IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioner,

v.

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

and

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

Respondents.

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Clerk of Supreme Court

CASE NO. 69920

DISTRICT COURT CASE NO.
A-14-707949-C

PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF MANDAMUS

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I. INTRODUCTION

Rule of Professional Conduct ("RPC") 1.9(b) prohibits a lawyer from representing a person in the same or substantially related matter in which that lawyer's former firm previously represented a client whose interests are materially adverse to that person. Thus, this Court adopted a Rule to protect the attorney-client relationship, attorney-client privilege and related confidentiality **even when** the lawyer didn't represent the former client thereby indicating the importance of that relationship, privilege and confidentiality. The Rule is clearly designed and intended to protect a former client's interests and confidences, and that is paramount here. The Rule imputes a conflict – both by its very terms and because it is derived from SCR 160(2) and must be considered in that light.

The only issue before this Court is whether Plaintiff's attorneys must be disqualified under RPC 1.9(b). Since Blue and this case are unquestionably substantially related, there is a presumption that confidential information was shared and/or acquired, and Plaintiff's attorneys must be disqualified. This Court and lower courts cannot and should not inquire into actual confidential communications, which would essentially defeat the purpose of the Rule. In this context, the attorney-client relationship, attorney-client privilege and confidentiality are more important than the individual lawyer, what cases he can work on, or even the opposing party's choice of counsel. This is evident from this

Court's holding that doubts should be resolved in favor of disqualification. Nev. Yellow Cab Corp. v. Dist. Ct., 123 Nev. 44, 53, 152 P.3d 737, 743 (2007) citing Brown v. Dist. Ct., 116 Nev. 1200, 1205, 14 P.3d 1266, 1269–70 (2000).

II. FACTUAL BACKGROUND

Plaintiff plays fast and loose with the facts again as Mr. Schnitzer did in his affidavit before the district court. Relying on that affidavit, Plaintiff states that "Mr. Hall also confirmed Mr. Schnitzer was never in contact with Kid's Quest nor would Mr. Schnitzer have obtained any confidential information." AB 4:13-18. First, that is hearsay and inadmissible. Second, Mr. Schnitzer's affidavit does not say that. 1 Appendix ("App.") 202. Third, Mr. Hall's affidavit does not say that either. 2 App. 257. Therefore, there is no evidence supporting those statements.

Plaintiff also makes inconsistent or conflicting arguments, which also cannot be relied upon. For example, Plaintiff maintains the district court applied Waid v. Dist. Ct., 121 Nev. 605, 119 P.3d 1219 (2005). AB 5-6. Later, Plaintiff states the opposite – that the district court held Waid is factually distinguishable and inapplicable. AB12:5-9. To be clear, the district court did not apply Waid because it found Waid is distinguishable. 2 App. 306:4-9. Also contrary to Plaintiff's assertion, the district court made no finding of fact that the three-prong test in Waid was not satisfied and, therefore, Blue and this case are not substantially related. AB 33:12 to 34:9-11. That is nowhere in the district court's Order and

Plaintiff did not even raise that issue in her Opposition. 1 App. 189-225; 2 App. 302-07.

Plaintiff complains about Defendant's alleged hearsay evidence, but asks this Court to rely on her hearsay evidence, including statements made by Mr. Schnitzer in his affidavit regarding what Mr. Hall and Ms. Northway allegedly said to him, none of which are admissible. 1 App. 202. Plaintiff also wastes this Court's valuable time with hearsay arguments regarding undisputed facts. For example, Plaintiff complains about the "internet print-off," which is the website page containing Mr. Schnitzer's work history at Hall Jaffe & Clayton ("HJC") and his current firm. AB 23; 1 App. 64. However, none of those facts are disputed. 1 App. 199-200 and 202. Plaintiff also complains about the e-mails establishing Mr. Schnizter and Ms. Northway, one of the attorneys representing Defendant in Blue, shared the same legal assistant at HJC, but submitted no admissible evidence to dispute them. Ms. Northway's hearsay evidence is inadmissible. Mr. Schnitzer's statement that he has no recollection of sharing that assistant does not establish that the two did not share the assistant. Furthermore, at no point in her Opposition or at the hearing, did Plaintiff challenge this evidence except as indicated above – with hearsay and no evidence contradicting it. 1 App. 189-225; 2 App. 273-96. Finally, Plaintiff's argument that Troy Dunkley's Affidavit supporting the facts of the shared assistant and relating to certain e-mails "lacks foundation" is without merit.

