

Lawyer Disqualification — Undertaking a Representation Adverse to a Current or Former Client

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Disqualification of a lawyer based upon a conflict of interest is a broad issue. Conflicts of interest may arise for a variety of reasons and in a variety of factual circumstances, and disqualification may be premised under either applicable ethical rules or common law. This article addresses the rules for disqualification of a lawyer concerning a representation that is adverse to the interests of a former client or another current client as followed by the Texas courts and the federal courts for cases pending in Texas, and further discusses select provisions of the Texas Disciplinary Rules of Professional Conduct which directly address the undertaking of such adverse representations. No other bases for disqualification of a lawyer for conflict of interest reasons are addressed.

TEXAS COURTS

FORMER REPRESENTATION

To prevail on a motion to disqualify due to a conflict with a former representation, the party seeking disqualification must (1) show a prior attorney-client relationship between the lawyer and the former client and (2) clearly establish that the matters involved in the pending suit are substantially related to the matters involved in the former representation.¹

The terms "substantially related" and "matters involved" in this test are not defined by the case law. The comments to the ethical rules, however, describe "substantially related" as "primarily [involving] situations where a lawyer could have acquired confidential information concerning a prior client that could be used either to that prior client's disadvantage or for the advantage of the lawyer's current client or some other purpose."² Clearly, "a superficial resemblance be-

tween issues is not enough to constitute a substantial relationship, and . . . facts which are community knowledge or which are not material to a determination of the issues litigated do not constitute 'matters involved' within the meaning of the rule."³ Because disqualification is a severe remedy, the factual matters involved in the former representation must be so related to the facts in the present representation that there be a genuine threat that confidences revealed by the former client will be divulged to the lawyer's current client.⁴

The party seeking disqualification has the burden of establishing a preponderance of the facts supporting its argument for disqualification, and to sustain this burden the movant must submit evidence of specific similarities capable of being recited in the disqualification order.⁵ Mere allegations of unethical conduct or evidence showing a remote possibility of a violation of the applicable ethical rules will not suffice under this test.⁶

If this evidentiary burden is satisfied, the movant is entitled to a conclusive, irrebuttable presumption that confidences and secrets were imparted to the former lawyer, and a disqualification order should be issued.⁷ This presumption eliminates the necessity for the former client to disclose in the motion to disqualify the actual confidences exchanged with the lawyer.⁸ If the movant fails to satisfy its burden to show a substantial relationship, however, the court cannot presume that the lawyer violated any duty to the former client merely by reason of the lawyer's having obtained confidential information while representing the former client.⁹

The specific facts of each case must be carefully analyzed to determine whether a conflict exists between a former and a current representation. While all of the disqualification cases cannot be adequately

summarized here, the Texas courts have ordered disqualification in a case where a lawyer represented a wife in a second divorce proceeding after having represented the husband in the first proceeding¹⁰ and in a case where a lawyer represented a party in a refinancing of apartments and later represented an adversary to the former client in litigation in which the refinancing of the apartments was an issue.¹¹ On the other hand, disqualification was not required where a law firm's prior representation of a client involved worker's compensation and general tort claims and the subsequent adverse representation involved condemnation claims,¹² where a lawyer represented a husband and a wife in the wife's personal injury claim, the lawyer immediately withdrew from the husband's representation in that action upon discovery of a conflict, and later represented the wife in a divorce action against the husband,¹³ where the prior representation involved the enforceability of an alimony decree and the subsequent adverse representation involved an action for breach of employment agreement,¹⁴ and where the prior representation involved tax exempt status and other general matters and the subsequent adverse representation involved the validity of a will leaving an estate to the prior client.¹⁵ When a trial court fails to use the substantial relationship test, the trial court has abused its discretion.¹⁶

The ethical rules are viewed as guidelines that set forth considerations relevant to the merits of disqualification motions; they are not the governing law on such motions.¹⁷ Nonetheless, the ethical rules are relevant to a lawyer's undertaking a representation adverse to the interests of a former client since the rules establish "the minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action."¹⁸

The ethical rules governing the practice of law in Texas are the Texas Disciplinary Rules of Professional Conduct ("the Disciplinary Rules").¹⁹ The Disciplinary Rules became effective on January 1, 1990 upon the repeal of the Texas Code of Professional Responsibility.²⁰ Of immediate importance with regard to the issue of undertaking a representation adverse to the interests of a former client is Rule 1.09 which provides, in relevant part, as follows:

CONFLICT OF INTEREST: FORMER CLIENT

(a) Without prior consent, a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

- (1) in which such other person questions the validity of the lawyer's services or work product for the former client;
- (2) if the representation in reasonable probability will involve a violation of Rule 1.05 [disclosure of confidential information]; or
- (3) if it is the same or a substantially related matter.

