

DISQUALIFICATION FOR CONFLICTS OF INTEREST: THE YEAR IN REVIEW

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INTRODUCTION

This paper surveys developments in the law of disqualification over roughly the past year.¹ As the title implies, the principal focus of the materials collected is on disqualification for conflicts of interest. But, cases of note resulting in disqualification on other grounds are included as are other decisions that highlight conflict issues that often arise in disqualification litigation.

The initial section reviews cases from Washington. The focus then shifts to regional developments in Alaska, Oregon and Idaho. The concluding section contains a brief bibliography of Washington disqualification cases over the past six years.

It is important to note that remedies for conflicts extend well beyond disqualification (and disciplinary sanctions) to include legal malpractice and breach of fiduciary claims and fee disgorgement. For more on those, see Mark J. Fucile, "Why Conflicts Matter," *Washington State Bar News*, August 2004, at 36.

¹ The cases discussed were reported through November 1. They are intended to be illustrative rather than encyclopedic. As such, they focus on decisions that are available in at least electronic form. Also, the Washington Supreme Court currently has proposed changes to the Washington RPCs under review. The proposed amendments to the RPCs, together with information on the status of their review, are available on the Washington State Bar's web site at www.wsba.org. The citations to the Washington RPCs in this paper are to the current rules.

WASHINGTON²

- ▶ ***In re Egger*,
___ Wn. 2d ___, 98 P.3d 477 (2004)**
 - **Defining the client and multiple client conflicts**

Egger is not a disqualification case. This disciplinary case, however, offers a tutorial on two key elements of conflicts law that are often at the heart of disqualification decisions: (1) who is the client for conflict purposes? and (2) are two clients' respective positions adverse? *Egger* was the regulatory chapter of an earlier legal malpractice case. The lawyer involved began representing an elderly, wealthy German widow, Marietta Gudeman, in the late 1980s. The work initially involved transferring Gudeman's substantial assets from Germany to Seattle. The lawyer then began assisting Gudeman in structuring investments in the Puget Sound area. In 1989, another client of the lawyer's firm who was close personally to Gudeman, Kirkham, discussed with Gudeman the possibility of making a \$300,000 loan to a couple named Kuniholm. A principal purpose of the loan would be to repay an earlier \$66,000 loan that Kirkham and her husband made to the Kuniholms. The loan had remained unpaid for three years and the Kuniholms were in bankruptcy.

As the opinion describes it, the lawyer "facilitated" the loan. Before the loan was completed, an associate working with the lawyer wrote a memo raising the conflict between the interests of Gudeman and Kirkham:

"A second problem is exactly whom we represent in this matter. If we represent Ms. Gudeman exclusively, then we should advise against entering into this transaction if its primary purpose is to permit the Kuniholms to use the loan proceeds to pay off Brigitte Kirkham's \$60,000

² Several of the disqualification decisions issued by the Washington Court of Appeals this year were unpublished—but are readily available in electronic form. Under RCW 2.06.040 and RAP 12.3(d), an unpublished decision is a matter of public record but does not have "precedential value."

to \$70,000 claim against the Kuniholm estate We should consider writing a letter to our client(s) explaining these difficulties and warning her/them of the risks involved.” 98 P.3d at 481.

The lawyer completed the transaction. Although Kirkham in the end did not receive any of the loan proceeds, the disciplinary hearing officer found that the lawyer had, nonetheless, attempted to direct the proceeds to repay the Kirkhams' earlier loan. In 1992, Gudeman's family became concerned about her continuing ability to handle her financial affairs. After learning that her liquid assets had been reduced from \$3.5 million to \$84,000, the family discharged the lawyer and filed a malpractice claim. Following settlement of the claim for roughly \$1 million, Gudeman's grandson, who had taken over management of her business affairs, filed a grievance with the Washington State Bar. The WSBA prosecuted the lawyer on the Kuniholm loan and several other matters. The Disciplinary Board eventually found that the lawyer had breached his professional obligations on that loan and one other matter he had handled for Gudeman. The Disciplinary Board recommended a six-month suspension. The lawyer contested the findings and argued that if the Washington Supreme Court found him liable that only a reprimand was warranted. The Supreme Court affirmed the Disciplinary Board and imposed a six-month suspension.

