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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JULIAN CASAS,

Plaintiff and Appellant,

v.

THE CITY OF BALDWIN PARK et al.,

Defendants and Respondents.

B266054

(Los Angeles County
Super. Ct. No. BS147794)

APPEAL from an order of the Superior Court of Los Angeles County, Luis Lavin,
Judge. Affirmed.

Law Office of Paul Cook and Paul Cook for Plaintiff and Appellant.

Albright, Yee & Schmit, Clifton W. Albright and Benjamin L. Caplan for
Defendants and Respondents.

This lawsuit arises over alleged violations of the Public Records Act (Gov. Code, § 6250 et seq.).¹ Julian Casas appeals from an order denying his motion to disqualify Baldwin Park’s city attorney Robert M. Nacionales-Tafoya, from representing defendants Baldwin Park Community Center Corporation (BPCCC), Manuel Carrillo Jr., and Craig Graves. He urges disqualification on the grounds that Tafoya’s representation violates sections 995 et seq. and 41801 and Rules of Professional Conduct, rule 3-310, subdivision (F).² Because the City of Baldwin Park stipulates that BPCCC is a city entity and that its employees, in serving as managers of BPCCC, are acting in their capacities as city employees, we find no abuse of discretion in the ruling.

We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Appellant filed a second amended petition for writ of mandate, alleging violations of the Public Records Act (§ 6250 et seq.) and Corporations Code sections 6311 and 6322.³ The petition named as defendants: the City of Baldwin Park; Michael Taylor, acting city manager; BPCCC; Carrillo, in his individual capacity and as president of BPCCC; and Craig Graves, in his individual capacity and as secretary of BPCCC. Tafoya and his law firm, Tafoya and Garcia, LLC, appeared as attorney of record for all the defendants.

Subsequently, appellant filed a motion to disqualify Tafoya from representing the

¹ Unless otherwise indicated, subsequent section references are to the Government Code.

² Subsequent rule references are to the Rules of Professional Conduct.

³ Corporations Code section 6311 provides: “[a]ny inspection under this chapter may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts” and Corporations Code section 6322, provides in part, that “every corporation shall furnish annually to its members and directors a statement of any transaction or indemnification.” Appellant asserts in his petition that he is a member of BPCCC.

noncity defendants, BPCCC, Carrillo, and Graves.⁴ Appellant’s primary arguments were that Tafoya’s representation violated sections 995, 995.2, 995.3, and 995.4 because Carrillo and Graves were not being sued for activities in the scope of their employment as employees of a public entity; section 41801 because the city had not authorized Tafoya to represent BPCCC, Carrillo, and Graves and the “[c]ity attorney must not defend a city officer when the officer’s illegal activity constituted an injury to the public interest”; and rule 3-310, subdivision (F) because Tafoya was receiving payment from a third party for his representation of the noncity defendants.

The court denied the motion, finding that section 41801 does not prohibit a city attorney from representing persons other than the city and that there was not a violation of rule 3-310, subdivision (F) because Tafoya was representing the employees in their official city capacities.

This timely appeal followed.

DISCUSSION

I

Courts have the power to order a lawyer’s disqualification pursuant to Code of Civil Procedure section 128, subdivision (a)(5). (*DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 831.) We review a trial court’s decision to order or deny a disqualification motion for abuse of discretion. (*Id.* at p. 832.)

On appeal, respondents argue that appellant lacks standing to bring a disqualification motion because he has not alleged that he had an attorney-client or confidential relationship with Tafoya or his law firm. Appellant insists that respondents

⁴ Respondents claim that the disqualification motion was brought only as to Carrillo and Graves. There is some inconsistency in the record but the caption on appellant’s motion to disqualify specifies that he seeks to disqualify Tafoya from representing BPCCC, Carrillo, and Graves. The memorandum of points and authorities is primarily focused on Tafoya’s representation of Carrillo and Graves but it does mention BPCCC. The court’s tentative ruling addresses appellant’s arguments as to Carrillo and Graves, but the minute order acknowledges that the motion included BPCCC.

cannot challenge standing for the first time on appeal because the question of standing is a factual issue that should have been presented to the trial court. We address the issue of standing because “challenges to standing are jurisdictional in nature and may be raised at any time.” (*Zermeno v. Precis, Inc.* (2009) 180 Cal.App.4th 773, 779.)

