

Oleske v New York State Dept. of Law

2025 NY Slip Op 32743(U)

July 21, 2025

Supreme Court, New York County

Docket Number: Index No. 153364/2024

Judge: James E. d'Auguste

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. James E. d'Auguste

PART 55

Justice

-----X

INDEX NO. 153364/2024

JOHN OLESKE,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 006

- v -

NEW YORK STATE DEPARTMENT OF LAW, LETITIA JAMES, JENNIFER LEVY, UMAIR KHAN, JOSE MALDONADO, JENNA MORAN, LARRY SCHIMMEL, JAMES SHEEHAN, SERENA LONGLEY, ANNA BROWER, THE DAILY BEAST COMPANY, LLC, MATT FULLER, JOSE PAGLIERY, DOES 1-10, IAC INC.,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for DISQUALIFY COUNSEL

Plaintiff John Oleske (Oleske) moves by Order to Show Cause for an order to disqualify the law firm of Emery, Celli, Brinkerhoff, Abady, Ward & Mazel, LLP (Emery Celli) from representing a group of the named co-defendants herein comprised of the New York State Department of Law (a/k/a the New York State Attorney General's Office), Attorney General Letitia James, Esq. and staff attorneys Jennifer Levy, Esq., Umair Khan, Esq., Jenna Moran, Esq., Larry Schimmel, Esq., James Sheehan, Esq., Serena Longley, Esq. and Anna Brower, Esq. (together, the AG defendants; motion sequence number 006). This motion is denied.

BACKGROUND

Oleske is an attorney formerly employed by the AG's Office which terminated his employment "for cause" on October 30, 2023. See NYSCEF document 45 (supplemental verified amended complaint), ¶¶ 37, 483. The AG's email notification stated that "[t]his termination is based

upon your insubordination, including your refusal to answer questions and cooperate with an internal employment review.” *Id.*

Oleske asserts that his termination was a wrongful retaliatory act which the AG committed in response to his being a “whistleblower” about instances of alleged prosecutorial corruption by certain high-ranking employees of the AG’s Office. *See* NYSCEF document 45, ¶¶ 271-497. Oleske also asserts that co-defendants The Daily Beast Company, LLC, Jose Pagliery and IAC INC. (the Daily Beast defendants) subsequently, with the AG defendants, conspired to publish a misleading article containing false statements about his purported “whistleblowing” activity. *Id.*, ¶¶ 498-602.

Oleske’s original summons and complaint were dated April 10, 2024, but he evidently served them on September 10, 2024, pursuant to an *ex parte* order that the Court (Johnson, J.) signed on August 13, 2024. *See* NYSCEF documents 1-9. Oleske later served an amended verified complaint dated December 17, 2024, and a supplemental amended verified complaint on December 18, 2024. *Id.*, NYSCEF documents 30, 45. The Daily Beast defendants and the AG defendants did not file answers to that pleading, but instead moved separately to dismiss it (motion sequence numbers 004 & 005). *Id.*, NYSCEF documents 33-46. Those dismissal motions were disposed of in a previous decision. The Court notes that individual co-defendants Maldonado and Fuller are evidently not represented by counsel for either the Daily Beast defendants or the AG defendants, and that they have neither answered nor moved to date. However, this decision does not concern either the Daily Beast defendants, Maldonado or Fuller.

On May 13, 2025, the Court signed Oleske’s order to show cause for an order to disqualify Emery Celli from representing the AG defendants. *See* NYSCEF document 59. That motion is now briefed, opposition has been filed, and this matter is fully submitted (motion sequence number 006). *Id.*, NYSCEF documents 57-75.

DISCUSSION

Oleske seeks to disqualify Emery Celli pursuant to Rule 1.18 of New York's Rules of Professional Conduct for attorneys ("Duties to a prospective client"). The portions of the rule that he relies on state as follows:

"(a) Except as provided in Rule 1.18 (e), a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a 'prospective client'

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) *A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).*

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; *or*

(2) *the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and*

(i) *the firm acts promptly and reasonably to notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;*

(ii) *the firm implements effective screening procedures to prevent the flow of information about the matter between the disqualified lawyer and the others in the firm;*

(iii) *the disqualified lawyer is apportioned no part of the fee therefrom; and*

(iv) *written notice is promptly given to the prospective client, except that if the notice would disclose confidential information protected by Rule*

1.6, the notice may be temporarily postponed but shall be sent promptly after such confidential information is known to the prospective client or is otherwise no longer protected by Rule 1.6; and

(3) a reasonable lawyer would conclude that the law firm will be able to provide competent and diligent representation in the matter.”

22 NY Admin Code 1200.0, Rule 1.18 (emphasis added). Oleske asserts that: (1) he disclosed “significantly harmful” information to Emery Celli partner Zoe Salzman (Salzman) at a half-hour consultation meeting on June 21, 2022 (before this case was commenced or the AG defendants had retained Emery Celli); (2) Emery Celli never sent him “prompt written notice” that it had been retained or requested his “informed consent”; and (3) Emery Celli never notified him about what “reasonable measures” or “screening procedures” it had put in place as a result of his consultation with Salzman. *See* NYSCEF document 58 (Oleske affirmation), ¶¶ 2-29. He then argues that these actions constitute violations of Rule 1.18 (c) and (d) which should warrant the firm’s “mandatory disqualification.” *Id.*, ¶ 22. Emery Celli opposes Oleske’s assertions and arguments. *Id.*, NYSCEF documents 60-75. After careful consideration, the Court finds for Emery Celli.

