Ontiveros v. City of Santa Maria | Case No. 25CV05376
Hearing Date: | April 15, 2026
Motion: Disqualify Counsel

TENTATIVE RULING

For all the reasons discussed below, the court finds the California Rules of Professional Conduct to be instructive to determine if disqualification is required; that test applicable under Rule 1.9 is qualitatively different from the test applicable under Rule 1.11; that merely knowing how the government agency usually handles such matters, untethered to personal and substantial involvement in or confidential information about the specific matter, is alone insufficient to prevent the former government lawyer from representing a private client against the lawyer's former government employer; and that the motion is denied because the City fails to produce sufficient evidence to show a conflict of interest.

Plaintiff Anthony Ontiveros is the owner of real property located at 1928 Arriba Way in the City of Santa Maria. In October 2023, he noticed his driveway, walkway, and garage floor was cracked and lifted. He believed that the cracks were caused by roots from a tree planted within a tree planting easement ("street tree") by the City of Santa Maria. The City arranged for an inspection, but the inspector could not determine if the roots from the street tree were the cause of the cracks and told plaintiff he would have to hire a contractor at his own expense to remove the concrete from the driveway and garage floor to confirm whether the damage was caused by the street tree. Plaintiff applied for a home equity line of credit to hire a contractor and on September 26, 2024, his contractor confirmed the roots of the street tree were the cause of the cracks. On August 25, 2025, plaintiff, represented by attorney Philip F. Sinco, filed his complaint against defendant to recover the expenses related to removal and replacement of the concrete damaged by the roots from the street tree. The defendant answered on October 23, 2025.

On January 29, 2026, defendant moved to disqualify attorney Philip F. Sinco from representing plaintiff. Opposition and reply have been filed. The court has read and considered all papers.

" 'A trial court's authority to disqualify an attorney derives from the power inherent in every court "[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 matter pertaining thereto." ' (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145.) '[U]ltimately the issue involves a conflict between a client's right to counsel of his

choice and the need to maintain ethical standards of professional responsibility.' " (*Johnson v. Department of Transportation* (2025) 109 Cal.App.5th 917, 933.)

The California Rules of Professional Conduct[1] do not provide standards for disqualification in the courts, but courts analyzing disqualification issues may obtain guidance from the rules. (*Antelope Valley Groundwater Cases* (2018) 30 Cal.App.5th 602, 621.)

To that end, a special rule applies to current and former government attorneys. Rule 1.11 (a) provides that a lawyer who has formerly served as a public official or employee of the government:

- "shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent to the representation"; and
- prohibits a lawyer who has formerly represented a client in a matter from using or revealing information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6[2] acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules or the State Bar Act would permit.

(Rule 1.11 (a)(1)-(2).)[3]

According to Comment 2, for purposes of this rule, a "matter" includes "any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons." (Rule 1.11, comm. 2—"For what constitutes a "matter" for purposes of this rule, see rule 1.7 (e).")

The prohibition on representation applies "when the former public official or employee of the government has personally and substantially participated in the matter. Personal participation includes both direct participation and the

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[1] All future references are to the California Rules of Professional Conduct unless stated otherwise.

[2] Business and Professions Code section 6068, subdivision (e) imposes upon attorneys the duty to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." Rule 1.6 reiterates this rule and specifies the circumstances under which the information may be revealed.

[3] Rule 1.11 was enacted as part of comprehensive amendments to California's Rules of Professional Conduct, effective November 2018. (Rule 1.11; *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc*. (2018) 6 Cal.5th 59, 86, fn. 7.)

supervision of a subordinate's participation. Substantial participation requires that the lawyer's involvement be of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. Personal and substantial participation may occur when, for example, a lawyer participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter." (Rule 1.11, comm. 3.) "Substantial" when used in reference to degree or extent means a material matter of clear and weighty importance. (Rule 1.01(*l).*)

The following commentary to ABA Model Rule 1.11, further explains the rationale underlying the rule, as follows in pertinent part:

> "This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards."
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> (ABA Model Rule 1.11, com. 4.)[4]

Analysis

Both sides proceed as if this inquiry is equivalent to the standard under Rule 1.9 (a), which governs a nongovernment attorney's duties to former clients. Pursuant to that rule, a "lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the *same or a substantially related matter* in which that person's interests are materially adverse to the interests of the

