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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

NADEJDA L. ROZANOVA et al., Plaintiffs and Appellants, v. RAFAEL S. URIBE, Defendant and Respondent.	No. H043316 (Monterey County Super. Ct. No. M122297)

On a date undisclosed to this court, Nadejda L. Rozanova and Denis Klimov (collectively, appellants) brought suit against their neighbor, Rafael S. Uribe (respondent), and in May 2013, respondent filed a cross-complaint against appellants. In April 2015, appellants, who are self-represented, filed a motion to disqualify respondent's counsel, Roy Gunter III (Gunter). The motion was denied. In August 2015, appellants filed a second motion to disqualify Gunter, contending that he had engaged in ethical improprieties, specifically, making a number of false and misleading statements in connection with the litigation. That motion was also denied. Appellants have sought review of this decision by appeal. (See *Metro-Goldwyn-Mayer, Inc. v. Tracinda Corp.* (1995) 36 Cal.App.4th 1832, 1838 (*MGM*) [order denying motion to disqualify is an appealable order].) We will affirm.

PROCEDURAL BACKGROUND

This action involves a dispute between neighbors concerning a paved parking area used by appellants that encroaches on respondent's property. The complaint is not presented to us.

On May 7, 2013, respondent filed a cross-complaint against appellants, alleging two causes of action for trespass and injunctive relief. He alleged that he resided at 1540 Kari Lane, Royal Oaks, Monterey County, California (Property A), and that appellants resided on the adjacent property at 1548 Kari Lane (Property B). Respondent alleged that prior to appellants' acquisition of Property B in July 2009, he advised them, among other things, that a certain fenced triangular area off the driveway to Property B that included a retaining wall and concrete extension, (hereafter, collectively the encroachment) was located on Property A. In or about May 2012, respondent requested that appellants remove the encroachment; they refused. Respondent alleged that the cost of removal was in excess of $15,000. He sought damages for continuing trespass to his property, a prohibitory injunction preventing such further trespass, and a mandatory injunction permitting respondent to employ contractors to enter onto the driveway of Property B to effect the removal of the encroachment.

On April 14, 2015, appellants filed a motion to disqualify Gunter as counsel (First Motion). Appellants alleged that Gunter made (either directly or through his client) a number of untrue statements in documents submitted to the court. Although the formal order is not before us, the court announced at the hearing on May 8, 2015, that it was denying the First Motion.

On August 18, 2015, appellants filed a renewed motion to disqualify Gunter as counsel (Second Motion). They alleged as the basis for disqualification that Gunter had "made numerous statements, misleading, untrue, or half true (which is also considering [sic] as untrue by California Law); and perjuries." The alleged misconduct concerned untruthful statements by Gunter (1) in his declaration in connection with a summary

judgment motion, (2) in his declaration in opposition to an ex parte application to continue trial, (3) at a settlement conference, and (4) in his declaration submitted before the appellate division of the Superior Court.

After hearing argument on September 18, 2015, the court announced that it was denying the Second Motion.[1] A formal order denying the Second Motion was entered October 7, 2015.

Appellants filed a notice of appeal (limited civil case) on or about November 6, 2015, indicating they were appealing from the order on the second motion. On March 1, 2016, the appellate division of the superior court, upon respondent's motion to dismiss the appeal for lack of jurisdiction, held the appeal was from an unlimited civil case, and therefore, pursuant to Code of Civil Procedure section 396, subdivision (b), it ordered the appeal transferred to this court.

DISCUSSION

I. Appellants' Noncompliant Brief and Other Filings

Before addressing any substantive issues raised by appellants, we are compelled to identify some procedural deficiencies with their filings with this court. The deficiencies concern their notices designating the record, the appendix supplied with their opening brief, and their opening brief.