(b) Except to the extent authorized by Rule 1.10 [successive government and private employment], when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if any one of them practicing alone would be prohibited from doing so by paragraph (a).

(c) When the association of a lawyer with a firm has terminated, the lawyers who were then associated with that lawyer shall not knowingly represent a client if the lawyer whose association with that firm has terminated would be prohibited from doing so by paragraph (a)(1) or if the representation in reasonable probability will involve a violation of Rule 1.05 [disclosure of confidential information].²¹

A former client has an interest in maintaining the attorney-client privilege for the confidential communications with the lawyer, protecting the product or benefit received from the lawyer's services against later attack by the lawyer, and maintaining the confidentiality of non-privileged information given in confidence during the course of the prior representation. Rule 1.09 is designed to accomplish these interests by providing "a reasonably balanced disciplinary standard safeguarding a former client's work product from attack by a turncoat lawyer."²² Rule 1.09 does not, however, absolutely prohibit a lawyer from ever representing a client against a former client since "such an absolute duty of loyalty would have injurious consequences for the legal system, including increased costs of legal services and an unwarranted interference with the right of other individuals to obtain the services of a lawyer of choice."²³

Rule 1.09(a)(1) prohibits a lawyer from representing a client who questions the validity of the lawyer's services or work product for a former client. The comments to Rule 1.09 provide the example of a lawyer who, after drafting a will which left a substantial portion of an estate to a designated beneficiary, would

be prohibited from representing the heirs at law in seeking to invalidate the will.²⁴

Rule 1.09(a)(2) prohibits a representation that would, in reasonable probability, involve a violation of Rule 1.05, relating to disclosure of confidential information. Whether such reasonable probability exists is a question of fact.²⁵

Finally, Rule 1.09(a)(3) prohibits a lawyer from undertaking an adverse representation in the same or a substantially related matter. Comment 4A provides that "the 'same' matter aspect of this prohibition prevents a lawyer from switching sides and representing a party whose interests are adverse to a person who sought in good faith to retain the lawyer. It can apply even if the lawyer declined the representation before the client had disclosed any confidential information."²⁶ "Substantially related" is not defined in the Disciplinary Rules, but is described as "primarily [involving] situations where a lawyer could have acquired confidential information concerning a prior client that could be used either to that prior client's disadvantage or for the advantage of the lawyer's current client or some other person."²⁷

The Rule 1.09(a) prohibitions are primarily for the protection of clients, and the Rule's protections can be waived by a client. A waiver is effective, however, only if there is consent after disclosure of the relevant circumstances, including the lawyer's past or intended role on behalf of each client, as appropriate.²⁸ The question of conflict must be resolved as to each client, and the lawyer must not seek a waiver or provide representation upon consent if a disinterested lawyer would conclude that the client should not agree to the representation.²⁹ Moreover, disclosure and consent are not formalities. Disclosure must be sufficient for both the former and the current clients to be fully informed, and although not required, both the former and the current clients should be provided with at least a written summary of the disclosures and a written consent obtained.³⁰

The prohibition as to the lawyer who personally represented the former client follows that lawyer at all times, including both present and future firms.³¹ The prohibition is imputed to all lawyers who are or in the future become associated with or a member of any firm with whom the lawyer practices, regardless whether they personally represented the former client.³² Thus, a lawyer who personally has knowledge of client confidences may not create a "Chinese wall" to allow his present or a future law firm to undertake a prohibited representation adverse to the lawyer's former client.³³