[4] Rule 1.11 (c) is substantially similar to the American Bar Association (ABA) Model Rules of Professional Conduct, rule 1.11 (c) (ABA Model Rule 1.11 (c)). Therefore, unless there is a conflict with California's public policy, we may look to the ABA Model Rules for guidance on proper professional conduct in California. (*Doe v. Yim* (2020) 55 Cal.App.5th 573, 582, fn. 3.)

former client unless the former client gives informed written consent." (Emphasis added.) Both sides thus focus their briefing on whether the matters are substantially related. However, there is a distinction between the scope of prohibited subsequent representation under the analysis of Rules 1.9 and 1.11, which the court will explore.

As a starting point, and to be clear, defendant argues that Mr. Sinco is disqualified because of information he obtained while employed as an assistant city attorney in cases of the type that his client now has brought against it. Defendant argues:

> "Mr. Sinco represented the City on a wide variety of legal issues including conducting legal research and providing legal opinions, policy guidance and liability management on urban forest and inverse condemnation. In providing this representation to the City, Mr. Sinco was privy to internal operational information, policy discussions, liability review and settlement information that are properly characterized as attorney-client information. Mr. Sinco participated in liability analysis and policy guidance relating to tree liability as recently as 2017. Such representation allowed Mr. Sinco to have intimate knowledge of Defendant's legal strategies, settlement posture, and internal workings that would be of great benefit in representing Plaintiff in a nuisance and inverse condemnation case."
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> (Motion, p. 1, ll. 9-17.)

This is not a case of "switching sides" during the pendency of an action or proceeding.

Under Rule 1.11 the trigger for disqualifying a lawyer formerly employed by the government is *personal and substantial participation* in the *same* matter, whereas under Rule 1.9, the trigger is actual *representation* in the *same or a substantially related* matter. (ABA Model Rule 1.11, Annotation, 1st paragraph; see also *State ex rel. Jefferson Cnty. Bd. of Zoning Appeals v. Wilkes* (W. Va. 2007) 655 S.E.2d 178 [disqualifying former county lawyer and his firm from representing private developer before zoning board in permit application on which lawyer worked as counsel for zoning board; rejecting trial court's conclusion that each stage in consideration of conditional-use permit application is separate "matter"].)

"For the most part, [this difference] is due to the different purposes served by each rule. The purpose of rule 1.9 is to assure that the confidentiality and loyalty owed to the client is not compromised . . . . The purpose of [R]ule 1.11 is to prevent a lawyer from exploiting public office for the advantage of a private client." (*Poly Software Intern., Inc. v. Su* (D. Utah 1995) 880 F.Supp. 1487, 1493.) An additional and important concern of Rule 1.11 (a), however, is to avoid an undue deterrent on

lawyers serving in a public position without forever forgoing private practice in the legal area in which the lawyer served the government. (N.Y. State Ethics Op. 1148 (2018).)[5] "For this reason, the test applicable to Rule 1.9 is qualitatively different from the test applicable to Rule 1.11." (*Id.*) "Otherwise put, Rule 1.11 (a) ousts the application of Rule 1.9 (a) in the context of government lawyers. Rule 1.9 (a)'s "substantial relationship" may extend its reach to encompass matters that Rule 1.11 (a)'s requirement of "personal and substantial" involvement in the specific matters was not intended to embrace." (*Id.*) Rule 1.11 (a)'s application is thus *narrower* than that of Rule 1.9.

Here, defendant challenges whether Mr. Sinco has a conflict of interest based on institutional knowledge gained while employed with the City. Defendant offers the following facts in support of its claim: Mr. Sinco was employed as an assistant city attorney for the City of Santa Maria from January 1, 2000, to June 14, 2019. (Sinco Decl., ¶ 6; Guerrero Decl., ¶ 2.) According to the declaration of Melissa Guerrero, who is employed by the city in the capacity as Risk Manager, Mr. Sinco:

- "was responsible for overseeing over one hundred litigation matters over the course of his employment as Assistant City Attorney from January 1, 2000 to June 14, 2019;"
- "participated in liability analysis and policy guidance relating to tree liability and inverse condemnation as recently as 2017;"
- "engaged in all aspects of defending the City against these matters, including preparing discovery, engaging in settlement discussions and mediation, and preparing for trial;"
- "obtained confidential information about the City including their litigation philosophy and strategy, their discovery policies, the identity of key decision makers, the organizational structure, the existence and amount of insurance coverage, and factors that affect their position and strategy for settlement" and
- discussed and strategized with Ms. Guerrero about the City's approach to handling cases about tree liability and inverse condemnation. (Guerrero Decl., ¶¶ 1-6.)