Mr. Dunkley is Defendant's Chief Operating Officer and that is more than enough foundation for him to authenticate e-mails sent by the HJC assistant to Ms. Northway and Defendant's other attorneys at the law firm of Dunkley and Bennett in the Blue case. 1 App. 67; 2 App. 251-255. The e-mails also are authenticated by Defendant's counsel because she received them from Defendant, who got them from its attorneys. 2 App. 242. In any case, these e-mails are not determinative of the issue before this Court. It should be noted that the consideration of the authenticity of documents, the veracity of affidavits, etc., gets into the swearing match that the substantial relationship test was adopted to avoid. See p. 15, infra.

III. ARGUMENT

A. Mandamus Is The Only Appropriate Relief

Plaintiff does not dispute that mandamus is the appropriate vehicle for challenging an attorney disqualification ruling, but states that "[t]he right to appeal is generally an adequate legal remedy that precludes writ relief." AB 11:12-13. However, that is not true here because there is no right to appeal from a disqualification order. Practice Mgmt. Sols. v. Dist. Ct., No. 68901, 2016 WL 2757512, at *3 (Nev. May 10, 2016) citing Liapis v. Second Judicial Dist. Court, 128 Nev. 414, 418, 282 P.3d 733, 736 (2012). Therefore, mandamus is the only appropriate remedy.

This Court reviews a petition for a writ of mandamus that depends on statutory interpretation, a question of law, *de novo*. State v. Barren, 128 Nev. Adv. Op 31, 279 P.3d 182, 184 (2012). Since this case involves the interpretation of the Rules of Professional Conduct, a question of law, this Court should apply the *de novo* standard. See, e.g., Dresser Industries, Inc., 972 F.2d 540, 543 (5th Cir. 1992) citing in part Unified Sewerage Agency v. Jelco, Inc., 646 F.2d 1339, 1342, n. 1 (9th Cir. 1981). However, Plaintiff's new argument, including that Blue and this case are not substantially related, should not be considered because it was not raised below. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.")

Finally, to prevail on a motion to disqualify for an alleged ethical violation, the moving party need only establish a "**reasonable possibility**" that some specifically identifiable impropriety occurred. Cronin v. Dist. Ct., 105 Nev. 635, 641, 781 P.2d 1150, 1153 (1989); Brown, 116 Nev. at 1205, 14 P.3d at 1270; Practice Mgmt. Sols., 2016 WL 2757512, at *6 and 8.[1]

B. The District Court Abused Its Discretion

1. The Applicability Of Waid And Nev. Yellow Cab Corp. Is Not An Abstract Question Or Moot

[1] Cf. Virgin Valley Water Dist. v. Dist. Ct., No. 63138, 2013 WL 5432349, at *2 (Nev. Sept. 20, 2013).

The applicability of Waid and Nev. Yellow Cab Corp. in this case is not an abstract question or moot. The law, rules and principles contained therein – applying SCR 159 and SCR 160, the predecessors to RPC 1.9 and RPC 1.10 – are still good law because this Court is still citing them in recent decisions applying the new Rules of Professional Conduct. See, e.g., Practice Mgmt. Sols. v. Dist. Ct., No. 68901, 2016 WL 2757512, at *6 and *7 (Nev. May 10, 2016) citing Waid; Pohl v. Dist. Ct., No. 64725, 2016 WL 383086, at *1 and *3 (Nev. Jan. 28, 2016) citing Nev. Yellow Cab Corp. Furthermore, the new Rules are substantially the same as, and derived from, the old rules. Therefore, the law established therein applies. This Court has done that in other cases. See, e.g., Fraser v. State, 126 Nev. 711, at *1, 367 P.3d 769 (2010).