In the event a lawyer who personally repre-

sented the former client leaves that firm, the remaining lawyers at that firm who did not personally represent the former client are only prohibited from undertaking a representation while at that firm that would violate paragraphs (a)(1) (questioning the validity of the lawyer's work) and (a)(2) (disclosure of confidential information); they are not prohibited from undertaking a representation that would otherwise violate Rule 1.09(a)(3) (involving the same or a substantially related matters).³⁴

Rule 1.09(a) relates only to lawyers who personally have formerly represented a client.³⁵ Thus, to the extent a lawyer who did not personally represent the former client leaves that firm, that lawyer may thereafter undertake a representation against the former client unless prohibited elsewhere under the Disciplinary Rules.³⁶ Moreover, the lawyers at the new firm may also undertake an adverse representation without fear of disqualification or discipline.³⁷

CURRENT REPRESENTATION

The test for disqualification based upon a representation adverse to an existing client has not been expressly stated. In one case, the Dallas Court of Appeals held that the trial court in a divorce action erred in allowing a law firm to represent both an unsecured creditor of the couple and the receiver for the estate because the exercise of the lawyer's independent judgment on behalf of one of the clients may be adversely affected by the firm's representation of the other client.³⁸ No test was set forth for determining the disqualification issue.

In another case, Conoco moved to disqualify a law firm that was simultaneously representing Conoco in several law suits and representing a company suing Conoco in another law suit.³⁹ In denying the disqualification motion, the El Paso Court of Appeals examined the facts of the matter and the issues presented in the representations in the context of Tex. Disciplinary Rules of Prof. Conduct, Rules 1.06(b)(2), (c) and (e), and held that Conoco did not consent to the adverse representation, but that Conoco waived the disqualification and there was no reasonable appearance that the adverse representation would have any limitation on the lawyers' representation of Conoco in the other cases.⁴⁰ Conoco argued that the "substantial relationship" test was not applicable since the case involved multiple representations of current clients; instead, the court should utilize the disciplinary standards under Rule 1.06 to determine the disqualification issue. The court of appeals did not decide or comment on that

issue. Although there appears to be no case authority directly on point in the instance of conflicting current representations, the comments to the Disciplinary Rules provide that the Disciplinary Rules do not provide the governing law on motions to disqualify.⁴¹

Disciplinary Rule 1.06 governs conflicts with current representations and provides, in relevant part, as follows:

CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent opposing parties to the same litigation.

(b) In other situations and except to the extent permitted by (c), a lawyer shall not represent a person if the representation of that person:

(1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the law firm;

(2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

(c) A lawyer may represent a client in the circumstances described in (b) if:

(1) the lawyer reasonably believes the representation of each client will not be materially affected; and

(2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications and possible adverse consequences of the common representation and the advantages involved, if any.

(f) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.⁴²

Rule 1.06(a) prohibits a representation of opposing parties to the same litigation. The term "opposing parties", while not defined, is stated as contemplating the situation where a "judgment favorable to one of the parties will directly impact unfavorably upon the other party".⁴³ This rule provides the obvious prohibition to

a lawyer's representing both the plaintiff and the defendant in the same lawsuit.

Rule 1.06(b) concerns representation of parties whose interests may not be directly adverse in the same litigation but whose representation may allow for the possibility of a conflict to exist.⁴⁴ One such situation is where a lawyer seeks to represent a client in one matter and simultaneously represent another client adverse to the first client in a separate matter. It is clear that Rule 1.06(b) does not prohibit such conduct by the statement in the comments that:

Ordinarily, it is not advisable for a lawyer to act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated and even if paragraphs (a), (b) and (d) [to Rule 1.06] are not applicable. However, there are circumstances in which a lawyer may act as advocate against a client, for a lawyer is free to do so unless this Rule or another rule of the Texas Disciplinary Rules of Professional Conduct would be violated.⁴⁵

Thus, while representing a client adverse to the interest of another client in a wholly separate matter may not be prohibited under Rule 1.06, the lawyer must be careful not to violate any other of the Disciplinary Rules, such as Rule 1.05 (disclosure of confidential information).

