

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2014-021
)	consolidated with
Plaintiff,)	Civil Action No. 2014-023
)	
vs.)	
)	
BERYSIN SALOMON and NANCY SALOMON,)	
)	
Defendants.)	
<hr/>		
BERYSIN SALOMON and NANCY SALOMON,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
ANNA MENDIOLA, in her capacity as President)	
and Chief Executive Officer of FSM Development)	
Bank; BRANDON TARA, in his capacity as Chief)	
Financial Officer of the FSM Development Bank;)	
JOHN SOHL, in his official capacity as Chairman)	
of the FSM Development Bank Board of Directors;)	
and FSM DEVELOPMENT BANK,)	
)	
Defendants.)	
<hr/>		

ORDER DENYING DISQUALIFICATION OF COUNSEL

Larry Wentworth
Associate Justice

Decided: June 1, 2021

APPEARANCES:

For the Plaintiff and Defendants: (Bank, Mendiola, Tara, & Sohl)	Nora E. Sigrah, Esq. P.O. Box M Kolonia, Pohnpei FM 96941
For the Defendants and Plaintiffs: (Salomons)	Yoslyn G. Sigrah, Esq. P.O. Box 3018 Kolonia, Pohnpei FM 96941

* * * *

HEADNOTES

Civil Procedure – Motions – Unopposed

The failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. FSM Dev. Bank v. Salomon, 23 FSM R. 314, 315 (Pon. 2021).

Attorney and Client – Disqualification of Counsel

The disqualification of a lawyer for the lawyer's emotional conflict is generally limited to prosecutors in criminal cases. FSM Dev. Bank v. Salomon, 23 FSM R. 314, 316 (Pon. 2021).

Attorney and Client – Disqualification of Counsel; Attorney and Client – Legal Malpractice

If the clients, whose counsel the opposing party is seeking to disqualify because of the counsel's emotional interest in the case, were to later obtain new counsel, and if that new counsel were to conclude that present counsel's emotional interests so prejudiced her ability to provide the clients with independent, competent legal advice, so that the clients were severely harmed by previous counsel's deficient representation, new counsel would likely consider pursuing a legal malpractice action against the previous counsel rather than further litigation against the opposing party. Thus, the current counsel's emotional interest is not a ground to disqualify the clients' current counsel. FSM Dev. Bank v. Salomon, 23 FSM R. 314, 316 (Pon. 2021).

Attorney and Client – Disqualification of Counsel

Courts are usually reluctant to interfere with a litigant's freely-made choice of counsel. FSM Dev. Bank v. Salomon, 23 FSM R. 314, 316 (Pon. 2021).

* * * *

COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On March 23, 2021, the FSM Development Bank filed a motion to disqualify Yoslyn G. Sigras, counsel for Berysin Salomon and Nancy Salomon, from continuing to represent Berysin Salomon and Nancy Salomon in this case. The Salomons did not file a response. The failure to oppose a motion is generally deemed a consent to the motion, FSM Civ. R. 6(d); Actouka v. Etpison, 1 FSM R. 275, 276 (Pon. 1983), but even when there is no opposition, the court still needs good grounds before it can grant the motion. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 442 (App. 1994).

The bank contends that Yoslyn G. Sigras, the Salomons' counsel, must be disqualified from representing the Salomons because she is (or has become) far too emotionally involved in cases opposing the FSM Development Bank and thus has conflicting emotional interests that prevent her from competently representing her clients, the Salomons; because she accused the bank of using its documents to inflict "black magic" on her. The bank contends that Sigras's representation of the Salomons is materially limited by Sigras's own strong emotional interests in disparaging the bank, its counsel, and even the court, in her publicly stated "mission from God" to thwart the bank due to her extreme emotional prejudice against the bank. The bank asserts that the Salomons would expect competent, independent objective legal advice from their own counsel on judgment satisfaction issues but instead Sigras's actions show that her extreme emotional prejudice against the bank interferes so seriously with the ability to give the Salomons competent independent legal advice.

The bank contends that the only remedy for what it sees as Sigras's unwaivable conflict is her

disqualification as counsel for the Salomons. The bank expresses its concern that otherwise Sigrah's personal impermissible conflict might present grounds to challenge orders in the future, especially if the Salomons obtain new counsel who then review past matters.

The court cannot agree. Although the Salomons are deemed to have consented to the disqualification of their counsel by their failure to respond to the disqualification motion, the court will not order Sigrah's disqualification. First, the disqualification of a lawyer for the lawyer's emotional conflict is generally limited to prosecutors in criminal cases. See FSM v. Wainit, 12 FSM R. 360, 364-65 (Chk. 2004); see also Marsolo v. Esa, 17 FSM R. 480, 484 n.1 (Chk. 2011) ("Disqualification for an emotional interest because it causes a conflicting interference with the lawyer's exercise of public responsibility is limited to prosecutors since prosecutors are held to a higher standard. If it were not, many criminal defense counsel and counsel for public and private civil litigants would be frequently disqualified.") (citing FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004); FSM v. Wainit, 12 FSM R. 360, 363-64 (Chk. 2004); FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003)).

Second, if the Salomons were to obtain new counsel, and if that counsel were to conclude that present counsel's emotional interests so prejudiced her ability to provide the Salomons with independent, competent legal advice, so that the Salomons were severely harmed by Sigrah's deficient representation, new counsel would likely consider pursuing a legal malpractice action against Sigrah. See Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009) (clients wronged by their lawyers may sue for damages based on breach of contract, breach of fiduciary duty, or negligence); cf. Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001) (parties who freely choose their attorneys should not be allowed to avoid the ramification of their chosen counsel's acts or omissions; a civil litigant whose attorney's conduct has fallen below a reasonable standard has other remedies than to challenge previous orders; court will not penalize the nonmoving party for the negligent conduct of the moving party's counsel).

And lastly, courts are usually reluctant to interfere with a litigant's freely-made choice of counsel.

Accordingly, the plaintiff's motion to disqualify defense counsel is denied.

* * * *