

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FLORENCE HALL,)
)
 Plaintiff,)
)
 vs.) No. 04-2299 Ml/V
)
 JOHN W. SNOW, SECRETARY,)
 UNITED STATES DEPARTMENT)
 OF THE TREASURY,)
)
 Defendants.)

REPORT AND RECOMMENDATION ON PLAINTIFF'S MOTION RAISING QUESTIONS
OF AN ALLEGED CONFLICT OF INTEREST

Before the court is the September 23, 2004 motion of the plaintiff, Florence Hall, seeking guidance as to whether the representation of the defendant, the United States Treasury Department, in this case by the United States Attorney's Office presents a conflict of interest. The court will treat Hall's request as a motion to disqualify defense counsel for violation of ethical rules. Hall's motion was referred to the United States Magistrate Judge for a report and recommendation. For the reasons that follow, it is recommended that the motion be denied.

This case arises out of Hall's claim against the Internal Revenue Service for disability discrimination pursuant to Title VII. In this motion, Hall questions whether Assistant United States Attorney (AUSA) Sidney Alexander's representation of the

United States Department of the Treasury in this matter presents a conflict of interest because she was represented by the United States Attorney's Office in a previous lawsuit against a private business entity, *United States of America v. Bette Bus Shuttle, et. al*, Doc. No. 03-CV-2100, for violations of the Americans with Disabilities Act. In her motion, Hall fails to cite any statutes or case law in support of her position. Nor does she indicate which ethical rules concerning conflicts of interest she believes have been violated.

The Treasury Department has responded to Hall's motion with several reasons as to why a conflict of interest does not exist. First, the Treasury Department argues that there is no conflict of interest present in this matter because the United States Attorney's Office did not represent Hall as its client in the previous ADA lawsuit against Bette Bus Shuttle. More specifically, the Treasury Department contends that no attorney-client relationship was established in the ADA lawsuit. Under the ADA provisions concerning discrimination by a public facility, "[a]ny individual who believes that he or she or a specific class of persons has been subjected to discrimination prohibited by the Act . . . may request the Department [of Justice] to institute an investigation." 28 C.F.R. § 36.502(b). Following an investigation, the Attorney General has sole discretion on the decision to

commence an action in the federal court. 28 C.F.R. § 36.503.

This procedure was followed in the *Bette Bus Shuttle* case in which Hall claims to have been represented by the United States Attorney's Office. After the aggrieved parties, including Hall, requested that the United States investigate a possible ADA violation, the United States, represented by AUSA Gary A. Vanasek and Harriet M. Halmon, filed suit. Hall was not a named party in the *Bette Bus Shuttle* litigation. She did not have control over the decisions made by the government, including whether or not to commence the action or settle the case.

Because no attorney-client relationship existed between Hall and the United States Attorney's Office, the Treasury Department argues that Tenn. Sup. Ct. Rule 8, RPC 1.7 has not been violated.

Tenn. Sup. Ct. Rule 8, RPC 1.7 provides:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents in writing after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents in writing after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common

representation and the advantages and risks involved.

Here, the Department of the Treasury argues that no attorney-client relationship existed between the parties in the previous lawsuit because the action was controlled solely by the government and Hall had no decision-making power; thus, AUSA Sidney Alexander's representation of the Department of the Treasury in this matter is not directly adverse to Hall's involvement in the ADA case.

RPC 1.7(a) is not invoked in the present matter because AUSA Alexander, the attorney representing the Treasury Department in this case, was not involved at all in the former matter. Even if an attorney-client relationship did exist in the previous case between Hall and AUSAs Halmon and Vanasek, Hall was not AUSA Alexander's client.

Likewise, RPC 1.7(b) is not invoked in this case either. AUSA Alexander has no responsibilities to Hall in regard to her ADA claim; therefore, AUSA Alexander's representation of the Department of the Treasury is not materially limited, nor is the United States Attorney's Office involvement in the continuing ADA claim materially limited.

The Department of the Treasury also cites to Tenn. Sup. Ct. Rule 8, RPC 1.10 which sets forth the rules for imputed or vicarious disqualification of all the lawyers associated with a firm when one of the lawyers in the firm has a conflict. This rule

does not require disqualification of the United States Attorney's Office in this case either, because the United States Attorney's Office does not meet the definition of a "firm" as defined in the comments to the rule.

Rule 1.10 states that "[e]xcept as permitted by paragraph (c), while lawyers are associated in a firm, none of them shall knowingly represent a client when one of them practicing alone would be prohibited from doing so." "Firm" is defined in the comments as lawyers in a private firm, lawyers in a legal department of a corporation or other organization or in a legal services organization. The United States Attorney's Office does not fit into one of these categories; thus, Rule 1.10 is not applicable to the present situation. Furthermore, the United States Attorney's Office has cured any possible conflict of interest by setting up screening procedures in order to prevent the flow of information concerning Hall between AUSA Alexander and AUSAs Halmon and Vanasek.

The court sees no other reason why AUSA Alexander should be disqualified in this case. Alexander's current representation of the Department of the Treasury does not violate any Rules of Professional Conduct and no facts have been offered which would suggest any type of impropriety on the part of the United States Attorney's Office. Accordingly, it is recommended that Hall's

motion to disqualify be denied.

Respectfully submitted this 22nd day of December, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE