

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

G SIX CONSULTING LLC,

Plaintiff,

v.

STEPHEN MULLETT

Defendant.

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Case No: 1:25-cv-2166

JURY TRIAL DEMANDED

**DEFENDANT STEPHEN MULLETT'S MOTION TO DISQUALIFY**

TO THE HONORABLE COURT:

Defendant Stephen Mullett ("Mullett") respectfully moves to disqualify Plaintiff's Counsel, the law firm Zarco Einhorn Salkowski, P.A. ("Zarco"), from representing Plaintiff G Six Consulting, LLC ("Plaintiff" or "G Six") in this case pursuant to Northern District of Illinois Local Rule 83.50, and would respectfully show as follows:

**INTRODUCTION**

Zarco should be disqualified from acting as counsel in this matter for its egregious and intentional violations of Rules 4.2, 8.4 and 3.7 of the American Bar Association Model Rules of Professional Conduct ("Ethics Rules" or "Rules").

This lawsuit is part of a coordinated effort spearheaded by Zarco to force Mullett's former employer, Dickey's Restaurants, Inc. ("Dickey's"), into bankruptcy by (1) coordinating and funding baseless litigation of disgruntled current and former

Dickey's franchisees; (2) driving negative publicity about Dickey's and (3) directly and indirectly encouraging franchisees to violate their franchise agreements. As a part of this campaign, Zarco has induced numerous franchisees (including G Six) to file baseless claims against Dickey's and its current or former employees in state and federal court, and in arbitration, and to drum up negative publicity about Dickey's.

For example, by this lawsuit, Zarco sued Mullett personally (a resident of Rockwall, Texas) for millions of dollars in Illinois, using largely copy-pasted pleadings from G Six's existing arbitration against Dickey's. And in its publicity campaign, Zarco has gone so far as to inject themselves (Zarco) into the various litigations as fact witnesses—in violation of Ethics Rule 3.7—through public statements in numerous articles, asserting, for example, that up to “80%” of Dickey's locations “are shutting down” (a completely fabricated assertion).

In its most recent litigation tactic, Zarco abandoned the rules of professional ethics and solicited a direct call with Mullett (whom Zarco knows to be represented) in an apparent attempt to leverage this lawsuit in order to coerce favorable testimony from Mullett in corresponding arbitration proceedings.

On April 11, 2025, Zarco attorneys—including specifically Robert Einhorn—met with one of their Dickey's-franchisee clients, Christopher Bruno and induced or otherwise encouraged him to call Mullett directly to discuss the facts of this case. Acting on their instruction and on their behalf, Bruno called Mullett, demanding that he

(Mullett) call the Zarco law firm directly “to speak with them about the case.” Bruno (again acting at his lawyer’s encouragement) repeatedly instructed Mullett to contact Zarco directly and to “work with us” to “help us get through all this.”

When Mullett refused to discuss case specifics with Bruno or call the Zarco firm, Bruno *threatened* him, using this lawsuit as leverage. Bruno told Mullett, “I know you’re in a lot of hot water yourself. So if you don’t want to work with me, that’s fine. I’ll just, you know, report back to my lawyers that you’re not interested and we’ll just keep going.” He also said: “I know Dickey’s is representing you and everything like that, but if Dickey’s isn’t going to have a favorable outcome, what makes you think things are going to go okay with you? *Dude, this is not going to go away.*”

To make matters worse, Mullett is a fact witness in multiple pending arbitrations against Dickey’s, including the arbitration brought by G Six and the arbitration brought by Bruno. The Zarco firm has already proven that they do not want Mullett’s *truthful* testimony, as they subpoenaed him for the final hearing in the G Six arbitration, and then refused to call him to the stand when he appeared. Instead, they are attempting to coerce him into “work[ing] with [them]” in order to influence his testimony in those matters, by leveraging this multi-million-dollar, federal lawsuit in Illinois, hundreds of miles away from Mullett’s residence in Rockwall, Texas.

