

No. 1-25-1950

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOSEPH D. RALLO, PETER V. RALLO, and	)	Appeal from the
DAVID RALLO,	)	Circuit Court of
	)	Cook County
Plaintiffs-Appellants,	)	
	)	No. 22 L09775
v.	)	
	)	Honorables
VINCENZO DUBLINO and RACHEL DUBLINO,	)	Anthony C. Swanagan and
	)	Daniel J. Kubasiak,
Defendants-Appellees.	)	Judges, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Quish and Justice Martin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the dismissal of plaintiffs' complaint as a sanction for continuing to solicit and receive legal advice from their attorney in violation of a court order requiring him to withdraw from the case due to a conflict of interest.

¶ 2 David T. Rallo is an attorney who brought a complaint on behalf of his sons, Joseph D. Rallo and Peter V. Rallo, against defendant, Vincenzo Dublino, for fraud, breach of contract, and breach of fiduciary duty. The circuit court entered an order disqualifying David as the attorney for Joseph and Peter (disqualification order) based upon a conflict of interest because David had previously represented defendant in the very transaction at issue here. David subsequently filed a fifth amended complaint against defendant, adding himself as a plaintiff along with Joseph and

Peter. Defendant filed a motion for sanctions against plaintiffs, seeking dismissal of their complaint because they were knowingly flouting the disqualification order by continuing to have David represent them. The court granted defendant's sanctions motion and dismissed plaintiffs' fifth amended complaint with prejudice. Plaintiffs appeal the dismissal. We affirm.

¶ 3 On January 30, 2023, David filed a first amended complaint on behalf of Joseph and Peter against defendant for fraud, breach of contract, and breach of fiduciary duty. The first amended complaint alleged that in 2008, defendant solicited Joseph and Peter to invest \$50,000 each in Coin Operated Equipment, Inc. (COE), a company that acquires and places legal, licensed gambling machines in locations throughout Chicago. Defendant promised them a 12% annual interest on their investment. In reliance on defendant's promise, Joseph and Peter each invested \$50,000 in COE. Defendant paid them the 12% annual interest until January 2020, when he stopped making any further payments and refused to return the principal to them, thereby allegedly engaging in fraud, breach of contract, and breach of fiduciary duty.

¶ 4 Defendant filed a motion to dismiss the first amended complaint for failure to state a cause of action. In lieu of a response, Joseph and Peter filed a motion for leave to file a second amended complaint against defendant with three counts, two for breach of contract and one for violation of the Illinois Securities Law of 1953 (Securities Law) (815 ILCS 5/1 *et seq.* (West 2024)). While Joseph and Peter's motion for leave to file the second amended complaint was pending, defendant filed a motion to disqualify David as their attorney due to a conflict of interest in violation of Rule 1.9(a) of the Illinois Rules of Professional Conduct, which states:

“A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests

are materially adverse to the interests of the former client unless the former client gives informed consent.” Ill. R. Prof’l Conduct (2010) R. 1.9(a) (eff. Jan. 1, 2010).

¶ 5 In support of his disqualification motion, defendant filed an affidavit attesting that he and David created COE in 2006. Defendant was the president of COE and David was general counsel. In his capacity as general counsel, David had numerous conversations with defendant about how to raise money for the company and ultimately suggested to defendant that Joseph and Peter could each loan \$50,000 to COE.

¶ 6 Defendant attested that David solely handled the negotiations for the loan and that defendant “never had any personal contact or communication with either Joseph or Peter during the transaction.” Defendant “relied upon David to handle that transaction on behalf of [COE] as an officer and the attorney for [COE].” David also negotiated a second loan from another couple, Thomas and Sandra Stern, for an additional \$100,000. After the funds for the loans were paid to COE, David took a 15% finder’s fee and paid himself \$30,000.

¶ 7 The disqualification motion argued that David’s prior representation of defendant in the negotiation of the \$50,000 loans with Joseph and Peter was substantially related to his current representation of Joseph and Peter in their lawsuit against defendant, creating a conflict of interest necessitating David’s disqualification under Rule 1.9(a).

