

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

**MIRCH LAW FIRM, et. al.
Appellants**

v.

**ELIAS NAKHLEH, et.al.
Defendants/Appellees**

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit
Ninth Circuit Case Number No. 20-56207
APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI**

**APPLICATION TO THE HONORABLE JUSTICE
ELENA KAGAN AS CIRCUIT JUSTICE**

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**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Elena Kagan, Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

In accordance with Rule 13.5 of the United States Supreme Court Rules, Appellants requests a sixty-day extension of time, up to and including February 16, 2023 within which to file a petition for writ of certiorari.

Mirches' petition for certiorari is currently due December 18, 2022.

JUDGMENT FOR WHICH RELIEF IS SOUGHT

The judgment for which review is sought is *MIRCH LAW FIRM, et. al. Appellants v. ELIAS NAKHLEH, et.al. Defendants/Appellees* from the United States District Court For the Central District of California District Court Case No.2:20-cv-05734-PA-MAA, Honorable Percy Anderson, which was affirmed by the Ninth Circuit Court of Appeal in a Memorandum dated May 26, 2022 (Attached as Exhibit 1). The Ninth Circuit denied Mirches' petition for rehearing on September 19, 2022. (Attached as Exhibit 2).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the

Rules of this Court, a petition for a writ of certiorari is due to be filed on or before December 18, 2022.

QUESTIONS TO BE RAISED

The Mirches' case raises the following important questions concerning the Ninth Circuit Court of Appeal's Memorandum Decision ("Decision"). The Decision, "overlooks and misapprehends" material points of fact and law by failing to address the limits on the attorney client privilege and the effect of the doctrines of waiver and joint representation as it applies to the same. Further the Court's memorandum fails to recognize the Mirch's right to due process when ethical violations are asserted.

The Court overlooked specific and substantial evidence in the record, and failed to apply Cal. Evid Code § 962's effect on attorney client privilege when there is joint representation. The Court failed to address the issue of waiver of the attorney - client privilege pursuant to Ca. Ev. Code § 912 and Fed. R. Evidence 502(a). The Court failed to recognize that the District Court abused its discretion when it held that communications between Nakhleh and Reiner, after Reiner was terminated as counsel, were privileged. The Court failed to recognize that the Mirches were denied a fair opportunity to respond to the ethical violations raised by the Nakhleh's for the first time in their reply brief in support of the motion to disqualify and applied the wrong standard of review as it related to whether an attorney has committed ethical

violations.

REASONS JUSTIFYING AN EXTENSION OF TIME

Appellants currently have until December 18, 2022 to file a petition for writ of certiorari. See U.S. Supreme Ct. R. 13.1. Under Rule 13.5, a Supreme Court Justice may extend the time for seeking certiorari for up to sixty additional days.

Counsel requests an additional sixty days to properly prepare and file the Mirches' petition for writ of certiorari. Undersigned counsel's mother recently passed away and he has numerous commitments to other clients, and upcoming trial work that requires a significant amount of time. Counsel has one other attorney in the firm, Marie Mirch, who will work with undersigned counsel on the petition, and ensure that the arguments presented to the Court are thorough and in the best light possible. Granting an additional 60 days will ensure that these important issues to be raised are properly, rather than hurriedly, presented to the Court.

There is no prejudice to Respondents in granting this request.

CONCLUSION

For the foregoing reasons the Mirches respectfully requests that this Court grant an extension of sixty days, up to and including February 16, 2023 , within which to file a petition for a writ of certiorari in this case.

Respectfully Submitted December 8, 2022.

Kevin Mirch

Kevin J. Mirch
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CERTIFICATE OF SERVICE

I, Molly Mirch , declare:

I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California, where the services set forth below occurred; and my business address is: MIRCH LAW FIRM, 1180 Rosecrans Street #104-552, San Diego, California 92106.

I further declare that on this date, I served the foregoing documents described as:

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

By mail, postage prepaid addressed as follows:

Kimberly Howatt
Gordon Reese
101 W Broadway, Suite 2000
San Diego, CA 9211

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on December 14, 2022 at San Diego, California.

Signature:  _____
Molly Mirch

EXHIBIT 1

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MAY 26 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MIRCH LAW FIRM, LLP; et al.,

No. 20-56207

Appellants,

D.C. No.

v.

2:20-cv-05734-PA-MAA

ELIAS NAKHLEH; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Argued and Submitted May 12, 2022
Pasadena, California

Before: IKUTA and NGUYEN, Circuit Judges, and DANIELS,** District Judge.

