



circuit court erred by denying the respondent's motions to disqualify the petitioner's attorney, and (3) whether the circuit court erred by granting the petitioner's motion for sanctions. For the following reasons, we affirm the orders of the circuit court.

¶ 3

### FACTS

¶ 4 A judgment of the dissolution of the parties' marriage was entered on November 3, 2006. The respondent filed a petition for modification of custody on October 8, 2008. Over the next year, the respondent filed six motions for substitution of judge. Five of the motions were denied, and one, filed on January 13, 2010, was never disposed of. Judge Mark Stanley mistakenly stated at a hearing on June 30, 2010, that the motion had been disposed of in February 2010. In referencing the motions to substitute, Judge Stanley noted that there were "so many of them, I've lost track." The record contains no indication that the January 13, 2010, motion was in fact ruled upon. The motion requests to substitute Judge Robert Lewis for cause. The record reveals that Judge Lewis subsequently referred the case to the chief judge's office and made no subsequent rulings in the case.

¶ 5 In addition to the motions to substitute judge, the respondent filed two motions to disqualify the petitioner's counsel, Jeron Merrell, on January 5, 2009, and July 8, 2009, respectively, and a supplemental motion to disqualify the petitioner's counsel on May 27, 2010. All three motions alleged a conflict of interest because Sean Featherstun, who worked at the same law firm as Merrell, previously represented the respondent in an order-of-protection proceeding when Featherstun was working at a different law firm. The supplemental motion adds that the respondent had a friend to whom Merrell allegedly made certain remarks about the respondent.

¶ 6 Arguments were heard with regard to the first filed motion to disqualify counsel at a hearing before Judge Lamar on April 20, 2009. At the hearing, Merrell stated that Featherstun neither worked on the case nor had access to the file and he had since become

employed as the public defender. Judge Lamar found that the respondent failed to show a substantial relationship between the subject matter of the former representation and that of the subsequent adverse representation and denied the motion.

¶ 7 The second motion to disqualify counsel had an attached letter from Merrell to the Attorney Registration and Disciplinary Commission (ARDC) dated December 18, 2008. The letter memorializes the same assertion that there was no conflict of interest and the reasons therefor. The record shows that the ARDC closed the file after determining that disciplinary action against Merrell would be unsuccessful. The ARDC informed the respondent of the same in a letter to him dated January 13, 2009. Judge Stanley denied the second motion to disqualify counsel on November 18, 2009, and denied the supplemental motion to disqualify on June 30, 2010.

¶ 8 On June 25, 2010, the petitioner filed a motion for sanctions, emphasizing that the respondent had filed over 15 frivolous pleadings and that he had been warned on at least three occasions in open court that he would be sanctioned if he continued to do so. Judge Stanley granted the motion for sanctions on August 18, 2010, and awarded the petitioner attorney fees related to the defense of the motions that had been dismissed. As a further sanction, Judge Stanley struck all pending motions and petitions that had been filed by the respondent, including but not limited to the petition for modification of custody. Judge Stanley further forbade the respondent from filing any additional pleadings without first obtaining permission from the court. On September 15, 2010, the respondent filed a motion for leave to file a "motion for rehearing," which Judge Stanley denied. The respondent filed a timely notice of appeal. Additional details will be provided as necessary in our analysis of the issues.

¶ 9

#### ANALYSIS

¶ 10 The first issue on appeal is whether the circuit court erred by not granting a hearing

before a judge not mentioned in the respondent's motions for substitution of judge. "Our review of a circuit court's ruling on a motion to substitute judge is *de novo*." *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 22. The respondent filed six substitutions of judge. The first was for substitution of Judge Lamar as a matter of right. However, Judge Lamar properly denied that motion because he had already made substantial rulings in the case (see 735 ILCS 5/2-1001(a)(2)(ii) (West 2008)), namely an order requiring the respondent to pay child support and to seek employment.

¶ 11 The five remaining motions to substitute judge are for cause. As mentioned above, one of the five, filed January 13, 2010, was never disposed of. However, we find that this motion is moot because Judge Robert Lewis, whom the motion seeks to substitute, referred the case for assignment and made no further rulings in the case. Three of the remaining four motions to substitute for cause are not verified by accompanying affidavits, as required by section 2-1001(a)(3)(ii) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(3)(ii) (West 2008) (petitions to substitute judge shall be verified by affidavit of applicant)). Accordingly, those motions were properly dismissed.

¶ 12 The motion to substitute judge for cause filed on February 17, 2010, was accompanied by the required affidavit. In the motion, the respondent alleged that Judge Mark Stanley was so prejudiced against him that he would not receive a fair hearing without the substitution. The respondent referenced Judge Stanley's denials of numerous previous motions. However a motion for substitution of judge for cause must include a showing of actual prejudice or bias on the part of the judge. See *People v. Jones*, 7 Ill. App. 3d 146, 149 (1972). Moreover, the denial of earlier motions is insufficient to establish prejudice and does not warrant a substitution of judge. *Id.* On February 17, 2010, Judge Stanley struck the February 17, 2010, motion to substitute as frivolous. We find this ruling appropriate. For these reasons, we affirm the denial of all of the motions for substitution.

¶ 13 The second issue on appeal is whether the circuit court erred by denying the respondent's motions to disqualify the petitioner's attorney. "A trial court's decision on whether to disqualify counsel will not be disturbed absent an abuse of discretion." *In re Estate of Klehm*, 363 Ill. App. 3d 373, 380 (2006). "An abuse of discretion occurs where a trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would adopt the court's view." *Id.*

¶ 14 Rule 1.10(e) of the Illinois Rules of Professional Conduct (IRPC) provides:

"When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified \*\*\* unless the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom." Ill. Rs. Prof'l Conduct R. 1.10(e) (eff. Jan. 1, 2010).

¶ 15 Here, Jeron Merrell represented to the court that when she and Sean Featherstun worked at the same law firm, Featherstun never worked on the petitioner's case and the file was kept in Merrell's office where Featherstun had no access to it. By the time of the hearing, Featherstun worked elsewhere. The respondent produced no evidence that Merrell was not compliant with the screening measures set forth in Rule 1.10(e) of the IRPC (Ill. Rs. Prof'l Conduct R. 1.10(e) (eff. Jan. 1, 2010)). Accordingly, Judges Lamar and Stanley did not abuse their discretion by denying the respondent's motions and supplemental motion to disqualify the petitioner's counsel.

¶ 16 The final issue on appeal is whether the circuit court erred by granting the petitioner's motion for sanctions, pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). "A reviewing court will not reverse a trial court's decision whether to impose sanctions absent an abuse of discretion." *Kellett v. Roberts*, 281 Ill. App. 3d 461, 464 (1996). Here, Judge Stanley ordered the respondent to pay the petitioner her attorney fees in defending the

frivolous motions. Judge Stanley further dismissed all of the respondent's pending petitions and further forbade him from filing anything without first obtaining permission from the court. The record is replete with frivolous pleadings filed by the respondent, some which were filed after previous warnings by the circuit court to cease doing so. Accordingly, we find that Judge Stanley did not abuse his discretion by granting the petitioner's motion for sanctions.

¶ 17 For the foregoing reasons, we affirm the orders of the circuit court of Jefferson County.

¶ 18 Affirmed.