

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 NEW HORIZON KIDS QUEST III,
4 INC., a Minnesota corporation; DOES
5 1 through 10, inclusive; and ROE
6 CORPORATIONS 1 through 20
 inclusive,

7 Petitioner,

8 vs.

9 EIGHTH JUDICIAL DISTRICT
10 COURT OF THE STATE OF
11 NEVADA IN AND FOR THE
12 COUNTY OF CLARK; THE
 HONORABLE SUSAN SCANN,
 DISTRICT JUDGE,

13 and

14 ISABELLA GODOY, a Minor, by and
15 through her mother, VERONICA
 JAIME,

16 Respondents.

Supreme Court Case No. 69920

 Electronically Filed
District Court Case No. May 13 2016 03:40 p.m.
A-14-707949-C Tracie K. Lindeman
 Clerk of Supreme Court

17 **RESPONDENTS APPENDIX TO ISABELLA GODOY, a Minor, by and through**
18 **her mother, VERONICA JAIME'S ANSWERING BRIEF**
19 **(Volume I)**

20 **KRAVITZ, SCHNITZER,**
21 **& JOHNSON, CHTD.**

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 Isabella Godoy, a Minor, by and through
 her mother, Veronica Jaime

Volume I

Exhibit	Document	Bates Number
A	Notice of Entry of Order filed on March 10, 2016	RA 1- RA 9
B	A.B.A. Comment on Rule 1.9	RA 10- RA 12
C	Nevada Rules of Professional Conduct Rule 1.10	RA 13

DATED this 13th day of May, 2016.

N.V.S.

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CERTIFICATE OF SERVICE

I CERTIFY that on the 13 day of May, 2016, I filed electronically with the Nevada Supreme Court and served by electronic service the foregoing **RESPONDENTS APPENDIX TO ISABELLA GODOY, a Minor, by and through her mother, VERONICA JAIME'S ANSWERING BRIEF** upon all parties listed on the Master Service List, (or, if necessary, by Regular U.S. Mail) to:

OLSON, CANNON, GORMLEY,
ANGULO & STOBERSKI
James R. Olson, Esq.
9950 West Charleston Ave.
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*Attorneys for Petitioner
New Horizon Kids Quest III, Inc.*

Honorable Susan Scann
Eighth Judicial District Court
Department 29
200 Lewis Ave.
Las Vegas, NV 89155

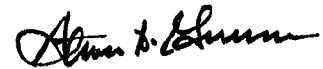
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An Employee of KRAVITZ, SCHNITZER &
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EXHIBIT “A”

EXHIBIT “A”



CLERK OF THE COURT

1 **NEO**
2 MARTIN J. KRAVITZ, ESQ.
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9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12
13 ISABELLA GODOY, a Minor, by and through
14 her mother, VERONICA JAIME

15
16 Plaintiff,

17 vs.
18 NEW HORIZON KIDS QUEST III, INC., a
19 Minnesota Corporation; DOES 1 through 10,
20 inclusive; and ROE CORPORATIONS 1
21 through 20, inclusive,

22 Defendant.

Case No.: A-14-707949-C
Dept No.: XXIX

NOTICE OF ENTRY OF ORDER

23
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PLEASE TAKE NOTICE that an **ORDER DENYING DEFENDANT'S MOTION TO**
DISQUALIFY PLAINTIFF'S ATTORNEYS was entered in the above-entitled

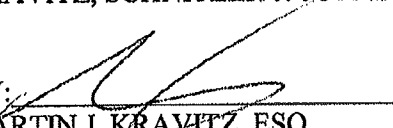
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1 action on the 8th day of March, 2016, a copy of which is attached hereto.

2
3 DATED this 10 day of March, 2016.

4 KRAVITZ, SCHNITZER & JOHNSON, CHTD.

5
6 BY: 
7 MARTIN J. KRAVITZ, ESQ.
8 Nevada Bar No. 83
9 JORDAN P. SCHNITZER, ESQ.
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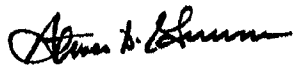
CERTIFICATE OF SERVICE

In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned hereby certify that on the 10th day of March, 2016, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case to the following counsel:

James R. Olson, Esq.
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CLERK OF THE COURT

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14 *ISABELLA GODOY, a minor, by and through*
15 *her Mother, Veronica Jaime*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

12 ISABELLA GODOY, a Minor, by and through
13 her mother, VERONICA JAIME

14 **Plaintiff,**

15 vs.
16 NEW HORIZON KIDS QUEST III, INC., a
17 Minnesota Corporation; DOES 1 through 10,
18 inclusive; and ROE CORPORATIONS 1
19 through 20, inclusive,

20 **Defendant.**

Case No.: A-14-707949-C
Dept No.: XXIX

**ORDER DENYING
DEFENDANT'S MOTION TO
DISQUALIFY PLAINTIFF'S
ATTORNEYS**

Date of Hearing: February 1, 2016
Time of Hearing: 9:30 a.m.

21 The above-captioned matter having come on for hearing pursuant to Defendant's Motion
22 to Disqualify Plaintiff's Attorneys on the 1st Day of February, 2016 before the Honorable Susan
23 Scann. Martin J. Kravitz, Esq. and Jordan P. Schnitzer, Esq. of the Law Firm of KRAVITZ,
24 SCHNITZER & JOHNSON, CHTD. appeared on behalf of Plaintiff, ISABELLA GODOY, a
25 Minor, by and through her mother, VERONICA JAIME, and James Olson, Esq. and Felicia
26 Galati, Esq. of the Law Firm of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
27 appeared on behalf of Defendant, NEW HORIZON KIDS QUEST III, INC. The Court having
28

1 considered the oral arguments of counsel, being fully advised on the premises, and good cause
2 appearing, therefore makes the following findings of facts, conclusions of law and Order:

3 **A. Findings of Fact**

4 1. The Defendant in this case was involved in a prior litigation, *Blue v. New Horizon Kids*
5 *Quest III, Inc.* ("Kids Quest").

