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Federal Court Denies Disqualification on Lawyer-Witness Rule in Bad Faith Litigation

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The federal district court in Seattle recently denied a disqualification motion based on the lawyer-witness rule, RPC 3.7. *Arrowood Indemnity Company v. Thompson*, 2024 WL 115509 (W.D. Wash. Jan. 10, 2024) (unpublished), is a declaratory judgment proceeding in which the plaintiff insurer argues it has no duty to pay a settlement of an underlying claim in state court. In the related state court case, the insured entered into a “covenant judgment” with the claimants, the insured assigned her rights against the carrier to the claimants, and the state court approved a \$21 million judgment following a “reasonableness hearing.” In the federal case, the carrier named both its insured and the claimants from the state proceeding as defendants. The defendants in the federal case are all represented by the law firm that represented the claimants in the state proceeding and negotiated the state court resolution.

The carrier moved to disqualify the defendants’ lead lawyer and his law firm—arguing that the lead lawyer was a necessary witness in the federal case. To be a “necessary” witness when seeking disqualification under RPC 3.7, however, the moving party must show that the lawyer-witness has evidence “unobtainable elsewhere.” The carrier conceded that the federal case focused on the carrier’s conduct—not that of the lawyer. The Court, therefore, found that

the lawyer did not meet the standard for being a necessary witness under RPC 3.7 and denied the motion as to the lawyer.

As to the lawyer's firm, the Court pointed out that RPC 3.7 typically precludes a necessary lawyer-witness only from being trial counsel to avoid jury confusion—not disqualified from the case altogether. The Court also noted that RPC 3.7 only ripens into a rule of law firm disqualification when the potential testimony of the lawyer-witness will be adverse to the firm's clients. The Court found that the carrier made no showing warranting disqualification of the law firm either.

Arrowood contains an excellent survey of Washington law on the lawyer-witness rule in the disqualification context and serves as a useful reminder of the rule's comparatively narrow application.

ABOUT THE AUTHOR

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