Gibbs meets with defendant Gothard and obviously, from that meeting and from other discussions that might or could have occurred directly or indirectly has, in a letter of May 2015 references certain legal positions that defendant Gothard is going to pursue and continues certain opinions or beliefs of defendant Gothard in regard to his inter-relationship with IBLP. Add to all of this, with attorney

Gibbs forwards bullet-points to Dr. Gothard from Stancil and then writes to defendant IBLP in regard to various decisions of defendant Gothard. Throughout all of this interaction between our defendants, attorney Gibbs has a relationship with unnamed plaintiffs which might or could lead to litigation against both defendant Gothard and defendant IBLP! In fact, after all of this, attorney Gibbs did in fact file our current litigation! In this Court's opinion, there can be no other conclusion that David Gibbs, III is far too intimately involved with communications with defendant IBLP and defendant Gothard to provide representation in our case to a group of plaintiffs who are suing both IBLP and Gothard.

Just these factual circumstances alone would lead this Court to come to no other opinion other than William C. Gibbs, III has a severe, undeniable, and severely questionable conflict of interest between all of the parties in the case pending before me of 2015 L 980. Yet, in addition, clearly attorney Gibbs has in one manner or another learned confidential information in regard to the inter-relationship of defendants Gothard and IBLP. He had previously and concurrently promoted the positions of each of our defendant in emails and in letters against each other and has utilized that information within various allegations of the complaint filed 2015 L 980 to lead this Court to believe that there is an undeniable conflict of interest existing for David Gibbs, III. There is no question that attorney Gibbs is likely to be a necessary witness in this litigation which would violate IRPC 3.7. There is no question that legal advice has been given to defendant IBLP in regard to the relationship with defendant Gothard by attorney Gibbs who is now the attorney for the plaintiffs suing those same two defendants. Such conduct certainly raises an issue of suing his own client IRPC 1.7. despite the fact that there are no billings or formal representation agreements that attorney Gibbs has with defendants IBLP or Gothard. But he has certainly discussed and exchanged the information between those party defendants and with each of the defendants individually that have a significant bearing on the issues of the case

pending before this Court. This all raises a serious concern with the Court with regard to advice being given, even if informally, by attorney Gibbs to defendant IBLP and also to defendant Gothard. Those communications further raise additional concerns in regard to attorney Gibbs giving legal advice to an unrepresented person other than to advise that person to secure counsel when the lawyer knows that the interest of the unrepresented person may be in conflict with those of the lawyer's client (IRPC 4.3). Attorney Gibbs was and is way too intimately involved in the inter-relationship of defendants IBLP and Gothard in regard to the subject matter of the disputes existing with the plaintiffs in the case pending before me with whom he represents!

“Once a substantial relationship is found between the prior and present representations, it is irrebuttably presumed that confidential information was disclosed in the earlier representation.” *Herbes v. Graham*, 180 Ill.App.3d 692, 700 (2nd Dist. 1989).

“In determining whether the two representations are substantially related, the court must consider the following: 1) The scope of the former representation; 2) whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing the client in those matters; and 3) whether the information is relevant to the issues raised in the litigation pending against the former client.” *In re: Marriage of Harms*, 266 Ill.App.3d 197, 198 (2nd Dist. 2005).

The totality of these facts leads the Court to no other conclusion but that a substantial relationship was formed between attorney Gibbs and both defendants, IBLP and Gothard, and that those representations were/are substantially related.

But to make matters worse, the chronology of this case follows a concerning direction. In October of 2015, attorney Gibbs on behalf of plaintiffs Gretchen Wilkinson, et al., filed a lawsuit against IBLP and various individuals who appear to be members of the board of IBLP including, as a named defendant, John Stancil. This is the same John Stancil that attorney Gibbs referenced in his May 15, 2015 email to Jared Stancil where he said “Please forward these bullet points to Dr. Gothard from Dr. Stancil.” Dr. Stancil is the previously referenced John Stancil. So attorney Gibbs who obviously was in counsel and communication with John Stancil back in

