

ILLINOIS POLLUTION CONTROL BOARD
December 14, 1994

LAND AND LAKES COMPANY,)	
JMC OPERATIONS, INC., and)	
NBD TRUST COMPANY OF)	
ILLINOIS as trustee under)	
Trust No. 2624EG,)	
)	
Petitioners,)	
)	
v.)	PCB 94-195
)	(Land Siting Review)
VILLAGE OF ROMEOVILLE,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on a November 2, 1994 motion to disqualify, filed by petitioners Land and Lakes Co., JMC Operations, Inc., and NBD Trust Company of Illinois, as Trustee under Trust No. 2624EG (collectively, Land & Lakes). Land & Lakes seeks to disqualify the law firm of Herschbach, Tracy, Johnson, Bertani & Wilson (Herschbach firm) from further representation of respondent the Village of Romeoville (Village)¹. On November 9, 1994, the Village filed its response in opposition to the motion to disqualify. On November 29, 1994, Land & Lakes filed a motion for leave to file a reply instanter. On December 9, 1994, the Village filed a motion for leave to respond to the reply. The latter two motions are granted.

Land & Lakes asks the Board to disqualify the Herschbach firm and any member of that firm from representing the Village. Land & Lakes states that in 1984, a trespass action involving the landfill at issue in this case was brought against it by Roy and Irene Hassert, and that an attorney named Roger D. Rickmon represented Land & Lakes during the trial court litigation of the Hassert suit. Mr. Rickmon is now a partner in the Herschbach firm. Land & Lakes contends that the Hassert litigation is substantially related to the instant proceedings, and maintains that Rules 1.9(a) and 1.10(a) of the Illinois Rules of Professional Conduct prohibit Mr. Rickmon, and any member of the Herschbach firm, from representing the Village in this matter.

¹ The Village was originally represented in this case by Nicholas E. Sakellariou of the firm of Robbins, Schwartz, Nicholas, Lifton & Taylor. On October 19, 1994, Mr. Sakellariou withdrew his appearance, and George F. Mahoney III of the Herschbach firm filed his appearance. Mr. Mahoney has not appeared on behalf of any of the parties in the cited proceedings prior to this appeal.

Additionally, Land & Lakes argues that the Herschbach firm actively participated in this matter at an earlier stage on behalf of the Hasserts, so that the Herschbach firm is disqualified from representing the Village by Rule 1.11(c) of the Illinois Rules of Professional Conduct.

In response, the Village first questions whether the Board has the authority to disqualify attorneys who practice before it. If the Board does exercise such jurisdiction over the motion, however, the Village argues that the motion should be denied since the Hassert litigation is not substantially related to the instant proceeding and accordingly, there is no conflict of interest presented by the facts of this case.

Regarding the issue of whether the Board has authority to disqualify the Village's attorney, the Village asserts that there is no statutory authority for the Board to disqualify attorneys appearing before it. The Village relies on People ex rel. Brazen v. Finley, 119 Ill.2d 485, 116 Ill.Dec. 683 (1988), for the proposition that only the Illinois Supreme Court can regulate the conduct of attorneys.

In Finley, the Illinois Supreme Court highlighted its exclusive power to regulate the practice of law in this State and to sanction or discipline attorneys admitted to practice before it for unprofessional conduct. (116 Ill.Dec.683, 687.) However, determining whether an attorney's appearance in an action presents an impermissible conflict of interest with the interests of another party to that action does not amount to such sanction or discipline. It is clear that tribunals other than the Supreme Court regularly apply the rules of professional conduct developed by the Supreme Court in order to make such conflict determinations. (See SK Handtool Corporation v. Dresser Industries, Inc., 246 Ill. App.3d 979, 189 Ill.Dec. 233 (1st Dist. 1993); Skokie Gold Standard Liquors v. Joseph Seagram & Sons, 116 Ill.App.3d 1043, 72 Ill.Dec 551 (1983).)² We therefore conclude that determining whether an impermissible conflict of interest exists in an action before the Board would not intrude into the exclusive disciplinary authority of the Supreme Court.

The Board is a quasi-judicial agency. (See Ford v. Environmental Protection Agency, 292 N.E.2d 540 (1973); Landfill, Inc. v. Pollution Control Board, 74 Ill.2d 256 (1978); Environmental Protection Agency v. Pollution Control Board, 86 Ill.2d 390, 427 N.E.2d 162 (1981).) In this landfill siting appeal, we are acting in that capacity, and in that capacity we have the authority and power to regulate the persons practicing

² In both these actions, the appellate court reviewed conflict of interest determinations made by circuit courts.

before us. Such authority is necessary to insure that the Act is fairly applied, and the Board's judicial obligations under the Act are fulfilled. Section 26 of the Act specifically authorizes the Board to adopt "such procedural rules as may be necessary to accomplish the purposes of the Act." (415 ILCS 5/26 (1992).) Pursuant to that grant of authority, the Board has adopted procedural rules governing actions before it at 35 Ill. Adm. Code 101 et seq., including who may appear before it and under what circumstances sanctions will be imposed. (See Sections 101.107 and 101.208.) To fulfill our obligations under the Act, it is necessary for the Board to determine whether an attorney's appearance before us presents an impermissible conflict of interest. (See People of the State of Illinois v. Kershaw, PCB 92-164 (July 22, 1993), wherein the Board, at the request of the Attorney General, applied the Rules of Professional Conduct in making such a determination.)

In this case, Land & Lakes seeks to disqualify the Herschbach firm on the grounds that its appearance violates Rules 1.9 and 1.10 of the Rules of Professional Conduct. The Board has read and reviewed all pleadings and affidavits filed on this question and is not persuaded that the now-closed Hassert case and this landfill siting appeal are substantially related. The existence and outcome of the Hassert case is a matter of public record, and information pertaining to the Hassert case which may have been relied upon by the Village when it denied Land & Lakes' siting petition is contained in the record below. Since no new evidence, except that pertaining to fundamental fairness, may be introduced in this type of proceeding, no new evidence about the Hassert case is relevant or will be allowed. (415 ILCS 40.1(a); see also E & E Hauling v. Pollution Control Board, 116 Ill.App.3d 587, 594, 451 N.E.2d 555 (2d Dist. 1983), aff'd in part 107 Ill.2d 33, 481 N.E.2d 664 (1985).) Thus, neither side can introduce any new information concerning the Hassert case in this landfill siting appeal. We, therefore, agree with the Village that Land & Lakes' apprehension concerning the Village's possible use of any information which Mr. Rickmon may have gained in the course of his employment with Land & Lakes in the Hassert litigation is without foundation.

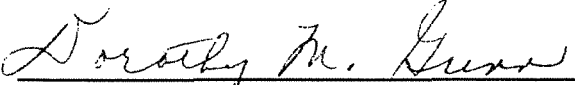
Finally, we find no merit in Land & Lake's argument that the Herschbach firm must be disqualified pursuant to Rule 1.11 due to its prior representation of the Hasserts in the landfill siting proceeding before the Village.

The motion to disqualify is denied.

Board Member J. Theodore Meyer dissented.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 14th day of December, 1994, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board