In reviewing applications to disqualify counsel pursuant to Rule 1.18, the Appellate Division, First Department, has observed that:

“A moving party has the ‘heavy burden’ of establishing a basis for disqualification. (*Mayers v Stone Castle Partners, LLC*, 126 AD3d 1, 5 [1st Dept 2015].) Rule 1.18 of New York’s Rules of Professional Responsibility provides that ‘where a prospective client consults an attorney who ultimately represents a party adverse to the prospective client in matters that are substantially related to the consultation, the prospective client is entitled to obtain the attorney’s disqualification only if it is shown that the information related in the consultation “could be significantly harmful” to him or her in the same or substantially related matter.’ (*Mayers*, 126 AD3d at 7, quoting 22 NYCRR 1200.0 rule 1.18 [c].)”

Ellison v Schulte, 84 Misc 3d 1243(A), 2024 NY Slip Op. 51669(U), * 4 (1st Dept 2024); *see also Fisher v Hauman*, 204 AD3d 406, 407 (1st Dept 2022); *Dietrich v Dietrich*, 136 AD3d 461, 462 (1st Dept 2016). The First Department has specifically held that, in order to meet the aforementioned “heavy burden,” a party seeking disqualification must “detail what confidential

information [s/he] shared with” counsel and must show that the subject information was neither “publicly available” nor “outside the scope of discovery.” *Ellison v Schulte*, 84 Misc 3d 1243(A), *

4. Here, Oleske’s supporting affirmation does not include any of the foregoing. Instead, he makes the general allegation that he and Salzman discussed “[his] evaluation of [the AG defendants’] conduct from a legal perspective, [his] potential claims and strategies, and [his] concerns regarding [the AG defendants’] potential future unlawful conduct, including multiple sensitive personal matters [he] feared that [the AG defendants] might seek to improperly exploit.” See NYSCEF document 58, ¶ 5. This blanket statement plainly does not identify any specific confidential information vis a vis public information or evaluate such information’s discoverability or admissibility. By its own terms, the foregoing statement merely describes Oleske’s “potential” concerns about his employer. Further, Oleske’s June 1, 2022, meeting with Salzman took place a year and four months before Oleske’s employment was terminated and nearly two years before he commenced this case. The Court finds that Oleske has failed to establish that the remote, indefinite concerns addressed at that meeting could have been “significantly harmful” to him since he provided no details about (or evidentiary evaluation of) the information discussed there. Accordingly, the Court rejects Oleske’s first disqualification argument.

Oleske’s assertions about lack of “prompt written notice” or requests for “informed consent” are also unavailing. The record herein clearly shows that Oleske executed a stipulation on October 21, 2024 granting Emery Celli an extension of time in which to answer or move on behalf of the AG defendants. See NYSCEF document 8. Since Oleske had served his original summons and complaint only two months earlier (pursuant to Judge Johnson’s August 13, 2024, *ex parte* order), he clearly had “prompt written notice” that Emery Celli would be representing the AG defendants. *Id.*, NYSCEF document 6. His allegation regarding “informed consent” is misplaced. Rule 1.18 permits an attorney who has received “disqualifying information” to represent a client under two

circumstances: (1) where the opposing party provides “informed written consent” (Rule 1.18 [d] [1]); *or* (2) where the attorney took certain protective measures *and* it would be reasonable to conclude that the attorney was capable of providing “competent and diligent representation” (Rule 1.18 [d] [2] and [3]). Oleske’s argument improperly conflates the two sets of circumstances that the Rule recognizes. Therefore, the Court rejects Oleske’s second disqualification argument.

Oleske’s argument that Emery Celli never notified him about “reasonable measures” or “screening procedures” with respect to Salzman is belied by the record. His own affirmation contains the admission that he discussed those matters with attorney Andrew Celli Esq. (Celli) during a phone call on October 7, 2024. *See* NYSCEF document 58, ¶¶ 13-14. Celli has further presented a quantity of email correspondence between himself and Oleske that took place in June 2025 that plainly discussed “screening procedures.” *Id.*, NYSCEF documents 61-71. In light of this evidence, the Court rejects Oleske’s third disqualification argument.

As a result of the foregoing, the Court concludes that Oleske has failed to meet the “heavy burden” necessary to seek disqualification of counsel pursuant to Rule 1.18. Accordingly, Oleske’s application for an order to disqualify Emery Celli from representing the AG defendants in this case is denied as meritless.

DECISION

ACCORDINGLY, for the foregoing reasons, it is hereby

ORDERED that the Order to Show Cause of plaintiff John Oleske (motion sequence number 006) is in all respects denied.

Dated:
New York, New York
July 21, 2025

ENTER:



Hon. James d'Auguste, J.S.C.