

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

WADE TUCKER, et al.,

Plaintiffs,

v.

RICHARD M. SCRUSHY, et al.,

Defendants.

CIVIL ACTION NO.: CV-02-5212

ORDER

This matter is before the Court on (i) Defendant Richard M. Scrushy's *Motion to Disqualify Plaintiffs' Counsel* [Doc. No. 10866] (the "Motion to Disqualify"), (ii) *Defendant's Consolidated Motion to Continue Hearing on Motion to Disqualify Counsel, to Permit Limited Discovery, to Stay Collection Proceedings, and to Preclude Bradley Arant from Acting as Counsel on the Disqualification Issue; and Memorandum of Law* [Doc. No. 10905] (the "Discovery Motion"), and (iii) the parties' filings related thereto.

The Court conducted a hearing on the Motions on November 13, 2025. Having considered the parties' submissions, including the evidence appended to the various motions and responses and the supplemental evidence presented at the hearing, the arguments of counsel, and the entire record in this case, and for good cause shown, the Court finds that the Motion to Disqualify and Discovery Motion are due to be DENIED for the reasons set forth herein.

I. The Discovery Motion

The Court has considered Mr. Scrushy's request to issue discovery to Bradley Arant Boult Cummings LLP ("Bradley"), counsel for Encompass Health Corporation (f/k/a HealthSouth Corporation) ("Encompass Health"), and take depositions of numerous attorneys at

Bradley. The Court has determined that this request for discovery is due to be denied. A final judgment was entered against Mr. Scrushy in this case in 2009. That final judgment was affirmed by the Supreme Court of Alabama. No rule or statute permits Mr. Scrushy, as a judgment debtor, to issue “post-judgment” discovery to Bradley or third parties in these circumstances. Alabama Rule of Civil Procedure 69(g) governs post-judgment discovery and confers the right to conduct post-judgment discovery solely on judgment creditors and not on judgment debtors or their counsel.

Even assuming that Mr. Scrushy were entitled to discovery as a judgment debtor, the discovery Mr. Scrushy now seeks is not warranted. Seeking discovery from opposing counsel tends to disrupt the adversarial system, constitutes an invitation to harass the attorney and parties, tends to disrupt and delay the case, and increases the costs of litigation. Bradley’s representation of Encompass Health in decades-old legal matters—unrelated to the current post-judgment recovery efforts—have no relevancy to the issues before the Court on the Motion to Disqualify. Discovery is not proper under Rule 26 of the Alabama Rules of Civil Procedure when, as here, the discovery sought is not relevant to the pending dispute, is not proportional to the needs of the case, the burden or expense of the proposed discovery outweighs its likely benefit, and the discovery is obtainable from some other source that is more convenient, less burdensome, or less expensive. *See Ala.R.Civ.P. 26(b)(1) & 26(b)(2)(B).*

Mr. Scrushy is not entitled to discovery from Bradley concerning its prior representation of Mr. Scrushy because he, his attorneys, and his agents were involved in these matters and had or have access to all relevant information. Bradley has already voluntarily produced to Mr. Scrushy numerous files relating to its prior engagements from over twenty (20) years ago, including original paper files and electronic files. Mr. Scrushy and his agents engaged Bradley.

They should have personal knowledge of the prior representation and should have their own documents or other evidence regarding those matters. Allowing Mr. Scrushy to issue discovery to Bradley, or any other third parties, is not proportional to the needs of resolving the Motion to Disqualify. The burden on Bradley would outweigh any benefits to Mr. Scrushy, and any information relating to Mr. Scrushy's prior engagement of Bradley is available to Mr. Scrushy from other sources fully within his control. There is no basis to allow Mr. Scrushy to pursue discovery from Bradley or any other party.

Mr. Scrushy also requested in the Discovery Motion that Bradley be precluded from participating in the hearing. The Court ruled from the bench that Bradley would be permitted to act as counsel.

II. The Motion to Disqualify

As to the merits of the Motion to Disqualify,¹ the Court finds that Mr. Scrushy did not sustain his burden to disqualify Bradley under Rules 1.7 or 1.9 of the Alabama Rules of Professional Conduct or any other authority.

As a threshold matter, Mr. Scrushy and any of his or his wife's affiliated companies, namely Marin, Inc. Marin Properties, LLC, Marin Realty, LLC, and Uppseedaisies, Inc., are *former* clients of Bradley, not *present* clients. Any representation of Mr. Scrushy or these companies by Bradley terminated over twenty years ago.² Bradley is not currently representing Mr. Scrushy or any of the companies he identified in his filings and there is no current conflict

¹ The Motion to Disqualify mistakenly refers to Bradley as counsel for "Plaintiffs." Bradley does not represent the Derivative Plaintiffs in this action, it represents the company, Encompass Health f/k/a HealthSouth Corporation. Judge Horn authorized counsel for the Derivative Plaintiffs to take the lead in prosecuting the derivative claims on behalf of HealthSouth, but ordered them to coordinate with the company for the expeditious disposition of its derivative claims. The Final Judgment against Mr. Scrushy was entered in favor of the Derivative Plaintiffs "for and on behalf of HealthSouth Corporation."

² The Court notes the companies have not been involved in this case since the Court's approval of the Pro Tanto Settlement in 2010.

that would preclude Bradley from representing Encompass Health in post-judgment collection matters against Mr. Scrushy. Accordingly, because Mr. Scrushy has not been a client of Bradley for over twenty (20) years, Rule 1.7 of the Alabama Rules of Professional Conduct does not apply and is not a basis to disqualify Bradley.

Mr. Scrushy has also failed to sustain his burden of proving a disqualifying conflict under Rule 1.9 of the Alabama Rules of Professional Conduct, which deals with former clients. Rule 1.9(a) states that “[a] lawyer who has formerly represented a client in a matter shall not ... represent another person in the same or a substantially related matter.” The test courts use to determine whether issues from past matters are “substantially related” to a current case involves an “inquiry into the similarity between the factual situations, the legal issues posed, and the nature and extent of the attorney’s involvement to see if information from the prior representation is material to the new representation.” *Ex parte Regions Bank*, 914 So. 2d 843, 848 (Ala. 2005). “[B]lanket statements” cannot “satisfy the former client’s burden.” *Id.* at 849 (citing *Ex parte Rush*, 574 So. 2d 808, 810 (Ala. Civ. App. 1990)). The party seeking disqualification must “delineate[] with specificity the subject matters, issues, and causes of action presented in former representation” so that the court can determine if the issues rise to the level of the substantial relationship test. *Id.*

At the crux of the Motion to Disqualify is Mr. Scrushy’s general allegation that Bradley has a conflict of interest because “[i]n 2010, Bradley negotiated a settlement that led to consent judgments against its own clients and the very entities Bradley helped form ... and eventually seized assets it helped its own clients procure.” *See* Motion to Disqualify, ¶15. However, it is undisputed that Mr. Scrushy, while represented by separate counsel, voluntarily agreed to the

underlying Pro Tanto Settlement that this Court approved over fifteen (15) years ago, and then he conveyed the assets referenced in the settlement to the Plaintiffs. *See* Doc. No. 3754.

Mr. Scrushy did not sustain his burden of proving that any prior representation by Bradley involves any subject matters, issues or causes of action presently before the Court in these post-judgment collection proceedings, or otherwise. Similarly, Mr. Scrushy has not demonstrated that any prior representation involved any of his assets that are the focus of present or potential future post-judgment collection actions in this case.

Moreover, Rule 1.9(b) states that a lawyer shall not “use information relating to the representation to the disadvantage of the former client” Ala. Rules of Prof'l Conduct R. 1.9(b). Mr. Scrushy has not identified, much less offered evidence of, any specific confidential information he contends Bradley gained from the terminated prior representation that has been or could potentially be used by Bradley to Mr. Scrushy's disadvantage in this post-judgment collection action. Accordingly, Mr. Scrushy has not sustained his burden for disqualification of Bradley under Rule 1.9(a) or 1.9(b) of the Alabama Rules of Professional Conduct.

Finally, even if Mr. Scrushy could sustain his burden of proof under Rule 1.7 or Rule 1.9, he has waived any right to object to Bradley's representation of Encompass Health by delaying over twenty (20) years to file the Motion to Disqualify after Bradley first appeared in this case in 2005. *See* Doc. No. 361. A former client waives their right to object to an attorney's subsequent representation if they do not object within a reasonable time. *Ex parte Petway Olsen, LLC*, 328 So. 3d 796, 800–01 (Ala. 2020) (waiting 18 months to file a motion to disqualify was not reasonable); *Ex parte Integrgraph Corp*, 670 So.2d 858, 860 (Ala. 1995) (motion to disqualify counsel was untimely because party allowed “case to proceed for six months while discovery was ongoing and the case was being prepared for trial.”); *Ex parte Peake*, 338 So. 3d 171, 181–

82 (Ala. Civ. App. 2021) (applying waiver on the basis of a 12 month delay); *Hall v. Hall*, 421 So. 2d 1270, 1271 (Ala. Civ. App. 1982) (finding waiver appropriate when a party waited until after a judgment was entered to raise disqualification based on representation from 2 years prior).

Mr. Scrushy had actual knowledge of Bradley's prior representation of him as evidenced by the fact he personally signed engagement letters with Bradley. Mr. Scrushy is also bound by the actual knowledge of his agents and counsel whom he admits knew of Bradley's prior representation of Mr. Scrushy and certain of his affiliated companies. As Mr. Scrushy admits, his authorized agents had actual knowledge of Bradley's prior representation. *See* Motion to Disqualify, ¶ 2. It is also undisputed that at least one of Mr. Scrushy's attorneys in this case had actual notice of the nature and scope of Bradley's prior representation based on Bradley's email disclosures to Mr. Scrushy's counsel in 2009. *See* Doc. No. 10881, Exhibits C & D. When Mr. Scrushy voluntarily agreed to the 2010 Pro Tanto Settlement referenced in his Motion to Disqualify, it is undisputed that he, his agents, and his counsel were all fully aware of Bradley's prior representation of Mr. Scrushy many years earlier.

Finally, during the hearing, Mr. Scrushy's counsel suggested the 2010 Pro Tanto Settlement should be set aside. Any such relief is barred by Alabama Rule of Civil Procedure 60 which has strict time limits that have long since passed.

Mr. Scrushy waived any right to seek disqualification of Bradley as a result of his delay of over twenty (20) years since Bradley first appeared on behalf of Encompass Health in the underlying litigation that resulted in the Judgment against Mr. Scrushy.

III. Conclusion

For the foregoing reasons, the Discovery Motion and Motion to Disqualify are **DENIED**.

DONE and ORDERED this 9th day of December, 2025.



ELISABETH A. FRENCH
CIRCUIT JUDGE