¶ 8 On September 27, 2023, the circuit court entered an agreed order, stating:

“THIS CAUSE coming to be heard on Defendants’ Motion to Disqualify Attorney, Plaintiffs and Plaintiffs’ counsel having filed no response to the Motion, and having no objection to the entry of this Order, and the Court being advised in the premises;

IT IS HEREBY ORDERED:

1) The Defendants' Motion to Disqualify David T. Rallo as the Plaintiffs' attorney is granted. David T. Rallo withdraws as attorney of record for Plaintiffs."

¶ 9 Joseph and Peter never retained new attorneys in this matter and instead filed *pro se* appearances.

¶ 10 On December 1, 2023, Joseph and Peter filed a third amended complaint against defendant, which added two new plaintiffs, Joseph D. Rallo as trustee of the Joseph D. Rallo Trust (the Joseph Trust) and Peter V. Rallo as trustee of the Peter V. Rallo Trust (the Peter Trust). Joseph and Peter alleged that they each paid COE \$50,000 based on misleading prospectuses and other documents that contained false information regarding the manner in which the interest on the \$50,000 investments would be paid. Recovery was sought by Joseph and Peter, in their capacity as trustees of the Joseph and Peter Trusts, for breach of the Securities Law and breach of a promissory note.

¶ 11 Defendant filed a motion to dismiss the third amended complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2024)), arguing that neither Joseph nor Peter were attorneys and therefore that neither of them could represent the Trusts in this litigation. The dismissal motion also noted that:

"The Third Amended Complaint was filed electronically through the account of David Rallo, and on its face appears that it may have been prepared by him. If so, this is concerning because Mr. Rallo was disqualified as Plaintiffs' attorney based upon conflict of interest, and he cannot be participating nor advising Plaintiffs."

¶ 12 On April 1, 2024, Joseph and Peter filed a fourth amended complaint removing the Joseph Trust and the Peter Trust as plaintiffs. The fourth amended complaint alleged claims against defendant for violation of the Securities Law and breach of a promissory note.

¶ 13 On July 17, 2024, the parties entered into an agreed order dismissing the fourth amended complaint without prejudice and granting Joseph and Peter leave to file a fifth amended complaint.

¶ 14 Meanwhile, on June 25, 2024, defendant filed a “motion for rule to show cause, to strike requests to admit and other discovery, and for sanctions against plaintiffs and attorney David Rallo” (sanctions motion). The sanctions motion asserted that in violation of the disqualification order, David was still providing Joseph and Peter with legal services. In support, defendant noted that (1) Joseph and Peter’s filings since the entry of the disqualification order “appear to be in the same style as pleadings and documents previously filed by Attorney Rallo”; (2) David sent an e-mail to defendant’s counsel on June 18, 2024, stating that he had taken the position of administrative assistant to Joseph and Peter and would henceforth be “communicating with you on their behalf, e-filing documents and pleadings, [and] serving you with papers”; (3) in that same e-mail, David further “encouraged” defendant’s counsel to contact him directly “for quicker and more efficient communication” and he attached a first set of interrogatories by Joseph to defendant; (4) on June 19, 2024, David sent defendant’s counsel additional e-mails attaching Joseph’s Requests to Admit Facts and Requests to Produce, which were obviously prepared and drafted by David because they referenced certain conversations between David and defendant which would not have been known to Joseph and Peter; (5) on June 20, 2024, David sent defendant’s counsel an e-mail attaching Joseph’s first set of interrogatories toward defendant’s wife, Rachel Dublino; and (6) on June 21, 2024, David sent defendant’s counsel an e-mail attaching Joseph’s second Request to Admit Facts to defendant.

¶ 15 Defendant argued in the sanctions motion that in light of the disqualification order and the conflict of interest upon which it was based, David “should not be providing *any* services to either of the Plaintiffs, whether he characterizes them as ‘administrative’ or otherwise” and “should not

be having *any* communication with either of the Plaintiffs regarding this action.” (Emphasis in the original.) Further, defendant argued that David had “ghost-written” the first set of interrogatories which were the subject of the June 18, 2024, e-mail and the Request to Admit Facts which were the subject of the June 19, 2024, e-mail. Defendant argued that David’s ghost-writing of legal documents also violated the disqualification order. Defendant argued that plaintiffs should be called upon to show cause why they should not be held in indirect civil contempt for violating the disqualification order. As a sanction, defendant requested that the court dismiss their complaint with prejudice and strike the first and second Requests to Admit Facts and all other written discovery served by David.