The call was in all respects a violation of Ethics Rules 4.2 and 8.4, and was further tantamount to witness tampering. Zarco's conduct in soliciting this communication is undoubtedly part its broader campaign against Dickey's.

Zarco's actions are plainly professional misconduct aimed at obtaining an unfair advantage in this proceeding and others. Zarco's bullying and underhanded litigation tactic threatens the integrity of the adversarial process and taints the litigation with serious ethical violations. Given this misconduct, Zarco should be disqualified from serving as counsel in this matter.

#### **BACKGROUND**

**A. Zarco violated Rules 4.2 and 8.4 by soliciting direct communication with Stephen Mullett, who Zarco knows to be represented by counsel in this lawsuit.**

Zarco currently represents numerous current and former Dickey's franchisees in arbitration proceedings against Dickey's, including G Six<sup>1</sup> and Christopher Bruno,<sup>2</sup> a former franchisee who resides in New Jersey. In each of these arbitration proceedings, Dickey's is represented by Lynn Pinker Hurst & Schwegmann ("LPHS"), which also represents Stephen Mullett in this lawsuit.

Stephen Mullett, defendant in this lawsuit, is the former Senior Director of Finance and Real Estate Development for Dickey's. Mullett has been represented by Lynn Pinker Hurst & Schwegmann ("LPHS") throughout this lawsuit. On March 28, 2025, LPHS

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<sup>1</sup> *G Six v. Dickey's*, AAA Case No. 01-23-0004-5053 (filed October 13, 2023).

<sup>2</sup> *Bruno v. Dickey's*, AAA Case No. 01-23-0004-5005 (filed October 13, 2023).

signed the pending Motion to Dismiss this lawsuit, Dkt. No. 12, providing notice of LPHS' representation of Mullett in this matter. Indeed, Zarco has communicated with LPHS attorneys regarding this lawsuit on numerous occasions, as the parties put together the Joint Status Report that was filed on May 14, 2025.

On April 11, 2025—two weeks *after* LPHS appeared as counsel for Mullett—Zarco solicited its client, Christopher Bruno, to call Mullett directly in order to induce Mullett to “work with” Zarco and “help us get through all this.” The call was a direct violation of Ethics Rules 4.2 and 8.4.

Mullett recorded the phone call. According to the transcript, Bruno met with his counsel (Zarco), and called Mullett directly afterwards. During the call, Bruno stated as follows:

- “You know, I’m being represented by the Zarco Law Firm and I know you’re getting sued from the Gibsons and all.”<sup>3</sup>
- “I’m sure Dickey’s is representing you”<sup>4</sup>
- “So, I think it would be in everyone’s best interest if you just talk to my lawyers and help us get through all this.”<sup>5</sup>
- “[M]y lawyers told me, because they’re not allowed to call you, that I could try and give you a call to see if you would be willing to speak with them and talk with them.”<sup>6</sup>
- “[M]y lawyers can’t specifically reach out to you.”<sup>7</sup>

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<sup>3</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 2:4-6.

<sup>4</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 4:6-7.

<sup>5</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 2:18-20.

<sup>6</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 9:6-9.

<sup>7</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 2:10-11.

- “I can give you my lawyer’s number.”<sup>8</sup>
- “I can give you my lawyer’s direct number.”<sup>9</sup>
- “I would give you their contact information, so that way you can call them and get the specifics to speak with them about the case.”<sup>10</sup>
- “I know you're in a lot of hot water yourself.”<sup>11</sup>
- “This is not going to go away.”<sup>12</sup>
- “All right, well then, I'll just go back and say you refuse to work with us, and we'll just keep going on with our case.”<sup>13</sup>

**B. Zarco’s conduct is part of a larger, ongoing campaign against Dickey’s.**

In isolation, the call is a gross violation of ethical rules, with which Zarco is presumably familiar. In this instance, however, Zarco’s ethical violations are magnified by its conduct outside of this lawsuit.