A. Record Designation and Appendix

Appellants filed a notice designating record on appeal concurrently with the notice of appeal (limited civil case), indicating an election to have a clerk's transcript prepared. There is no indication that a clerk's transcript was ever prepared. As noted, the appellate division of the superior court ordered the appeal transferred to this court on March 1, 2016. On April 12, 2016, appellants filed a second notice designating record on appeal,

[1] After briefing was concluded, appellants filed a motion to augment the record to include the reporter's transcript of the hearing on the Second Motion. On August 10, 2016, this court granted appellants' motion.

indicating elections (1) to proceed with the filing of an appendix in lieu of a clerk's transcript, and (2) to proceed without a reporter's transcript.[2] There is no proof of service attached to the April 12, 2016 notice. On June 21, 2016, appellants filed an appellants' appendix in lieu of clerk's transcript, together with their opening brief.

Respondent has objected on various grounds to appellants' designation notices and to their appendix. In summary, respondent contends that (1) appellants, through their initial record designation filed in the superior court, did not comply with the California Rules of Court,[3] because they did not elect the preparation of an appendix in lieu of a clerk's transcript; (2) appellants' second record designation filed after the superior court's order transferring the appeal was untimely and was not served on respondent; and (3) the appendix is noncompliant because it includes materials unnecessary to decide the appeal and includes reporter's transcripts.

Respondent's first objection lacks merit. At the time appellants filed the first record designation, the appeal was presented as one to the appellate division of the superior court. As such, it was governed by rules 8.830 to 8.843, including rule 8.831, under which an appellant must serve a notice designating the record within 10 days of the filing of the notice of appeal. Unlike the record designation for appeals to the Court of Appeal (see rules 8.120(a)(1), 8.121(b)(1)(B)), rule 8.831 does not include a provision wherein the appellant may elect the preparation of an appendix in lieu of a clerk's transcript.

Respondent argues that the second record designation, filed more than 10 days after the order transferring the appeal, was untimely. The California Rules of Court do not specify when an appellant must file a record designation notice in the event an appeal

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[2] Appellants in fact checked both boxes, indicating elections to proceed without, and with, a reporter's transcript. But appellants designated no hearings for which they sought a transcript, so they effectively chose to proceed without a reporter's transcript.

[3] Further rule references are to the California Rules of Court.

to the appellate division of the superior court is transferred to the Court of Appeal due to a lack of jurisdiction of the former court to hear the appeal. But Code of Civil Procedure section 396, subdivision (b) provides that where, as here, the superior court transfers an appeal for which it lacks jurisdiction to a court of appeal where jurisdiction lies, "the appeal . . . shall be transferred . . . and proceeded with as if regularly filed in the court having jurisdiction." Since an appellant "must serve" a record designation notice in an appeal taken to the Court of Appeal within 10 days of the filing of the notice of appeal (rule 8.121(a)), it appears that appellants' second record designation notice, filed 42 days after the order transferring the appeal, was untimely. Moreover, it is clear that the second notice was noncompliant in that appellants failed to serve it upon respondent's counsel. (See *ibid.*) In the interests of hearing the merits of the appeal, however, we will overlook appellants' noncompliance in connection with the service of the second record designation notice.

The appendix filed by appellants is, indeed—as urged by respondent—noncompliant in a number of respects with the California Rules of Court. Under rule 8.124(b)(1)(A), appellants were required to include in their appendix all items required to be included in a clerk's transcript under rule 8.122(b)(1). The required documents—not included by appellants here—include the notice of appeal, the order from which the appeal was taken, all record designation notices, and the clerk's register of actions. (*Ibid.*) Further, appellants were required to provide in the appendix items "necessary for proper consideration of the issues, including . . . any item that the appellant should reasonably assume the respondent will rely on." (Rule 8.124(b)(1)(B).) As is evident from respondent's brief and appendix, appellants violated this rule by failing to include such key documents as the declaration of respondent's counsel filed in opposition to the Second Motion, and the order denying that motion. And appellants failed to include their notice of election as required. (Rule 8.124(b)(1)(C).)