May 2015 and was obviously discussing with Dr. John Stancil various issues with William Gothard, is now suing that same individual, John Stancil, in October 2015! When this lawsuit was filed in October 20, 2015, the allegations, pertaining to the plaintiffs, was that they were victims of alleged sexual abuse, sexual harassment and inappropriate unauthorized touching at the hands of IBLP. The allegations in that original complaint referenced Mr. Gothard (who was not a defendant in the original pleading) as the individual who has acted “in an inappropriate manner” and further referenced how defendant IBLP removed Gothard as president. On November 24, 2015, defendants filed a 5/2-619.1 Motion to Dismiss Plaintiffs’ Complaint. When that motion was presented on December 2, 2015, the plaintiff stated that they wished to file an Amended Complaint rather than respond to defendants’ motion to dismiss and leave to file an Amended Complaint was granted. On January 6, 2016, the plaintiffs in fact filed their Amended Complaint at law which still named defendant IBLP but now added a new defendant, Gothard. What is troubling about this is that attorney Gibbs had direct contact with Gothard at or around November 25, 2015, one day after the notice of motion was filed for the above-referenced motion to dismiss. The interaction is referenced by an email sent on November 25, 2015 which is exhibit 19 to Gothard’s amended 2-619 affidavit where the email read “Since you are currently unrepresented, please review this affidavit and call me back with any additional edits.” In that referenced affidavit, exhibit 19a reads “Dr. William W. Gothard, Jr., after being sworn on oath, deposes and states as follows: 1) This affidavit is made upon my personal knowledge and if I was sworn as a witness at trial in this matter, I would testify to the facts contained therein; 2) I am over the age 21 years and I am confident to swear to the facts contained therein;” and then goes on to present 28 allegations or factual statements pertaining to Gothard’s interactions with IBLP and starting on paragraph 13 and proceeding through paragraph 20 references his interactions with David Gibbs, Jr., the father of David Gibbs, III, and

references various legal positions that Gothard would have in regard to his relationship with IBLP. Following attorney Gibbs preparation of that affidavit and his forwarding of that directly to Gothard, attorney Gibbs proceeds to sue Gothard as an additional defendant in the case pending before me utilizing various allegations contained within that affidavit to support his amended complaint at law on behalf of the plaintiffs! This Court finds David Gibbs, III interactions with William Gothard, Jr. at this time and place in November 2015 to be a clear violation of IRPC 4.3 where he is presenting and preparing an affidavit to an unrepresented person when he knows the interest of that unrepresented person may be in conflict with those of the lawyer's client (attorney Gibbs). This is obviously the case as subsequent to this, Gothard becomes a new defendant in the lawsuit filed by attorney Gibbs for his individual clients.

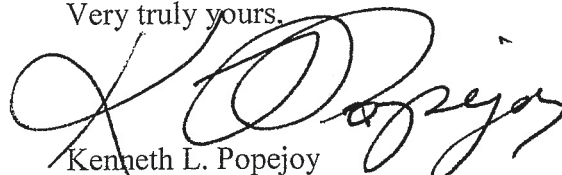
Attorney Gibbs had intimate, professional and personal interactions with ALL of the parties to this case at various times within the calendar year of 2015! He discussed issues of dispute between defendants IBLP and Gothard and prepared bullet points on behalf of one of the trustees for IBLP as it pertained to Gothard. He met with Gothard and had various communications with Gothard in May 2015 and thereafter. In November 2015, he prepared an affidavit for Gothard to sign and clearly obtained information from that affidavit directly from Gothard. He also clearly knew that Mr. Gothard's interest were in conflict with those of his individual clients as is referenced by the allegations against Gothard, although not a party in the original complaint filed in October 2015. Then, after preparing and forwarding that affidavit to Gothard, attorney Gibbs obviously knew that Gothard was going to be an additional defendant in an amended complaint filed in January 2016. Whether the actions of attorney Gibbs are "strict" ethical violations of the Illinois Code of Professional Responsibility or not, there is clearly a clouded, convoluted and inappropriate set of interactions that attorney Gibbs had among the entire set of circumstances and parties pertaining to the litigation now pending before this Court.

Therefore, it is completely and utterly inappropriate for attorney Gibbs to continue as legal counsel for the plaintiffs. There are other attorneys who can handle litigation of this nature and there are at least two other attorneys who have filed appearances in this case alone on behalf of the plaintiffs. Attorney Gibbs will clearly be a witness in some manner in the course of this litigation and that he clearly gleaned confidential and/or exceedingly relevant information from the now current defendants in this case and then used that information in the preparation of original complaint and a subsequent amended complaint, all of which dealt with substantially related materials.

Therefore, it is the order of the Court that attorney William Gibbs, III shall be disqualified from his representation of the plaintiffs from this point forward.

This letter will be filed with the Clerk's office on this date and defendants are to prepare an order which simply incorporates this letter as the reasons stated for the disqualification of William Gibbs, III as attorney for the plaintiffs. That order is to be circulated and presented on the next status date of May 31, 2016 at 9:00 a.m.

Very truly yours,



Kenneth L. Popejoy
Circuit Court Judge