

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(609) 989-2040

CHAMBERS OF
TONIANNE J. BONGIOVANNI
UNITED STATES MAGISTRATE JUDGE

U.S. COURTHOUSE
402 E. STATE STREET, RM 6052
TRENTON, NJ 08608

December 1, 2009

LETTER ORDER

Re: Wyeth and Cordis Corp. v. Abbot Laboratories, et al.
Civil Action No. 08-0230 (JAP)

Dear Counsel:

On May 12th, 2009, this Court issued an Order deferring the issue of the potential disqualification of Howry LLP (“Howry”) as counsel to Boston Scientific Corporation (“BSC”) until the District of Delaware issued a ruling relating to the disqualification of Howry in the cases involving Wyeth and BSC currently pending in the District of Delaware [Docket Entry No. 54]. The Court further instructed the parties to submit a letter to the Court seeking relief if a party believed that the ruling from Delaware did not resolve the issue of disqualification in this Court [Docket Entry No. 54]. On August 25th, 2009, the Honorable Sue L. Robinson, U.S.D.J., issued a ruling from the District of Delaware (August 25th, 2009 Memorandum Opinion). Judge Robinson held that even though there was a violation of Rule 1.7 of the American Bar Association’s Model Rules of Professional Conduct (“Rule 1.7”), disqualification of Howry as counsel for BSC was not appropriate because Howry’s ethical screen was a sufficient measure to deal with the violation in the District of Delaware (*Id.* at 9).

On September 2nd, 2009, Wyeth wrote a letter to the Court asking that the Court decline to follow the holding of Judge Robinson and instead find that Howry should be disqualified because

of the violation. BSC opposed Wyeth's request. After carefully considering the parties' papers in support of and in opposition to Wyeth's request, the Court finds that Howry should be disqualified as counsel for BSC in the case before this Court.

This Court concurs with Judge Robinson's finding that Howry's representation of BSC constituted a violation of Rule 1.7. Before making this determination, Judge Robinson conducted an evidentiary hearing involving testimony from representatives of both Howry and Wyeth. Judge Robinson found that "there is a current attorney-client relationship between Howry and Wyeth," and "[t]here is no real dispute that Howry's representation of plaintiffs [BSC] places it in a position directly adverse to Wyeth" (August 25th, 2009 Memorandum Opinion at 7-8). Given that status of case law in Delaware, however, Judge Robinson declined to disqualify Howry.

Notably, Judge Robinson recognized that "[t]he court is aware of case law from other jurisdictions suggesting that a violation of Rule 1.7 should result in disqualification" (*Id.* at 9 n.7). One of the District Courts that Judge Robinson cited for the proposition that a violation of Rule 1.7 results in disqualification is the District of New Jersey (*In re Cendant Corp. Securities Litigation*, 1234 F. Supp. 2d 235, 248-50 (D. N.J. 2000) ("New Jersey simply does not permit concurrent representation when the interests of two current clients are adverse"); *Celgene Corp. v. KV Pharmaceutical Corp.*, 2008 WL 2937415 (D. N.J. 2008) ("There is also no dispute that a violation of Rule 1.7 merits disqualification")). Given the violation of Rule 1.7, this Court finds that disqualification is appropriate here. The Court therefore need not engage in an analysis of whether Wyeth's alleged "obfuscatory" conduct in causing the conflict of interest justifies disqualification.

Wyeth's request to disqualify Howry as counsel for BSC in this matter is hereby GRANTED.

IT IS SO ORDERED.

s/ Toniaanne J. Bongiovanni
TONIANNE J. BONGIOVANNI
United States Magistrate Judge