While the district court ignored all of Defendant's cases finding they are distinguishable, this was manifestly clear error and this Court must review the issue of disqualification under RPC 1.9(b) *de novo* as it raises an issue of law. Barren, supra. Furthermore, this Court does not defer to factual findings that are clearly wrong and not supported by substantial evidence, or errors of law. NOLM v. Couny of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004); Rish v. Simao, 132 Nev. Adv. Op. 17, 68 P.3d 1203, 1209 (Mar. 17, 2016). Since the district court rejected those cases and/or did not apply them, it manifestly abused its discretion and mandamus is appropriate.

2. The District Court Abused Its Discretion By Failing To Apply Waid And Nev. Yellow Cab Corp.

Since Waid and Nev. Yellow Cab Corp. are still good law, the district court abused its discretion by failing to consider and apply the law of disqualification established therein that a lawyer in Nevada must be disqualified from representing a client adverse to a former client if: (1) an attorney-client relationship existed, (2) the current and former matters are substantially related, and (3) the current representation is adverse to the former client. Nev. Yellow Cab Corp., 123 Nev. at 50, 152 P.3d at 741. There is nothing in the district court's Order indicating that was done. 2 App. 302-07.

In this case, there is no dispute that: (1) there was an attorney-client relationship between HJC and Defendant in Blue while Mr. Schnitzer was an associate at HJC (1 App. 53-61, 199-200 and 202; 2 App. 257); (2) the current representation is adverse to Defendant (1 App. 1-8 and 44-61); and (3) the two representations are substantially related under the test established in Waid requiring the Court to:

> (1) make a factual determination concerning the scope of the former representation, (2) evaluate whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client in those matters, and (3) determine whether that information is relevant to the issues raised in the present litigation. Id. at 610, 1223.

Nev. Yellow Cab Corp., 123 Nev. at 52, 152 P.3d at 742 (emphasis added).

For the first time in her Answering Brief, Plaintiff argues that the matters in question are not "substantially related." AB 12 and 32-35. Plaintiff did not raise that issue in her Opposition or at the hearing on the Motion. 1 App. 189-225; 2 App. 273-96. Furthermore, the district court did not make any finding whatsoever regarding the matters not being substantially related. 2 App. 302-07. Indeed, Plaintiff's Opposition and the facts in the Order prepared by Plaintiff (which Defendant did not approve) confirm the matters are substantially related – i.e. Mr. Kravitz conducted a search of court pleadings and the internet to find **prior similar incidents** and located the Blue case in Nevada. 1 App. 190; 2 App. 303:18-25. Finally, this court can determine by conducting a *de novo* review that there is no doubt that Blue and this case are substantially related. Both involve the same claims – negligence, intentional misrepresentation, negligent misrepresentation. 1 App. 3-8 and 46-50. Both involve the same allegations – that Plaintiff/a minor was left at Defendant's child care facility at Boulder Station and allegedly was sexually assaulted by another minor who was also in the care of the facility. 1 App. 3 at ¶ 10-11; and 45 at ¶ 3. Both involve the same issues – an alleged lack of staffing and a failure to follow administrative regulations. 1 App. 160-61 and 166. Both seek the same damages – general, special and punitive damages. 1 App. 8 and 50. Both involve the same witness – Traci Peterson. 1 App. 67-70 and 78. Therefore, Plaintiff's argument is wholly contradicted by the undisputed facts and, at best, is

disingenuous especially when Plaintiff has maintained throughout this case that the cases are the same, including when she sought and obtained substantial discovery from Blue through a district court order. 1 App. 90, 104 and 181-88. There can be no other finding on these undisputed facts.

