

IN RE:	:	CASE NO. G11-23072-REB
	:	
CCB2, LLC,	:	
	:	
Debtor.	:	
	:	
	:	
HAMILTON STATE BANK,	:	ADVERSARY PROCEEDING
	:	NO. 13-2130
Plaintiff,	:	
	:	
v.	:	
	:	CHAPTER 11
CCB2, LLC, and JON R. GRAY,	:	
	:	
Defendants.	:	JUDGE BRIZENDINE
	:	

Before the Court is the Motion of Plaintiff named above as filed herein on December 13, 2013, to disqualify counsel for Defendants, Charles N. Kelley, Jr., on grounds that counsel has an impermissible conflict of interest in this matter in contravention of Rules 1.7 and 1.9 of the Georgia Rules of Professional Conduct. Based upon a review of the motion and response, the Motion will be denied.

In the Motion, Plaintiff contends Mr. Kelley represented Defendant-Debtor CCB2, LLC in connection with the drafting and execution of a certain cash collateral order as previously entered in this Chapter 11 bankruptcy case and which is the subject of this adversary proceeding. Specifically, Plaintiff asserts that in seeking to represent Defendant CCB2, LLC in its alleged violation of the order, and

Defendant Jon R. Gray, the alleged recipient of monies improperly paid by Debtor, Mr. Kelley is attempting to represent clients with opposing interests arising in a substantially related transaction. Due to this conflict of interest, Plaintiff insists Mr. Kelley cannot adequately represent the interests of both parties. For instance, in his prior representation of CCB2, LLC, Mr. Kelley likely acquired confidential information that he may not now use in representing Mr. Gray. To allow Mr. Kelley to continue in his representation of both Defendants herein creates a “significant risk” that his duty to one party will harm the interests of the other in violation of Rule 1.9. For these reasons, Plaintiff seeks an order disqualifying Mr. Kelley from representing Mr. Gray.

In response, counsel for Defendants states disqualification is unwarranted because no conflict is presented in that both Defendants desire the same outcome in this matter in the denial of relief to Plaintiff on its complaint. In addition, he states that Plaintiff lacks standing to challenge counsel’s representation as its allegations are not properly substantiated and do not show a “sufficiently severe” violation of the rules addressing simultaneous representation of multiple defendants. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Odum (In re Odum)*, __ B.R. __, 2008 WL 7874259, 2008 Bankr. Lexis 1740 (Bankr. N.D.Ga. May 28, 2008).

Upon review of the record and the authority as cited, the Court finds that Plaintiff has not shown grounds for ordering the disqualification of Charles N. Kelley, Jr. as counsel for Defendant Jon R. Gray in this adversary proceeding. Plaintiff has not presented sufficient facts to enable assessment of the probability of whether a significant risk exists to Mr. Gray’s interests based on the presence of an actual conflict of interest in contravention of Rule 1.7. The Court also finds the Comment to this Rule instructive in its placing “primary responsibility for resolving questions of conflict on interest on the lawyer undertaking the representation,” as compared to opposing counsel, whose requests regarding

same warrant careful scrutiny. *See Odum*, 2008 WL 7874259 at * 2-3, citing Comment 15 to Rule 1.7, as quoted in *Bernocchi v. Forcucci*, 279 Ga. 460, 463, 614 S.E.2d 775 (2005). With regard to Rule 1.9, while Plaintiff argues that Mr. Kelley's representation of both Defendants will require a "changing of sides," apparently in relation to what Plaintiff believes was a particular shared understanding of the meaning of the order in question, the Court finds a failure to show that a materially adverse interest exists between these Defendants to the degree addressed by this Rule.

Accordingly, based on the above discussion, it is

ORDERED that the Motion of Plaintiff as filed on December 13, 2013, to disqualify counsel for Defendants, Charles N. Kelley, Jr., herein be, and the same hereby is, **denied**.

The parties are directed to continue in preparing this matter for trial or other disposition.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, counsel for Defendants, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 21st day of January, 2014.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE