REL: October 30, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1180863

Ex parte The Terminix International Co., LP, Terminix International, Inc., and Matthew Cunningham

PETITION FOR WRIT OF MANDAMUS

(In re: Bay Forest Condominium Owners Association, Inc., et al.

v.

The Terminix International Co., LP, et al.)

(Baldwin Circuit Court, CV-18-900579)

MITCHELL, Justice.

Birmingham law firm Campbell Law, P.C., represents consumers in legal proceedings against pest-control companies, including The Terminix International Co., LP, and Terminix International, Inc. (hereinafter referred to collectively as "Terminix"). After Campbell Law initiated arbitration proceedings against Terminix and Matthew Cunningham, a Terminix branch manager, on behalf of owners in the Bay Forest condominium complex ("Bay Forest") in Daphne, Terminix and Cunningham asked the Baldwin Circuit Court to disqualify Campbell Law from the proceedings because it had retained a former manager of Terminix's Baldwin County office as an investigator and consultant. The trial court denied the motion to disqualify. Terminix and Cunningham ("the petitioners") now petition this Court for a writ of mandamus, arguing that the Alabama Rules of Professional Conduct require Campbell Law's disqualification. We deny the petition.

Facts and Procedural History

In December 1996, the Bay Forest Condominium Owners Association, Inc. ("the Association"), and Terminix entered into contracts obligating Terminix to provide termite-protection services to the four buildings in Bay Forest. The

Association renewed the contracts multiple times in the following years, during which Terminix periodically inspected and treated the Bay Forest buildings.

In May 2016, suspected termite damage was discovered in one of the buildings. After the Association notified Terminix, a Terminix representative conducted an inspection and confirmed that there was termite damage. The Association and its members (hereinafter referred to collectively as "BFCOA") state that Terminix initially agreed to treat and repair the damaged building but later refused to respond to telephone calls and never returned to perform the needed treatment and repairs.

Steve Barnett was the manager of Terminix's Baldwin County office when the termite damage was discovered at Bay Forest. The extent of Barnett's personal involvement with Bay Forest is not clear from the materials before us, but, in January 2017, while the Association was apparently trying to get Terminix to address the termite damage, Barnett's employment was terminated.[1] Shortly thereafter, Barnett

[1]Terminix says that Barnett was fired because he was not properly communicating with customers; Barnett says that he was fired because he was honest with customers, and, as a result, the Baldwin County office was paying more damage

approached Campbell Law, which he knew from its involvement representing parties in previous disputes with Terminix, for legal advice related to the termination of his employment. Barnett ended up not retaining Campbell Law to pursue any employment-related claims, but, in February 2017, the firm hired him as an independent contractor to provide investigative and consulting services.

As part of Barnett's duties, he began attending property inspections and providing testimony in arbitration and other proceedings involving pest-control companies, including Terminix. In fact, in the same month he was hired by Campbell Law, Barnett submitted affidavits supporting a discovery motion that was filed in an arbitration proceeding involving Terminix and he attended an inspection at a property that was the subject of another dispute with Terminix. That prompted Terminix's national counsel in Chicago to telephone Campbell Law to question the ethics of the firm's use of Barnett. Campbell Law's Thomas Campbell states that he responded by explaining that Barnett had been instructed not to divulge privileged or confidential information to anyone at Campbell

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claims than it had before he became the manager.

Law. According to Campbell, the attorney representing Terminix replied by saying that his law firm would investigate the ethics of Barnett's employment further. But Campbell Law says no further communication was ever received from Terminix or its counsel concerning Barnett. Thus, Campbell Law continued to employ Barnett and use him as a witness in proceedings against Terminix.

At some point, BFCOA retained Campbell Law to represent it in its dispute with Terminix. BFCOA then petitioned the Baldwin Circuit Court to appoint an arbitrator to hear their dispute.[2] After the trial court granted that petition and appointed an arbitrator, BFCOA initiated arbitration by filing a statement of claims against Terminix and Cunningham, Barnett's successor as the manager of Terminix's Baldwin County office.[3] About three months later, the petitioners

[2]Some of the contracts executed by the Association and Terminix contained an arbitration provision, but the arbitral forum named in those contracts has since ceased to offer consumer-arbitration services. Under § 5 of the Federal Arbitration Act, 9 U.S.C. § 1 et seq., a trial court may appoint a replacement arbitrator if the arbitrator designated in the arbitration agreement is unavailable. See, e.g., Robertson v. Mount Royal Towers, 134 So. 3d 862, 869 (Ala. 2013).