3. The District Court Abused Its Discretion Because Its Decision Is Contrary To the Law

Plaintiff tells this Court it cannot look beyond the plain language of Rule 1.9(b) to interpret it because it is not ambiguous. Defendant disagrees. First, the case law on statutory construction relates to statutes enacted by the Legislature, not this Court. Defendant has not found a single case establishing the same is true for this Court interpreting its own Rules of Professional Conduct. Second, this Court has gone beyond the plain language of its Rules to interpret them. See, e.g., In re Discipline of Schaefer, 117 Nev. 496, 25 P.3d 191 (2001). Third, there is ambiguity here because Rule 1.9(b) relates to a situation where a lawyer has not represented the former client yet the Rule also requires the lawyer to have acquired confidential information, which is contradictory. As such, clarification is required. Fourth, the law from other courts is inconsistent on what presumptions apply, and whether the presumptions are rebuttable. Fifth, the legal profession, clients and the public need guidance on this very important conflict issue, which only this Court can give.

Based on the plain language of the Rule, this Court must consider RPC 1.9(b) along with SCR 160(2) – the predecessor rule. The side by side comparison below shows the Rules are essentially the same.

RPC 1.9(b)	SCR 160(2)
A lawyer shall not knowingly represent a person in the same or a substantially related matter in which **a firm with which the lawyer formerly was associated had previously represented a client**: (1) **Whose interests are materially adverse to that person; and** (2) **About whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter**; (3) Unless the former client gives informed consent, confirmed in writing.	When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or **a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person** and **about whom the lawyer had acquired information protected by Rules 156 and 159(2) that is material to the matter.**

The case law on disqualification talks about disqualification in general and shifts back and forth between RPC/Rule 1.9 and RPC/Rule 1.10 because: (1) there is an interplay between the Rules; (2) RPC 1.9(b) actually is derived from SCR 160(2) (now generally RPC 1.10); and (3) because some jurisdictions have the Rule similar to Nevada RPC 1.9(b) contained in their Rule 1.10(b). Nev. Yellow Cab Corp., 123 Nev. at 49, 152 P.3d at 741; Owens v. First Fam. Fin. Servs., 379

F.Supp.2d 840, 846 (S.D.Miss. 2005); Green v. Administrators of Tulane Educ. Fund, 1998 WL 24424, at *2 (E.D.La.) Therefore, this Court should consider all of the relevant rules and law on the substantive issues, regardless of which Rule is cited bearing in mind that the purpose of the Rule is to prevent a representation in which former client's confidences could be shared or a former client injured. In re Rossana, 395 B.R. 697, 706 (Bankr.D.Nev. 2008).

Both RPC 1.9(b) and SCR 160(2) contain similar language – about whom the lawyer had acquired confidential information. This Court already has held:

> **[a] presumption of shared confidence, wherein it is presumed that an attorney takes with him or her any confidences gained in a former relationship and shares them with the firm, is imposed by the imputation provisions of RPC 1.10, 1.11, and 1.12.**

Ryan's Express v. Amador Stage Lines, 128 Nev. Adv. Op. 27, 279 P.3d 166, 170 and n. 2 (2012) (emphasis added). Since RPC 1.9(b) is derived from SCR 160(2), and SCR 160 is now RPC 1.10, the above presumption of shared confidences applies to this case. Furthermore, the Rule does not require that the lawyer actually acquired confidential information, just that there is a possibility that confidences might have been disclosed. Waid, 121 Nev. at 610, 119 P.3d at 1222-23 quoting Robbins v. Gillock, 109 Nev. 1015, 1017, 862 P.2d 1195, 1197 (1993). The district court failed to apprehend that, engaged in the prohibited inquiry into the actual acquisition of confidential information, and denied the Motion, thereby manifestly abusing its discretion.

Also, " 'actual knowledge' [of confidential information] depends on the extent to which a lawyer had access to confidential information." Pfarr v. Island Servs. Co., Inc., 124 F.R.D. 24, 26 (D.R.I. 1989) citing Comment 6, infra. There is an inference of knowledge created by reason of general access to files or confidential information imputing knowledge; and where the lawyer's former firm represented the client in matters substantially related to the current litigation. Id. at 24 and 26-28. In Pfarr, even though the lawyers who were once members of the former firm that represented the client lacked actual knowledge of confidences disclosed by the client and did not recall any representation of the former client, it was irrebuttably presumed that the confidences arising out of the firm's representation of the former client were disclosed to the firm's attorneys and it was presumed that even if the lawyers lacked actual knowledge, there was an inference of knowledge by reason of general access to confidential information requiring the lawyers' disqualification. Id. at 28. The knowledge of the former firm's attorneys was imputed to the attorneys at that firm even after they had left that firm. Id.