Zarco’s conduct on April 11, 2025 is part of its ongoing campaign to push Dickey’s into bankruptcy by (1) coordinating and funding baseless litigation of disgruntled current and former Dickey’s franchisees; (2) driving negative publicity about Dickey’s and (3) directly and indirectly encouraging franchisees to violate their franchise agreements.

Consistent with these efforts, Zarco currently or previously represents at least three franchisees in litigation against Dickey’s in federal and state court, and in arbitration proceedings. In multiple of these arbitrations, Zarco has included as named

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<sup>8</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 4:5.

<sup>9</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 5:20-21.

<sup>10</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 9:17-20.

<sup>11</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 6:5-6.

<sup>12</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 10:2.

<sup>13</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 7:15-16.

respondents numerous current or former employees (including Mullett), in a transparent attempt to harass these individuals; though they have since been dismissed from those proceedings. Zarco has also made an offer to take over representation for yet another claimant in a pending arbitration against Dickey's and to fund that arbitration. Mullett has been named by Zarco as a witness in multiple of these proceedings.

In December 2024, one of Zarco's named partners, Robert Zarco, was interviewed for and quoted in a *Restaurant Business* article titled "*Dickey's sales plunge, and franchisees pay the price*," by Jonathan Maze (published December 11, 2024).<sup>14</sup> Mr. Zarco was quoted in the article as stating (with no factual basis): "Some locations are viable . . . , [b]ut very few. Seventy to 80% are shutting down." He went on to assert, "Franchisees are losing their investments[.] Stores have no equity once the investment is made. Buildouts are more expensive than what they portrayed. The whole business model is simply not working."<sup>15</sup> On information and belief, Zarco encouraged franchisees to collect funds to pay reporters (including Mr. Maze) to publish these defamatory articles, and even offered to contribute to such funds by matching franchisee contributions.

Zarco and its other attorneys have been quoted in multiple news articles published false and negative press about Dickey's, including a recent New York Times article in

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<sup>14</sup> Ex. C, Jonathan Maze, *Dickey's sales plunge, and franchisees pay the price*, RESTAURANT BUSINESS ONLINE (December 11, 2024), available at <https://www.restaurantbusinessonline.com/financing/dickeys-sales-plunge-franchisees-pay-price>.

<sup>15</sup> *Id.*

which Einhorn stated, “There are hundreds of people who have been wiped out by Dickey’s.”<sup>16</sup>

Further, on information and belief, Zarco is directly involved with a private Facebook Group called “Bbq Into Bankruptcy Group,” and galvanizes clients from the group to assert claims against Dickey’s. Members of this group openly discuss alleged and unproven claims against Dickey’s, going so far as to coordinate efforts to disrupt and harm Dickey’s business operations including encouraging franchisees to cease operating their restaurants and to take other actions inconsistent with the terms of their Franchise Agreements, to influence or manipulate the media coverage of Dickey’s, and to coordinate litigation/arbitration tactics regardless of viability of claims. Importantly, this group includes Maria Gibson, owner of the Plaintiff in this case, Christopher Bruno, and Danny Unsworth,<sup>17</sup> and—all of whom are plaintiffs in pending litigation against Dickey’s.

The broader scale of Zarco’s campaign against Dickey’s adds color Zarco’s already-egregious conduct regarding the April 11, 2025 phone call to Mullett. It is clear that Zarco intends or attempted to use this lawsuit against Mullett as leverage to solicit favorable testimony from Mullett in Zarco’s other proceedings against Dickey’s. Zarco’s

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<sup>16</sup> Brett Anderson, *They Bet Their Future on Barbecue Dreams. Many Lost Everything*, NY Times (June 3, 2025), available at <https://www.nytimes.com/2025/06/03/dining/dickeys-barbecue-pit-franchise.html>.