Rule 1.06(b)(1) prohibits a lawyer's undertaking a representation which "involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm."⁴⁶ The term "substantially related" is not defined but, as previously stated, is described as "primarily [involving] situations where a lawyer could have acquired confidential information concerning a prior client that could be used either to that prior client's disadvantage or for the advantage of the lawyer's current client or some other person."⁴⁷

The term "directly adverse," although likewise not defined, has been described as a situation where the lawyer's independent judgment on behalf of a client or the lawyer's ability or willingness to consider, recommend or carry out a cause of action will be or is reasonably likely to be adversely affected by the lawyer's representation of, or responsibilities to, the other client. The dual representation also is directly adverse if the lawyer reasonably appears to be called upon to espouse adverse positions in the same matter or a related matter.⁴⁸

Rule 1.06(b)(2) prohibits a representation when it reasonably appears to be or become adversely limited by the lawyer's responsibility to another client or a third person, or by the lawyer's interests. Falling within the prohibition of this rule would be a lawyer's simultaneous representation of two clients in two separate lawsuits where the clients have opposing positions on a legal question and where a decision in favor of one client would adversely affect the other client.⁴⁹ Also falling within the prohibition of Rule 1.06(b)(2) would be a representation where an attorney would be required "to engage in a sharp, relentless cross-examination of the lawyer's own mother" and, of course, where the lawyer undertakes a representation that he cannot competently handle merely out of a need for income.⁵⁰

The El Paso Court of Appeals addressed this issue and stated that the interests to be protected by the disqualification rule include: "the preservation of the intangible representation elements of loyalty and client confidence essential to any attorney-client relationship, the preservation of client confidences, the assurance of unfettered advocacy on behalf of each client, and avoidance of additional costs of representation and litigation occasioned by inopportune changes in counsel."⁵¹ The court reviewed the facts pertaining to each of the foregoing interests in the case before it and held that the facts presented did not establish any basis for disqualification.

As with a conflict concerning a prior representation, the clients may waive the conflict. A waiver is possible only if the attorney reasonably believes his representation of each client will not be materially affected and if each client consents upon full disclosure of the existence, nature, implications and possible adverse consequences of such multiple representation. The consent must be informed, and each client must consent.⁵²

The prohibition against a lawyer's undertaking a representation adverse to an existing client equally applies to all lawyers who are members or associated with that lawyer's firm.⁵³ Thus, a "Chinese wall" cannot be created at the lawyer's firm to allow other lawyers at that firm, whether with or without personal knowledge, to undertake a prohibited representation.

If a lawyer not having personal knowledge leaves the firm, the lawyer is not subject to disqualification or disciplinary action for undertaking an adverse representation.⁵⁴ Moreover, the lawyers at the new firm are likewise not disqualified or subject to discipline for undertaking an adverse representation.⁵⁵ There is no need for a Chinese wall in that instance.

FEDERAL COURTS

FORMER REPRESENTATION

The issue of disqualification of a lawyer based upon a conflict with a former client as followed by the federal courts for cases pending in Texas recently came before the Fifth Circuit Court of Appeals.⁵⁶ In that case, American Airlines, Inc. sought a writ of mandamus requiring disqualification of a law firm from representing Northwest Airlines in certain antitrust litigation against American. American contended that the law firm had already undertaken to represent American in that lawsuit and, further, that the law firm previously represented American on various antitrust matters.

The court of appeals conducted a lengthy analysis of the facts and the arguments asserted by the parties, but limited its decision to whether the law firm could undertake a representation adverse to American as a former client. In that regard, the court of appeals reiterated its long standing test as follows:

A party seeking to disqualify opposing counsel on the ground of a former representation must establish two elements: (1) an actual attorney-client relationship between the moving party and the attorney he seeks to disqualify and (2) a substantial relationship between the subject matter of the former and present representations.⁵⁷

In supporting its disqualification motion, the moving party must specify the subject matters, issues and causes of action common to the prior and current representations before a "substantial relationship" may be found. The court will engage in a "painstaking analysis of the facts and precise application of precedent" in considering the disqualification motion.⁵⁸ A lawyer's advice need not be relevant to be "substantially related"; it need only be "akin to the present action in a way reasonable persons would understand as important to the issues involved."⁵⁹ The party seeking the disqualification bears the burden of proving that the former and present representations are substantially related,⁶⁰ but need not prove that the past and present matters are so similar that a lawyer's continued involvement will threaten to taint the trial.⁶¹

If a party can establish 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 representation and that confidences obtained by one lawyer will be shared with others in the lawyer's firm.⁶²