Appellants' appendix is also noncompliant because of the *inclusion of* documents prohibited by the Rules of Court. An appellant shall not include in the appendix "[d]ocuments or portions of documents filed in the superior court that are unnecessary for proper consideration of the issues." (Rule 8.124(b)(3)(A).) Here, appellants included in the appendix a host of unnecessary documents, including several that postdate the hearing on the Second Motion.[4] And appellants included in the appendix, in violation of rule 8.124(b)(3)(B), several reporter's transcripts—some incomplete, and some occurring months after the September 2015 hearing on the Second Motion—that were appropriately subject to designation under rule 8.130.

B. Appellants' Opening Brief

Appellants' opening brief is also not in compliance in a number of respects with the California Rules of Court or with the rules of appellate practice. The opening brief contains no proper citations to the appellate record (i.e., appellants' appendix) in support of their assertions of fact and concerning procedural matters allegedly occurring below, in violation of rule 8.204(a)(1)(C). (See also *In re S.C.* (2006) 138 Cal.App.4th 396, 406-407 ["an appellate court need not search through the record in an effort to discover the point purportedly made"]; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800-801 [failure to include citations to appellate record in brief may result in forfeiture of claim].) Although appellants, in their reply brief, have included some references to the

[4] The documents that either are or appear to be unnecessary to the resolution of the issues on appeal include (1) appellants' opposition to motion for summary judgment; (2) appellants' ex parte application filed in connection with the motion for summary judgment; (3) appellants' objections to summary judgment order; (4) appellants' First Motion; (5) a minute order on the motion for summary judgment; (6) the formal order on the summary judgment motion; (7) unauthenticated emails; (8) appellants' settlement conference statement; (9) respondent's (incomplete) declaration in opposition to motion for summary judgment; (10) appellants' objections to respondent's answer to complaint; (11) respondent's motion for judgment (filed six months after the hearing on the Second Motion); (12) respondent's October 2015 settlement conference statement; and (13) respondent's February 2016 settlement conference statement.

record that are proper, the lack of proper citation to the record in their opening brief makes the court's task considerably more difficult.

In addition, we observe that in asserting that the court below erred in denying the Second Motion, appellants rely in part in their opening brief upon documents and occurrences that postdate the hearing on the Second Motion. For instance, appellants rely on (1) trial testimony of Hugo Mar on March 8, 2016, (2) statements made in respondent's motion for judgment made on or about March 8, 2016, (3) respondent's trial testimony of March 15, 2016, (4) appellant Rozanova's trial testimony of March 15, 2016, (5) statements made in respondent's settlement conference statement dated October 2, 2015, and (6) respondent's settlement conference statement dated February 5, 2016. This practice is also in violation of established rules of appellate procedure. "It has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.' [Citation.] This rule reflects an 'essential distinction between the trial and the appellate court . . . that it is the province of the trial court to decide questions of fact and of the appellate court to decide questions of law.' [Citation.]" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) Accordingly, parties to an appeal are admonished not to refer to factual matters that were not available to the trial court, and appellate courts will generally decline to consider such extraneous material. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1 (*Doers*); see also *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.)

C. Conclusion Re Appellants' Noncompliance

We acknowledge that appellants are representing themselves in connection with this appeal and therefore have not had the formal legal training that would be beneficial to them in advocating their position. However, the rules of civil procedure apply with equal force to self-represented parties as they do to those represented by attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, "[w]hen a litigant is

appearing in propria persona, he [or she] is entitled to the same, but no greater, consideration than other litigants and attorneys." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Based upon the noncompliant nature of appellants' opening brief, it would be appropriate to entirely disregard the contentions made in it as having been forfeited. (See *State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528-1529, fn. 1.) Furthermore, appellants' noncompliance with the California Rules of Court might justify this court's striking the appellants' appendix from the record (*Termo Co. v. Luther* (2008) 169 Cal.App.4th 394, 404), or otherwise imposing "monetary or other sanctions." (Rule 8.124(g); see *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 877.)