<sup>17</sup> *Unsworth et al v. Dickey’s Barbecue Restaurants, Inc. et al*, Case No. 5:24-cv-00975-JRA, pending in U.S.D.C. Northern District of Ohio.



conduct is unethical bullying at its core. These tactics—including the April 11, 2025 phone call and this lawsuit as a whole—point directly to Zarco’s underlying motivation: to drive Mullett’s former employer, Dickey’s—and their current franchisees—out of business. Such conduct threatens the integrity of the adversarial process and prejudices Mullett and his counsel, as well as his former employer, Dickey’s.

### LEGAL STANDARD

A Motion for Disqualification proceeds in two steps: the Court must determine (1) if an ethical violation occurred; and (2) whether disqualification is an appropriate remedy. *See Freeman Equip., Inc. v. Caterpillar, Inc.*, 262 F. Supp. 3d 631, 634 (N.D. Ill. 2017) (citing *Guillen v. City of Chicago*, 956 F.Supp. 1416, 1421 (N.D. Ill. 1997)).

“[I]t is well established that courts possess the inherent power to protect the orderly administration of justice and to preserve the dignity of the tribunal and that the inherent power of a court to manage its affairs necessarily includes the authority to impose reasonable and appropriate sanctions upon errant lawyers practicing before it.” *O’Malley v. Novoselsky*, No. 10 C 8200, 2011 WL 2470325, at \*4 (N.D. Ill. June 14, 2011) (quotation omitted). “Such sanctions may include the award of attorneys’ fees and costs, disqualification of counsel, and the imposition of monetary penalties.” *Blanchard v. EdgeMark Fin. Corp.*, 175 F.R.D. 293, 303 (N.D. Ill. 1997) (citation omitted).

Local Rule 83.50 states that the “Applicable disciplinary rules are the Model Rules adopted by the American Bar Association.”<sup>18</sup> Zarco’s conduct stands in direct violation of Rules 4.2, 8.4 and 3.7.

**1. Rule 4.2: Communication with Person Represented by Counsel.**

“In representing a client, *a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter* unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” Rule 4.2 (emphasis added). *See also* ILL. R. PROF. RESP. 4.2 (same). Some version of Rule 4.2 “is in force in every U.S. jurisdiction.” *Weibrecht v. S. Illinois Transfer, Inc.*, 241 F.3d 875, 881 (7th Cir. 2001), *as amended on denial of reh’g* (Mar. 27, 2001).

“A lawyer may not make a communication prohibited by [Rule 4.2] through the acts of another.” Rule 4.2, cmt. 4. *See also* Rule 8.4(a).

**2. Rule 8.4: Misconduct.**

Rule 8.4 states that indirect violation of any of the Ethics Rules is equally violative. Specifically, Rule 8.4 states, “It is professional misconduct for a lawyer to: (a) *violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.*” Rule 8.4.

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<sup>18</sup> LR 83.50 also states that if ABA Model rules are inconsistent with or silent on a topic, then the professional rules of the state where counsel’s principal office is located apply. Zarco’s office is located in Miami, Florida. To the extent the Florida Rules of Professional Conduct apply, Florida Rules of Professional Conduct Rule 4-4.2 is consistent with ABA Model Rule 4.2.

### **3. Rule 3.7: Lawyer as Witness.**

Further relevant here, Rule 3.7 provides: “A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.” The advocate-witness rule “has deep roots in American law.” *In re Gibrick*, 562 B.R. 183, 187 (Bankr. N.D. Ill. 2017) (quoting *U.S. v. Jones*, 600 F.3d 847, 861–62 (7th Cir. 2010)). “Rules of professional conduct for attorneys have long recognized that having an attorney testify either for or against his client can put great stress on our system of justice.” *Id.* (quoting *U.S. v. Turner*, 651 F.3d 743, 749 (7th Cir. 2011)).