On the conflict charge, the Supreme Court first addressed the lawyer's contention that Kirkham was not a client at the time he handled the Kuniholm loan. In doing so, the Supreme Court relied primarily on *Bohn v. Cody*, 119 Wn.2d 357, 832 P.2d 71 (1992), which established the test for an attorney-client relationship in Washington. There are two parts to the *Bohn* test: (1) the person asserting the relationship must subjectively believe that he or she is a client; and (2) that subjective

belief must be objectively reasonable under the circumstances. Here, the Supreme Court found that both elements of the *Bohn* test were met. Kirkham testified that she believed that she was a client at the time the Kuniholm loan was negotiated. Her subjective belief was supported by, among other things, the contemporaneous memo that discussed her role as a firm client and the firm's records that listed her as a client on other matters at the time.

The lawyer also argued that the loan benefited both Gudeman and Kirkham and, as a result, there was no adversity between their positions that is the predicate for a conflict. The Supreme Court rejected this argument as well, noting that while the loan was designed to benefit Kirkham directly it entailed considerable risk to Gudeman in light of the Kuniholms' failing financial condition—which was the point the associate made to the lawyer at the time.

The Supreme Court, therefore, found that the lawyer had violated RPC 1.7(b) by undertaking Gudeman's representation on the Kuniholms' loan while that representation was, in the phrasing of the rule, "materially limited by the lawyer's responsibilities to another client." The lawyer never obtained a conflict waiver from Gudeman—again despite his associate calling that out to him. The Supreme Court, therefore, suspended the lawyer for the conflict charge and an excessive-fees violation that also arose from his representation of Gudeman.³

³ The other matter involved charging her an excessive fee in violation of RPC 1.5(a). The lawyer had charged her \$21,000 for documenting a loan for her. The loan agreement provided that the borrowers were to reimburse her for attorney fees up to \$15,000. The borrowers did so, but the lawyer did not credit Gudeman with the \$15,000. The Supreme Court found that the \$21,000 fee was reasonable, but pocketing the additional \$15,000 was not.

► ***State v. MacDonald***,
___ Wn. App. ___, 95 P.3d 1248 (2004)

Sanders v. Woods,
121 Wn. App. 593, 89 P.3d 312 (2004)

State v. McClanahan,
2004 WL 723283 (Wn. App. Apr. 5, 2004) (unpublished)

- Former client conflicts

The Washington Court of Appeals recently examined the often-cited but less frequently discussed topic of what constitutes a “substantially related matter” under the former client conflict rule—RPC 1.9(a). *State v. MacDonald*, ___ Wn. App. ___, 95 P.3d 1248 (2004), was a criminal case in which the defendant’s original lawyer had been disqualified. One of the charges against the defendant involved the rape of a minor. At the time he took on the defendant’s criminal case, the original lawyer had recently represented the victim’s mother in the dissolution of her marriage. Because the dissolution case included “[n]umerous family issues . . . including personal issues related to the mother’s relationship with . . . [the victim]” that might go to the victim’s credibility and would involve the cross-examination of the mother, the trial court found that the present and former matters were substantially related and ordered disqualification. *Id.* at 1253.

Following his conviction, the defendant challenged the disqualification on appeal and appellate counsel told the court at oral argument that if the case was reversed the original trial lawyer planned to handle it on remand. After first reversing on substantive issues, the Court of Appeals next addressed disqualification. It agreed with the trial court. In doing so, the Court of Appeals discussed the Washington standard for a “substantially related matter” under RPC 1.9(a). Relying principally on *State v.*

Hunsaker, 74 Wn. App. 38, 44, 873 P.2d 540 (1994), the Court of Appeals in *MacDonald* used a “factual context” test for determining the overlap between the current and former matters at issue:

“First, the court reconstructs the scope of the facts involved in the former representation and projects the scope of the facts that will be involved in the second representation. Second, the court assumes that the lawyer obtained confidential client information about all facts within the scope of the former representation. Third, the court then determines whether any factual matter in the former representation is so similar to any material factual matter in the latter representation that a lawyer would consider it useful in advancing the interests of the client in the latter representation.” *Id.* at 1253 (citations omitted).

MacDonald mirrored a Court of Appeals decision from earlier this year that also dealt with a former client conflict resulting in disqualification—*Sanders v. Woods*, 121 Wn. App. 593, 89 P.3d 312 (2004). Like *MacDonald*, *Sanders* relied on the *Hunsaker* test in determining whether an earlier representation was related to a current one under RPC 1.9(a). *Sanders* involved, in part, a dispute over a noncompetition agreement that a law firm for the defendant had a hand in drafting for the plaintiff. With these facts, the *Sanders* court noted that it “need not delve very deeply into the *Hunsaker* analysis to make . . . [a] decision.” 121 Wn. App. at 598. Nonetheless, it made plain that *Hunsaker* outlines the current test for a “substantial relationship” in Washington.

State v. McClanahan, 2004 WL 723283 (Wn. App. Apr. 5, 2004) (unpublished), also touched on *Hunsaker* earlier this year. In *McClanahan*, a criminal defendant argued on appeal that his trial counsel had a former client conflict because the public defender’s firm had formerly represented a witness on an unrelated matter. The Court of Appeals, citing *Hunsaker*, rejected that argument—noting that the two matters were

unrelated and that the witness's conviction in the earlier unrelated case was a matter of public record.⁴

- ▶ ***In re Webbe*,
122 Wn. App. 683, 94 P.3d 994 (2004)**
 - **Disqualification and ineffective assistance of counsel**

Even the Court of Appeals described this case as “unusual.” Webbe’s criminal defense attorneys had waived the attorney-client privilege during competency hearings without their client’s consent. The waiver came in the form of testimony by one of Webbe’s attorneys about Webbe’s mental stability. The defense also gave the prosecutors their interview notes from their conversations with Webbe on the competency issue. When it later came to light that Webbe had not consented to the disclosure, the trial court appointed a guardian ad litem and the guardian refused to waive privilege. The trial court then ordered the prosecutors to return the notes and invited the defense to file motions for disqualification of the prosecutors and for recusal of the judge (who had reviewed the notes in camera). The defense never made the motions.

After he was convicted, Webbe argued, in part, that his trial counsel had been ineffective in Sixth Amendment terms by not moving for disqualification of the prosecutors. Although the Court of Appeals found that Webbe’s lawyers did not have authority to waive privilege, it also concluded that it was not the prosecutors’ job to determine whether Webbe had authorized the waiver of privilege and, therefore, they

⁴ *State v. Northup*, 2004 WL 295159 (Wn. App. Feb. 17, 2004) (unpublished), also cited *Hunsaker*. *Northup* involved a criminal defendant’s former lawyer who became counsel for an accomplice and likely witness against the former client. The trial court appointed substitute defense counsel. The defendant then argued that the remedy should have included suppressing the accomplice’s testimony and that the failure of his new lawyer to do so constituted ineffective assistance under the Sixth Amendment. The Court of Appeals found no prejudice, no ineffective assistance and affirmed the conviction.

were entitled to rely on the material provided by his lawyers. The Court of Appeals found Webbe was not ultimately prejudiced by the prosecutors' review of the notes and affirmed Webbe's conviction.

REGIONAL DEVELOPMENTS⁵

Alaska

- ▶ ***Schug v. State*,
2004 WL 1837712 (Alaska App. Aug. 18, 2004) (unpublished)**
 - **Cross-examining former clients**

Schug was a defendant in a criminal case. His lawyer had represented a key witness 10 years before in another criminal matter. Although the former matter and the current one were unrelated, the lawyer had learned confidential information in the course of the earlier representation that would be material to cross-examination of the witness. The trial court appointed independent counsel to advise Schug. The trial court viewed the conflict as being primarily a current conflict for the lawyer under Alaska RPC 1.7(b)⁶ because the lawyer would be limited in his representation of Schug by his continuing duty of confidentiality to the former client under Alaska RPC 1.9(c) and RPC 1.6. Schug waived the conflict on the record. Schug was later convicted. On appeal, he argued, in part, that the trial court should have disqualified his lawyer. The Alaska Court of Appeals disagreed and affirmed Schug's conviction. In doing so, the Court of Appeals, like the trial court, analyzed the conflict primarily in terms of Alaska RPC 1.7(b). It found that there was a conflict, but also agreed that Schug had knowingly waived the conflict on the record.

⁵ As noted earlier, the compilation of regional cases in this section is intended to be illustrative and not encyclopedic.

⁶ Alaska RPC 1.7(b) is similar to Washington RPC 1.7(b).

Idaho

► ***Cole v. U.S. Dist. Court for the District of Idaho*,
366 F.3d 813 (9th Cir. 2004)**

- **Procedural avenues for challenging disqualification**

The underlying facts in *Cole* are not described in much detail in the reported decision because the key disqualification pleadings and proceedings were handled under seal. From what is available in the public record, it appears that the defendants in this civil matter moved to disqualify the plaintiffs' lead counsel, who had been admitted pro hac vice in Idaho, based on a current or former client conflict. The plaintiffs' lawyer, in turn, argued that the clients had waived the conflict. The federal magistrate who heard the motion denied it on the grounds advanced by the defendants but granted it sua sponte for the plaintiffs' lawyer's refusal to submit an affidavit the magistrate had requested on the issues involved. The magistrate also summarily revoked the lawyer's pro hac vice admission.

The disqualified lawyer bypassed direct review by the district judge to whom the case was assigned and instead filed a petition for a writ of mandamus with the Ninth Circuit. The Ninth Circuit's holding was threefold. First, it found that normally mandamus was a proper procedural vehicle to challenge a disqualification ruling. Second, it held that the magistrate had failed to give the lawyer proper notice and an opportunity to be heard before revoking his pro hac vice admission. Third, it concluded, however, that the lawyer should have first appealed the decision to the district judge. Accordingly, the Ninth Circuit denied the petition.

- ▶ ***In re Larson*, 2004 WL 307182 (Bankr. D. Idaho Jan. 30, 2004) (unpublished)**
 - **Fee disgorgement coupled with disqualification**

Larson involved a debtor's counsel who had not disclosed to the court that he had a claim against the bankruptcy estate and, therefore, did not meet the Bankruptcy Code's test of "disinterestedness" for a debtor's counsel. The U.S. Trustee moved both to disqualify the lawyer and for disgorgement of his fees. The Bankruptcy Court granted both elements of the motion. Although the court did not cite to it, *Larson* has echoes of another recent bankruptcy decision coupling disqualification with fee disgorgement—*In re Jore Corp.*, 298 B.R. 703 (Bankr. D. Mont. 2003). Fee forfeiture, however, is not limited to the bankruptcy context. In Washington, the courts have noted on several occasions that a conflict of interest may also constitute a breach of a lawyer's fiduciary duty of loyalty to the client and that fee forfeiture is an available remedy. *See generally Eriks v. Denver*, 118 Wn.2d 451, 463, 824 P.2d 1207 (1992); *Cotton v. Kronenberg*, 111 Wn. App. 258, 275, 44 P.3d 878 (2002).

Oregon

- ▶ ***Meadows v. Kindercare Learning Centers, Inc.*, 2004 WL 2203299 (D. Or. Sept. 29, 2004) (unpublished)**
 - **Claims by former in-house counsel**

Meadows is not a disqualification case. Rather, it deals with the issue of whether an in-house counsel can bring a wrongful discharge claim against a former employer when doing so would involve disclosure of information otherwise protected by the attorney-client privilege. Courts around the country have split on this issue. In those jurisdictions that have held that such claims are barred, disqualification of an in-house

counsel's trial lawyer may be a possibility if the former in-house counsel has revealed the employer's confidential information without the former employer's authorization.

Oregon's appellate courts have not yet ruled on the substantive issue. Oregon State Bar Formal Ethics Opinion 1994-136 (1994)⁷ examined the related question under the professional rules of whether a lawyer could bring a wrongful discharge claim if doing so would involve disclosure of the former employer's confidential information. The Oregon State Bar, while taking no position on the substantive employment law issue, concluded that such disclosure would be permitted under Oregon DR 4-101(C)(4)'s exception for "claim[s] or defense[s] on behalf of a lawyer in a controversy between the lawyer and the client."⁸ After summarizing the varying approaches to this issue used around the country, the federal district court in *Meadows* allowed the claim to proceed in the face of a motion to dismiss. In doing so, the court did not address Oregon DR 4-101(C)(4) as such. But, it did conclude that it had "equitable measures at its disposal designed to permit an attorney plaintiff to attempt to make the requisite proof while protecting from disclosure client confidences." 2004 WL 2203299 at *3.

⁷ This ethics opinion is available on the Oregon State Bar's web site at www.osbar.org.

⁸ Oregon has adopted new professional rules effective January 1. New Oregon RPC 1.6(b)(4), however, is very similar to soon-to-be-former Oregon DR 4-101(C)(4). Both, in turn, are similar in this regard to Washington RPC 1.6(b)(2).

SELECTED BIBLIOGRAPHY OF WASHINGTON DISQUALIFICATION CASES

The following list of cases—arranged in alphabetical order—is not meant to be a comprehensive summary of Washington disqualification law. Rather, it simply notes some of the more interesting decisions over the past six years.