Plaintiff asks this Court to rely upon Comment 5 of Model Rule of Professional Conduct 1.9 issued by the ABA dealing with the lawyer's possession or actual knowledge of confidential information. AB 17; RA 11-12. However, neither that document nor the ABA's Model Rule 1.10, both in Respondent's Appendix, were before the district court. 1 App. 189-225; RA 10-13. Therefore,

they are not properly before this Court and have been submitted in violation of NRAP 30(b). Although Plaintiff referred to Comment 5 in her Opposition, the Comments to Rule 1.9 and Model Rule 1.10 were not exhibits or documents before the district court. Therefore, they cannot be considered. Fergason v. LVMPD, 131 Nev. Adv. Op. 94, 364 P.3d 592, 598 n. 4 (2015) citing Hooper v. State, 95 Nev. 924, 926, 604 P.2d 115, 116 (1979) ("Matters outside the record on appeal may not be considered by an appellate court.") They are not part of the clerk's record and cannot be part of the record of appeal. Id.

Furthermore, the Comments support Defendant's position. First, Comment 6 states the application of RPC 1.9(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.** [For example,] [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.

RA 12 (emphasis added). This is consistent with this Court's acknowledgment of the existence of a presumption of shared confidences in Ryan's Express, supra.

Second, Comment 3 states:

> **[a] former client is not required to reveal the confidential information . . . 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.**

RA 11 (emphasis added). This is consistent with the Court's decision in Waid that:

> in proving that a prior representation is substantially related to the present litigation, . . . the moving party is not required to divulge the confidences actually communicated, nor should a court inquire into whether a lawyer actually acquired confidential information in the prior representation which is related to the current representation.

Waid, 121 Nev. at 610, 119 P.3d at 1223 quoting Robbins, 109 Nev. at 1018, 862 P.2d at 1197. The Court can only "undertake a realistic appraisal of **whether confidences might have been disclosed**" by the client to the law firm. Id. Since the word "might" is used, there need only be a reasonable possibility of that. Plaintiff's argument that Defendant should have presented an affidavit stating it had spoken to Mr. Schnitzer is not required and circumvents the very purpose of the Rule.

Also, Plaintiff's reliance upon the State Bar of Nevada's Standing Committee on Ethics and Professional Responsibility Formal Opinion No. 39, dated April 24, 2008, is misplaced. That Opinion is "advisory only" and "not binding upon the courts." 1 App. 219. Furthermore, it pre-dates Ryan's Express, wherein this Court clearly indicated there is a presumption of shared confidences imposed by the Rule.

In sum, both RPC/Rule 1.9 and RPC/Rule 1.10 relate to conflicts of interest based on prior representations. Disqualifications based on prior representations are

governed by the substantial relationship test. Waid, 121 Nev. at 609-11, 119 P.3d at 1222-24; Nev. Yellow Cab Corp., 123 Nev. at 52, 152 P.3d at 742; SHFL Entm't, Inc. v. DigiDeal Corp., 2013 WL 178130, at *8 (D.Nev.). "[C]ourts have developed the 'substantial relationship' test, under which " 'actual possession of confidential information is not required for an order of disqualification' where there is a 'substantial relationship' between the current and former representations.' " Elan Transdermal Ltd. v. Cygnus Therapeutic Systems, 809 F.Supp. 1383, 1388 (N.D.Cal. 1992); Nev. Yellow Cab Corp., 123 Nev. at 50-52, 152 P.3d at 741-2; Waid, 121 Nev. at 610, 119 P.3d at 1223. The test was adopted by necessity so a former client would not have to disclose confidential information, to avoid swearing matches, and because it is not in the power of the former client to prove what is in the mind of the attorney. Elan Transdermal Ltd.,supra; Nelson v. Green Builders, Inc., 823 F.Supp. 1439, 1445-46 (E.D. Wisc. 1993) citing LaSalle National Bank v. County of Lake, 703 F.2d 252, 255 (7th Cir. 1983) (emphasis added) (**"[t]he substantially related test also applies to motions seeking imputed or vicarious disqualification; i.e., when a lawyer's firm represents a party in a mater in which the adverse party was represented . . . by that lawyer's former firm"**). "If a substantial relationship is established, the discussion should ordinarily end. The rights and interests of the former client will prevail." Rosenfeld Constr. Co. v. Sup. Ct., 235 Cal.App.3d 566, 575, 286