We are, however, able to glean the essential claims of error appellants make relative to the order denying the Second Motion. And we will not impose sanctions upon appellants relative to their noncompliant appendix. We will however, decline to consider the appendix to the extent that it contains improperly included documents, namely, (1) documents that postdate the hearing on the Second Motion on September 18, 2015, that were thus not considered by the court below (*In re Zeth S.*, *supra*, 31 Cal.4th at p. 405; *Doers*, *supra*, 23 Cal.3d at p. 184, fn. 1), (2) documents unnecessary for proper consideration of the issues (rule 8.124(b)(3)(A)), and (3) reporter's transcripts (rule 8.124(b)(3)(C)). Further, we will not consider any argument in the opening brief that refers to documents or occurrences that postdate the hearing on the Second Motion. With these limitations, in the interests of addressing the merits of the case—and without impliedly minimizing the significance of appellants' noncompliance with appellate procedures—we will address the merits of their contention that the court erred in denying the Second Motion.

II. Motions to Disqualify Counsel

A trial court may disqualify counsel under its inherent power "[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every manner pertaining thereto." (Code Civ. Proc., § 128, subd. (a)(5); see *In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 586.) A motion to disqualify counsel may implicate several important interests, including "a client's right to chosen counsel, an attorney's interest in representing a client, the financial burden on a client to replace disqualified counsel, and the possibility that tactical abuse underlies the disqualification motion. [Citations.]" (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1144-1145 (*SpeeDee Oil*).) At its core, a motion to disqualify "involve[s] a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility. [Citation.] The paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar. The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process. [Citations.]" (*Id.* at pp. 1145-1146; see also *Comden v. Superior Court of L.A. County* (1978) 20 Cal.3d 906, 915 (*Comden*).)

Our high court has highlighted that a motion to disqualify may be misused by a litigant to delay or increase expense to an opponent rather than to prevent an attorney from impermissibly representing an opposing litigant due to a conflict of interest. (See *SpeeDee Oil*, *supra*, 20 Cal.4th at p. 1145 [disqualification motion may involve a number of considerations, including "the possibility that tactical abuse underlies the disqualification motion"]; *Comden, supra,* 20 Cal.3d at p. 915 [disqualification motion "frequently a tactical device to delay litigation"].) Indeed, a moving party's delay in bringing a disqualification motion may be indicative of a tactical, rather than legitimate, reason for the attempt to disqualify opposing counsel. (See *Zador Corp. v. Kwan* (1995)

31 Cal.App.4th 1285, 1302; *In re Complex Asbestos Litigation*, *supra*, 232 Cal.App.3d at pp. 599-600.) Furthermore, as we have recently observed, "while disqualification is a drastic measure and motions to disqualify are sometimes brought by litigants for improper tactical reasons, disqualification is not 'generally disfavored.' " (*M'Guinness v. Johnson* (2015) 243 Cal.App.4th 602, 627.)

A trial court's ruling on a motion to disqualify counsel is generally reviewed for abuse of discretion. (*SpeeDee Oil*, *supra*, 20 Cal.4th at p. 1143.) Where the trial court resolves a matter by considering disputed factual issues, the appellate court does not substitute its judgment for that of the trial court, and its express and implied findings will be upheld if supported by substantial evidence. (*Ibid.*) If the court's findings are supported by substantial evidence, the appellate court reviews those findings under an abuse of discretion standard. (*Id.* at p. 1144.) But "the trial court's discretion is limited by the applicable legal principles . . . [and] where there are no material disputed factual issues, the appellate court reviews the trial court's determination as a question of law. [Citation.]" (*Ibid.*) Further, "the trial court's conclusions of law . . . [are] review[ed] . . . de novo; a disposition that rests on an error of law constitutes an abuse of discretion. [Citations.]" (*In re Charlisse C* (2008) 45 Cal.4th 145, 159.) And "[t]he trial court's 'application of the law to the facts is reversible only if arbitrary and capricious.' [Citation.]" (*Ibid.*, quoting *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 712.)

