

DEC 16 2009

SALT LAKE COUNTY

By _____ Deputy Clerk

Proposed order prepared by:

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IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

**AMENDED ORDER OF
DISQUALIFICATION OF JAMES J.
WARNER AND SARA J. PFROMMER**

Case No. 080922273

Judge: Denise P. Lindberg

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

THIS CAUSE came to be heard before this Court on questions raised by the Receiver regarding potential conflicts of interest arising from James J. Warner and Sara J. Pfrommer continuing to represent defendant Roger E. Taylor in this consolidated action after having

previously represented two of the entities now in receivership. The suggestion of possible conflict was raised by the Receiver in his Third Report to the Court, filed July 10, 2009, and a separate Receiver's Notice and Report of Potential Conflicts of Interest, also filed July 10, 2009.

At a status hearing on July 20, 2009, the Court requested additional briefing from the Parties regarding the Receiver's suggestion of conflict. On August 13, 2009, James Warner filed a response on behalf of defendant Taylor. Also on August 13, 2009, plaintiff Dr. Barnes filed a memorandum in support of disqualification. On August 20, 2009, the Receiver filed his reply.

The Court heard oral argument on the issue of disqualification at a status hearing on October 1, 2009. Participating in the hearing were Wayne Klein, the Receiver; James Gilson, counsel for plaintiff Dr. Barnes; and James J. Warner, counsel for defendant Taylor (Mr. Warner participated in the hearing by telephone).

The Court having read the briefing submitted in response to the Receiver's notice and report of potential conflicts, having read the briefing submitted by the parties in connection with the December 5, 2008 motion by Dr. Barnes to disqualify counsel for Taylor, having heard oral argument of counsel, and for the reasons set forth on the record at the October 1, 2009 hearing, entered an Order of Disqualification on October 16, 2009. By a submission dated October 16, 2009, Warner objected to the language proposed by the Receiver and requested changes to three portions of the proposed order. On October 28, 2009, the Receiver filed a reply, indicating acquiescence to two of the changes sought by Warner.

At a status hearing held December 2, 2009, the Court decided to issue this amended order of disqualification. Based on the history of proceedings on this matter and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that:

1. Taylor's request for an evidentiary hearing is denied. The Court finds there is no need for an evidentiary hearing as disqualification of counsel is not a dispositive motion and because this case is at too early a stage to focus on factual rulings.
2. As a result of information in the Receiver's reports and in the briefing submitted in the case, the Receiver has made a prima facie showing, based on competent evidence, to support disqualification. The Court notes that no evidence was submitted by Taylor to refute submissions by the Receiver, only argument.
3. The interests of Taylor and his counsel are materially adverse to the interests of the entities now in receivership (which have been placed under the control of the Receiver). These adverse interests, of the type contemplated by Rule 1.9 of the Utah Rules of Professional Conduct, exist due to Taylor's counsel having formerly represented the entities now in receivership and due to the possibility the Receiver will be asserting financial claims against Taylor and against counsel for Taylor. These conflicts of interest have not been waived by the Receiver.
4. Because Taylor was warned of the possibility of conflicts of interest at a hearing on March 18, 2009, he has been bearing the risk of the disqualification of his counsel.
5. James J. Warner and Sara J. Pfrommer, along with all others in their firms, are immediately disqualified from representing Taylor or any other party in this action.
6. Taylor shall obtain new counsel who is independent of any prior involvement in this case and independent of any other counsel connected with this case.

7. Warner and Pfrommer are permitted to deliver to Taylor, or to new counsel selected by Taylor, documents and other records (including computers and computer drives) (hereinafter "records") in their possession and control which they have received from Taylor and which relate only to Taylor individually. This may include the types of records that Taylor would be expected to possess absent his or his counsel's previous roles with the Receivership Entities.
8. Warner and Pfrommer shall deliver to the Receiver all records in their possession and control that are not of the type Taylor reasonably would be expected to have absent his or his counsel's role with the Receivership Entities. These include records relating to a) the corporate entities that they have represented in the past, b) any corporate entities related to this action for which Taylor has acted as manager in the past, but for which he is not currently manager, c) actions undertaken by Warner or Pfrommer while acting in the capacity of a self-appointed quasi-receiver or conservator of corporate entities, such as communications with investors and records received from investors, except when those communications clearly communicated that Warner was personally representing Taylor and there was no implication that Warner was acting on behalf of the corporate entities or the interests of the investors themselves, and d) legal services provided by Warner or Pfrommer on behalf of the corporate entities (including billing records related to representation of the corporate entities) or legal services provided for any other person or entity where the payment for those legal services was provided by one of the Receivership Entities. Except for instances in which the records clearly relate to their personal representation of Taylor in his individual capacity, records shall be delivered to

the Receiver. No copies of these records may be retained by Warner or Pfrommer except for copies of the law firm's internally-generated billing records.


9. Warner and Pfrommer are prohibited from delivering to Taylor, or other counsel selected by Taylor, records containing any information that has been learned as a result of Warner's and Pfrommer's prior representation of the Receivership Entities, as a result of Warner and Pfrommer's prior actions as quasi-receivers for these entities, or as a result of suggestions or implications to investors that the attorneys' actions or inquiries were part of an effort to assist the investors.
10. Taylor shall promptly deliver to the Receiver (or to Warner for delivery to the Receiver) all records in Taylor's possession or control belonging to any of the Receivership Entities, including all records that Taylor would not have but for his role with the Receivership Entities. Taylor shall not retain any copies of those corporate records.
11. To the extent Warner, Pfrommer, Taylor, or substitute counsel for Taylor have questions or uncertainty about whether particular records are required to be delivered to the Receiver to be in compliance with the intent of this Order, they shall a) identify and describe those records in writing to the Receiver, and b) seek agreement with the Receiver as to whether those records are required to be withheld from Taylor and his substitute counsel or may be delivered to Taylor. If these parties cannot reach agreement, the dispute shall be brought to the Court for resolution.
12. Warner and Pfrommer are prohibited from discussing this case with Taylor or new counsel for Taylor, including any information they learned as a result of their a) representation of Taylor, b) representation of the corporate entities, or c) communications

with investors in this action. Warner and Pfrommer are further prohibited from participating in any way in any future aspect of this litigation other than relating to the contents of this Order.

13. Taylor shall cause a copy of this Order to be delivered to new counsel he selects to represent him in this action. Taylor's substitute counsel shall avoid using or sharing with Taylor any information he or she receives contained in records from Warner or Pfrommer that reasonably would be perceived as being derived from Warner or Pfrommer's prior representation of the corporate entities, their prior actions as quasi-receivers, or their communications with investors under circumstances in which the investors reasonably might have perceived the attorneys to be acting on their behalf.
14. This Order is effective as of October 1, 2009, the day it was orally announced by the Court.
15. Taylor's oral request at the hearing for a stay of this Order, pending appeal, is denied.

DATED this 15 day of December, 2009.

BY THE COURT:



Denise P. Lindberg
Third District Court Judge