

CA Self-Insurers' Security Fund v. Superior Court (Orange)

4DCA/3

Petition granted where court must look to whether brief tenure of attorney at plaintiff firm merits disqualification where he previously represented defendants.

FACTS/PROCEDURE

California Self-Insurers' Security Fund sued Activcare Health Care Group and Mountainview Retirement Ltd. The fund was represented by Nixon Peabody LLP, a law firm that employed Andrew Selesnick, an attorney, for approximately five weeks. Before working at Nixon Peabody, Selesnick represented the defendants. While at Nixon Peabody, however, Selesnick worked at a "different office at the firm from the attorneys who were actively involved" with the case. Further, Nixon Peabody attempted to isolate Selesnick from the case, there was no evidence that Selesnick shared any confidential information with other Nixon Peabody attorneys, and Selesnick ultimately left the firm. Nonetheless, the defendant successfully moved to disqualify Nixon Peabody. The lower court found that the disqualification was mandatory because Selesnick switched sides. The Fund and Nixon Peabody petitioned for a writ of mandate.

HOLDING/DISCUSSION

Petition Granted. Under *Kirk v. First American Title Insurance*, if evidence establishes that no one other than an attorney that departed from a firm "had any dealings with the client or obtained confidential information," vicarious disqualification is unnecessary.

Here, the lower court concluded that the disqualification of Nixon Peabody was mandatory because Selesnick "switched sides." However, the case facts here were "unlike any of the published cases" this court found. Here, Selesnick was employed by Nixon Peabody for a short period of time, "he worked at a different office at the firm from the attorneys who were actively involved in the instant matter," the firm attempted to isolate Selesnick from the matter, and there was no evidence that Selesnick shared confidential information about the case with other attorneys at the firm. Hence, this court found that the lower court should "engage in factual analysis discussed in *Kirk*," before using its discretion to determine whether Nixon Peabody's disqualification is appropriate. Thus, this court vacated and granted Nixon Peabody's petition.