



United States Tax Court

Washington, DC 20217

BEVELED EDGE INSURANCE COMPANY,
INC., ET AL.,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket Nos. 19821-16, 19822-16, 19823-16,
19824-16, 19825-16, 20157-19, 20158-19,
20159-19, 20160-19, 11931-20, 11932-20,
11933-20, 11934-20, 11935-20.

ORDER

This consolidated case for the redeterminations of deficiencies is before the Court on: (1) respondent's Motion to Compel Production of Documents, filed December 21, 2022; (2) petitioner's Motion to Quash or Modify Subpoena, filed October 30, 2023, as amended on November 1, 2023; (3) a third-party's Motion to Quash or Modify Subpoena, filed October 31, 2023; (4) respondent's Motion to Disqualify Counsel, filed January 22, 2024; and (5) respondent's Motion for Protective Order Pursuant to Rule 103, filed May 17, 2024.

Objections and responses to the various motions have been filed and are taken into account. Some of the motions were heard in Atlanta, Georgia, on September 12, 2023; some were heard in Atlanta, Georgia, on February 7, 2024, and some were heard in Atlanta, Georgia, on June 4, 2024. Counsel for the parties (including counsel for the third-party) appeared at the hearings and presented argument consistent with the positions taken in documents filed in connection with the above-referenced motions. All of the motions, in one manner or another, relate to the circumstances surrounding petitioners' representation.

Because the resolution of respondent's Motion to Disqualify Counsel informs the resolution of the other pending motions, we focus our attention on that motion, which requires only little discussion by way of background.

Brandon Keim, formerly employed by the Internal Revenue Service Office of Chief Counsel, previously entered his appearance on petitioners' behalf in this matter. Because of a conflict of interest attributable to his prior Chief Counsel employment, and consistent with an opinion letter dated July 1, 2022, issued by the Ethics and General Government Law Branch, of the Associate Chief Counsel General Legal Services of the Office of Chief Counsel of the Internal Revenue Service (Exhibit E to respondent's motion to disqualify), Mr. Keim's voluntary withdrawal from the case was given effect

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by Order served July 11, 2022. Respondent now seeks to impute Mr. Keim's conflict of interest to any and all other of petitioners' attorneys in this case that might have communicated, consulted, or shared information with Mr. Keim either before or after his appearance in this case. *See* Rule 1.11(b), Model Rules of Professional Conduct (Model Rules) applicable to this Court by virtue of Rule 201, Tax Court Rules of Practice and Procedure.

According to respondent, petitioners' other attorneys of record have been "tainted" because Mr. Keim presumptively shared with them confidential information with respect to this matter acquired during his employment with Chief Counsel's Office. The affected attorneys are from the law firm of Moore, Ingram, Johnson and Steele, LLP, and the law firm of Frazer, Ryan, Goldberg & Arnold, LLP (FRGA).

As noted in the Comments to the Model Rule relied upon by respondent, the Model Rule requires a "balancing of interests" with respect to imputing a conflict of interest between attorneys. That being so, we are reluctant to resolve the dispute between the parties on the basis of any presumptions or inferences. This is particularly true where the relief sought by respondent is characterized as "drastic". *See Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715, 721 (7th Cir. 1982). Furthermore, and separate and apart from presumptions or inferences, any of petitioners' present counsel of record who received confidential information from Mr. Keim, knowing that the information is confidential, are already obligated to voluntarily withdraw and subject to disciplinary proceedings for the failure to do so if it becomes apparent at any stage of the proceedings that Brandon Keim has shared such information with any of them.

We understand respondent's concerns and perceived prejudices under the circumstances but note that respondent's position with respect to the substantive issues involved in this matter are well-known. To the extent that Mr. Keim possesses confidential information regarding the substantive issues not otherwise public, that information more likely than not manifests itself in the 204 "informal" discovery requests that he propounded on respondent's counsel before his appearance in the matter was noted, or his involvement in the matter was known to respondent. *See* Exhibit A to respondent's motion to disqualify. Rather than granting the more drastic relief sought in respondent's motion by disqualifying petitioners' counsel of choice, relieving respondent from the obligation to respond to those questions, or to any formal discovery request that touches upon the topics of any of those questions is sufficient relief under the circumstances.

To reflect the foregoing, as well as observations made by the Court during the above-referenced hearings, it is

ORDERED that respondent's Motion to Disqualify Counsel, filed

January 22, 2024, is denied. It is further

ORDERED that respondent's Motion to Compel Production of Documents, filed December 21, 2022, is denied; It is further

ORDERED that petitioner's Motion to Quash or Modify subpoena, filed October 30, 2023, as amended on November 1, 2023; and FRGA's Motion to Quash or Modify Subpoena, filed October 31, 2023, are granted, and neither petitioner nor FRGA need respond to the subpoenas addressed in the motions. It is further

ORDERED that in addition to the foregoing, for the reasons set forth in respondent's Motion for Protective Order Pursuant to Rule 103, filed May 17, 2024, that motion is granted, and respondent need not respond to any of the discovery addressed in the motion, and need not respond to above-referenced 204 "informal" questions, or any other informal or formal discovery that addresses any of the topics alluded to in those 204 questions.

(Signed) Lewis R. Carluzzo
Chief Special Trial Judge