## **ARGUMENT AND AUTHORITIES**

### **A. Zarco violated Ethics Rules 4.2 and 8.4.**

The April 11, 2025 phone call is a clear violation of Ethics Rules 4.2 and 8.4. Zarco used its client, Bruno, to initiate a prohibited substantive contact with Mullett, a represented party. Rule 4.2 prohibits a lawyer’s direct or indirect communication (1) “about the subject of the representation” and (2) “with a person the lawyer knows to be represented by another lawyer in the matter.” Rule 4.2.

#### **1. Zarco had actual knowledge Mullett was a represented party.**

There is no question that on April 11, 2025, Zarco had actual knowledge that Mullett was represented by LPHS. Indeed, two weeks before, on April 2, a Zarco lawyer initiated communications with LPHS, as counsel for Mullett, to schedule a Rule 26(f)

conference consistent with the Federal Rules of Civil Procedure.<sup>19</sup> Bruno also admits that he knew Mullett was represented by counsel: “I know you’re getting sued from the Gibsons and all”<sup>20</sup> and “I know Dickey’s is representing you.”<sup>21</sup>

## **2. Zarco induced Bruno to initiate the call.**

The fact that Christopher Bruno—not Zarco directly—initiated the call is immaterial. Comments to Rule 4.2 speak to this exact instance: “*A lawyer may not make a communication prohibited by this Rule through the acts of another.*” Rule 4.2, cmt 4. And Rule 8.4 specifically makes it a violation to “knowingly assist or induce another to [violate the Rules of Professional Conduct] or to do so through the acts of another.” Rule 8.2. Simply put, “[a] lawyer may not turn a blind eye to circumstances that make it clear that a person with whom a lawyer wishes to speak is a represented party.” *Scanlan v. Eisenberg*, 893 F. Supp. 2d 945, 949 (N.D. Ill. 2012).

Bruno admitted multiple times that he called Mullett at Zarco’s instruction: “[M]y lawyers told me, because they’re not allowed to call you, that I could try and give you a call to see if you would be willing to speak with them and talk with them.”<sup>22</sup> He told Mullett, “I had a meeting with [Zarco] this morning about my case and about the Gibsons

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<sup>19</sup> Ex. B, April 2, 2025 email from ZES (Himanshu Patel) to LPHS (Daniela Holmes).

<sup>20</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 2:5.

<sup>21</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 9:20-21. Dickey’s and Mullett share the same counsel (LPHS) in this lawsuit and others.

<sup>22</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 9:6-9. Bruno admits that his lawyers are “the Zarco Law Firm” and “Robert Einhorn.” *Id.* at 2:4-5 and 3:9.

case and the other cases. And *they told me* if it's worth a short *to give you a call*."<sup>23</sup> Bruno further states, "I mean, my lawyers can't specifically reach out to you."<sup>24</sup>

Moreover, the entirety of the call is replete with requests from Bruno for Mullett to reach out to Zarco directly.<sup>25</sup> Cf. Rule 4.2, cmt. 3 ("The Rule applies even though the represented person initiates or consents to the communication.").

### **3. The call was a communication "about the subject of the representation."**

Bruno explicitly confirmed that the purpose for Zarco's solicitation was to speak directly with Mullett "*about the case*."<sup>26</sup> The conversation directly addresses Mullett and Dickey's alleged wrongdoing, as shown by Bruno's statement: "I know you know that what Dickey's was doing wasn't right."<sup>27</sup> Bruno also references Dickey's purported fraudulent arrangement with Illumina Bank, saying, "I know the details between, you know, April Dravey and Illumina Bank and Financial Capital Solutions and, you know, Dickey's was making money on the back end of these deals."<sup>28</sup>

Worse, when Mullett refused to "work with" Zarco, Bruno *threatened* him, using this litigation as leverage: "I know you're in a lot of hot water yourself,"<sup>29</sup> "*This is not*

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<sup>23</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 6:13-16.