This test was founded in the common law; not under any ethical rules. Thus, this test applies under both the former Texas Code of Professional Responsibility and the current Disciplinary Rules.⁶³ Moreover, the applicable ethical rules, including any rules adopted as part of a federal court's local rules, do not alone regulate the parties' right to counsel of their choice and are not the sole authority governing a motion to disqualify counsel for a conflict with either a current or former client.⁶⁴ The federal courts look to "the ethical rules announced by the national profession in the light of the public interest and the litigants' rights", including the Model Code of Professional Responsibility and the Disciplinary Rules.⁶⁵

After examining the law firm's prior representations of American, the court held that there was a substantial relationship between the former and present representations, and that those representations required the disqualification of the law firm from representing Northwest against American in this case.

As with the Texas disqualification cases, all of the federal disqualification cases cannot be adequately summarized. For purposes of illustration, however, the Fifth Circuit Court of Appeals has ordered disqualification in a case where a law firm represented a former client in antitrust litigation and provided advice on antitrust issues and later sought to oppose the former client in antitrust litigation,⁶⁶ where a law firm provided antitrust counseling in a former representation and, in subsequent litigation, sought to assert antitrust claims and obtain discovery on matters on which advice was provided in the former representation,⁶⁷ where a lawyer previously represented a codefendant of the moving party and obtained confidential information relevant to a subsequent substantially related matter in which the lawyer sought to oppose the moving party,⁶⁸ and where a lawyer who provided joint representation to both parties was later disqualified from representing one party against the other party in litigation.⁶⁹

CURRENT REPRESENTATION

The Fifth Circuit Court of Appeals has addressed the issue of a lawyer's undertaking a representation against a current client in only one case, at least in modern times.⁷⁰ In that case, Dresser Industries, Inc. sought a writ of mandamus requiring disqualification of a lawyer from representing several companies against it in antitrust litigation. The lawyer was, at the same time, representing Dresser in two lawsuits, one of which involved alleged antitrust violations and claims of tortious interference with contract by Dresser. The

court of appeals stated that the lawyer had access to data concerning Dresser's management, organization, finances, and accounting practices, and had engaged in privileged communications with the company concerning antitrust defenses and other litigation strategies.⁷¹

The court of appeals said that it would consider the issue of disqualification under the framework set forth in its earlier decision in *Woods v. Covington Cty. Bank*⁷² as tailored to apply to the facts arising from a concurrent representation.⁷³ In that earlier case, the court of appeals had refused to disqualify an attorney from representing the plaintiffs in a securities fraud case although the attorney had previously investigated the possibility of filing those claims on behalf of the plaintiffs while serving as a military reserve attorney. The court of appeals held that it should consider the attorney's conduct under more than the Model Code of Professional Responsibility and should be conscious of its responsibility to preserve a reasonable balance between the need to ensure lawyers' ethical conduct and other social interests, including the litigants' right to their counsel of choice.⁷⁴ The considerations relied upon by the court of appeals in *Woods v. Covington Cty. Bank* were:

whether a conflict has (1) the appearance of impropriety in general, or (2) a possibility that a specific impropriety will occur, and (3) the likelihood of public suspicion from the impropriety outweighs any social interests which will be served by the lawyer's continued participation in the case.⁷⁵

In following its earlier decision, the court of appeals referred to both the Model Rules of Professional Conduct and the Model Code of Professional Responsibility as the "national norms of attorney conduct" and found that neither allowed an attorney to file suit against a current client without the client's consent.⁷⁶ The court of appeals then considered whether there were any exceptional circumstances to justify the adverse representation, such as the existence of some social interest to be served by the lawyer's continued representation that would outweigh the public perception of the lawyer's actions. The court found no evidence that other lawyers could not ably perform the work or that any societal or professional interests would be served by allowing the conflicting representation. Mandamus was issued to disqualify the lawyer from continuing as counsel adverse to Dresser.⁷⁷

The court of appeals' decision is far more restrictive upon a lawyer's ability to undertake a representa-

tion adverse to an existing client than the decisions of the Texas courts. Under this authority, the federal courts will apparently not allow a lawyer to sue an existing client unless there is some very significant social interest that will justify the action. The state courts appear to be much more willing to allow a lawyer to represent parties adverse to existing clients.

