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IN THE  
COURT OF APPEALS OF INDIANA

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Robert E. Duff and  
Lydia Rockey,  
*Appellants-Petitioners and Counsel,*

v.

Brian Rockey,  
*Appellee-Respondent*

January 18, 2022

Court of Appeals Case No.  
21A-DR-1750

Appeal from the  
Hamilton Circuit Court

The Honorable  
David A. Shaheed, Sr. Judge

Trial Court Cause No.  
29C01-0806-DR-767

**Vaidik, Judge.**

## Case Summary

- [1] About a decade after Lydia Rockey (“Mother”) and Brian Rockey (“Father”) divorced, a parenting-time issue arose. Robert E. Duff (“Attorney Duff”) entered an appearance for Mother. Father moved to disqualify Attorney Duff from representing Mother under Indiana Professional Conduct Rule 3.7 on

grounds that he would likely be a necessary witness at the parenting-time hearing. The trial court disqualified Attorney Duff, and the parties reached an agreement about parenting time. About eight months later, a different post-dissolution issue—Father’s alleged overpayment of child support—arose. Attorney Duff entered an appearance for Mother, and Father moved to disqualify him based solely on his first disqualification. The court disqualified Attorney Duff, and Mother and Attorney Duff now appeal.

- [2] We hold an attorney disqualified from one post-dissolution matter is not automatically disqualified from a second, later arising post-dissolution matter if the basis for the first disqualification no longer exists. Because the basis for Attorney Duff’s first disqualification no longer existed, the trial court abused its discretion in disqualifying him from representing Mother on the child-support matter. We reverse and remand.

## Facts and Procedural History

- [3] Mother and Father, who have five children, divorced in 2010. About a decade later, Mother filed a contempt petition against Father alleging he denied her parenting time, and Father filed a petition to modify parenting time. A guardian ad litem (GAL) was appointed, and a hearing was set for October 2020.
- [4] In September, Attorney Duff entered an appearance for Mother (Mother had been represented by a different attorney but that attorney withdrew). Mother was married to Attorney Duff from 2013 to 2019 and was then pregnant with

his child. Father moved to disqualify Attorney Duff from representing Mother on grounds that “his representation violates the Rules of Professional Conduct Rule 3.7.” Appellants’ App. Vol. II p. 36. Specifically, Father alleged Attorney Duff had spoken to the GAL on Mother’s behalf about parenting time and would likely be a “necessary” witness at the parenting-time hearing. *Id.*

[5] A hearing was held, and the trial court took the matter under advisement. On October 5, the court entered an order finding Attorney Duff “is hereby disqualified.” *Id.* at 40. A few days later, Father, represented by counsel, and Mother, pro se, reached an agreement about Mother’s parenting time. *See Agreed Entry*, Cause No. 29C01-0608-DR-767 (Oct. 9, 2020). As such, a parenting-time hearing was never held.

[6] About eight months later, in June 2021, Father filed a “Verified Motion to Reduce Order to Civil Judgment.” Appellants’ App. Vol. II p. 41. Specifically, Father sought reimbursement for his alleged overpayment of child support. Attorney Duff entered an appearance for Mother, following which Father filed a motion to disqualify Attorney Duff on the sole basis that he had been “previously disqualified from representing” Mother in 2020. *Id.* at 45. Father did not raise any new grounds for disqualification or allege Attorney Duff would likely be a necessary witness regarding the child-support issue. At a hearing on the matter, Attorney Duff argued he should no longer be disqualified because “the basis for the previous disqualification no longer exists.” Tr. p. 16. In August, the trial court entered an order disqualifying

Attorney Duff and certifying the issue for interlocutory appeal. Appellants' App. Vol. II p. 26.

- [7] This Court accepted jurisdiction of the appeal under Indiana Appellate Rule 14(B) and stayed the trial-court proceedings pending appeal.

## Discussion and Decision

- [8] Mother and Attorney Duff contend the trial court erred in disqualifying him from representing her. A trial court may disqualify an attorney for a violation of the Indiana Rules of Professional Conduct, and the court's decision is reviewed for an abuse of discretion. *Reed v. Hoosier Health Sys., Inc.*, 825 N.E.2d 408, 411 (Ind. Ct. App. 2005).

- [9] Father sought to disqualify Attorney Duff based on Indiana Professional Conduct Rule 3.7, which provides:

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

The primary purpose of Rule 3.7 is to avoid confusion at trial created by the dual role of an attorney as advocate and witness. Ind. Professional Conduct Rule 3.7, cmt. 2; *see also Utilimaster Corp. v. Ind. Dep't of State Revenue*, 967 N.E.2d 92, 95-96 (Ind. T.C. 2012).

[10] Father argues the trial court properly disqualified Attorney Duff in 2021 because the court had disqualified him in 2020 and that disqualification was “continuing” and “unqualified.” Appellee’s Br. p. 9. Father, however, cites no authority for the proposition that an attorney’s disqualification under Rule 3.7 is permanent. After parties divorce, post-dissolution issues can crop up at different times, even years apart. These issues can be vastly different, requiring different evidence and witnesses. Given this reality, an attorney disqualified from one post-dissolution matter is not automatically disqualified from a second, later arising post-dissolution matter if the basis for the first disqualification no longer exists. This is especially so considering motions to disqualify under Rule 3.7 are viewed with caution given the potential for abuse. *See Utilimaster*, 967 N.E.2d at 95-96; *Mills v. Hausmann-McNally*, S.C., 992 F. Supp. 2d 885, 895 (S.D. Ind. 2014).

[11] Here, Attorney Duff was disqualified in October 2020 because he would likely be a necessary witness at a hearing on parenting time. A couple days later, the parties reached an agreement about parenting time. About eight months later,

in June 2021, a different issue—Father’s alleged overpayment of child support—arose. Attorney Duff entered an appearance for Mother, and Father moved to disqualify him based solely on his first disqualification. Father did not raise any new grounds for disqualification or allege Attorney Duff would likely be a necessary witness at a hearing on child support. Because the second post-dissolution matter is different from the first post-dissolution matter and the basis for the first disqualification no longer existed, the trial court abused its discretion in disqualifying Attorney Duff from representing Mother in the second post-dissolution matter.

[12] Reversed and remanded.

Najam, J., and Riley, J., concur.