<sup>24</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 2:10-11.

<sup>25</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 2:18-20 ("So, I think it would be in everyone's best interest if you just talk to my lawyers and help us get through all this."); *id.* at 2:10-11 ("[M]y lawyers can't specifically reach out to you."); *id.* at 4:5 ("I can give you my lawyer's number."); *id.* at 5:20-21 ("I can give you my lawyer's direct number."); *id.* at 9:17-20 ("I would give you their contact information, so that way you can call them and get the specifics to speak with them about the case.").

<sup>26</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 9:17-20 (emphasis added).

<sup>27</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 3:21-22.

<sup>28</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 5:13-16.

<sup>29</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 6:5-6.

*going to go away”<sup>30</sup> and “I’ll just go back and say you refuse to work with us, and we’ll just keep going on with our case.”<sup>31</sup>*

Further, Bruno attempted to elicit admissions from Mullett: “You’re a part of this whole scheme. You know you are.”<sup>32</sup> He also attempted to persuade Mullett to distance himself from Dickey’s and align with former franchisees, including Bruno himself—“I know Dickey’s is representing you and everything like that, but if Dickey’s isn’t going to have a favorable outcome, what makes you think things are going to go okay with you?”<sup>33</sup> and “I just think it’s in everyone’s best interest that you work with our lawyers.”<sup>34</sup> The transcript demonstrates a clear intent to influence Mullett’s position in this litigation and presumably in others, in which Mullett may be called to testify as a witness.

#### **4. No exception applies.**

Both Bruno and Zarco knew that the Ethics Rules prohibited between Zarco and Mullett. Bruno admits this directly: “My lawyers can’t specifically reach out to you.”<sup>35</sup> At no time did Zarco seek consent from Mullett’s counsel to have this call; nor would the undersigned have given such consent. Rather, Zarco attempted to circumvent its ethical obligations by soliciting the call through its other client, Bruno. Mullett also intends to

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<sup>30</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 10:2 (emphasis added).

<sup>31</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 7:15–16 (emphasis added).

<sup>32</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 10:5-6.

<sup>33</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 9:20-10:2.

<sup>34</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 4:10-12.

<sup>35</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 2:10-11.

file a grievance with the Florida State Bar to address Zarco's ethical violations, including the April 11, 2025 phone call.

**B. Zarco violated Ethics Rule 3.7.**

"The roles of attorney and witness 'usually are incompatible.'" *Gibrick*, 562 B.R. at 187 (quoting *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1148 (7th Cir. 1993)). "The most important consideration is that the attorney-witness may not be a fully objective witness, or may be perceived by the trier of fact as distorting the truth for the sake of his client." *Jones v. City of Chicago*, 610 F. Supp. 350, 357 (N.D. Ill. 1984) (citing *U.S. v. Morris*, 714 F.2d 669 (7th Cir.1983)).

Through its involvement and quoted statements in the article published by Restaurant Business, Zarco (and specifically, Mr. Zarco) became a personal participant in the negative publicity campaign against Dickey's, and represented itself to have material information regarding the statements made in article. Further, Zarco's broader campaign against Dickey's is material to Mullett's defenses in this lawsuit, as it suggests improper motive for the filing of this lawsuit in the first place. As the leader and organizer of this campaign, Zarco has made itself a key witness in this dispute. When—and not if, as Mr. Zarco's testimony is necessary—Mr. Zarco testifies, he will have every incentive to "distort[] the truth for the sake of his client" and "vouch for his own credibility" on the witness stand, resulting in unfair prejudice to Mullett. *Id.* Rule 3.7 therefore mandates Zarco's disqualification as counsel for Plaintiff.