As with appellate review of other judgments, an order granting or denying the disqualification motion "is presumed correct and all intendments and presumptions are indulged to support it on matters as to which the record is silent. [Citation.] Conflicts in the declarations are resolved in favor of the prevailing party and the trial court's resolution of factual issues arising from competing declarations is conclusive on the reviewing court. [Citations.]" (*H. F. Ahmanson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal.App.3d 1445, 1451-1452 (*H. F. Ahmanson*).)

III. Appellants' Second Motion to Disqualify Was Properly Denied

In appellants' Second Motion, they identified four instances in which Gunter had allegedly made false statements in the litigation. We discuss each of these matters separately below, including Gunter's response to each assertion that he gave in his declaration in opposition to the Second Motion—the declaration that was omitted from the record provided by appellants.[5]

First, appellants identified Gunter's June 2, 2015 declaration in which he submitted a proposed summary judgment order to the court. Appellants asserted that Gunter falsely declared that he had not received any objections from appellants to the proposed order he had served upon them on May 27, 2015; they contended that they had, in fact, served Gunter with objections on May 29, 2015. In opposition to the Second Motion, Gunter declared that as of June 2, 2015, he had "received" no objections from appellants. (Original underscoring.) There was therefore substantial evidence supporting the trial court's implied finding overruling appellant's contention that Gunter had made a false statement in his June 2, 2015 declaration. (See *Federal Home Loan Mortg. Corp. v. La Conchita Ranch Co.* (1998) 68 Cal.App.4th 856, 860 [if substantial evidence supports trial court's implied factual findings, appellate court reviews conclusions based on the

[5] Appellants urge here that there were "new facts" involving attorney misconduct that this court should consider in reviewing the trial court's order denying the Second Motion. These additional matters—which, of necessity, since they occurred after the hearing on the Second Motion on September 18, 2015, were not included in the Second Motion—include (1) respondent allegedly having made various false statements in March 2016 trial testimony, (2) Gunter allegedly having made false statements in a motion for judgment filed in March 2016, and (3) Gunter allegedly having made false or misleading statements in settlement conference statements filed in October 2015 and February 2016. We decline to consider these improper arguments, given that they are based upon matters not presented to the trial court when it considered and ruled on appellants' Second Motion. (See *In re Zeth S.*, *supra*, 31 Cal.4th at p. 405; *Doers*, *supra*, 23 Cal.3d at p. 184, fn. 1.)

findings for abuse of discretion]; *In re Complex Asbestos Litigation*, *supra*, 232 Cal.App.3d at p. 585 [same].)

Second, appellants cited the same proposed summary judgment order submitted by Gunter to the court on June 2, 2015, arguing that Gunter misled the court by not including " any references to the evidences [*sic*] in support of or in opposition which indicated that a triable controversy exists." Appellants urged that this omission was "not [in] compel [*sic*] with CCP 437(g) [*sic*]."[6] Gunter responded in his opposing declaration that he had properly addressed evidence in the proposed order by twice referring to a portion of respondent's declaration. While we question whether the alleged conduct—even if unrebutted—would have constituted a false statement to the court as claimed by appellants, Gunter in fact rebutted the claim. Substantial evidence supported the trial court's implied finding overruling appellants' factual assertion that Gunter had been untruthful in his submission of the proposed order. (See *In re Complex Asbestos Litigation*, *supra*, 232 Cal.App.3d at p. 585.)