According to Mr. Sinco, during his employment, he had primary responsibility for claims administration and management from January 2002 – September 2005, and then again, from February 2005 – June 2015. He had limited involvement with claims administration and management after June 2015. (Sinco Decl., ¶ 7.)[6] He does not recall participating in liability analysis and policy guidance relating to tree liability and inverse condemnation as recently as 2017, but concedes

[5] Although the court is not bound to follow an out-of-state ethics opinion, it nevertheless finds it persuasive, absent any California state law authority on point.

[6] From January 2014 – June 2019, he was responsible for attending meetings of the planning commission as well as other duties. (*Id.*)

it was possible. (*Id.*) He points out that every person he worked with concerning the handling of claims concerning trees (i.e., the Director of Parks and Recreation, the City Manager, and the City Attorney) are no longer employed by defendant. *(*Sinco Decl., ¶ 8.) He also points out the third-party claims adjusting firm that handled the investigation and settlement of government claims for City has been replaced by a different firm that he has never worked with. (*Id.*) He does not recall discussing and strategizing about the City's approach to handling cases about tree liability and inverse condemnation with Ms. Guerrero. (Sinco Decl., ¶ 11.)

Under Rule 1.11, there is no conflict. "[M]erely knowing how the government agency usually handles such matters, untethered to personal and substantial involvement in or confidential information about the specific matter, is alone insufficient to prevent the former government lawyer from representing a private client against the lawyer's former government employer." (N.Y. State Ethics Op. 1148 (2018), ¶ 11.) The Committee found that the "playbook approach" [7] to disqualifying nongovernment attorneys "is not practicable in the context of former government lawyers. Many state and sub-state legal departments represent the government only in specific types of cases. To use this 'playbook' approach in interpreting Rule 1.11 (a) is to disregard both its purpose of encouraging public service and the different language that Rule 1.11 (a) uses to assess whether a government lawyer is able to represent a client against the lawyer's former employer." (*Id.* at ¶ 9.) In the end, the Committee concluded: "Consequently, we conclude that a onetime government lawyer may represent clients adverse to the lawyer's former government employer unless that lawyer had a personal and substantial involvement in the same specific matter in which the lawyer now proposes to challenge the government's position. This conclusion rests on the assumption that (a) the inquiring lawyer does not possess confidential information about the specific matter obtained during the inquirer's government service, and (b) the inquiring lawyer does not otherwise possess confidential information about the specific matter which, owing to the lawyer's confidentiality obligations, the lawyer could not competently represent the client in resisting the government's action without violating the lawyer's ongoing duty of confidentiality." (*Id.* at ¶ 11.)

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[7] This is consistent with caselaw in California. A non-government attorney is not subject to disqualification because he or she possesses information concerning an adversary's general business practices or litigation philosophy (referred to as "playbook" information) acquired during the attorney's previous relationship with the adversary. (See *Wu v. O'Gara Coach Co., LLC* (2019) 38 Cal.App.5th 1069, 1082–1083.) The typical "playbook" problem involves a claim by a former client that the lawyer learned confidential information of a general kind during the prior representation, such as settlement strategy. (*Id.*; *Banning Ranch Conservancy v. Superior Court* (2011) 193 Cal.App.4th 903, 918 ["[m]erely knowing of a former client's general business practices or litigation philosophy is an insufficient basis for disqualification based upon prior representation"].)

Here, there is no evidence that Mr. Sinco had a personal and substantial involvement in the same specific matter in which he now proposes to challenge the government's position. There is no evidence that, for example, he represented the City in the action establishing the street tree easement or defended the City against an attack on the street tree easement. Nor is there evidence that he defended the City in an action by plaintiff regarding the street tree easement. "Rule 1.11 (a) bars representation by a former government employee adverse to the former client only in the same specific matter as the matter in which the lawyer participated "personally and substantially" during the lawyer's government employment." (N.Y. State Ethics Op. 1148 (2018), ¶ 9.)