The policy behind Rule 3.7 “reflects the broader concern for public confidence in the administration of justice, that ‘justice must satisfy the appearance of justice.’” *Jones*, 610 F. Supp. at 357 (quoting *U.S. v. Johnson*, 690 F.2d 638 (7th Cir.1982)). The most important consideration is that the attorney-witness may not be a fully objective witness. *Id.* And such policy concerns are greater in cases, as this one, where a jury is the trier of fact. *Id.* An advocate-witness will be in a position to “vouch for his own credibility” to the jury, and creates a risk that the jury will place undue weight on the attorney’s testimony, both of which create an unfair advantage. *See Jones*, 610 F. Supp. at 357.

**C. Disqualification is an appropriate remedy.**

The question rests with the Court’s “broad discretion.” *Gibrick*, 562 B.R. at 188 (quoting *U.S. v. Hollnagel*, No. 10 CR 195, 2011 WL 3898033, at \*4 (N.D. Ill. Sept. 6, 2011)). Here, disqualification is warranted because Zarco engineered a clear, knowing violation of Ethics Rules 4.2, 8.4(a) and 3.7, thereby compromised the fairness and integrity of these proceedings and the profession, which the Ethics Rules are designed to uphold. “[E]ven the appearance of impropriety” may justify disqualification of counsel to preserve public confidence in the integrity of legal proceedings. *Wagner v. Lehman Bros. Kuhn Loeb Inc.*, 646 F. Supp. 643, 668 (N.D. Ill. 1986); *see also Schloetter v. Railoc of Ind., Inc.*, 546 F.2d 706, 711 (7th Cir. 1976) (district court “was well within the bounds of its discretion in disqualifying attorneys [ ] because of the appearance of impropriety which would result from their continued involvement”).



**1. Disqualification is appropriate for Zarco's violations of Rules 4.2 and 8.4.**

"Disqualification may be ordered as a remedy for a violation of Rule 4.2." *Weeks v. Indep. Sch. Dist. No. I-89 of Oklahoma Cnty., OK., Bd. of Educ.*, 230 F.3d 1201, 1211 (10th Cir. 2000). *See also Kuziel v. Kuziel*, No. 1–12–2612, 2013 WL 1296235, ¶ 23 (Ill. App. 2013) ("Courts have interests in protecting the attorney-client relationship, maintaining public confidence in the legal profession and ensuring the integrity of judicial proceedings and have the authority to disqualify an attorney from representing a particular client to protect those interests."). Zarco's egregious violation of Rules 4.2 and 8.4—even in isolation—warrant disqualification.

This Court and others have disqualified counsel in whole or in part for violating ethics rules against speaking with represented parties. *See Wagner*, 646 F. Supp. at 659 ("This Court has no doubt that [attorney] must be disqualified as counsel for plaintiff for his unethical conduct in violation of DR 7–109(C) and DR 7–104(A)."). *See also Kuziel*, 2013 WL 1296235, ¶ 23 (finding disqualification of counsel "was well within the circuit court's discretion" where counsel violated Rule 4.2); *Weeks*, 230 F.3d at 1211 ("After a thorough examination of the record in this case, we conclude that the district court did not abuse its discretion in disqualifying [attorney] for her violation of Rule 4.2."); *MMR/Wallace Power & Indus., Inc. v. Thames Assocs.*, 764 F. Supp. 712, 718 (D. Conn. 1991) (disqualifying counsel for violation of Rule 4.2).

Bruno, acting on Zarco's instruction, admitted that he and Zarco intended to seek disclosure of information about the ongoing litigation—precisely the conduct Rule 4.2 exists to prevent. Bruno told Mullet specifically: "I would give you [Zarco's] contact information, so that way you can call them and get the specifics to speak with them about the case."<sup>36</sup>

The Court's failure to disqualify Zarco, would improperly condone its misconduct and incentivize future back-channel communications with represented witnesses—conduct designed to obtain an unfair advantage. Absent disqualification, Zarco's conduct is likely to be repeated. Indeed, when confronted, Robert Einhorn (a named partner at Zarco) dismissed the misconduct as "innocuous," insisting that the call was "nothing inappropriate" because "Mullett was unwilling to share any information with Bruno."<sup>37</sup> But the fact that Zarco's efforts failed does not change that Zarco engaged in a deliberate attempt to circumvent multiple Ethics Rules and interfere with Mullett's attorney-client relationship.