Mirch Law Firm, LLP (“Mirch”) appeals the district court’s order disqualifying it as plaintiffs’ counsel in a RICO action brought by Seyed Zia Eddin Ahmadi Abhari, Donya Entertainment, Inc., and Noreen Entertainment, Inc. against defendants Elias Nakhleh, Slater’s 50/50 Franchise, LLC, and Elite

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable George B. Daniels, United States District Judge for the Southern District of New York, sitting by designation.

Restaurant Group, Inc. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.¹

1. Defendants argue that Mirch lacks standing to challenge the disqualification order. Where a disqualification order “clearly and intentionally sanction[s] an attorney,” the attorney has suffered sufficient injury-in-fact to have standing. *United States v. Ensign*, 491 F.3d 1109, 1118 (9th Cir. 2007); *see also United States v. Talao*, 222 F.3d 1133, 1137-38 (9th Cir. 2000) (finding an attorney had standing to appeal a district court ruling that she violated an ethical rule because it constituted a “per se” sanction). Here, given the district court’s clear findings of ethical violations, we are satisfied that Mirch has standing to appeal.

2. We review disqualification orders for abuse of discretion. *Trone v. Smith*, 621 F.2d 994, 999 (9th Cir. 1980). “[A]n order disqualifying counsel will not be disturbed if the record reveals ‘any sound’ basis for the court’s action,” *Paul E. Iacono Structural Eng’r, Inc. v. Humphrey*, 722 F.2d 435, 438 (9th Cir. 1983), which may include a violation of ethical rules, *see id.* at 440. The district court properly applied California law in determining whether disqualification was proper. *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1122 (9th Cir. 2002); *see also*

¹ We grant appellees’ request for judicial notice (Dkt. 55) and deny Mirch’s request for judicial notice (Dkt. 15).

C.D. Cal. Local R. 83-3.1.2 (requiring attorneys in the Central District of California to comply with California’s Rules of Professional Conduct). Relevant here, an attorney may be disqualified based on his presumed or actual acquisition of an adversary’s privileged information. *See Humphrey*, 722 F.2d at 440; *see also Shadow Traffic Network v. Superior Court*, 24 Cal. App. 4th 1067, 1085 (Cal. Ct. App. 1994).

The record supports the district court’s finding that Martin Reiner obtained privileged information from Defendants during a prior lawsuit through an implied attorney-client relationship. *See* Cal. Evid. Code § 950. “[I]t is the intent and conduct of the parties that controls the question as to whether an attorney-client relationship has been created.” *Zenith Ins. Co. v. O’Connor*, 148 Cal. App. 4th 998, 1010 (Cal. Ct. App. 2007). Defendants reasonably believed Reiner was acting as their attorney and that their communications were privileged.

The record also supports the district court’s finding that Defendants disclosed confidential information to Reiner that was materially relevant to this case. The party seeking disqualification need not “disclose the actual information contended to be confidential.” *In re Complex Asbestos Litigation*, 232 Cal. App. 3d 572, 596 (Cal. Ct. App. 1991). The court should be given “the nature of the information and its material relationship to the proceeding.” *Id.* Defendants did so

here, outlining the categories of confidential business materials Nakhleh disclosed to Reiner, which materially relate to many of the allegations in this case.

Where a law firm witness or employee has an adversary's relevant, privileged information, a "rebuttable presumption arises that the information has been used or disclosed" to the law firm. *Shadow Traffic Network*, 24 Cal. App. 3d at 1085 (citing *Complex Asbestos*, 232 Cal. App. 3d at 596). Reiner claimed to be Mirch's witness, and although Mirch denies receiving confidential information from Reiner, the district court's weighing of the evidence is entitled to deference. On this record, the district court did not abuse its discretion in disqualifying Mirch because there is a "sound basis," *Humphrey*, 722 F.2d at 438 (internal quotation marks omitted), for the district court's conclusion that disqualification was required to remedy the unfair advantage that Plaintiffs obtained through Mirch's representation.

3. The district court did not violate Mirch's due process rights by taking the motion to disqualify under submission. *See* Fed. R. Civ. P. 78(b); C.D. Cal. Local R. 7-15; *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971) (per curiam) (holding that a district court's failure to hold oral argument on a motion to dismiss was not an abuse of discretion or a denial of due process).

AFFIRMED.

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 19 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MIRCH LAW FIRM, LLP; et al.,

Appellants,

v.

ELIAS NAKHLEH; et al.,

Defendants-Appellees.

No. 20-56207

D.C. No.
2:20-cv-05734-PA-MAA

ORDER

Before: IKUTA and NGUYEN, Circuit Judges, and DANIELS,* District Judge.

The panel has voted to deny the petition for panel rehearing. Judges Ikuta and Nguyen have voted to deny the petition for rehearing en banc, and Judge Daniels has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition of rehearing en banc are denied.

* The Honorable George B. Daniels, United States District Judge for the Southern District of New York, sitting by designation.