

BEFORE THE MONTGOMERY COUNTY
OFFICE OF ZONING AND ADMINISTRATIVE HEARING
ON REFERRAL FROM COMMISSION ON COMMON OWNERSHIP COMMUNITIES

MARY DOLBASHIAN

Complainant

v.

Case No. 2025-076/OZAH

KENWOOD PLACE CONDOMINIUM

Referral No: CCOC 26-01

Respondent

OPPOSITION TO REQUEST TO DISQUALIFY COUNSEL

On January 13, 2026, Complainant filed a *pro se* document she captions “Signed Statement in Support of Preliminary Objection Based on Conflict of Interest.” Respondent hereby files this Opposition to her Request to Disqualify Counsel, and for cause states as follows:

Complainant makes several general allegations of a conflict of interest; she bases those on Mr. Fellner’s prior service as a CCOC panel chair in unrelated cases before the CCOC. For the reasons cited below, Respondent argues that this is insufficient to serve as a basis for disqualification of its Attorney. Specifically, Complainant has failed to allege a conflict of interest under the plain language of the County Code. Additionally, should any actual conflict of interest have existed before the CCOC, it was cured by referring this matter to OZAH. Finally, Complainant has not met the level of proof demanded by Maryland courts in reviewing requests to disqualify opposing counsel. For those reasons, Respondent respectfully requests that the Honorable Hearing Officer deny the request to disqualify undersigned counsel.

I. There is no Conflict of Interest Under the Plain Terms of the County Code

The filing by Ms. Dolbashian alleges a conflict of interest. She cites broadly to “Montgomery County Code Chapter 19A (Public Ethics Law) and long-standing Ethics Commission guidance.” This is not a sufficient allegation.

Montgomery County Code Section 19A-4 (m) identifies a *Public employee* as:

- (1) the County Executive and each member of the County Council;

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- (2) any person employed by a County agency, including the director of the agency;
- (3) any person appointed by the County Executive or County Council to a board, commission, committee, task force, or similar body, whether or not:
 - (A) the person is compensated for serving on the body; or
 - (B) the body is permanent or temporary;
- (4) any member of the Revenue Authority, the Housing Opportunities Commission, or the Board of License Commissioners; and
- (5) any other person providing services without compensation to a County agency if that person:
 - (A) exercises any responsibility for government-funded programs, procurement, or contract administration for an agency; or
 - (B) has access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration.

Ms. Dolbashian fails to allege how undersigned counsel fits into any of those categories. Specifically:

Mr. Fellner is not the County Executive or a member of the County Council; is not employed by a County agency; and was not appointed by either the County Executive or County Council.

Mr. Fellner is not a member of the Revenue Authority, the Housing Opportunities Commission, or the Board of License Commissioners.

Mr. Fellner does not exercise any responsibility for government-funded programs, procurement, or contract administration for an agency; or have access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration.

Thus, the allegation of a conflict of interest fails out of hand. Section 19A-b(12) of the County Code imposes certain restrictions on “public employees” as they are defined above. Because Mr. Fellner is not a “public employee” as defined by the Code, Section 19A-b(12) is not relevant to his conduct. Ms. Dolbashian’s broad statements regarding ethical rules and obligations ignore the specific wording of the Code.

II. The Referral to OZAH Cures or Shields any Potential Conflict of Interest

Complainant does not contend that Mr. Fellner has any conflict of interest with her or the subject matter of this case. Her sole allegations allege that Mr. Fellner should not appear before the Montgomery County CCOC. However, the CCOC has already addressed any potential conflict in that regard by referring this case to OZAH. Because Mr. Fellner is no longer appearing before the CCOC, and because Ms. Dolbashian does not allege any conflict of interest between Mr. Fellner and OZAH, any alleged conflict is now moot or non-existent.

III. Maryland Courts Require Specific Proof of Conflict to Disqualify an Attorney

Ms. Dolbashian further alleges (without support) that ethical guidelines somehow require disqualification. Maryland courts have rejected her argument and addressed this matter at length, holding:

It has been recognized that “[d]isqualification is a drastic remedy since it deprives litigants of their right to freely choose their own counsel.” *Gross v. SES Americom, Inc.*, 307 F.Supp.2d 719, 722 (D.Md.2004) (citations omitted). Discussing the issue of disqualification, in *Franklin*, 454 F.Supp.2d at 365, the District Court explained:

Maryland courts are hesitant to grant disqualification motions, particularly where the opposing party is the sponsor of such a motion, because they can be abused for tactical reasons. Indeed, “[w]hen an opposing party moves for disqualification of the other party's counsel, the court will take a hard look at such a motion. The concern is that the opposing party will use such a motion to block, harass, or otherwise hinder the other party's case.” *Klupt v. Krongard*, 126 Md.App. 179, 728 A.2d 727, 740 (Md.App.1999). To that end, this court must “closely scrutinize” the disqualification motion. *Id.*

“[D]isqualification at the urging of opposing counsel is permitted only ‘where the conflict is such as clearly to call in question the fair and efficient administration of justice.’” *Gross*, 307 F.Supp.2d at 723.

Baltimore Cnty. v. Barnhart, 201 Md. App. 682, 711–12, 30 A.3d 291, 309 (2011)

This of course directly addresses (and refutes) Ms. Dolbashian's arguments, and predicts this exact scenario. A court (or OZAH) must “take a hard look” at a motion to disqualify an attorney, especially one filed by an opposing party. Disqualification should only be permitted

Maryland courts have overturned cases where the trial court disqualified opposing counsel without sufficient direct factual basis for such a disqualification:

But the record developed at trial, upon which the trial court rested its decision, does not come close to revealing the “serious potential for conflict,” that *Wheat* requires be established before the trial court may exercise its discretion to deprive a defendant of his or her counsel of choice.

State v. Goldsberry, 419 Md. 100, 128–29, 18 A.3d 836, 853 (2011).

Unless there is a significant record demonstrating actual issues and “serious potential for conflict,” Maryland law specifically prohibits the remedy that Ms. Dolbashian requests.

IV. Any Alleged Violation of Stay, Even if Proven, Would Not Constitute a Conflict of Interest or Grounds for Disqualification of an Attorney

Ms. Dolbashian’s argument and request in her Section IV are unclear. None of these allegations, even if true, creates a conflict of interest. They seem to claim that Mr. Fellner has acted as legal counsel for the Respondent in various fashions. That is undisputed, and does not appear to weigh on the issue before OZAH in this case. Perhaps Complainant wishes to file a subsequent motion, once her allegation of conflict is resolved, and seek some relief on these issues. Regardless, they have no bearing on a question of “conflict.”

V. Conclusion

As demonstrated herein, Complainant has failed to allege a conflict of interest under the plain language of the County Code. Additionally, Complainant has not met the level of proof demanded by Maryland courts in reviewing requests to disqualify opposing counsel. Finally, should any actual conflict of interest have existed before the CCOC, it was cured by referring this matter to OZAH.

For the foregoing reasons, Respondent respectfully requests that the Honorable Hearing Officer deny the request to disqualify counsel.

/s/ Brian R. Fellner

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this January 23, 2026, a true copy of the foregoing was served by email on:

OZAH Hearing Officer

Complainant

/s/

Brian R. Fellner