Third, appellants cited Gunter's declaration dated May 12, 2015, in opposition to an ex parte application to continue trial. Appellants contended that Gunter had falsely stated that they had "refuse[d] to provide documents for subordination for lender presented by Ocwen servicing company, because of the costs for these documents." Appellants claimed that they had not refused to obtain the documents due to "cost but because of the fact that Defendant and [his] attorney were hiding the second lender who was represented by Green tree servicing company." In his declaration in opposition to

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[6] This was an apparent reference to Code of Civil Procedure section 437c, subdivision (g), which provides in part: "Upon the denial of a motion for summary judgment on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion that the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion that indicates that a triable controversy exists."

the Second Motion, Gunter responded that his statement was not false, but was based upon his letter to appellant Rozanova of June 6, 2014, and her email to Gunter of August 18, 2014, both documents being attached to his declaration. In the letter, Gunter, stated that if Rozanova "still want[ed] a subordination by Mr. Uribe's lender, please send any application or other documents it may require and we will prepare and submit the documents at no charge for my fees, although you must pay any costs required by the bank or any third parties." In appellant Rozanova's email, she stated, among other things: "About lender['s] fees: We never agreed to pay them. We can negotiate to pay ½ of them." The trial court's implied finding overruling appellants' factual assertion that Gunter was untruthful in his May 12, 2015 declaration was supported by substantial evidence. (See *In re Complex Asbestos Litigation*, *supra*, 232 Cal.App.3d at p. 585.)

Fourth, appellants cited Gunter's declaration in response to request for further information dated August 7, 2015. Claiming that this was "[t]he last straw which prompted" them to file the Second Motion, appellants contended that Gunter "lied by omission or half[-]truth" when he stated that he had made a prior request to the court to admonish appellants not to serve him by email, while omitting from his declaration "the fact that this request he made only after he was served 4 times by e-mail and after first 3 (three) servings he did not complain about it. [*Sic.*]" Gunter responded in his declaration opposition the Second Motion that he had previously, on March 24, 2014, advised appellants that his client had instructed him to communicate only through United States mail, and that therefore " 'all of your future communications should be sent by mail.' " The trial court's implied finding overruling appellants' factual assertion that Gunter was untruthful in his August 7, 2015 declaration was supported by substantial evidence. (See *In re Complex Asbestos Litigation*, *supra*, 232 Cal.App.3d at p. 585.)

Appellants rely on *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197 (*Kennedy*) in support of their claim that the trial court erred. They argue that under *Kennedy*, an "attorney must **be disqualified even if there is no conflict of interest but when**

attorney committed malpractice or acted unethical [*sic*]," and that because of Gunter's alleged falsehoods to the court, disqualification was required. (Original bold.)

Kennedy involved a support and custody dispute between the mother and the father of their infant son in which the father was represented by his father (the child's paternal grandfather). (*Kennedy*, *supra*, 201 Cal.App.4th at p. 1200.) Following the trial court's granting of the mother's motion to disqualify the father's counsel, the father appealed, contending, among other things, that the mother had no standing to bring the motion and the father's counsel had not obtained any confidential information as a result of having his firm's having represented the mother's father in a prior family law case. (*Id.* at pp. 1200-1201.) The appellate court affirmed the disqualification order. It first rejected the standing contention, observing that "no California case has held that only a client or former client may bring a disqualification motion." (*Id.* at p. 1204.) It held that while federal courts generally required the motion to be brought by a client or former client, "in California 'where the ethical breach is " 'manifest and glaring' " and so "infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of [his or] her claims" [citation], a nonclient might meet the standing requirements to bring a motion to disqualify based upon a third party conflict of interest or other ethical violation.' [Citations.]" (*Ibid.*, quoting *Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1357 (*Burman*).)

The *Kennedy* court went on to conclude that there was substantial evidence supporting the trial court's finding that counsel's law firm had obtained confidential information pertaining to the mother in its prior representation of her father that could be used to gain unfair advantage of the mother in the present case. (*Kennedy*, *supra*, 201 Cal.App.4th at p. 1208.) And in light of the fact that counsel would likely play the role of both advocate for the father (who lived in counsel's home) and give testimony relevant to custody issues, the appellate court approved of the trial court's additional rationale,

concluding that "[u]nder no judicially tolerable circumstance can [counsel] effectively perform such multiple, awkward and conflicting duties." (*Id.* at p. 1211.)

