

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

MARIELLE (“MOLLY”) KRONBERG, )  
)  
Plaintiff, )  
)  
v. ) No. 1:09cv947 (AJT/TRJ)  
)  
LYNDON LAROUCHE, et al., )  
)  
Defendants. )  
\_\_\_\_\_ )

**ORDER**

This matter is before the Court on Plaintiff Molly Kronberg’s Motion for Reconsideration of, or for a Certification Allowing Interlocutory Appeal of, the Order Disqualifying Attorney Markham, and for an Interim Stay (Doc. No. 42), filed in response to this Court’s Order dated April 9, 2010 (Doc. No. 41) (the “Disqualification Order”) disqualifying Kronberg’s lead counsel John E. Markham pursuant to Virginia Rule of Professional Conduct 1.11(c) (“Rule 1.11(c”).

The Fourth Circuit has recognized three potential grounds for reconsideration of a judgment: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *EEOC v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997) (citing *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir.1993)). Because the Disqualification Order is interlocutory, reconsideration may also be based on other rationales necessary for the Court “to reach the correct judgment under law.” *Netscape Comm’ns Corp. v. ValueClick, Inc.*, --- F. Supp. 2d ---, 2010 WL 1303473 (E.D. Va. Apr. 2, 2010) (quoting *Am. Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-15 (4th Cir. 2003)). Kronberg has not proffered that any valid basis for

reconsideration here, arguing only that the Court mis-applied the standard of law set forth in Rule 1.11(c). Accordingly, the Court denies Kronberg's motion for reconsideration.

With respect to Kronberg's alternative request that the Court certify its Disqualification Order for interlocutory appeal, the Court has considered the requirements of 28 U.S.C. § 1292(b). That provision states:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, that application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

There is no reported judicial application of Rule 1.11(c) to facts comparable to those presented in this case. Here, the Court determined that having once had actual knowledge of confidential government information, some of which remains confidential, Markham continues to have actual knowledge of confidential information for the purposes of Rule 1.11(c), even accepting that he currently has no specific memory of that still confidential information. This construction and application of Rule 1.11(c) is not the only reasonable construction and application of Rule 1.11(c) and the Court finds that there are substantial grounds for a difference of opinion. The Court also finds that the Court's Disqualification Order involves a controlling question of law and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation. *See Rogers v. Pittston Co.*, 996 F.2d 1212, 1993 WL 23900 (4th Cir. 1993) (per curiam) (unpublished) (affirming the district court's disqualification

of an attorney in an interlocutory appeal pursuant to 28 U.S.C. § 1292(b)); *F.D.I.C. v. U.S. Fire Ins. Co.*, 50 F.3d 1304 (5th Cir. 1995) (considering appeal of interlocutory disqualification order pursuant to 28 U.S.C. § 1292(b)). Finally, the Court finds that it is in the interests of justice that this case be stayed pending Kronberg's appeal of the Disqualification Order.

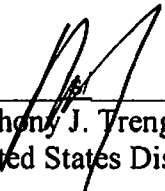
For the above reasons, it is hereby

ORDERED that Plaintiff Molly Kronberg's Motion for Reconsideration of, or for a Certification Allowing Interlocutory Appeal of, the Order Disqualifying Attorney Markham, and for an Interim Stay (Doc. No. 42) be, and the same hereby is, DENIED with respect to reconsideration and GRANTED with respect to an interlocutory appeal and interim stay; it is further

ORDERED that the Court's April 9, 2010 Order (Doc. No. 41) be, and the same hereby is, certified for interlocutory appeal pursuant to 28 U.S.C. 1292(b); and it is further

ORDERED that this matter be, and the same hereby is, STAYED pending the outcome of any interlocutory appeal to the Fourth Circuit.

The Clerk is directed to forward copies of this Order to all counsel of record.

  
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Anthony J. Trenga  
United States District Judge

Alexandria, Virginia  
May 3, 2010