Cal.Rptr. 609, 614 (1991); Green v. Administrators of Tulane Educ. Fund, 1998 WL 24424, at *3 (E.D.La.). This is the test this Court should reiterate for Nevada.

More specifically, two irrebuttable presumptions apply under that test. Green, supra. First, once it is established that the prior matter is substantially related to the present case, "the court will irrebuttably presume that relevant confidential information was disclosed during the former period of representation." Id. citing In re Amer. Airlines, Inc., 972 F.2d 605, 614 (5th Cir. 1992) citing Duncan v. Merrill Lynch, Pierce, Fenner & Smith, 646 F.2d 1020, 1028 (5th Cir.), cert. denied, 454 U.S. 895, 102 S.Ct. 394 (1981); Owens, 379 F.Supp.2d at 847. The former client does not have to prove the lawyer actually received confidential information. Nelson, 823 F.Supp. at 1446; Waid, supra; SHFL Entm't, Inc., supra. Second, there is an irrebuttable presumption that "confidences obtained by an individual lawyer will be shared with the other members of his firm." Nelson, supra and at n. 1; In re Corrugated Container Antitrust Litig., 659 F.2d 1341, 1346 (5th Cir. 1981); Owens, supra at n. 4 and 851. This Court should adopt these irrebuttable presumptions.

> "[C]ourts bar attorneys from appearing in substantially related matters not only to protect individual parties against the adverse use of information but also 'to aid the frank exchange between attorney and client.' " [In re]Am. Airlines, [Inc.], 972 F2d [605] at 619 [(5th Cir. 1992)]. "The substantial relationship test [thus] aims to protect the adversary process but also, or as part of this concern, seeks to provide conditions for the attorney-client relationship." Id. at 620.

OneBeacon Insur. Co. v. T. Wade Welch & Associates, 2012 WL 393309, at *7 (S.D. Tex.).

Here, Mr. Schnitzer has a conflict of interest under RPC 1.9(b) because: (1) there was an attorney-client relationship between HJC and Defendant in Blue while Mr. Schnitzer was an associate at HJC (1 App. 53-61, 199-200 and 202; 2 App. 257); (2) the current representation is adverse to Defendant (1 App. 1-8 and 44-61); and (3) the two representations (Blue and this case) are substantially related under the test established in Waid, including because they involve the same claims, allegations, issues, damages, and witness. Because the representations are substantially related there is a presumption of shared confidences and, as such, Mr. Schnitzer must be disqualified. Accordingly, his firm must also be disqualified under RPC 1.10(a).

IV. CONCLUSION AND RELIEF SOUGHT

Based on the foregoing, the district court abused its discretion in denying Defendant's Motion To Disqualify. The district court ruling defies the Rules of Professional Conduct, well-established law of disqualification, and this Court's

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precedent. Accordingly, a Writ of Mandamus should issue compelling the district court to disqualify Plaintiff's attorneys under RPC 1.9(b) and RPC 1.10(a).

RESPECTFULLY SUBMITTED this 31st day of May, 2016.

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CERTIFICATION PURSUANT TO NRAP 28.2, 32(a)(4), NRAP 32(a)(5) and NRAP 32(a)(6)

1. I certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7)(A)&(C) because:

   [X] Proportionately spaced, has a typeface of 14 points or more and contains [4,263] words.

   or is

   [ ] Monospaced, has 10.5 or less characters per inch and contains words or _____ lines of text.

2. I further certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

5/31/16
DATE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2016, I sent via e-mail a true and correct copy of the above and foregoing **PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF MANDAMUS** by electronic service through the Nevada Supreme Court's website, (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

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