- ▶ ***Cotton v. Kronenberg*,
111 Wn. App. 258, 44 P.3d 878 (2002)**
 - **Disqualification and forfeiture of fees**

Cotton is not a disqualification case as such. Rather, it involved a breach of fiduciary duty claim against a lawyer seeking, among other things, the return of the client's fees because the lawyer had been disqualified. *Cotton* suggests fee forfeiture as a possible subsidiary remedy for disqualification that results in the client's loss of its financial investment in the lawyer when the lawyer is disqualified. See generally *Kelly v. Foster*, 62 Wn. App. 150, 813 P.2d 598 (1991) (discussing breach of fiduciary duties by lawyers and fee forfeiture generally).

- ▶ ***Daines v. Alcatel, S.A.*,
194 F.R.D. 678 (E.D. Wash. 2000)**
 - **Screening**

Daines affirms the use of screening under Washington RPC 1.10(b) to avoid lateral-hire conflicts involving nonlawyer staff. *Daines* also contains a discussion of a lawyer's responsibility for supervising nonlawyer staff that was later cited in the *Richards v. Jain* case discussed below.

- ▶ ***Estate of McCorkle v. England*,
1998 WL 295896 (Wn. App. June 5, 1998) (unpublished)**
 - **Standing to raise disqualification motions**

McCorkle discusses the important, but often overlooked, point that a party moving to disqualify counsel must generally be or have been the law firm's current or former client to have standing to seek disqualification.

- ▶ ***Eugster v. City of Spokane*,
110 Wn. App. 212, 39 P.3d 380 (2002)**
 - **Conflicts involving governmental counsel in civil proceedings**

Eugster involved a situation where the city attorney was representing both the city and individual city council members in a dispute with another council member. The city attorney withdrew from representing the city

council members before the trial court issued a ruling on disqualification. The plaintiff renewed the motion against the outside law firm substituted for the council members. The trial court denied the motion and the Court of Appeals affirmed—implicitly concluding that simply the possibility of a conflict was not sufficient to warrant disqualification.

- ▶ ***In re Feetham*,
149 Wn.2d 860, 72 P.3d 741 (2003)**
 - **Standing to assert disqualification**

Feetham involved the sufficiency of a ballot synopsis and associated charges involving a recall campaign directed against the mayor of Concrete. The chief petitioner was represented by a lawyer who was mayor of another nearby town. The lawyer-mayor was quoted by a local newspaper as saying that the recall campaign would be moot if the mayor against whom the campaign was aimed simply resigned. The mayor being recalled did not take kindly to those remarks and moved to disqualify the petitioner's lawyer-fellow mayor based on a variety of alleged violations of the RPCs. The Supreme Court noted that none of the alleged RPC violations went to the issue of whether there was a conflict that warranted disqualification.⁹ The Supreme Court, therefore, rejected the suggestion that the lawyer-fellow mayor should be disqualified. Although not saying so explicitly, the Supreme Court's decision highlights that generally only a client or former client of the lawyer involved will have standing to seek disqualification except in circumstances where the conflict would potentially affect the validity of the proceeding as a whole.

- ▶ ***In re Firestorm 1991*,
106 Wn. App. 217, 22 P.3d 849, rev. denied, 144 Wn.2d 1021 (2001)**
 - **Disqualification of class counsel**

This decision is another chapter in the litigation that grew out of a large wildfire near Spokane in 1991. See also *In re Firestorm 1991*, 129 Wn.2d 130, 916 P.2d 411 (1996) (touching on the issue of disqualification based on ex parte contact with an opponent's experts). This latest decision deals with disqualification standards for class counsel.

- ▶ ***Lambert v. Blodgett*,
248 F. Supp. 2d 988 (E.D. Wash. 2003)**
 - **Co-defendant conflicts in criminal representation**

Lambert was a federal habeas corpus proceeding in which petitioner Lambert sought review of his state guilty plea to aggravated murder charges based on ineffective assistance of counsel under the Sixth

⁹ For a similar case with a similar result, see *Capps v. Gregoire*, 2003 WL 103461 (Wn. App. Jan. 13, 2003) (unpublished).

Amendment. The district court granted the petition on several grounds. One of Lambert's arguments was that his lawyer who had represented him on the plea had a nonwaivable conflict because another lawyer from the same firm was representing a co-defendant and their respective positions on both culpability and plea negotiations were adverse. Both of the lawyers involved worked under contract for a law firm that handled public defender work in Grant County. The firm operated that aspect of its practice under a trade name and the two lawyers both apparently appeared on the record under the firm's trade name. Although the State contended that the lawyers were independent contractors and did not share confidences regarding the two clients, the district court relied on the definition of "law firm" in ABA Model Rule 1.0 and its accompanying comments—which are similar to the one used in the "terminology" section of the Washington RPCs and under RPC 7.5's discussion of firm and trade names—in concluding that the two lawyers were members of the same firm because they held themselves out as such. Having found that the lawyers were from the same firm, the district court then imputed their respective conflicts to the firm as a whole under Washington RPC 1.10(a).

- ▶ ***Miller v. Robertson*, 1999 WL 65638 (Wn. App. Feb. 12, 1999) (unpublished)**
 - **Former client conflicts as a basis for disqualification**

Miller deals primarily with the application of the former client conflict rule, RPC 1.9, in the context of disqualification arising in a lawsuit involving a "squeeze out" of a minority shareholder in a closely held corporation. It focuses on the issue of what constitutes a "substantially related matter" under RPC 1.9(a).

- ▶ ***Oxford Systems, Inc. v. CellPro, Inc.*, 45 F. Supp. 2d 1055 (W.D. Wash. 1999)**
 - **Current/former client conflicts as a basis for disqualification**

Oxford contains one of the most comprehensive discussions of the current and former client conflict rules in recent Washington disqualification litigation. It also addresses the question of whether a "periodic" out-of-state client is a current or former client. The *Oxford* court also allowed the parties to present expert testimony (by affidavit) on the questions of whether a conflict existed and, if so, whether disqualification was appropriate.

- ▶ ***Richards v. Jain*,
168 F. Supp. 2d 1195 (W.D. Wash. 2001)**
 - **Disqualification as a sanction for failure to return privileged communications**

In *Richards*, the plaintiff had provided his lawyers with over 900 privileged communications that he had taken with him when he left his corporate employer for use in prosecuting his claim over stock options against the former employer. Relying primarily on an ABA ethics opinion—94-382—the court found a duty to notify the privilege holder, to return them and to quickly seek the court’s intervention to resolve any issues over waiver. On another note, the communications in *Richards* were e-mails. The court looked to the substance of the communications rather than their form in determining that they were privileged.

- ▶ ***State v. Bland*,
90 Wn. App. 677, 953 P.2d 126 (1998)
State v. Daniels,
2000 WL 1156871 (Wn.App. Aug. 11, 2000) (unpublished)**
 - **Lawyer-witness rule and disqualification**

Bland and *Daniels* both discuss the lawyer-witness rule in the context of prosecutor’s offices. In doing so, both classify a prosecutor’s office as a “law firm” for purposes of RPC 3.7’s lawyer-witness rule.

- ▶ ***State v. Riofta*,
2003 WL 22039947 (Wn. App. Sept. 2, 2003) (unpublished)**
 - **Conflicts in criminal representation**

Riofta hired the same law firm to be his defense counsel as was representing one of the defendants in the murder case. The prosecution moved to disqualify the law firm in the *Riofta* case. The State argued that the law firm had a conflict because any negotiations over a plea in *Riofta* would be aimed at soliciting Riofta’s assistance as a witness against the defendants in the murder case—including the defendant that the law firm was representing there. The trial court agreed and the Court of Appeals affirmed.

- ▶ ***State v. Shelby*,
2001 WL 337867 (Wn. App. Feb. 9, 2001) (unpublished)**
 - **Bar complaints and disqualification**

Shelby dealt with conflicts arising from bar complaints—in this instance a complaint filed against co-counsel. *Shelby* analyzes the issue under RPC 1.7(b).

- ▶ ***State v. Siriani*,
2000 WL 1867632 (Wn. App. Dec. 21, 2000) (unpublished)**
 - “Who is the client?” for purposes of disqualification

This case deals with the “who is the client?” question in the context of disqualification. Relying on *Bohn v. Cody*, 119 Wn.2d 357, 832 P.2d 71 (1992), *Siriani* examines the issue of whether a former client relationship existed as a predicate to deciding whether a former client conflict warranting disqualification was present.

- ▶ ***State v. Tjeerdsma*,
104 Wn. App. 878, 17 P.3d 678 (2001)**
 - **Municipal prosecutor conflicts**

Tjeerdsma addresses the problems associated with representing a municipal government while also representing criminal defendants being prosecuted by the State in the same county. The Court of Appeals found that because the lawyer’s contract as a municipal prosecutor designated the City and not the State as his client, there was no conflict. *See also* Washington State Bar Association Formal Ethics Opinion 161 (1975).