[3]Campbell Law had named Barnett as a defendant in other proceedings involving Terminix's Baldwin County office before

moved the trial court to disqualify Campbell Law from representing BFCOA in the Bay Forest dispute because, they alleged, Campbell Law's employment of Barnett violated the Alabama Rules of Professional Conduct. Campbell Law denied the existence of an ethical problem and argued that, in any event, the petitioners had waived their right to object because they had known about Barnett's hiring since shortly after it occurred but failed to formally object in any other proceeding in which Campbell Law was representing a party against Terminix. Following a hearing, the trial court denied the motion to disqualify without stating its rationale. The petitioners sought mandamus relief.

Standard of Review

> "A writ of mandamus is an extraordinary remedy, and is appropriate when the petitioner can show (1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court. Ex parte Inverness Constr. Co., 775 So. 2d 153, 156 (Ala. 2000)."

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his employment with Terminix was terminated. It appears Barnett has been dismissed from those proceedings since leaving Terminix and being hired by Campbell Law.

Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001). A petitioner bears the burden of proving all four of these elements before a writ of mandamus will issue. Ex parte State Farm Fire & Cas. Co., [Ms. 1180451, April 24, 2020] ___ So. 3d ___ (Ala. 2020).

In Ex parte Taylor Coal Co., 401 So. 2d 1, 3 (Ala. 1981), this Court recognized that rulings on a motion to disqualify counsel are within the discretion of the trial court. While noting that mandamus review is typically not available to review a trial court's discretionary decisions, the Taylor Coal Court concluded that such review was appropriate in that case because of the "serious charges" leveled against the attorneys involved and the potential for the underlying proceedings to be tainted if the alleged ethical issues were not resolved before trial. Id. This Court later confirmed that a trial court's ruling on a motion to disqualify can be reviewed only by mandamus. See Ex parte Central States Health & Life Co. of Omaha, 594 So. 2d 80, 81 (Ala. 1992) ("To avoid future problems with incorrect filings and to provide specific instructions to the Bar as to the correct method for seeking review of a lower court's ruling on a motion to disqualify an

attorney, this Court holds that review of such a ruling is by a petition for writ of mandamus only.").

Analysis

It is well established that a trial court has the authority to disqualify counsel for violating the Alabama Rules of Professional Conduct. See Ex parte Utilities Bd. of Tuskegee, 274 So. 3d 229, 232 (Ala. 2018). Nonetheless, this Court has explained that a "common-sense approach" should guide the trial court when considering motions to disqualify and that a violation of the Rules of Professional Conduct does not require disqualification in every instance. See, e.g., Ex parte Wheeler, 978 So. 2d 1, 7 (Ala. 2007) (concluding that counsel's disqualification was inappropriate even though he had violated Rule 1.11, Ala. R. Prof. Cond.). In sum, the decision of whether to disqualify counsel who has violated the Rules of Professional Conduct falls squarely within the sound discretion of the trial court. Taylor Coal, 401 So. 2d at 3. Accordingly, the trial court's denial of the motion to disqualify must be affirmed unless it is established that the ruling "is based on an erroneous conclusion of law" or that the trial court "has acted arbitrarily without employing

conscientious judgment, has exceeded the bounds of reason in view of all circumstances, or has so far ignored recognized principles of law or practice as to cause substantial injustice." Edwards v. Allied Home Mortg. Capital Corp., 962 So. 2d 194, 213 (Ala. 2007).

The petitioners argue that the trial court erred by concluding that Campbell Law did not violate Rules 4.2(a), 1.6(a), 1.9, and 4.4, Ala. R. Prof. Cond., and that, based on the circumstances of those violations, the trial court exceeded its discretion by denying the motion to disqualify. We analyze each of the rules that the petitioners say Campbell Law violated, in the order presented by them in their petition.

A. Rule 4.2(a)

Rule 4.2(a) provides that, when representing a client, "a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so." The Comment to Rule 4.2(a) further explains:

> "In the case of an organization, this Rule prohibits communications by a lawyer for one party

> concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization."[4]

The petitioners argue that, while Rule 4.2(a) expressly applies to only current employees of an organization, its application should be expanded to cases in which communications have been received from a former employee. The petitioners insist that because Barnett acquired confidential knowledge about Terminix while he was employed by Terminix, under Rule 4.2(a), "Campbell Law had a duty to seek Terminix's consent before contacting Barnett and before hiring him to be an investigator and consultant." Petition, at p. 14. We disagree.

This Court has explained that the words in the rules adopted by the Court must be interpreted according to their plain meaning. Ex parte Jett, 5 So. 3d 640, 643 (Ala. 2007). By its terms, Rule 4.2(a) prohibits a lawyer from communicating with a person only if the lawyer knows the

[4]Although the Comment to a rule sheds light on the meaning of the rule, "the text of each Rule is authoritative," and Comments "do not add obligations to the Rules." Scope, Ala. R. Prof. Cond.

person "to be represented by another lawyer in the matter." As the Comment to Rule 4.2 indicates, by virtue of being an employee with "managerial responsibility," Barnett was effectively "represented" by counsel for Terminix while he was employed by Terminix; Rule 4.2 therefore generally prohibited Campbell Law from communicating with Barnett while he was a Terminix employee.

But there is no allegation that Campbell Law had any communication with Barnett while he was employed by Terminix. Rather, Barnett initiated his communication and eventual relationship with Campbell Law after his employment with Terminix was terminated and he ceased to have any managerial responsibility. And Campbell has testified that Barnett was never personally served in actions initiated against Terminix while he was a Terminix employee and that Barnett never agreed to be represented by Terminix's lawyers. The petitioners cite no evidence to refute Campbell's statements.

Although the petitioners acknowledge the limits of the text of Rule 4.2(a), they nonetheless argue that an ethics opinion issued by the Alabama State Bar Disciplinary Commission ("the Commission") in 1993 supports its position.

In ethics opinion RO-93-05, the Commission responded to a lawyer's question about the ethics of contacting the former employees of a factory that had closed and was alleged to have polluted surrounding properties. The Commission concluded that "Rule 4.2, Alabama Rules of Professional Conduct, does not prohibit plaintiff's counsel from contacting former employees of a corporate defendant," but further explained that there "might be" an exception for "those employees who occupied a managerial level position and were involved in the underlying transaction." The petitioners argue that Barnett is such an employee and that Rule 4.2 should therefore apply.

We decline this invitation to expand Rule 4.2. As the American Bar Association Standing Committee on Ethics and Professional Responsibility ("the Committee") explained in an advisory opinion concerning Model Rule of Professional Conduct 4.2 -- on which Alabama's Rule 4.2 is based -- there may be sound policy arguments that support expanding Rule 4.2 in the way the petitioners now urge, but doing so would be inconsistent with the text of the rule:

> "While the Committee recognizes that persuasive policy arguments can be and have been made for extending the ambit of Model Rule 4.2 to cover some former corporate employees, the fact remains that

> the text of the Rule does not do so and the comment gives no basis for concluding that such coverage was intended. Especially where, as here, the effect of the Rule is to inhibit the acquisition of information about one's case, the Committee is loath, given the text of Model Rule 4.2 and its comment, to expand its coverage to former employees by means of liberal interpretations."

ABA Comm. on Ethics and Prof. Resp., Formal Op. 91-359 (March 1991).

The majority of states that have interpreted a rule derived from Model Rule 4.2 have likewise concluded that it applies only to current employees. The petitioners have identified one state that has rejected the Committee's view of Model Rule 4.2, see Lang v. Superior Court of Maricopa Cnty., 170 Ariz. 602, 607, 826 P.2d 1228, 1233 (Ct. App. 1992) (concluding that Rule 4.2 prohibits ex parte communications with former employees in some circumstances), but the majority of jurisdictions that have considered the issue have followed the Committee's text-based approach and concluded that Rule 4.2 has no field of operation as it relates to former employees. See, e.g., H.B.A. Mgmt., Inc. v. Estate of Schwartz, 693 So. 2d 541, 544 (Fla. 1997) (concluding that Rule 4.2 does not bar communication with "former employees of defendant-employers who can no longer speak for or bind the

organization"); State ex rel. Charleston Area Med. Ctr. v. Zakaib, 190 W. Va. 186, 190, 437 S.E.2d 759, 763 (1993) ("[A] majority of jurisdictions that have had occasion to consider whether Rule 4.2 restrictions are applicable to former employees have concluded that they are not."); Strawser v. Exxon Co., U.S.A., 843 P.2d 613, 622 (Wyo. 1992) ("[T]he overwhelming recent trend has been for courts to find that Rule 4.2 does not generally bar ex parte contacts with former employees."). Because we apply Court rules in accordance with the plain meaning of their text, Jett, 5 So. 3d at 644, we join those jurisdictions that have limited the application of Rule 4.2 to current employees. Accordingly, Campbell Law did not violate Rule 4.2 by communicating with and retaining Barnett once he was no longer employed by Terminix.

B. Rules 1.6(a) and 1.9(b)

Rules 1.6(a) and 1.9(b) both concern the unauthorized disclosure of information obtained from clients. Rule 1.6(a) provides that, with limited exceptions not applicable here, "[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation." And Rule 1.9(b) prohibits, again with limited

exceptions not applicable here, a lawyer "who has formerly represented a client in a matter" from "us[ing] information relating to the representation to the disadvantage of the former client." The petitioners do not allege that Campbell Law has directly revealed information protected by Rule 1.6(a) or Rule 1.9(b) but argue that under Rule 5.3(c), Ala. R. Prof. Cond., Campbell Law is responsible for the acts of Barnett, who, the petitioners allege, has revealed confidential information he obtained from Terminix. See Rule 5.3(c) (explaining that a lawyer may be responsible for acts of a nonlawyer employee that would violate the Rules of Professional Conduct if that employee was a lawyer).

In support of their argument, the petitioners rely almost exclusively on an unreported decision of the United States District Court for the Eastern District of Pennsylvania, Grant Heilman Photography, Inc. v. McGraw-Hill Global Education Holdings, LLC, No. 17-694, May 2, 2018 (E.D. Pa. 2018) (not reported in F. Supp.), in which a federal district court granted a motion to disqualify plaintiff's counsel after they retained a former employee of the defendant who "was deeply involved in discovery management and other litigation support"

as a consultant to assist with litigation against the defendant. The federal district court concluded that, "once a non-lawyer possessing material confidential information 'switches sides' on the same case, a presumption attaches to the new employer that such information will be improperly shared." Id. Because there was no evidence indicating that plaintiff's counsel had taken measures to avoid the improper sharing of confidential information, the court disqualified plaintiff's counsel. The petitioners argue that Campbell Law's hiring of Barnett is analogous to plaintiff's counsel's hiring of the consultant in Grant Heilman and contend that Campbell Law should likewise be disqualified. We disagree.

The federal district court's decision to disqualify plaintiff's counsel in Grant Heilman was centered on the failure of plaintiff's counsel to take any steps to ensure that the former employee did not share privileged and confidential information in spite of the obvious potential for that to occur based on her job duties while employed by the defendant. The federal district court explained that "[t]he appearance of impropriety, and [counsel's] lack of controls in ensuring compliance with the Rules, dictates that the proper

result is disqualification." Id. In contrast, the materials before this Court indicate that Campbell Law took affirmative steps to ensure that Barnett did not disclose privileged and confidential information that he may have obtained while working for Terminix. In an affidavit submitted to the trial court, Campbell described the instructions he gave Barnett when he was hired:

> "I have never received confidential information about Terminix from Steve Barnett. I admonished him when consulting me about his potential employment claims and, later, when discussing his proposal to work with us as an independent-contractor investigator that he should not reveal attorney-client privileged information or work product. I explained [and] defined privileged and work product information. I also explained that he could never share confidential information.
>
> "....
>
> "I explained to Barnett that some Terminix information was confidential and could never be divulged either directly or indirectly to me, any employee of the firm, others working for the firm, or its clients. For example, I knew that as branch manager Barnett would know some customers with good claims and some with claims that allowed Terminix to make repairs that would have been partial in keeping with its practice of failing to make all the necessary repairs needed to find the end of infestations. I explained that he could not identify those customers, solicit them, or have anyone else solicit them. I explained carefully that when it came to ethical duties we had as lawyers that he could not violate those and that one

> 'cannot do through the back door what you cannot do through the front door.'
>
> "....
>
> "Barnett has never shared privileged, work-product or privileged information."

Barnett has confirmed under oath the points made in Campbell's affidavit. Barnett has testified that Campbell gave him instructions along these lines when he was hired. Barnett has also stated that, after his employment with Terminix was terminated, he asked Terminix for copies of any confidentiality agreements that applied to him; he said he received no response from Terminix.[5] He further stated that, although he originally retained possession of some Terminix documents after his termination, he disposed of them "after Mr. Campbell informed me that I could not provide him any documents I may have received while at Terminix."

In the absence of evidence indicating that Barnett actually provided confidential Terminix information to Campbell Law, the petitioners say this Court "must presume

[5]Terminix submitted a copy of a "Confidentiality/Non-Compete Agreement" that Barnett executed in May 2008 with the motion to disqualify Campbell Law. But the effect of that agreement and any issues related to Barnett's compliance with it are outside the scope of this petition.

that Barnett shared with Campbell Law all of the confidential information he had obtained as Terminix's highest manager in Baldwin County." Petition, at p. 20. The petitioners emphasize that Barnett acknowledged having a box of materials, including Terminix's confidential "Aspire Service Manual," after leaving Terminix. But as discussed above, Barnett said that he disposed of those materials after being told by Campbell that he could not share them with Campbell Law. Given the evidence indicating that Campbell Law clearly instructed Barnett that he could not disclose any privileged and confidential information that he had obtained from Terminix and the absence of any evidence indicating that Barnett violated that instruction, we cannot conclude that Rules 1.6(a) and 1.9(b) have been violated.

C. Rule 1.9(a)

Like Rule 1.9(b), Rule 1.9(a) concerns a lawyer's duty to former clients. It provides that a lawyer "who has formerly represented a client in a matter shall not thereafter ... represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the

former client consents after consultation." As one leading treatise summarizes, Rule 1.9(a) "prevents the disloyal act of switching sides in the same or a related matter." Geoffrey C. Hazard, Jr. & W. William Hodes, The Law of Lawyering § 1.9:103 (1990). The petitioners argue that, under Rule 5.3(c), Campbell Law is responsible for Barnett's actions and that, because Barnett has effectively switched from the "Terminix side" to the "Campbell Law side" of the Bay Forest dispute (and other proceedings in which Campbell Law represents parties against Terminix), Campbell Law has violated Rule 1.9(a) and should be disqualified.

Again, the petitioners rely almost entirely upon Grant Heilman. In that unreported case, it was undisputed that the former employee was intimately involved in the litigation process while in her former job. There was testimony indicating that she assisted in collecting information for discovery and in witness preparation and, crucially, that she was a participant in conversations in which litigation strategy was discussed between her employer's in-house counsel and outside counsel. In sum, the former employee had knowledge not only of information about her former employer's

operations that the employer desired to keep confidential, but also of specific privileged information about her former employer's strategy for the litigation against her new employer.

In this case, by contrast, there is no indication that the extent of Barnett's involvement in any legal proceedings rose to the level of the former employee in Grant Heilman. The petitioners emphasize generally that Barnett was the highest-ranking Terminix employee in Baldwin County while he was manager and that he was therefore responsible for all Terminix operations there, including the handling of termite-damage claims. Barnett was also responsible for managing the Baldwin County office's compliance with Alabama Department of Agriculture and Industries ("ADAI") regulations and for completing reports notifying the corporate office when ADAI was investigating services that had been provided to a customer.

But when we drill down to the particulars, it is clear that Barnett's involvement in legal matters was limited. Barnett has testified that he could recall "two or three" lawsuits that were filed while he was Terminix's manager in

Baldwin County. On a separate occasion, he testified that there was only one time when he actually spoke to a Terminix lawyer about a case.[6] Barnett also stated under oath that his discretion in dealing with termite-damage claims was limited -- that, in fact, he had no authority over the process for handling claims and no authority to settle claims exceeding $3,000. And while Barnett was Terminix's Baldwin County manager when termite damage was discovered at Bay Forest, it is not clear from the materials before us that he was even involved in handling BFCOA's eventual claim. It is clear though, that by the time BFCOA formally initiated proceedings against the petitioners in May 2018, Barnett had not been working for Terminix for well over a year. These facts distinguish Barnett from the former employee in Grant Heilman, who "was deeply involved in discovery management and other litigation support" for her former employer, including the specific dispute in which plaintiff's counsel was involved.

As Campbell Law notes in its response to the mandamus petition, the Supreme Court of Texas has recognized that there is a meaningful distinction between lawyer employees who

[6]Barnett testified that he has not shared information about that telephone call with Campbell Law.

