

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

In Re: The Receivership of
Florida Specialty Insurance Company,
a Florida corporation.

CASE NO.: 2019 CA 002328

**FLORIDA DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF
REHABILITATION AND LIQUIDATION'S MOTION TO DISQUALIFY**

The Florida Department of Financial Services, Division of Rehabilitation and Liquidation, hereinafter ["The Department"] moves this Court to disqualify the law firm of Cozen O'Connor from representing Florida Specialty Holdings, Inc. and Florida Specialty Managing General Agency LLC, and in support of said motion states the following:

Background

1. Prior to October 2, 2019, the law firm of Cozen O'Connor represented Florida Specialty Insurance Company [hereinafter "FSIC"]. Specifically, Kenneth Levine, of Cozen O'Connor's West Palm Beach, Florida office represented FSIC when it was under Administrative Supervision by the Florida Office of Insurance Regulation [hereinafter "OIR"].
2. On October 2, 2019, the Department was appointed as Receiver for FSIC after a referral made to the Department by OIR on September 27, 2019. For all intents and purposes, DFS became FSIC on October 2, 2019. Section 631.111(1), Florida Statutes.
3. On October 3, 2019, Kenneth Levine advised the Department that he/his law firm represented Florida Specialty Managing General Agency LLC [hereinafter "FSMGA"]. Mr. Levine was on-site at FSIC's building, which also housed FSMGA in Sarasota, Florida on both October 3 and 4, 2019.

4. On October 8, 2019, Matthew Criscuolo, a partner in the Cozen O’Conner West Palm Beach office where Mr. Levine is located, filed a Motion for Reconsideration on behalf of FSHC, with no prior notice to the Department.

5. Cozen O’Conner has not sought the Department’s consent to represent FHSC in the receivership matter.

Argument

6. Florida Bar Rule 4-1.6 establishes the parameters of the confidentiality of information that a client relays to his attorney. To disclose confidential information, the attorney must obtain the client’s informed consent. The official comment to the rule refers attorneys to Rule 4-1.9(c) regarding disclosure of information gleaned during their representation of a former client, and Rules 4-1.8(b) and 4-1.9(b) for their duties with respect to the use of confidential information to the disadvantage of clients and former clients.

7. The official comment to Florida Bar Rule 4-1.9 explains a lawyer representing past and present clients can only do so in conformity with the rule, and again directs attorneys to Rule 4-1.7 for a determination of whether the interests of a present and former client are adverse. The comment additionally states that:

“[t]he underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question. ...In the case of an organizational client, general knowledge of the client’s policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation.”

8. Florida Bar Rule 4-1.7(a)(2) regarding Conflict of Interest; Current Clients states that a lawyer “must not represent a client if: “there is substantial risk that the representation of 1 or more

clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person by a personal interest of the lawyer".

9. Florida courts apply a two-prong test when considering a motion to disqualify. *Philip Morris USA Inc. v. Caro*, 207 So. 2d 944, 948 (Fla. 4th DCA 2016). The first part of the test determines whether there was an attorney-client relationship between the former client and counsel. *Id.* Once the relationship has been established, "[i]ts existence creates an irrefutable presumption that confidences were disclosed during the relationship." The second part of the test determines "whether the matter in which the lawyer subsequently represents the interest adverse to the former client is the same or substantially related to the matter in which it represented the former client." *Id.*

10. Having the same law firm who represented FSIC, now represent FSHC, who is challenging the liquidation order appointing the Department, creates the appearance that the attorneys have switched sides: something not permitted by the rules governing Florida attorneys. See *Kenn Air Corp. v. Gainesville-Alachua Cty. Regional Airport Authority*, 593 So. 2d 1219, 1222 (Fla. 1st Dist. Ct. App. 1992) (granting a motion to disqualify based "[u]pon consideration of the public's perception of the integrity of the bar, and the appearance of impropriety that arises in situations in which an attorney switches sides).

11. Moreover, there is an irrefutable presumption that FSIC exchanged confidential information with Cozen O'Connor. See *Health Care and Retirement Corp. of Am. Inc. v. Bradley*, 944 So.2d 508, 512 (Fla. 4th DCA 2006). This presumption is critical because an attempt to prove that such information was exchanged "would appear to defeat the confidential nature" of the information, *id.*, "because it is difficult to establish that confidences were actually disclosed to an opponent, and because such a situation is 'rife with the possibility of discredit to the bar and the

administration of justice.’ ” *Bochese v. Town of Ponce Inlet*, 267 F. Supp. 2d 1240, 1244 (M.D. Fla. 2003) (quoting *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So. 2d 630, 634 (Fla. 1991)).

12. There is no dispute that Cozen O’Connor represented FSIC prior to liquidation while it was under Administrative Supervision by OIR. In that representation, without a doubt, it received confidential information from FSIC.

13. Likewise, the firm now represents FSHC, an affiliate of FSIC as defined by Section 631.011(1), Florida Statutes in this receivership action prompted by the referral from OIR, a substantially related matter. FSHC, is in an adversarial position to the successor in interest to FSIC, the Department. Without question, the firm’s partners have shared FSIC’s confidential information.

14. Therefore, Cozen O’Connor cannot represent FSHC here unless and until the Department gives its written informed consent to the representation.

Requested Relief

15. The Department respectfully requests, therefore, that this Court disqualify Cozen O’Connor from representing FSHC or any other affiliate of FSIC in this receivership matter.

DATED: this 16th day of October, 2019.

Respectfully submitted,

/signed/

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that Department counsel conferred with opposing counsel on the 15th and 16th day of October 2019, and they are opposed to this Motion.

/signed/

Miriam O. Victorian

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served all parties who have entered an appearance on the ECF system with a copy of this Motion.

/signed/

Miriam O. Victorian