¶ 16 After filing the sanctions motion, defendant learned that Joseph had served subpoenas for documents on several banks. The subpoenas sought defendant’s banking records as well as the banking records of Rachel Dublino and Rachel’s Café, LLC, neither of which were parties to the suit at that time. Defendant filed an emergency motion to quash the subpoenas. The circuit court held a hearing by Zoom, found that the subpoenas were not validly issued, and granted the emergency motion to quash.

¶ 17 On July 29, 2024, Joseph, Peter, *and* David filed a fifth amended complaint against defendant and against Rachel Dublino, which added David as a party-plaintiff based on Joseph and Peter’s purported assignment to him of 20% of their claims and causes of action against defendant, Rachel, and Rachel’s Café, LLC. The fifth amended complaint alleged that defendant violated the Securities Law, breached a promissory note, and engaged in common law fraud. Although Rachel was named in the caption as a defendant, none of the counts were pleaded against her.

¶ 18 While the fifth amended complaint was pending, the circuit court conducted an evidentiary hearing on the sanctions motion on September 19, 2024. The record on appeal does not contain a transcript of the hearing or an acceptable substitute such as a certified bystander's report or an agreed statement of facts pursuant to Illinois Supreme Court Rule 323. See Ill. S. Ct. R. 323(a), (c), (d) (eff. July 1, 2017).

¶ 19 On March 18, 2025, the circuit court entered a written order which found that plaintiffs had repeatedly violated the disqualification order and it sanctioned them by dismissing the fifth amended complaint with prejudice. The court specifically cited several actions by plaintiffs that violated the disqualification order. First, the court noted that following his disqualification on September 27, 2023, David sent e-mails to defendant's counsel stating that he was acting as administrative assistant for Joseph and Peter and attached various discovery including interrogatories, Requests to Produce, and Requests to Admit Facts. Such e-mails indicated that despite David's disqualification, he was still in communication with Joseph and Peter about their litigation against defendant.

¶ 20 Second, the court noted:

“David Rallo testified under oath that nothing in the disqualification order prevented him from giving legal advice to his sons. When asked by defense counsel about his conversations with his sons about the case, he refused to answer and asserted attorney-client privilege as his basis. Asked by the court to clarify whether he was asserting that privilege for conversations he had with his sons following disqualification, he confirmed that he was.”

¶ 21 Third, the court noted that during the Zoom hearing held on the emergency motion to quash the bank subpoenas, David could be heard off-camera “prompting” some of Joseph's answers.

¶ 22 In its analysis, the court acknowledged David’s contention that “nothing in the order disqualifying him mandated any restriction on his interaction with his sons beyond his withdrawal of his appearance as [their] attorney.” The court disagreed, ruling that the disqualification order necessarily precluded David from *any* communications with Joseph and Peter about the case against defendant, which he repeatedly violated as evidenced by the e-mails and his admission at the hearing that he had continued to give legal advice to his sons even after his disqualification. The court further stated:

“Nine months *after* he was disqualified and one month *after* a motion for rule to show cause was filed against him, he and his sons amended the sons’ complaint to add David as a plaintiff based on the sons’ assignment of an interest in their claims to him. If there is significance of that amendment other than to attempt to ensure that David could continue to participate in the case despite disqualification, that significance is not apparent to the court. How [David’s] direct pursuit of claims against his former client could be perceived to be less of a violation of the rules of professional responsibility than assisting other parties in the same proceeding is also unclear.” (Emphasis in the original).

¶ 23 The court concluded:

“Given the length of time following the disqualification order during which David Rallo acted against the interest of his former client, the court perceives no prospect for effective compliance or remediation. The court finds that David Rallo’s post-disqualification conduct constitutes deliberate and contumacious disregard for the court’s disqualification order, and further finds that the acquiescence of Joseph and Peter Rallo’s [sic] in the actions of their father is an appropriate basis for subjecting them to the consequences of that conduct. This case is accordingly dismissed with prejudice.”

