

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Miguel A. Ramirez Diaz, et al. v. Edward R. Gomez, et al.

2026 NY Slip Op 01487 · No. 2024-11729 · Decided March 18, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order denying defendants’ motion to disqualify plaintiffs’ counsel in a personal-injury action arising from a rear-end automobile accident. The court held that counsel’s joint representation of the plaintiff driver and passenger plaintiffs created a conflict after defendants asserted a counterclaim against the driver, and that the record did not establish informed written consent to the potential conflict.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Paul Wooten, J.; Deborah A. Dowling, J.; Carl J. Landicino, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 18, 2026
DOCKET	2024-11729
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion to disqualify plaintiffs' counsel based on a conflict of interest.
STANDARD OF REVIEW	A trial court's determination on attorney disqualification is reviewed for abuse of discretion; the moving party bears the burden of demonstrating that disqualification is warranted.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Edward R. Gomez, Canada Dry Bottling Company of New York, L.P. v. Miguel A. Ramirez Diaz, Carlos E. Acosta Abreu, Rigoberto Jerez Vicioso, Yoselin Veloz Garcia

TOPICS

civil procedure

appellate procedure

standard of review

personal injury

PRACTICE AREAS

civil procedure

legal ethics

personal injury

QUESTIONS PRESENTED

1. Whether Gambone Law Group, PLLC, had to be disqualified from representing the plaintiff driver and passenger plaintiffs because the defendants' counterclaim against the plaintiff driver created a conflict of interest.
2. Whether the plaintiffs waived the potential conflict under Rule 1.7(b) of the New York Rules of Professional Conduct.

HOLDINGS

1. The defendants demonstrated that Gambone's representation of the plaintiff driver and the passenger plaintiffs created a conflict of interest because the plaintiff driver's pecuniary interests conflicted with those of the passengers once the defendants asserted a counterclaim against him.
2. Under the circumstances, Gambone should be disqualified from continuing to represent any of the plaintiffs in the action.
3. The record was inadequate to establish that the plaintiffs waived the potential conflict under Rule 1.7(b) because counsel failed to submit written confirmation of informed consent.

KEY QUOTATIONS

*“A party's entitlement to be represented by counsel of his or her choice is a valued right which should not be abridged absent a clear showing that disqualification is warranted” (*1)*

*“the pecuniary interests of the plaintiff driver conflicted with those of the passengers once the defendants asserted the counterclaim against the plaintiff driver” (*2)*

FACTUAL BACKGROUND

On January 28, 2021, Miguel A. Ramirez Diaz was allegedly stopped at a red traffic signal when his vehicle was struck from behind by a vehicle operated by Edward R. Gomez and owned by Canada Dry Bottling Company of New York, L.P. Diaz and three passengers jointly sued the defendants for personal injuries and were represented by Gambone Law Group, PLLC. The defendants asserted a counterclaim against Diaz for common-law indemnification or contribution, alleging that the plaintiffs' injuries resulted in whole or substantial part from Diaz's negligence.

PROCEDURAL HISTORY

Plaintiffs commenced a personal-injury action against the defendant driver and vehicle owner. The defendants asserted a counterclaim against the plaintiff driver for common-law indemnification or contribution and later moved to disqualify the law firm jointly representing the plaintiff driver and passengers. The Supreme Court,

Queens County, denied the motion, finding no conflict because the plaintiff driver was not at fault. The Appellate Division reversed and granted the motion.

DISPOSITION

reversed

CASES CITED

- Buckham v 322 Equity, LLC, 229 AD3d 669, 672
- Alnoukari v Nokari, 218 AD3d 527, 528
- Greenberg v Grace Plaza Nursing & Rehabilitation Ctr., 174 AD3d 510, 510
- Matter of Blauman-Spindler v Blauman, 184 AD3d 636, 637
- Shelby v Blakes, 129 AD3d 823, 825
- Alcantara v Mendez, 303 AD2d 337, 338
- Pessoni v Rabkin, 220 AD2d 732
- Sidor v Zuhoski, 261 AD2d 529, 530

OPINION

PER CURIAM.

Diaz v Gomez (2026 NY Slip Op 01487) Diaz v Gomez 2026 NY Slip Op 01487 Decided on March 18, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on March 18, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

PAUL WOOTEN DEBORAH A. DOWLING CARL J. LANDICINO, JJ. 2024-11729 (Index No. 704839/21) [*1]Miguel A. Ramirez Diaz, et al., respondents, v Edward R. Gomez, et al., appellants. The Law Offices of Christopher P. Di Giulio, P.C., New York, NY, for appellants. Gambone Law Group, PLLC (Mitchell Dranow, Sea Cliff, NY, of counsel), for respondents Carlos E. Acosta Abreu, Rigoberto Jerez Vicioso, and Yoselin Veloz Garcia.