Kennedy does not support appellants' claim of error. The factual circumstances of the two cases are vastly different. In *Kennedy*, there was a showing that counsel was involved in "[a] plethora of family entanglements, potential misuse of confidential information, a conflict posed by the near-certain prospect that counsel will have to testify, and the preservation of the integrity of the judicial system [that] all coalesce[d] to support the trial court's disqualification order." (*Kennedy*, *supra*, 201 Cal.App.4th at p. 1200.) Here, the basis for the motion did not involve Gunter's having obtained confidential information that could be used against appellants, or that he had any prior professional or familial relationship with either of the appellants that threatened the integrity of the judicial system. Instead, appellants' motion was based upon evidence—disputed by counsel—that he had made false and or misleading statements in the proceedings.

As has been repeatedly held, "a 'violation of a rule of the State Bar Rules of Professional Conduct does not necessarily compel disqualification.' [Citation.]" (*In re Marriage of Murchison* (2016) 245 Cal.App.4th 847, 853; see also *Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 303 (*Gregori*).) Likewise, "an appearance of impropriety by itself does not support a lawyer's disqualification. [Citation.] ' "Speculative contentions of conflict of interest cannot justify disqualification of counsel." [Citation.]' [Citation.]" (*DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 833.) Thus, "it is relatively unimportant whether the status or misconduct claimed to warrant disqualification is proscribed by a particular ethical norm or disciplinary rule . . . Since the purpose of a disqualification order must be prophylactic, not punitive, the significant question is whether there exists a genuine likelihood that the status or misconduct of the attorney in question will affect the outcome of the proceedings before the court.' [Citations.]" (*Hetos Investments, Ltd. v. Kurtin* (2003) 110 Cal.App.4th 36, 48, quoting *Gregori*, at pp. 308-309.) Here, there was no showing

that Gunter's alleged misconduct threatened the outcome of the proceedings in any manner.

Additionally, the fact that appellants, who are not clients or former clients of Gunter, were not precluded under *Kennedy* from bringing a disqualification motion does not mean that the motion itself had merit. Even if appellants had standing, they were required to present sufficient facts warranting Gunter's disqualification, namely, a showing that his "continued representation threatens an opposing litigant with cognizable injury or would undermine the integrity of the judicial process." (*Kennedy*, *supra*, 201 Cal.App.4th at p. 1205.) Based upon the evidence presented below, including Gunter's opposing declaration addressing the specific claims of misconduct asserted by appellants, we uphold the trial court's implied finding that appellants failed to make the requisite showing for disqualification.

In short, the trial court was presented with evidence that Gunter had made false or misleading statements in the proceedings, as well as countervailing evidence that no such misconduct occurred. We resolve these conflicts in the evidence, as we must, "in favor of the prevailing party [respondent]," and we defer to the trial court's resolution of these factual issues. (*H. F. Ahmanson*, *supra*, 229 Cal.App.3d at pp. 1451-1452.) Moreover, we uphold the trial court's implied finding that, even assuming any misconduct, there was no showing that Gunter's continued participation in the proceedings posed a threat to appellants of "cognizable injury or [of] . . . undermin[ing] the integrity of the judicial process." (*Kennedy*, *supra*, 201 Cal.App.4th at p. 1205.) Since the trial court's express and implied findings were supported by substantial evidence, we conclude the trial court did not abuse its discretion in denying appellants' motion to disqualify counsel. (*SpeeDee Oil*, *supra*, 20 Cal.4th at p. 1143.)

DISPOSITION

The order of October 7, 2015, denying appellants' motion to disqualify Roy Gunter III as counsel of record for respondent is affirmed.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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GROVER, J.

Rozanova et al. v. Uribe
H043316