

DEC 21 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY K. HART; D. MOTLEY,

Plaintiffs - Appellees,

v.

GREGORY GAIONI, ATF Special Agent;
DEBRA W. YANG, United States
Attorney; GEORGE CARDONA, Chief
Assistant United States Attorney; LEON
W. WEIDMAN, Assistant United States
Attorney, Chief, Civil Division; DAVID
PINCHAS, Assistant United States
Attorney (Civil Division); ALKA
SAGAR, Assistant United States Attorney
(Criminal Division); CHARLES
MULALLY, IRS Special Agent,

Defendants - Appellants.

No. 06-55808

D.C. No. CV-04-03818-RMT

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Robert M. Takasugi, District Judge, Presiding

Argued and Submitted November 8, 2007
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: B. FLETCHER, REINHARDT, and RYMER, Circuit Judges.

Defendants appeal the order of the district court denying their motion to dismiss on the basis of qualified immunity. We have jurisdiction over interlocutory appeals of a district court's denial of qualified immunity. *Brittain v. Hansen*, 451 F.3d 982, 987 (9th Cir. 2006). We review the district court's denial of a motion to dismiss *de novo*. *Id.* "A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001).

Government officials are entitled to qualified immunity unless the facts "[t]aken in the light most favorable to the party asserting the injury . . . show the officer's conduct violated a constitutional right." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Civil litigants have a First Amendment right to be represented by counsel of choice free from unreasonable government interference with the attorney-client relationship. *See, e.g., Bhd. of R.R. Trainmen v. Virginia*, 377 U.S. 1, 7-8 (1964). The states may, however, regulate the attorney-client relationship through the promulgation of rules of professional responsibility, so long as those rules are content-neutral and narrowly tailored to serve a compelling state interest. *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (9th Cir. 2005).

The rules of professional responsibility require an attorney to disclose any potential conflict of interest to the client and obtain a written waiver of the conflict. *E.g.*, Cal. Rules of Prof'l Conduct R. 3-310. This rule is content-neutral because it applies equally in all cases regardless of the nature of the litigation. *See Mothershed*, 410 F.3d at 611 (“Speech restrictions are content-neutral when they can be justified without reference to the content of the regulated speech.”) (citation omitted). It also serves the compelling government interest in regulating the practice of law. *See id.* Finally, it is narrowly tailored to serve that interest in that it allows attorneys to represent clients despite a conflict of interest so long as the client knowingly waives the conflict and elects for the attorney to continue representing her. Thus the rule is a reasonable restriction on the First Amendment right to counsel of choice.

Plaintiffs’ attorney knew about the potential conflict of interest and had a duty to disclose it. Any action by the prosecutor that simply informed plaintiffs of information that counsel was required to provide did not interfere with the attorney-client relationship. Therefore, plaintiffs have failed to state a violation of their constitutional rights.

The district court order is **REVERSED** and the case **REMANDED** with instructions to dismiss the action.