¶ 24 Plaintiffs now appeal the March 18, 2025, order dismissing their fifth amended complaint with prejudice as a sanction for repeatedly and willfully violating the disqualification order. Initially, we note that plaintiffs characterize the dismissal as a finding of either indirect civil contempt or indirect criminal contempt. However, the March 18 order never specifically stated that it was finding plaintiffs in contempt; rather, it cited to the holding in *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48 (1995), that a trial court has the inherent authority to control its own docket and “is empowered to dismiss a cause of action with prejudice for violations of court orders *** [when] the party dismissed has shown a deliberate and contumacious disregard for the court’s authority.” *Id.* at 65, 68.

¶ 25 The circuit court here found that plaintiffs engaged in deliberate and contumacious disregard of the disqualification order and dismissed the fifth amended complaint with prejudice as a sanction pursuant to its inherent authority to control its own docket as recognized in *Sander*, and *not* as a sanction following a finding of indirect contempt. Our review is for a clear abuse of discretion. *Id.* at 67. In reviewing whether the circuit court’s dismissal order was a clear abuse of discretion, we note our supreme court’s holding that “[d]ismissal is justified only when (1) there is a clear record of willful conduct showing deliberate and continuing disregard for the court’s authority; and (2) a finding that lesser sanctions are inadequate to remedy both the harm to the judiciary and the prejudice to the opposing party.” *Santiago v. E.W. Bliss Co.*, 2012 IL 111792, ¶ 20.

¶ 26 We begin our analysis by examining the facts underlying the court’s entry of the disqualification order on September 27, 2023. The disqualification order was made pursuant to Rule 1.9(a) of the Illinois Rules of Professional Conduct, which provides that an attorney’s subsequent representation of a party with interests materially adverse to a former client is

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prohibited if the matters involved in the two representations are the same or substantially related. Ill. R. Prof'l Conduct (2010) R. 1.9(a) (eff. Jan. 1, 2010). In *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 180 (1997), our supreme court adopted the three-part test set forth in *La Salle National Bank v. County of Lake*, 703 F. 2d 252 (7th Cir. 1983) for determining whether prior and subsequent representations are substantially related. First, the court must make a factual reconstruction of the scope of the prior legal representation; second, the court determines whether it is reasonable to infer that confidential information would have been given to an attorney representing a client in those matters; third, the court determines whether the information is relevant to the pending litigation against the prior client. *Schwartz*, 177 Ill. 2d at 178.

¶ 27 Once a substantial relationship is found between the prior and current representations, an irrebuttable presumption arises that confidential information was disclosed to the attorney in the earlier representation (*Franzoni v. Hart Schaffner & Marx*, 312 Ill. App. 3d 394, 403-04 (2000)), necessitating his withdrawal as counsel. *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 32.

¶ 28 Defendant here argued in his disqualification motion that David's prior representation of him in the negotiation of the \$50,000 loans with Joseph and Peter was substantially related to David's current representation of Joseph and Peter arising out of those same loans. Plaintiffs did not dispute that a substantial relationship existed between the prior and current representations and accordingly the circuit court entered an agreed order on September 27, 2023, disqualifying David as Joseph and Peter's attorney in this matter.

¶ 29 On appeal, plaintiffs' argument is that the disqualification order only required the withdrawal of David's appearance but did not enjoin him from talking about the case with Joseph and Peter post-withdrawal and, therefore, that the court erred by dismissing the fifth amended

complaint with prejudice as a sanction for talking about the case with them. Plaintiffs contend that if the circuit court intended to enjoin David from talking about the case with Joseph and Peter post-withdrawal, it should have explicitly stated as such in the disqualification order. Plaintiffs argue that “In Illinois, injunctions cannot be implied. Injunctions must be expressed in writing and set forth with certainty, clarity and conciseness precisely what actions are enjoined.” See *e.g.*, *People v. Wilcox*, 5 Ill. 2d 222, 228 (1955) (“[T]he mandate of the court must be clear before disobedience can subject a person to punishment.”).

¶ 30 Contrary to plaintiffs’ argument, the disqualification order is not unclear or ambiguous about the actions enjoined. The disqualification order clearly provides that “The Defendants’ Motion to Disqualify David T. Rallo *as the Plaintiffs’ attorney* is granted.” (Emphasis added.) An attorney’s duty is to provide “competent representation and sound legal advice.” *Wilkey v. Paulsen*, 385 Ill. App. 3d 305, 313 (2008). When the court disqualified David from acting as Joseph and Peter’s attorney in their case against defendant, it necessarily was enjoining him from providing any further legal representation of them, including giving them any further legal advice about the case.

¶ 31 Plaintiffs next argue that no evidence was presented to the court as to what David talked to Joseph and Peter about after the disqualification order was entered on September 27, 2023, and therefore that the court erred in presuming that he was giving them legal advice in violation of the disqualification order. Plaintiffs acknowledge that the court found that David sent defendant’s counsel five e-mails over a three-day period regarding the case, but they argue that those e-mails were sent in David’s capacity as “administrative assistant” and did not show that he had been giving Joseph and Peter legal advice. Plaintiffs also acknowledge that the court found that during the Zoom hearing on the motion to quash the bank subpoenas, David could be heard “prompting

Joseph's answers" in violation of the disqualification order. Plaintiffs argue there was no evidence presented that the court was familiar with David's voice so as to be able to identify him as the person prompting Joseph and, further, that the record is unclear whether the prompted answers "were of any legal nature or significance."

¶ 32 The court's factual findings were made after an evidentiary hearing at which Joseph and David testified. As discussed, the record on appeal does not contain a transcript of the hearing or an acceptable substitute such as a certified bystander's report or an agreed statement of facts pursuant to Illinois Supreme Court Rule 323. Ill. S. Ct. R. 323(a), (c), (d) (eff. July 1, 2017). As the appellants, plaintiffs bear the burden of providing a sufficient record to review their claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Generally, in the absence of a complete record, we presume that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Id.* at 392.

¶ 33 Plaintiffs argue that in this case, though, we should make no such presumptions based on an incomplete record because they submitted proposed bystander's reports to the circuit court, which it improperly refused to certify under Illinois Supreme Court Rule 323(c) (eff. July 1, 2017). Rule 323(c) states:

"If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection. *** The proposed [bystander's] report shall be served on all parties within 28 days after the notice of appeal is filed. Within 14 days after service of the proposed report of proceedings, any other party may serve proposed amendments or an alternative proposed report of proceedings. Within 7 days thereafter, the appellant shall, upon notice, present the proposed report or reports and any proposed amendments to the trial court for

settlement and approval. The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings.” *Id.*

¶ 34 Plaintiffs’ proposed bystander’s reports are contained in the record on appeal and consist of Joseph, David, and Peter’s affidavits as to their recollections of what transpired at the evidentiary hearing on the sanctions motion.

¶ 35 Joseph attested that at the evidentiary hearing, he was called to testify under oath. Joseph was asked whether he alone wrote all the documents filed with the court after the disqualification order. Joseph answered affirmatively. Joseph also was asked whether, after the disqualification order, David ever spoke to Joseph about his prior representation of defendant. Joseph answered, “No.”

¶ 36 David attested that at the evidentiary hearing, he was called to testify under oath. David was asked if he wrote any of the documents filed with the court after the disqualification order. David answered, “No.” David also was asked if he ever spoke with Joseph or Peter about facts he may have learned during his prior representation of defendant. David answered, “No.”

¶ 37 Peter attested that he was not called to testify at the evidentiary hearing but that he was present at the hearing and heard Joseph and David’s testimony. Peter stated that the testimony they gave at the hearing was the same as that attested to in their respective affidavits.

¶ 38 The court refused to certify the proposed bystander’s reports and instead entered an order stating:

“The proposed bystander’s reports omits multiple events of the September 19, 2024, hearing that served as partial justifications for the dismissal order appealed. Although Joseph Rallo testified that he had himself prepared documents in the case after this disqualification of his father, David Rallo, David later presented the contradictory

testimony that he had prepared the same documents in advance of the disqualification order. David further testified at the hearing that nothing in the disqualification order prevented him from giving legal advice to his sons. When asked by defense counsel about his conversations with his sons, David refused to answer on the basis of attorney-client privilege. In response to the court's request for clarification as to whether he was asserting the privilege for conversations that took place after the disqualification, David confirmed that he was. Following his examination by defense counsel, David sought to examine defendant Vincenzo Dublino under oath, and proceed[ed] to pose questions aimed at the merits of the case rather than the contempt proceedings that were the purpose of the hearing. These omissions prevent certification of the proposed report and dictate denial of plaintiffs' motion."