CONCLUSION

The standards for lawyer discipline and lawyer disqualification under the applicable ethical rules are significantly different. The lawyer disciplinary standards in the Texas courts are the Texas Disciplinary Rules of Professional Conduct. The standard for disqualification of a lawyer, however, is dependent upon several factors, including whether the venue is in federal or state court and whether the moving party is a current or former client. Once the applicable test is determined, an extensive factual investigation and analysis must then be undertaken to determine whether the requisites of the applicable test have been met.

ENDNOTES

1. *NCNB Texas Nat'l Bank v. Coker*, 765 S.W.2d 398, 399-400 (Tex. 1989); *P&M Elec. Co. v. Godard*, 478 S.W.2d 79, 81 (Tex. 1972); *Arkla Energy Resources v. Jones*, 762 S.W.2d 694, 695 (Tex. App.—Texarkana 1988, no writ); *Gleason v. Coman*, 693 S.W.2d 564, 566 (Tex. App.—Houston [14th Dist.] 1985, writ ref'd n.r.e.); *Lott v. Ayres*, 611 S.W.2d 473, 475 (Tex. Civ. App.—Dallas 1981, writ ref'd n.r.e.); *Braun v. Valley Ear, Nose & Throat Specialists*, 611 S.W.2d 470, 472 (Tex. Civ. App.—Corpus Christi 1980, no writ); *Lott v. Lott*, 605 S.W.2d 665, 668 (Tex. Civ. App.—Dallas 1980, writ dism'd); and *Howard Hughes Med. Inst. v. Lummis*, 596 S.W.2d 171, 174 (Tex. Civ. App.—Houston [14th Dist.] 1980, writ ref'd n.r.e.).
2. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09 comment 4A.
3. *Arkla Energy Resources v. Jones*, 762 S.W.2d at 695.
4. *Spears v. Fourth Court of Appeals*, 797 S.W.2d 654, 656 (Tex. 1990); *NCNB Texas Nat'l Bank v. Coker*, 765 S.W.2d at 400; and *Arkla Energy Resources v. Jones*, 762 S.W.2d at 695.
5. *NCNB Texas Nat'l Bank v. Coker*, 765 S.W.2d at 400.
6. *Spears v. Fourth Court of Appeals*, 797 S.W.2d at 656.
7. *Spears v. Fourth Court of Appeals*, 797 S.W.2d at 656; *Clarke v. Ruffino*, 819 S.W.2d 947, 951 (Tex. App.—Houston [14th Dist.] 1991, writ dism'd w.o.j.); and *Arkla Energy Resources v. Jones*, 762 S.W.2d at 695.
8. *NCNB Texas Nat'l Bank v. Coker*, 765 S.W.2d at 400; and *Gleason v. Coman*, 693 S.W.2d at 564.
9. *Lott v. Ayres*, 611 S.W.2d at 475.
10. *Gleason v. Coman*, 693 S.W.2d at 564.
11. *Clarke v. Ruffino*, 819 S.W.2d at 947.
12. *Arkla Energy Resources v. Jones*, 762 S.W.2d at 694.
13. *Lott v. Ayres*, 611 S.W.2d at 473; and *Lott v. Lott*, 605 S.W.2d at 665.
14. *Braun v. Valley Ear, Nose & Throat Specialists*, 611 S.W.2d at 470.
15. *Howard Hughes Med. Inst. v. Lummis*, 596 S.W.2d at 171.
16. *NCNB Texas Nat'l Bank v. Coker*, 765 S.W.2d at 398.
17. *NCNB Texas Nat'l Bank v. Coker*, 765 S.W.2d at 399; *Ayres v. Canales*, 790 S.W.2d 554, 556-57 at n.2 (Tex. 1990); *Spears v. Fourth Court of Appeals*, 797 S.W.2d at 656; and Tex. Disciplinary Rules of Prof. Conduct preamble, para. 15; but see *Clarke v. Ruffino*, 819 S.W.2d at 950 (Disciplinary Rules provide additional bases for disqualifying a lawyer in an adverse representation).
18. *Spears v. Fourth Court of Appeals*, 797 S.W.2d at 656; and Tex. Disciplinary Rules of Prof. Conduct preamble, para. 7.
19. Tex. Gov't Code, title 2, subtitle G app., State Bar Rules, art. X, § 9 (Vernon Supp. 1992).
20. *Id.*
21. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09.
22. Schuwert & Sutton, "A Guide to the Tex. Disciplinary Rules of Prof. Conduct," 27A Hou. L. Rev. 1, 147-48 (Oct. 1990).
23. *Id.* at 148; and Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09 comment 3.
24. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09 comment 3.
25. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09 comment 4.

26. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09 comment 4A.
27. *Id.*
28. *Id.*
29. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06 comment 7.
30. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06 comment 8.
31. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09(b) and comment 5; and Schuwerk & Sutton, "A Guide to the Tex. Disciplinary Rules of Prof. Conduct," 27A Hou. L. Rev. at 149.
32. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09(b) and comments 5 and 7.
33. *Petroleum Wholesale Inc. v. Marshall*, 751 S.W.2d 295, 300-01 (Tex. App.—Dallas 1988, no writ); and *Dillard v. Berryman*, 683 S.W.2d 13, 15 (Tex. App.—Fort Worth 1984, no writ).
34. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09(c) and comments 6 and 7.
35. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09(a); and Schuwerk & Sutton, "A Guide to the Tex. Disciplinary Rules of Prof. Conduct," 27A Hou. L. Rev. at 149.
36. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09 comment 7.
37. *J.K. and Susie L. Wadley Research Inst. & Blood Bank v. Morris*, 776 S.W.2d 271, 282 (Tex. App.—Dallas 1989, no writ).
38. *Mallou v. Payne & Vendig*, 750 S.W.2d 251, 258 (Tex. App.—Dallas 1988, writ denied).
39. *Conoco Inc. v. Baskin*, 803 S.W.2d 416 (Tex. App.—El Paso 1991, no writ).
40. *Id.* at 419-22.
41. Tex. Disciplinary Rules of Prof. Conduct preamble, para. 15; *Ayres v. Canales*, 790 S.W.2d at 556 n.2; *Spears v. Fourth Court of Appeals*, 797 S.W.2d at 656; and Schuwerk & Sutton, "A Guide to the Tex. Disciplinary Rules of Prof. Conduct," 27A Hou. L. Rev. at 113-14; *but see Clarke v. Ruffino*, 819 S.W.2d at 950 (Disciplinary Rules provide additional bases for disqualification of a lawyer for undertaking an adverse representation).
42. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06.
43. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06 comment 2.
44. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06 comment 3.
45. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06 comment 11 (emphasis added); Schuwerk and Sutton, "A Guide to the Tex. Disciplinary Rules of Prof. Conduct," 27A Hou. L. Rev. at 105; and *see Conoco Inc. v. Baskin*, 803 S.W.2d at 416.
46. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06(b)(1).
47. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.09 comment 4A.
48. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06 comment 6.
49. Schuwerk & Sutton, "A Guide to the Tex. Disciplinary Rules of Prof. Conduct," 27A Hou. L. Rev. at 106.
50. *Id.* at 108.
51. *Conoco Inc. v. Baskin*, 803 S.W.2d at 421.
52. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06(c) and comments 7 and 8; Schuwerk & Sutton, "A Guide to the Tex. Disciplinary Rules of Prof. Conduct," 27A Hou. L. Rev. at 109-10; and *Conoco Inc. v. Baskin*, 803 S.W.2d at 419.
53. Tex. Disciplinary Rules of Prof. Conduct, Rule 1.06(f).
54. Schuwerk & Sutton, "A Guide to the Tex. Disciplinary Rules of Prof. Conduct," 27A Hou. L. Rev. at 113; *but see* Tex. Comm. on Professional Ethics, Op. 453, 51 Tex. B.J. 293 (1988) and *Enstar Pet. Co. v. Mancias*, 773 S.W.2d 662, 664 (Tex. App.—San Antonio 1989, no writ) (attorney not having personal knowledge is disqualified under the former Texas Code of Professional Responsibility).
55. *Enstar Pet. Co. v. Mancias*, 773 S.W.2d at 664; *J.K. and Susie L. Wadley Research Inst. & Blood Bank v. Morris*, 776 S.W.2d at 282; and Tex. Comm. on Professional Ethics, Op. 453, 51 Tex. B.J. at 293.
56. *In re American Airlines Inc.*, 972 F.2d 605 (5th Cir. 1992).
57. *In re American Airlines. Inc.*, 972 F.2d at 614, *citing Johnston v. Harris Cty. Flood Control Dist.*, 869 F.2d 1565, 1569 (5th Cir. 1989), *cert. denied*, 493 U.S. 1019 (1990), *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1341, 1345 (5th Cir. 1981), and *Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 646 F.2d 1020, 1028 (5th Cir.), *cert. denied*, 454 U.S. 895 (1981).
58. *In re American Airlines Inc.*, 972 F.2d at 614.

