

Non-Client Defendant May Move To Disqualify Counsel

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The Brickman law firm represented Client Matthews in an age discrimination claim against his former employer, defendant's predecessor in interest. The claim was settled. Client Skidmore, a fellow employee of Matthews, retained the Brickman firm on a claim which was essentially similar to the Matthews claim. The Skidmore claim did not settle and suit was commenced. *See, Skidmore v. Warburg Dillon Read LLC, f/d/b/a UBS Securities LLC, 99 Civ. 10525 (NRB) S.D.N.Y. 2001 U.S. Dist. LEXIS 5101.*

Plaintiff Skidmore relied for his claim in great part on information obtained from Matthews during their employment. But when Matthews was deposed, he disputed the testimony given by Skidmore.

Defendant moved to disqualify the Brickman firm though it had never been a client of the firm. Defendant relied on Canon 4 of the ABA Model Code of Professional Responsibility which states: "A lawyer should preserve the confidences and secrets of a party." Defendant argued, in effect, that the Brickman firm could not represent both Skidmore and Matthews without violating this rule.

The Court held that defendant had standing to make this motion even though it was not a former client. "Ample precedent indicates that a party who is not part of the alleged conflict has standing to make a disqualification motion."

On the merits, however, the Court found no basis to support defendant's motion. Attorney Brickman denied that he had disclosed to Skidmore any confidences received from Matthews. Matthews may even have referred Skidmore to the firm. The Court also rejected defendant's argument that Brickman had violated Canon 5 of the ABA Code.