

SUPREME COURT OF OKLAHOMA

The Board of County Commissioners of Harmon County v.
Association of County Commissioners of Oklahoma Self-Insured
Group

Bd. of Cnty. Comm'rs, 2021 OK 15 (Okla. 2021) · No. 118613 · Decided April 6, 2021

SUMMARY

The Oklahoma Supreme Court reviewed the denial of a motion to disqualify counsel in litigation involving an association’s liability protection agreement and alleged professional negligence. The court held that although the prior and current matters were substantially similar, the evidence did not establish that the attorney possessed material confidential information warranting disqualification, and it affirmed the trial court.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Kauger, J.; Kane, V.C.J.; Winchester, J.; Edmondson, J.; Combs, J.; Gurich, J.; Rowe, J.
JURISDICTION	Oklahoma
DECIDED	April 6, 2021
DOCKET	118613
DISPOSITION	affirmed
PROCEDURAL POSTURE	ACCO-SIG appealed from the Oklahoma County District Court's denial of its motion to disqualify the Board's attorney and the attorney's law firm based on alleged conflicts arising from the attorney's prior representation of ACCO-SIG. The Oklahoma Supreme Court retained the appeal.
STANDARD OF REVIEW	The trial court's factual findings are reviewed for clear error, while its application of ethical standards is examined de novo. A motion to disqualify counsel should be granted only when real harm to the integrity of the judicial process is likely to result, which the moving party must establish by a preponderance of the evidence.
PRECEDENTIAL VALUE	published

PARTIES

Association of County Commissioners of Oklahoma Self-Insured Group (ACCO-SIG) v. The Board of County Commissioners of Harmon County

TOPICS

civil procedure appellate procedure standard of review breach of contract professional negligence

PRACTICE AREAS

legal ethics civil procedure appellate procedure professional negligence contracts

QUESTIONS PRESENTED

1. Whether the denial of ACCO-SIG's motion to disqualify Erin Rooney and his law firm was immediately appealable.
2. Whether Rooney's prior representation of ACCO-SIG involved the same or a substantially related matter and materially adverse interests under Oklahoma Rules of Professional Conduct Rules 1.9 and 1.10.
3. Whether Rooney obtained material confidential information from ACCO-SIG such that his continued representation of the Board would likely cause real harm to the integrity of the judicial process.
4. Whether the alleged conflict required disqualification of Rooney's entire law firm.

HOLDINGS

1. An order denying a motion to disqualify counsel is immediately appealable as a final order because it affects a substantial right.
2. Counsel should be disqualified only when real harm to the integrity of the judicial process is likely to result if counsel is not disqualified; the moving party bears the burden of proving that likelihood by a preponderance of the evidence.
3. Although Rooney's prior and current matters were sufficiently similar for purposes of the disqualification inquiry, disqualification was not required because the evidence showed that he possessed only general information about ACCO-SIG's policies and no material confidential information relating to the prior representation.
4. Because Rooney was not required to be disqualified, his law firm was not required to be disqualified on the same basis.

KEY QUOTATIONS

"the proper test for granting a motion to disqualify counsel is whether real harm to the integrity of the judicial process is likely to result if counsel is not disqualified." (¶ 13)

"More than appearance is required to tell a party that their chosen counsel cannot be hired because of prior representation. Propinquity does not equal knowledge." (¶ 25)

FACTUAL BACKGROUND

The Board had a liability protection agreement with ACCO-SIG covering claims against the Harmon County Sheriff. After an underlying federal sexual-assault action resulted in a \$6.5 million judgment and attorney-fee award, ACCO-SIG paid \$2 million in benefits under the agreement. The Board then sued ACCO-SIG and the lawyers involved in the underlying defense and settlement negotiations. Erin Rooney, who represented the Board in the later action, had previously participated in representing ACCO-SIG in a similar matter involving inmate lawsuits and alleged failures to defend, settle, and communicate with policyholders. The trial court found that Rooney had not obtained material confidential information in the prior representation.

PROCEDURAL HISTORY

The Board sued ACCO-SIG and related lawyers in Oklahoma County District Court for breach of contract and professional negligence arising from the defense and settlement of an underlying federal inmate-assault action, later adding a fiduciary-duty claim. ACCO-SIG moved to disqualify Erin Rooney and his law firm. After evidentiary hearings, the trial court denied the motion, and ACCO-SIG appealed. The Supreme Court retained the appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- Arkansas Valley State Bank v. Phillips, 2007 OK 78, 171 P.3d 899
- Miami Business Services, LLC v. Davis, 2013 OK 20, 299 P.3d 477
- Hayes v. Central State Orthopedic Specialists, Inc., 2002 OK 30, 51 P.3d 565
- Towne v. Hubbard, 1999 OK 10, 977 P.2d 1084
- Piette v. Bradley & Leseberg, 1996 OK 124, 930 P.2d 183
- McQueen, Rains & Tresch, LLP v. Citgo Petroleum Corp., 2008 OK 66, 195 P.3d 35
- Peyton v. McCaslin, 1966 OK 4, 417 P.2d 316
- Midland Valley Railroad Co. v. Barnes, 1933 OK 26, 18 P.2d 1089
- State ex rel. Howard v. Oklahoma Corporation Commission, 1980 OK 96, 614 P.2d 45
- Board of County Commissioners v. Association of County Commissioners of Oklahoma Self-Insured Group, 2014 OK 87, 339 P.3d 866