Even if the definition of "matter" extended to the mere development of institutional policies regarding street trees, or the City's liability for tree damage, there is no evidence that Mr. Sinco was "personally and substantially" involved in any such thing. Defendant asserts that "Mr. Sinco's prior representation while the Assistant City Attorney *overwhelmingly* included defending the City against a plaintiff [] alleging that the City's tree caused plaintiff to suffer property damage." (Reply, p. 3, ll. 10-12 [emphasis added].) Defendant also asserts that "Mr. Sinco's representation in the past is substantially related to the instant case as he represented the City in *dozens* of tree liability inverse condemnation cases." (Reply, p. 3, ll. 16-18 [emphasis added].) Both statements cite the Guerrero Declaration, ¶ 3 for support. That paragraph simply states: "Mr. Sinco participated in liability analysis and policy guidance relating to tree liability and inverse condemnation as recently as 2017." It does not characterize whether such advice comprised the majority of his workload, nor does it quantify how often such litigation occurred. To the extent defendant meant to cite to paragraph 2, that paragraph simply states: "Mr. Sinco was responsible for overseeing over one hundred litigation matters over the course of his employment as Assistant City Attorney from January 1, 2000, to June 14, 2019." Neither statement supports the assertions made in reply.

In any event, the information may well be stale. Both sides agree that Mr. Sinco was last employed by the City in 2019. Notably, defendant has provided no evidence that Mr. Sinco's "liability analysis and policy guidance" remains its current practice, or that the information he obtained regarding "litigation philosophy and strategy, their discovery policies, [and] the identity of key decision makers" has not changed, or that the "factors that affect [City's] position and strategy for settlement" remain the same as it was in 2019. In fact, Mr. Sinco's evidence is unrefuted that key decision makers who were in office when he was employed by the City have changed. In other words, there is no evidence that this information is anything but attenuated by the passage of almost six years since Mr. Sinco left the City's employ, followed by changes in the office of key decision makers, such as the City Attorney. Even under the broader "substantially related" analysis under rule 1.9 (and even if the court assumed arguendo that the rule applied despite all indications to the contrary), courts acknowledge there must be some evidence that the institutional

policies remain effective. (See *Khani v. Ford Motor Co.* (2013) 215 Cal.App.4th 916, 922—finding evidence "does not show that Ford had any policies, practices, or procedures generally applicable to the evaluation, settlement or litigation of California Lemon Law cases at the time [attorney] represented Ford, or that any such policies, practices, or procedures continued in existence unchanged between 2007 and 2011. Nor does it show that the same decision makers that were involved in cases [attorney] handled for Ford are involved in this case;" see also *Johnson v. Superior Court* (1984) 159 Cal.App.3d 573 [confidential information attorney obtained during prior representation approximately eight years before current litigation had "been substantially attenuated by the passage of so much time"]; *Farris v. Fireman's Fund Ins. Co.* (2004) 119 Cal.App.4th 671, 686 ["We certainly can envision circumstances where the passage of time might be shown to have eliminated a prior substantial relationship due to such events as changes in corporate structure, turn over in management, and the like. No such event has been shown to have occurred here."].)

There is no evidence that Mr. Sinco's reported involvement in "liability analysis and policy guidance relating to tree liability and inverse condemnation as recently as 2017" is in any way related to the factual scenario presented by this matter, or that Mr. Sinco was personally and substantially involved in its development.[8]

The motion is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

[8] This can be compared to *Farris v. Fireman's Fund Ins. Co.* (2004) 119 Cal.App.4th 671, in which the evidence showed that the former nongovernment attorney for defendant insurer provided ongoing legal advice on insurance coverage issues to key decision makers in more than two hundred coverage claims over an extended period of time and also provided general guidance to those decision makers concerning claims handling and policy interpretation questions. The insurer submitted numerous declarations from key decision makers stating that they had discussed with the attorney the insurer's practices, including litigation and settlement strategies, in coverage matters. The attorney did not dispute this evidence. The court found disqualification to be necessary.