

1 Summer Reese
449 – 43rd St.
2 Richmond, California 94805
(510) 680-5019
3 Cross-defendant in pro. per.
4
5
6
7
8

9 **SUPERIOR COURT OF STATE OF CALIFORNIA, COUNTY OF ALAMEDA**
10 **RENE C. DAVIDSON COURTHOUSE, UNLIMITED CIVIL JURISDICTION**
11

12 PACIFICA DIRECTORS FOR GOOD GOVERNANCE, an)
Unincorporated Association;)

13)
14) Plaintiff)

15) v.)

16 PACIFICA FOUNDATION RADIO, a California Nonprofit)
Public Benefit Corporation;)

17 RODRIGO ARGUETA, LYDIA BRAZON, JIM BROWN,)
ADRIANA CASENAVE, BENITO DIAZ, BRIAN)
18 EDWARDS-TIEKERT, JOSE LUIS FUENTES, LAWRENCE)
REYES, CERENE ROBERTS, and MARGY WILKINSON ; in)
19 their official capacities as members of the Board of Directors of)
Pacifica Foundation Radio, a California Nonprofit Public)
20 Benefit Corporation; and)

21 HANK LAMB and TONY NORMAN, directors de facto of said)
22 Corporation;)

23) Defendants)

24 PACIFICA FOUNDATION RADIO,)

25) Cross-complainant)

26) v.)

27 Summer Reese, and "ROES" 1 to 100, inclusive;)

28) Cross-defendants)

Case No. HG14720131

**CROSS-DEFENDANT'S
REPLY TO CROSS-
COMPLAINANT'S
OPPOSITION TO
CROSS-DEFENDANT'S
MOTION FOR
DISQUALIFICATION ;**

**POINTS AND AUTHOR-
ITIES IN SUPPORT**

Date: 2/11/2015
Time: 9:00 a.m.
Dept: 15

29 Summer Reese (hereinafter, "Reese"), a cross-defendant in the above entitled matter, replies to the
30 January 29, 2015 Opposition of Cross-complainant (hereinafter, "counsel") to her January 20, 2015
31 Motion for Disqualification, as follows:
32

///

1 **10. Counsel makes frivolous arguments with respect to the grounds of the underlying motion**

2 The text of the memorandum in support of said motion begins:

3
4 On June 18, 2014, the Court issued its ruling denying plaintiff PDGG’s motion for
5 disqualification, which alleged conflict arising from successive representation by S &
6 Y of its client. *But*, the instant motion alleges dual or simultaneous representation. It
7 evaluates S & Y’s loyalty to defendants and their legitimate expectation thereof.
(Citations omitted.)
(Reese’s Jan. 20, 2015 memo., 1:3—11.)

8 Notwithstanding, counsel’s opposition to said motion opens with the words:

9
10 On September 18, 2014, the Court entered its Order Denying the Motion to
11 Disqualify Siegel & Yee. The motion was brought by the plaintiff, Pacifica
12 Directors for Good Governance (“PDGG”). Reese attended the September 18, 2014
13 hearing on the Motion and accepted the tentative ruling. (See Minutes of the
14 September 18, 2014 hearing, ¶ 1.) Reese now brings her own motion to disqualify
15 Siegel & Yee as opposing counsel. Her motion seeks the Court’s reconsideration of
the same issues that were decided on September 18, 2014. Reese’s Motion is
untimely and raises no new facts that would justify reconsideration by the Court.
(Counsel’s Jan. 29, 2015 opp., 1:26—2:7)

16 The underlying motion has nine headings, one of which (number 3) has three subheadings. None of
17 these headings and subheadings pertain to successive representation. All 12 pertain to dual or
18 simultaneous representation. Counsel’s above quoted arguments are frivolous, as is his reliance
19 thereon in quoting the Court’s September 18, 2014 order denying attorney Anderson’s said motion
20 (Jan. 29, 2015 opp., 3:23—4:4).