"switch sides" and non-lawyer employees who do the same.[7] In In re RSR Corp., 475 S.W.3d 775, 776 (Tex. 2015), that court held that a trial court erred by disqualifying a law firm for hiring an opposing party's former finance manager as a consultant. Explaining that the finance manager's position "existed independently of litigation and [that] he did not primarily report to lawyers," the court concluded that the finance manager was essentially a fact witness and that the ethical considerations that apply to "a side-switching paralegal" therefore did not apply. Id. We are persuaded by this analysis. Based on the evidence of Barnett's limited involvement in Terminix's legal affairs generally and the Bay Forest matter in particular, we agree with the trial court that there has been no violation of Rule 1.9(a) by Campbell Law in this case.

[7]Like the Alabama Rules of Professional Conduct, the Texas Disciplinary Rules of Professional Conduct are "based on the American Bar Association Model Rules of Professional Conduct." Board of Law Exam'rs v. Stevens, 868 S.W.2d 773, 777 (Tex. 1994). See also In re Whitcomb, 575 B.R. 169, 172 (Bankr. S.D. Tex. 2017) (explaining that "the ABA Model Rules and Texas Disciplinary Rules of Professional Conduct parallel one another regarding attorney use of confidential information").

D. Rule 4.4

The petitioners' final argument is that Campbell Law violated Rule 4.4 by improperly obtaining evidence from Barnett. Subsection (a) of Rule 4.4 provides that "a lawyer shall not ... use methods of obtaining evidence that violate the legal rights of [a third] person," while subsection (b) generally sets forth the procedure a lawyer should follow when he or she "receives a document that on its face appears to be subject to the attorney-client privilege or otherwise confidential." Rule 4.4(b) expressly provides that a lawyer in receipt of such privileged or confidential information should "notify the sender." The petitioners argue that Campbell Law violated Rule 4.4(b) by obtaining and using privileged and confidential information from Barnett without notifying Terminix and that Campbell Law should therefore be disqualified. In support, the petitioners rely on Harris Davis Rebar, LLC v. Structural Iron Workers Local Union No. 1, Pension Trust Fund, 17-C-6473, February 5, 2019 (N.D. Ill. 2019) (not reported in F. Supp.), an unreported decision in which the United States District Court for the Northern District of Illinois sanctioned -- but did not disqualify --

defense counsel after it concluded that they had violated Illinois's Rule 4.4 by failing to disclose that the plaintiff-company's former employee had given them over 3,000 internal e-mails, including confidential documents and privileged communications between the plaintiff-company and its attorneys.

Harris Davis Rebar is distinguishable. As discussed, while the petitioners have generally alleged that Barnett shared privileged and confidential Terminix information with Campbell Law, they have not identified any specific document or information that was allegedly shared. At most, the petitioners point to the fact that Barnett may have retained a copy of its confidential Aspire Service Manual following his departure from Terminix. But Campbell Law has rebutted any allegation that Barnett improperly shared that document by submitting Barnett's testimony that he disposed of all Terminix materials that he had in his possession without sharing them with Campbell Law. Campbell Law further states that Terminix knows that the firm has already received multiple copies of the Aspire Service Manual in other proceedings -- and that Terminix has even asserted in other

cases that it should not be required to produce that manual again because it had already done so. Without any evidence indicating that Barnett actually shared privileged or confidential information with Campbell Law, the petitioners have failed to show that the trial court exceeded its discretion by declining to disqualify Campbell Law for an alleged violation of Rule 4.4.

Conclusion

The petitioners moved the trial court to disqualify Campbell Law from representing BFCOA based on the firm's hiring of Terminix's former manager Barnett as an investigator and consultant. The petitioners argued that Barnett possessed privileged and confidential information related to disputes between Terminix and parties represented by Campbell Law and that Campbell Law had therefore violated Rules 4.2(a), 1.6(a), 1.9, and 4.4, Ala. R. Prof. Cond. After the trial court denied the motion to disqualify, the petitioners sought mandamus relief. As explained above, the petitioners have not shown that Campbell Law has violated the Rules of Professional

Conduct.[8] Thus, the petitioners have not established that they have a clear legal right to the relief they seek.

PETITION DENIED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, and Stewart, JJ., concur.

[8]It is unnecessary to consider Campbell Law's alternative argument that the petitioners waived any right to seek the disqualification of Campbell Law by failing to timely object to Barnett's employment.