DECISION & ORDER In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Denise N. Johnson, J.), dated September 12, 2024. The order denied the defendants' motion to disqualify Gambone Law Group, PLLC, as counsel for the plaintiffs. ORDERED that the order is reversed, on the law and in the exercise of discretion, with costs, and the defendants' motion to disqualify Gambone Law Group, PLLC, as counsel for the plaintiffs is granted.

On January 28, 2021, the plaintiff Miguel A. Ramirez Diaz (hereinafter the plaintiff driver) allegedly was stopped at a red traffic signal when his vehicle was struck in the rear by a vehicle operated by the defendant Edward R. Gomez (hereinafter the defendant driver) and owned by the defendant Canada Dry Bottling Company of New York, L.P. (hereinafter Canada Dry).

In March 2021, the plaintiff driver, along with three passengers who were in his vehicle at the time of the subject accident, the plaintiffs Carlos E. Acosta Abreu, Rigoberto Jerez Vicioso, and Yoselin Veloz Garcia (hereinafter collectively the passengers), commenced this action to recover damages for personal injuries against the defendant driver and Canada Dry.

The plaintiff driver and the passengers were jointly represented in this action by nonparty Gambone Law Group, PLLC (hereinafter Gambone). In an answer, the defendants asserted a counterclaim against the plaintiff driver for common-law indemnification or contribution, alleging that any injuries sustained by the plaintiffs from the subject accident resulted, in whole or in substantial part, from the negligence of the plaintiff driver.

In May 2024, the defendants moved to disqualify Gambone as counsel for the plaintiffs, contending, *inter alia*, that it was a conflict of interest for Gambone to represent both the plaintiff driver and the passengers.

In an order dated September 12, 2024, the Supreme Court denied the defendants' motion, determining, among other things, that there was no conflict of interest because the plaintiff driver was not at fault in the happening of the accident.

The defendants appeal. "'The disqualification of an attorney is a matter that rests within the sound discretion of the [trial] court'" (*Buckham v 322 Equity, LLC*, 229 AD3d 669, 672, quoting *Alnoukari v Nokari*, 218 AD3d 527, 528). "'A party's entitlement to be represented by counsel of his or her choice is a valued right which should not be abridged absent a clear showing that disqualification is warranted'" (*id.*, quoting *Greenberg v Grace Plaza Nursing & Rehabilitation Ctr.*, 174 AD3d 510, 510).

"On [*2]a motion to disqualify an attorney, '[t]he moving party bears the burden of showing that disqualification is warranted'" (*id.*, quoting *Matter of Blauman-Spindler v Blauman*, 184 AD3d 636, 637). Contrary to the passengers' contention, the defendants demonstrated that Gambone's representation of both the plaintiff driver and the passengers created a conflict of interest (see *Shelby v Blakes*, 129 AD3d 823, 825; *Alcantara v Mendez*, 303 AD2d 337, 338; *Pessoni v Rabkin*, 220 AD2d 732).

Although the passengers contend that there was no conflict of interest because the plaintiff driver, whose vehicle allegedly was struck in the rear while he was stopped at a red traffic signal, was not at fault in the happening of the accident, the pecuniary interests of the plaintiff driver conflicted

with those of the passengers once the defendants asserted the counterclaim against the plaintiff driver (see *Shelby v Blakes*, 129 AD3d at 825).

Moreover, under the circumstances of this case, the defendants sufficiently demonstrated that Gambone should be disqualified from continuing to represent any plaintiffs in this action (see *Alcantara v Mendez*, 303 AD2d at 338; *Sidor v Zuhoski*, 261 AD2d 529, 530). Furthermore, contrary to the Supreme Court's determination, the record is inadequate to determine that the plaintiffs waived the potential conflict pursuant to Rule 1.7(b) of the New York Rules of Professional Conduct (22 NYCRR 1200.0), as their counsel failed to submit written confirmation of informed consent to the potential conflict (see *Shelby v Blakes*, 129 AD3d at 825).

The parties' remaining contentions either are not properly before this Court, need not be reached in light of our determination, or are without merit. Accordingly, the Supreme Court improvidently exercised its discretion in denying the defendants' motion to disqualify Gambone as counsel for the plaintiffs. CHAMBERS, J.P., WOOTEN, DOWLING and LANDICINO, JJ., concur.

ENTER: Darrell M. Joseph Clerk of the Court