21 **11. Counsel ignores the existence of any and all exceptions to the general rule that only a client of**
22 **an attorney has standing to disqualify the attorney**

23 Reese did not attend the September 18, 2014, because none was held. She was notified of
24 the Court’s tentative ruling denying attorney Anderson’s motion to disqualify S & Y on grounds of
25 successive representation. Reese does not deny the general rule regarding standing to bring a motion
26 to disqualify an attorney is that only a client of the attorney may do so. In her memorandum (3:4—5)
27 in support of the underlying motion Reese cites *Great Lakes Constr., Inc. v. Burman* (App. 2 Dist.
28 2010) 186 Cal.App.4th 1347, 1156 wherein the Court of Appeal so held.

29 Counsel ignores *Kennedy v. Eldridge* (App. 3 Dist. 2011) 201 Cal.App.4th 1197, 1204, a
30 decision of the Court of Appeal—cited on line 17 of page 3 of Reese’s memorandum—holding an
31 exception to that general rule exists where an attorney’s simultaneous representation is so “‘manifest
32 and glaring’” and “‘infects the litigation in which disqualification is sought that it impacts the

1 moving party's interest in a just and lawful determination of [his or] her claims'." Counsel does not
2 deny the existence of this exceptional rule, but because he cannot overcome it, he ignores it.

3 Counsel also ignores *In re A.C.* (App. 4 Dist. 2000) 80 Cal.App.4th 994, 1001, a decision of
4 the Court of Appeal—cited on lines 22—23 of page 5 of said memorandum—holding another
5 exception exists where “the court has an *independent interest* in ensuring trials are conducted within
6 ethical standards of the profession and that legal proceedings appear fair to all that observe them.”
7 Again, counsel does not deny the rule's existence. Since he cannot overcome it, he simply ignores it.

8 In fact, counsel's January 29, 2015 opposition to the underlying motion does not even
9 attempt to refute the ground appearing under heading 3, wherein Reese demonstrates her standing to
10 bring said motion (*id.*, 3:2—5:30).

11 And, although none of the 20 court decisions which are cited in said ground of the motion
12 and none were cited in support of legal standing to make attorney Anderson's said motion, counsel,
13 in arguing Reese lacks standing, somehow finds it appropriate to quote from the Court's ruling
14 denying Anderson's motion (Jan. 29, 2015 opp., 3:24—4:3). Counsel's over-zealous attempts to
15 allege the two disqualification motions are comparable, even identical in his apparently wishful
16 thinking, are mere frivolities.

17 ***12. Counsel does not deny simultaneous representation is unconsentable under California law***

18 In support of his allegation that Reese “Cannot Established [*sic*] That Any of the Asserted Grounds
19 for Disqualification Appy [*sic*] Here”, counsel alleges Reese

20 argues that there is conflict arising from Siegel & Yee's joint representation of PFR
21 and some of PFR's board members. However, joint representation alone simply does
22 not trigger an ethical violation requiring automatic disqualification. (See *Great Lakes*
23 *Construction Inc. v. Burman* (2010) 186 Cal.App.4th at 1359, *People ex rel. Dept. of*
24 *Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1144.)
25 PFR in [*sic*] entitled to its counsel of choice, and should any joint representation arise
26 in the future, the parties may take the appropriate steps to ensure Siegel & Yee's
undivided loyalty to each of them. *Great Lakes Construction Inc. v. Burman* (2010)
186 Cal.App.4th at 1359.
(Jan. 29, 2015 opp., 3:10—18)

27 Reese does not deny “joint representation alone” does not per se trigger disqualification.

28 Reese's 15-page Memorandum—making 103 citations to case law under nine main
29 headings—discusses, not “joint representation alone”, but identifies counsel's conflicts of
30 interest which he does not specifically deny but cavalierly alleges Reese “submits no
31 evidence to support any of her allegations” (Jan. 29, 2015 opp., 3:9—10). Counsel's above
32 allegations also ignore the following:

1 Under California case law, exceptions to this rule—making simultaneous
2 representation unconsentable—exist in those cases wherein not mere divergence, but
3 an actual conflict of interest exists. (See *Spindle v. Chubb/Pacific Indemnity Group*
4 (*supra*) 89 Cal.App.3d at 713 [discussing contrast between divergence and conflict].)
(Reese’s Jan. 20, 2015 memo., 11:1—4.)

5 Counsel cites no authority for his allegation, “Joint representation is not even an issue [w]here”
6 “PDGG has failed to amend its complaint following the Court’s ruling sustaining PFR’s demurrer,
7 the only remaining action in this litigation is the Cross-Complaint of PFR against Cross-Defendant
8 Reese.” (Jan. 29, 2015 Opp., 3:19—22, *passim*)

9 **Conclusion**

10 Counsel thus appears to invent a rule of procedure respecting conflict of interest. He does not deny
11 his firm simultaneously represented Defendant-individuals and Defendant-corporation, or that an
12 associate of his firm sat on the Board of Director of PFR which he purports to “joint[ly] represent”
13 by their consent and Counsel’s inventiveness appears an attempt to evade the Court’s “*independent*
14 *interest in ensuring . . . that legal proceedings appear fair to all that observe them.*” (*Kennedy v.*
15 *Eldridge (supra)* 201 Cal.App.4th at p. 1205, quoting and italicizing *In re A.C.* (App. 4 Dist. 2000)
16 80 Cal.App. 4th 994, 1001.) That Plaintiff-association is not currently prosecuting its first amended
17 complaint is no viable means of “ensuring . . . that legal proceedings [herein] appear fair to all that
18 observe them” (*id.*; underline added). Counsel fails to allege a highly publicized proceeding, such as
19 here, would appear fair to all observers if Plaintiff did not prosecute its said complaint for several
20 news cycles, only to resume its prosecution, resounding with éclat in news outlets throughout the
21 country. Despite counsel’s inventiveness, there is no assurance to the contrary but the
22 disqualification of the firm employing him, whose representation herein he hopes to perpetuate
23 without citation to or discussion of the Rules of Professional Conduct which governs the conduct of
24 his employer and himself vis-à-vis the pending motion which he self-servingly opposes.

25 Counsel’s inventiveness also avoids any discussion of the fiduciary value of loyalty. Neither
26 the term *loyalty* nor its predecessor *fidelity* appear in any of his pleadings. Yet, conflict involving
27 this value is the most serious, the “most egregious” of all conflicts of interest:

28 Because a conflict involving an attorney’s duty of loyalty is “[t]he most egregious”
29 kind of conflict, the disqualification standards we have developed for simultaneous
30 representation cases are “more stringent” than those that apply in successive
31 representation cases; “[w]ith few exceptions, disqualification [in a case of
32 simultaneous representation] follows automatically, regardless of whether the
simultaneous representations have anything in common or present any risk that
confidences obtained in one matter would be used in the other. [Citation.]” (Citation.)

1 This strict rule recognizes that “[a] client who learns that his or her lawyer is also
2 representing a litigation adversary, even with respect to a matter *wholly unrelated* to
3 the one for which counsel was retained, cannot long be expected to sustain the level
4 of confidence and trust in counsel that is one of the foundations of the professional
5 relationship. All legal technicalities aside, few if any clients would be willing to
6 suffer the prospect of their attorney continuing to represent them under such
7 circumstances.” (Citation.)

(*In Charlisse C.* (2008) 45 Cal.4th 145, 160.)

8 Apart from counsel’s said cavalier allegation that Reese “submits no evidence to support any of her
9 allegations” (Jan. 29, 2015 opp., 3:9—10), counsel does not deny that three grounds of her said
10 motion—appearing under heading numbers 4, 7, and 8—duly examine his and his employer’s duty
11 of loyalty under the Rules of Professional Conduct of the State Bar, as well as the simple, undisputed
12 facts appearing on the face of counsel’s own pleadings herein vis-à-vis the Court’s “*independent*
13 *interest* in ensuring . . . that legal proceedings appear fair to all that observe them.” (*Kennedy v.*
Eldridge (*supra*) 201 Cal.App.4th at p. 1205).

14 Accordingly, Cross-defendant’s motion should be granted.

15 Respectfully submitted,

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32


Summer Reese, Cross-defendant