**2. Disqualification is appropriate for Zarco's involvement as a necessary witness.**

Disqualification is also independently warranted under Ethics Rule 3.7, as Zarco's deliberate actions have made Robert Zarco, and other Zarco attorneys necessary fact witnesses in this dispute.

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<sup>36</sup> Ex. A-1, April 11, 2025 Phone Call Tr. 9:17-20.

<sup>37</sup> Ex. C, April 14, 2025 email from Robert Einhorn to Mary Nix.

Given the statements made by Mr. Zarco, and the overarching scheme against Dickey's driving this litigation, the testimony of Zarco attorneys is essential to this dispute, and cannot be obtained from any other source. *See Walton v. Diamond*, No. 12 C 4493, 2012 WL 6587723, at \*2 (N.D. Ill. Dec. 14, 2012) ("A 'necessary' witness under Rule 3.7 is one whose testimony is unobtainable elsewhere.").

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. *Mills v. Hausmann-McNally*, S.C., 992 F. Supp. 2d 885, 895 (S.D. Ind. 2014). And an attorney representing a party whose testimony is necessary to the proceedings "does [] militate in favor of his disqualification." *Jones*, 610 F. Supp. at 361. Moreover, even if only the statements by Mr. Zarco were at issue, "the same reasons which support disqualification of [Mr. Zarco] also support disqualification of [Mr. Zarco's] entire firm." *Id.* ("[T]he judicial process itself would be tainted by allowing the testifying lawyer's firm to act as trial counsel under the circumstances of this case.").

Under these circumstances, considering both Zarco's violations of 4.2 and 8.4 and Zarco's role as a necessary attorney-witness, disqualification is the *only* appropriate remedy.

The district court bears the responsibility for the supervision of the members of its bar. *Hull v. Celanese Corp.*, 513 F.2d 568, 571 (2d Cir. 1975). And courts are charged with "[t]he preservation of public trust both in the scrupulous administration of justice and in

the integrity of the bar[.]” *MMR/Wallace Power & Indus.*, 764 F. Supp. at 718. While courts may consider a litigant’s right to counsel of its choice, “[this] consideration must yield [ ] to considerations of ethics which run to the very integrity of our judicial process.” *Id.* Accordingly, “any doubt is to be resolved in favor of disqualification.” *Id.*

Particularly here, where this case is in its earliest stages, and Defendants’ counsel acted promptly in bringing this motion, G Six cannot reasonably claim hardship. *See Gibrick*, 562 B.R. at 190 (Bankr. N.D. Ill. 2017) (granting motion for disqualification where discovery was still continuing and no trial date was set). Moreover, “courts have generally rejected arguments that a lawyer’s long-standing relationship with a client, involvement with the litigation from its inception or financial hardship to the client are sufficient reasons to invoke the ‘substantial hardship’ exception to the advocate-witness rule.” *Jones*, 610 F. Supp. at 361 (citing *J.P. Foley & Co. v. Vanderbilt*, 523 F.2d 1357, 1359 (2d Cir. 1975); *May’s Family Centers v. Goodman’s Inc.*, 590 F.Supp. 1163 (N.D. Ill. 1984); *Brotherhood Railway Carmen v. DelPro Co.*, 549 F.Supp. 780 (D. Del. 1982)).

### CONCLUSION

Based on the foregoing, Defendant respectfully requests the Court grant this Motion for Disqualification, and award Defendant any such other and further relief to which he may be entitled.

DATED: June 3, 2025

Respectfully submitted,

/s/

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record on June 3, 2025, via CM/ECF.

/s/