59. *In re Corrugated Container Antitrust Litigation*, 659 F.2d at 1346.
60. *In re American Airlines Inc.*, 972 F.2d at 614; and *Duncan v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 646 F.2d at 1028.
61. *In re American Airlines Inc.*, 972 F.2d at 616.
62. *In re American Airlines Inc.*, 972 F.2d at 614 and n.1; *Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 646 F.2d at 1028; and *In re Corrugated Container Antitrust Litigation*, 659 F.2d at 1347.
63. *In re American Airlines, Inc.*, 972 F.2d at 617, 621.
64. *Id.* at 610; and *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir. 1992). The federal district courts in Texas have adopted various ethical rules to govern the practice of law in their courts. The U.S. District Court for the Southern District of Texas has adopted the Disciplinary Rules as its code of professional responsibility. Local Rules of the United States District Court for the Southern District of Texas, Appendix A, Rule 4(B); and *In re American Airlines Inc.*, 972 F.2d at 609. The U.S. District Court for the Western District of Texas has likewise adopted the Disciplinary Rules as its standard of professional conduct, but notes that the Model Code of Professional Responsibility will also be considered as a standard. Local Rules of the United States District Court for the Western District of Texas, Rule AT-4. The U.S. District Court for the Eastern District of Texas has adopted the Model Code of Professional Responsibility and the Texas Code of Professional Responsibility as its guide. Local Rules for the United States District Court for the Eastern District of Texas, Rule 3(a). Finally, the U.S. District Court for the Northern District has not adopted any particular ethical rules concerning lawyer conflicts, but has referred to the Model Code of Professional Responsibility and the Texas Code of Professional Responsibility in setting other standards which lawyers are to satisfy. *Dondi Prop. Corp. v. Commerce Sav. & Loan Assoc.*, 121 F.R.D. 284, 288 n.9 (N.D. Tex. 1988).
65. *In re American Airlines Inc.*, 972 F.2d at 610; and *In re Dresser Indus. Inc.*, 972 F.2d at 543.
66. *In re American Airlines, Inc.*, 972 F.2d 605.
67. *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1341.
68. *Wilson P. Abraham Constr. Corp. v. Armco Steel Corp.*, 559 F.2d 250 (5th Cir. 1977).
69. *Brennan's Inc. v. Brennan's Restaurants, Inc.*, 590 F.2d 168 (5th Cir. 1979).
70. *In re Dresser Indus., Inc.*, 972 F.2d 540, 544.
71. *Id.* at 541-42.
72. *Woods v. Covington Cty. Bank*, 537 F.2d 804 (5th Cir. 1976).
73. *In re Dresser Indus. Inc.*, 972 F.2d at 544.
74. *Woods v. Covington Cty. Bank*, 537 F.2d at 810.
75. *In re Dresser Indus. Inc.*, 972 F.2d at 544; and *Woods v. Covington Cty. Bank*, 537 F.2d at 812-13.
76. *In re Dresser Indus. Inc.*, 972 F.2d at 544-45 and nn.7-9. "Unquestionably, the national standards of attorney conduct forbid a lawyer from bringing a suit against a current client without the consent of both clients." *Id.* at 545.
77. *Id.* at 545 and n.12. Although it did not so hold, the court of appeals stated that the "consideration of social benefit to offset the appearance of impropriety might allow such a representation if the balance clearly and unequivocally favored allowing such representation to further the ends of justice." (emphasis in original). *Id.*

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