¶ 39 Plaintiffs now argue that the circuit court erred by failing to certify their bystander's reports without explanation. As related above, though, the court's order quite clearly explains that the reasons it was refusing to certify the proposed bystander's reports is because they lacked any discussion of (1) the conflicting testimony regarding who had prepared the documents filed after the entry of the disqualification order; (2) David's testimony as to his belief that the disqualification order did not prevent him from giving legal advice to Joseph and Peter; (3) David's assertion of the attorney-client privilege when he was asked questions about his conversations with Joseph and Peter; (4) David's admission that he was asserting the attorney-client privilege for conversations that took place after his disqualification; and (5) David's improper questioning of defendant.

¶ 40 The circuit court was under no obligation to certify the proposed bystander's reports where it found the proposed reports to be inaccurate. See *Allen v. Lin*, 356 Ill. App. 3d 405, 409 (2005)

(quoting *Silverstein v. Grellner*, 15 Ill. App. 3d 695, 697 (1973)) (“ ‘Where the proposed report of proceedings does not accurately reflect what occurred before the court during the trial of the case, the trial judge may refuse to certify such a report’ ”); *Stehl v. Dose*, 83 Ill. App. 3d 440, 444 (1980) (“A trial judge should never certify a report he knows to be incorrect or inaccurate”); *East Lake Condominium Ass’n v. Brewer*, 2022 IL App (1st) 201373-U, ¶ 33 (“Where the proposed bystander’s report does not accurately reflect what occurred before the circuit court, the judge may refuse to certify the report”); *Feldman v. Munizzo*, 16 Ill. App. 2d 58, 64 (1957) (“[W]e will not permit a scanty and inadequate report, showing on its face the omission of evidence, to suffice as a basis for compelling the court to reconstruct a record of the proceedings”).

¶ 41 Plaintiffs argue that the circuit court erred by failing to hold a hearing on their motion to certify the bystander’s reports, especially where plaintiffs had timely served the reports on the appellee and the court in accordance with Rule 323(c). As the appellants, plaintiffs bore the burden to move for a hearing on the matter. *Id.* at 63-64. Plaintiffs did not request a hearing. We have also held that “the proper action for appellant upon a refusal to certify the proposed report would have been to seek a writ of *mandamus* to have the trial judge certify the report in question.” *Silverstein*, 15 Ill. App. 3d at 698. See also *Urmoneit v. Purves*, 33 Ill. App. 3d 939, 942 (1975) (“the remedy for failure to certify the report of proceedings would have been *mandamus*”). Plaintiffs did not file a *mandamus* action.

¶ 42 Consequently, plaintiffs’ uncertified bystander’s reports are not properly before us. See Ill. S. Ct. R. 323(c) (eff. July 1, 2017) (“only the report of proceedings so certified shall be included in the record on appeal”). In the absence of a transcript or certified bystander’s report of the evidentiary hearing, we must presume that the circuit court’s finding that the e-mails sent by David to defendant’s counsel with the attached discovery documents, coupled with his apparent

prompting of Joseph during the earlier hearing on the motion to quash the bank subpoenas, showed that David provided his sons with legal advice as well as document review in violation of the disqualification order.

¶ 43 In addition to David's e-mails and his prompting of Joseph's answers during the hearing on the motion to quash, the court cited other evidence showing plaintiffs' deliberate and continuing disregard of the disqualification order. Specifically, the court pointed to David's admission at the evidentiary hearing that he was asserting attorney-client privilege for communications he had with Joseph and Peter *after* the entry of the disqualification order. The court also noted that Joseph and Peter's purported assignment to David of 20% of their claims against defendant and his subsequent filing of the fifth amended complaint adding himself as party-plaintiff showed his "steadfast" insistence to continue to help his sons litigate their claims against defendant in violation of the disqualification order. Plaintiffs have made no specific arguments on appeal in response to these findings, thereby forfeiting review thereof. Ill. S. Ct. R. 341(h)(7) (eff. Oct.1, 2020).

