


ORDERED.

Dated: October 31, 2018



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
RONALD E. SCHERER,)	Case No. 6:17-bk-2004-KSJ
)	Chapter 11
Debtor.)	
_____)	

ORDER PARTIALLY GRANTING MOTION TO DISQUALIFY INTERNAL REVENUE SERVICE ATTORNEY

This matter came before the Court on the Scherer Children’s Irrevocable Trust’s (“SCIT”) Motion to Disqualify Internal Revenue Service (“IRS”) Attorney Richard Zuckerman.¹ Debtor and the trustee for SCIT, David Thompson, joined.² IRS filed a response in opposition.³ After reviewing the pleadings and the position of interested parties, the Court partially will grant the motion for the *limited purpose* of confirming Mr. Zuckerman will have no further involvement with the dispute between the Debtor and the IRS.

¹ Doc. No. 338.
² Doc. Nos. 341, 362.
³ Doc. No. 355.

Mr. Zuckerman was a partner in the law firm Honigman, Miller, Schwartz and Cohn, LLP; lawyers at the firm represented the Debtor and National Sign & Signal, Co. (NSSC) in an action against Fifth Third Bank approximately six years ago.⁴ Mr. Zuckerman allegedly was not involved in that dispute and worked at an office in a different location.⁵ He is now the head of the Tax Division in the Department of Justice (“DOJ”) and his name is included in the signature block used by Tax Division trial attorneys.⁶ IRS states Mr. Zuckerman is personally not involved in this current case, and he did not sign any pleadings.⁷

SCIT filed this Motion to Disqualify Mr. Zuckerman and requested: 1) Discovery to determine if others in the DOJ and the IRS should be disqualified; 2) discovery regarding the “failure” of the IRS and the DOJ to conduct an adequate conflict check; and 3) suspension of discovery against NSSC and the Debtor until these issues have been resolved.⁸

Mr. Zuckerman, however, already voluntarily recused himself.⁹ It is doubtful whether recusal was even required given the general rule on imputation does not apply to government lawyers. “If the more extensive disqualification in rule 4-1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome...the government’s recruitment of lawyers would be seriously impaired if rule 4-1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in rule 4-1.11.”¹⁰

⁴ Doc. Nos. 338, 355.

⁵ Doc. No. 338, pp. 1-2.

⁶ Doc. No. 355, pp. 2-3.

⁷ Doc. No. 338.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ F.S.A. Bar Rule 4-1.10.

Motions to disqualify are left to the discretion of the trial court.¹¹ Disqualification under Florida law is “an extraordinary remedy that should be used sparingly.”¹² “Motions seeking disqualification should be viewed with extreme caution and the remedy of disqualification imposed sparingly since disqualification can be utilized as a technique of harassment or to gain a tactical advantage.”¹³ Here, Movants failed to establish they are entitled to discovery given Mr. Zuckerman’s voluntary recusal and the exception to the general imputation rule for government lawyers.¹⁴

Accordingly, it is

ORDERED:

1. SCIT’s Motion to Disqualify Internal Revenue Service Attorney Richard Zuckerman (Doc. No. 338) is **PARTIALLY GRANTED** for the *limited purpose* of confirming Mr. Zuckerman will have no further involvement in this case.
2. No further discovery or hearing is merited.

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The Clerk is directed to serve a copy of this order on all interested parties.

¹¹ *Moriber v. Dreiling*, 95 So. 3d 449, 453 (Fla. 3d DCA 2012).

¹² *Gutierrez v. Rubio*, 126 So. 3d 320, 321 (Fla. 3d DCA 2013).

¹³ *In re Lawrence*, 217 B.R. 658, 662 (Bankr. S.D. Fla. 1998).

¹⁴ None of the cases cited by Movants involved the disqualification of a government lawyer, voluntary recusal of a government attorney, and/or a right to discovery. *See, e.g., Young v. Achenbauch*, 136 So. 3d 575 (Fla. 2014); *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So. 2d 630 (Fla. 1991); *Madison 92nd St. Assocs., LLC v. Marriott Int’l, Inc.*, No. 13 CIV. 291 CM, 2013 WL 5913382 (S.D.N.Y. Oct. 31, 2013), *aff’d sub nom. Boies, Schiller & Flexner LLP v. Host Hotels & Resorts, Inc.*, 603 F. App’x 19 (2d Cir. 2015).