Case law is divided on the standing requirement for bringing a motion to disqualify. In *Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356, the court reasoned that “[a] ‘standing’ requirement is implicit in disqualification motions” and that “[g]enerally, before the disqualification of an attorney is proper, the complaining party must have or must have had an attorney-client relationship with that attorney.” (See also *Strasbourg Pearson Tulcin Wolff Inc. v. Wiz Technology, Inc.* (1999) 69 Cal.App.4th 1399, 1404 [attorney-client relationship required before disqualification is proper].) Some courts have broadened the requirement, finding standing where the attorney had a confidential or fiduciary relationship with the complaining party. (See *DCH Health Services v. Waite, supra*, 95 Cal.App.4th at p. 832; *Dino v. Pelayo* (2006) 145 Cal.App.4th 347, 353.)

Other cases recognize that an attorney may be disqualified for other reasons. (See *Meza v. H. Muehlstein & Co.* (2009) 176 Cal.App.4th 969, 980 [attorney-client privilege is not only ground for motion to disqualify and attorney may be disqualified for variety of reasons].) In *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1205, the court held that if “an attorney’s continued representation threatens an opposing litigant with cognizable injury or would undermine the integrity of the judicial process, the trial court may grant a motion for disqualification, regardless of whether a motion is brought by a present or former client of recused counsel.”

Because there is a split of authority and appellant’s arguments are premised on the integrity of the judicial process, rather than an expectation of confidentiality, we shall proceed to address the merits of his appeal.

II

Appellant argues that Tafoya's representation of BPCCC, Carrillo, and Graves violates sections 995, 995.2, 995.3, 995.4, and 41801, and rule 3-310, subdivision (F). Section 995 requires a public entity to provide the defense of an employee in a civil action in his or her official or individual capacity. Section 995.2 permits a public entity to refuse to provide an employee's defense, if for example, "[t]he act or omission was not within the scope of his or her employment." (§ 995.2, subd. (a)(1).) Section 995.3 specifies, in part, that a public entity, which provides a defense for an employee who is found to have used or attempted to use official authority in an unlawful manner has a right to be reimbursed for the cost of the defense. Section 995.4 governs actions or proceedings brought by a public entity against its own employee or former employee. Section 41801 directs "[t]he city attorney [to] advise the city officials in all legal matters pertaining to city business." None of these premises is applicable here.

Rule 3-310, subdivision (F) prohibits an attorney from accepting compensation from a third party for the representation of a client, unless (1) "[t]here is no interference with the member's independence of professional judgment or with the client-lawyer relationship;" (2) information relating to representation of the client is kept in confidence; and (3) the attorney obtains the client's informed consent. Because rule 3-310 addresses third party representation, we must first determine whether the BPCCC and its employees are third parties and whether Carrillo and Graves are acting within their official capacities as city employees in their service as BPCCC managers.⁵ If we answer both questions in the affirmative, then rule 3-310 would not be applicable.

In a signed declaration, submitted in support of respondents' opposition to appellant's motion for disqualification, Tafoya declared that "[a]s the City Attorney, [he is] authorized to represent the City of Baldwin Park and all its entit[ies] which include

⁵ On appeal, respondents argue that Carrillo and Graves were sued in their official capacities as city employees but the second amended petition names Carrillo as an individual and as president of the BPCCC, and Graves as an individual and as president of the BPCCC.

‘alter-egos.’”⁶ He went on to say that “[t]here is no third party paying in this case, as claimed by Petitioner. The BPCCC, which is a non-profit who really exist[s] just to hand out gifts to children every Christmas, is one and the same with the City of Baldwin Park according to Petitioner’s Writ. Thus, the City of Baldwin Park is not a third party payer when it is paying for itself or an alter ego of itself or in this case a non-profit organization with two City Directors working for it.” Regarding Carrillo and Graves, Tafoya explained that “[t]he duties performed by Graves and Carrillo are being done in the course and scope of their duties as Directors for the City of Baldwin Park. The City Council is well aware of these BPCCC duties performed by Carrillo and Graves for the BPCCC.”

Respondents’ stipulation⁷ supports their argument that the BPCCC is not a third party and thus there is no conflict between Tafoya’s representation of Baldwin Park and his representation of BPCCC and its employees; hence, rule 3-310 does not apply. But respondents’ stipulation also supports appellant’s theory on the underlying issue of liability as to the public records: that any records belonging to BPCCC or for which BPCCC is responsible are official city records.

Because the record is devoid of evidence to the contrary, we accept respondents’ stipulation that BPCCC is a city entity and that Carrillo and Graves are acting in their official capacities as city employees in their service as managers of the BPCCC. Accordingly, we conclude that the trial court did not abuse its discretion.

⁶ Although Tafoya has conceded that BPCCC is an alter ego of the city of Baldwin Park, we note but do not address the liability implications that may arise in tort or other areas of law if BPCCC’s corporate entity is disregarded. (See *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1122.)

⁷ We are treating Tafoya’s declaration as a stipulation.

DISPOSITION

The order is affirmed. The parties are to bear their costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.