¶ 44 On this record, we cannot say that the circuit court clearly abused its discretion by finding that with Joseph and Peter's acquiescence, David continued to represent them for 18 months (from September 2023 to March 2025) following the entry of the disqualification order, thereby showing a collective, deliberate, and continuing disregard of the court's authority. Nor did the court clearly abuse its discretion in finding that "[g]iven the length of time following the disqualification order during which David Rallo acted against the interest of his former client, the court perceives no prospect for effective compliance or remediation." Therefore, we affirm the dismissal of plaintiffs' fifth amended complaint as a sanction for their continuing and deliberate disobedience of the disqualification order.

¶ 45 Plaintiffs argue, though, that the dismissal was erroneous because any assistance David provided to Joseph and Peter following his disqualification was permissible under Illinois Supreme Court Rule 137(e) (eff. Jan. 1, 2018), which states:

“An attorney may assist a self-represented person in drafting or reviewing a pleading, motion, or other document without making a general or limited scope appearance. Such assistance does not constitute either a general or limited scope appearance by the attorney. The self-represented person shall sign the pleading, motion, or other paper. An attorney providing drafting or reviewing assistance may rely on the self-represented person’s representation of facts without further investigation by the attorney, unless the attorney knows that such representations are false.”

¶ 46 Plaintiffs forfeited review by raising this issue for the first time in their motion for reconsideration of the sanctions order. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271,

¶ 36. Even if the issue had not been forfeited, we would find no reversible error.

¶ 47 Rule 137(e) merely provides that an attorney who is assisting a self-represented litigant in the drafting of a document need not file an appearance on his behalf. Rule 137(e) does not provide any exception to Rule 1.9(a) of the Illinois Rules of Professional Conduct, which provides that an attorney’s subsequent representation of a party with interests materially adverse to a former client is prohibited if the matters involved in the two representations are substantially related. Ill. R. Prof’l Conduct (2010) R. 1.9(a) (eff. Jan. 1, 2010). In the present case, the circuit court entered the disqualification order pursuant to Rule 1.9(a), prohibiting David from providing *any* legal representation to Joseph and Peter in this matter due to David’s prior representation of defendant in a substantially similar matter. The court subsequently found that Joseph and Peter willfully acquiesced in David’s continuing representation of them, including his reviewing and/or drafting

discovery documents and providing them with legal advice, all in violation of the disqualification order. Rule 137(e) does not excuse such willful disobedience of the disqualification order by plaintiffs.

¶ 48 Finally, plaintiffs argue that the disqualification order and concomitant restriction on David's communications with Joseph and Peter about their case against defendant is an unconstitutional prior restraint on David's speech. Plaintiffs forfeited review by failing to raise this argument in the circuit court. *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 32. Even if the issue had not been forfeited, we would find no cause for reversal.

¶ 49 A prior restraint on speech is "the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). While not unconstitutional *per se*, any prior restraint on expression bears a heavy presumption of invalidity. *Kemner v. Monsanto Co.*, 112 Ill. 2d 223, 243 (1986). To withstand constitutional scrutiny, the restraint on speech must be a "precisely drawn means of serving a compelling state interest." *Petrillo v. Syntex Laboratories, Inc.*, 148 Ill. App. 3d 581, 607 (1986). The State has a compelling interest in disqualifying attorneys from representing a party with interests adverse to a former client so as "to enforce the attorney's duty of absolute fidelity and to guard against the danger of inadvertent use of confidential information" (*LaSalle National Bank v. Triumvera Homeowners Ass'n*, 109 Ill. App. 3d 654, 664 (1982)) and to protect the attorney-client relationship, maintain public confidence in the legal profession, and ensure the integrity of judicial proceedings. *In re Estate of Wright*, 377 Ill. App. 3d 800, 804 (2007). The court's disqualification order was narrowly tailored to serve these compelling state interests and was not unconstitutional.

¶ 50 For all the foregoing reasons, we affirm the circuit court.

¶ 51 Affirmed.