6 2. The Blue case was litigated from 2007 through 2011.

7 3. The law firm of Hall, Jaffe and Clayton ("HJC") defended Kids Quest in that action.

8 4. The evidence before the Court shows the only attorneys who worked on the Blue case for
9 HJC were Michael Hall and Jill Northway.

10 5. An attorney for Plaintiff, Jordan Schnitzer, worked at HJC during a portion of the time
11 the Blue matter was active.

12 6. Kids Quest moved to disqualify Mr. Schnitzer and his current firm, Kravitz, Schnitzer
13 and Johnson ("KSJ") based upon Mr. Schnitzer's employment at HJC.

14 7. The facts set forth in the affidavit of Martin J. Kravitz were undisputed.

15 8. The case was brought in to KSJ by its managing partner, Marty Kravitz.

16 9. After accepting the case, Mr. Kravitz conducted a search, both through court pleadings
17 and the internet, to determine whether there had been any prior similar incidents.

18 10. Mr. Kravitz located two claims of prior similar incidents that had gone in to litigation,
19 one locally and one in Minnesota.

20 11. Additionally, during Mr. Kravitz's investigation, he noticed the firm of Hall, Jaffe and
21 Clayton ("HJC") defended Kids Quest in the prior litigation in Clark County, *Blue v. New*
22 *Horizon Kids Quest*.

23 12. Mr. Kravitz knew one of his associates, Jordan Schnitzer, had previously worked for that
24 firm, nearly 5 years ago now.

1 13. Mr. Kravitz asked Mr. Schnitzer whether he ever worked on the case.

2 14. Mr. Schnitzer stated he had not.

3 15. Mr. Kravitz asked whether Mr. Schnitzer had gained any confidential information about
4 Kids Quest during his time at HJC.

5 16. Mr. Schnitzer stated had not gained any confidential information regarding Kids Quest.

6 17. Mr. Schnitzer told Mr. Kravitz he had absolutely no knowledge about the Blue case.

7 18. Mr. Schnitzer has performed work on the present case.

8 19. Mr. Schnitzer has never provided any information regarding Defendant that he did not
9 learn through the course of the instant litigation.

10 20. The facts set forth in the affidavit of Jordan P. Schnitzer were also undisputed.

11 21. During Mr. Schnitzer's time at HJC, he was an associate attorney.

12 22. Mr. Schnitzer had a list of cases that he handled under the supervision of an HJC partner,
13 which was Steve Jaffe the vast majority of the time.

14 23. Mr. Schnitzer was not assigned the Blue case as one of his "assigned" cases.

15 24. Mr. Schnitzer did perform any work in the Blue case.

16 25. Mr. Hall provided an affidavit confirming that Mr. Schnitzer had nothing to do with the
17 defense of Kids Quest while at HJC.

18 **B. Conclusions of Law**

19 1. Courts approach the issue of whether to disqualify opposing counsel as "a drastic
20 measure which courts should hesitate to impose except when absolutely necessary." *United*
21 *States v. Titan Pac. Const. Corp.* 637 F. Supp. 1556, 1562 (W.D. Wash. 1986) (quoting Freeman,
22 689 F.2d at 721).

2. "The burden of proving... falls on the party moving for disqualification and that party must have evidence to buttress the claim that a conflict exists." *Robbins v. Gillock*, 109 Nev. 1015, 1017, 862 P.2d 1195, 1197 (1993).

3. Kids Quest has not provided any evidence that a conflict exists.

4. Nevada Rules of Professional Conduct ("RPC") 1.9(a) provides:

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, confirmed in writing. (Emphasis added)

5. RPC 1.9(a) does not apply in this case because Mr. Schnitzer never represented Defendant in any capacity.

6. RPC 1.9(b) applies in this case, where the "firm with which [Mr. Schnitzer] was associated had previously represented [Defendant]."

7. The rule where an attorney's former firm represented someone provides the attorney may not represent someone whose interests are adverse to that client and "(2) About whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter..."

8. The fact that Mr. Schnitzer had no role in the Blue case and never obtained any confidential information ends this Court's inquiry.

9. The State Bar of Nevada Standing Committee on Ethics and Professional Responsibility issued Formal Opinion No. 39 on April 24, 2008, which supports this Court's interpretation. The Standing Committee on Ethics noted that:

If the laterally moving lawyer had no role in the case at the former firm, and did not otherwise acquire confidential information material to the matter, the moving lawyer is not personally disqualified from representing Client B while in the new firm, Red & Green.

10. *Id.* at page 2 citing ABA Model Rule 1.9(b) Comment [5]. See also *Edwards v. 360 [degrees] Communs.*, 189 F.R.D. 433, 436 (D. Nev. 1999)(in denying a motion to disqualify

EXHIBIT “B”

EXHIBIT “B”

Comment on Rule 1.9

Client-Lawyer Relationship

Rule 1.9 Duties To Former Clients - Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors

seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the

restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

EXHIBIT “C”

EXHIBIT “C”

Rule 1.10: Imputation of Conflicts of Interest: General Rule

Client-Lawyer Relationship

Rule 1.10 Imputation Of Conflicts Of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.