

No. 33193-8

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

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Division III  
State of Washington

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In re the Matter of:

JAMES D. CUDMORE, Alleged Vulnerable Adult,

JOHN C. BOLLIGER, Appellant

and

TIM LAMBERSON, Respondent.

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**REPLY BRIEF**

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Mr. Meehan's respondent's brief ("RB") necessitates us recalling some facts from Mr. Bolliger's appellant's brief ("AB"), in the following footnote.<sup>1</sup>

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<sup>1</sup> Those are:

- In early July of 2013, **mentally competent** Mr. Cudmore hired Mr. Bolliger, with a written fee agreement, to prepare new estate planning documents for Mr. Cudmore, including a new Will. In particular with his new Will, Mr. Cudmore wanted to disinherit his step son (Mr. Lamberson).
- On July 12, 2013, after learning about that, Mr. Lamberson and his attorney (Mr. Meehan) commenced a guardianship case against Mr. Cudmore – to try to prevent Mr. Cudmore from disinheriting Mr. Lamberson.
- Because Mr. Cudmore's friend of 35 years (Dona Belt) and her son (Gregg Belt) had been assisting Mr. Cudmore with his transportation needs in getting to and from Mr. Bolliger's office, Mr. Lamberson and Mr. Meehan also decided to commence separate VAPO cases against both (1) Dona Belt (and her husband, Larry Belt) and (2) Gregg Belt. Mr. Meehan calendared the initial guardianship hearing, and the initial hearing in both VAPO cases, to occur on the same date (July 19, 2013) before the **same judge**.
- On July 18, 2013, Mr. Cudmore hired Mr. Bolliger, with a separate written fee agreement, to defend Mr. Cudmore against the guardianship case. Mr. Bolliger therefore filed his RCW 11.88.045(2) petition therefor. Mr. Bolliger also filed his *Notice of Appearance* on behalf of both Mr. Cudmore and Gregg Belt for this case.
- On July 19, 2013, the guardianship case hearing was first. At that, Mr. Meehan wrongfully communicated a known (to him) material falsehood to the judge: that the Belts had been trying to financially exploit Mr. Cudmore at Edward Jones. AB, fn. 4. Being deceived by Mr. Meehan's false Edward Jones story against the Belts and (by extension) their attorney Mr. Bolliger, the judge refused to appoint Mr. Bolliger to defend Mr. Cudmore against the guardianship case. Instead, the judge appointed an attorney expressly endorsed by Mr. Meehan (even though Mr. Meehan was Mr. Cudmore's opposing counsel): Ms. Woodard, (1) who was not at the hearing, (2) who had not filed the RCW 11.88.045(2)-required petition to be appointed as Mr. Cudmore's attorney, and (3) whom Mr. Cudmore never had met.
- Next, Mr. Meehan's VAPO case against Dona and Larry Belt was called. Knowing that his Edward Jones misrepresentation to the **same judge** (during the guardianship hearing) was false – and having already benefitted from his falsehood by getting Ms. Woodard (and not Mr. Bolliger) appointed as Mr. Cudmore's attorney in the guardianship case, Mr. Meehan volunteered to dismiss his VAPO case against Larry and Dona Belt. So, the judge dismissed that VAPO case.
- However, Mr. Meehan decided to press forth with his frivolous VAPO case against Gregg Belt, which next was heard. Mr. Meehan knew that Mr. Lamberson's VAPO petition against Gregg Belt was way too lean to succeed. So, he made the additional wrongful decision during his oral argument to materially embellish the facts. AB, fact ¶ 15. Being deceived by Mr. Meehan's false Edward Jones story against the Belts and (by extension) their attorney Mr. Bolliger – and by Mr. Meehan's material factual embellishments just mentioned – the **same judge** entered Mr. Meehan's requested 1-year VAPO against Gregg Belt.
- On July 26, 2013, Mr. Cudmore filed his declaration, in which he stated **"I like Gregg Belt. He is the son of my good friend, Dona Belt. I have known Dona for about 35 years. I don't want or need an order of protection against Gregg Belt. I ask the Court to get rid of it."** (Emphasis added.) There is no evidence in the record that Mr. Cudmore ever wavered in that position, because he never did. Mr. Cudmore and Gregg Belt always were – and always remained – united in their opposition to a VAPO being entered to "protect" Mr. Cudmore from Gregg Belt.
- During August 12-20, 2013, Mr. Bolliger invited – but Mr. Meehan refused – to stipulate to vacate his frivolous VAPO against Gregg Belt. Mr. Meehan instead responded "[w]e may just let things play out at this point."
- On December 27, 2013, the trial court adjudicated Mr. Cudmore as incapacitated – and, so, on January 27,

Mr. Meehan disingenuously has argued this case from the sham premise that, after Mr. Bolliger properly withdrew from representing Mr. Cudmore any further (because Mr. Cudmore eventually got adjudicated as incapacitated), Mr. Bolliger failed to obtain written consent from Mr. Cudmore to represent Gregg Belt further on appeal. However, the simple kernels of truth for this case are that (1) written consent was not required in this case because (2) Mr. Meehan has provided this Court not one, single indication from the record that either Mr. Cudmore or Gregg Belt ever wavered from their expressly united opposition to the VAPO against Gregg Belt. They never, ever had opposing interests in this case – not even once.

**A. The Express Wording Of RPC 1.7 And RPC 1.9, Combined With The Particular Facts Of This Case, Demonstrate That Mr. Bolliger Would Not Be Violating Either Rule If The Trial Court Had Allowed Mr. Bolliger To Represent Gregg Belt Further On Appeal**

In the section with this title in his AB, Mr. Bolliger identified the operative facts (recalled in fn. 1 above) which demonstrate that Mr. Bolliger would not be violating either rule if the trial court had allowed Mr. Bolliger to

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2014, Mr. Bolliger filed his *Notice of Intent to Withdraw* from representing Mr. Cudmore any further in the Gregg Belt VAPO case.

- On March 13, 2014, Mr. Bolliger filed Gregg Belt's *Notice of Appeal* of Mr. Meehan's frivolous VAPO against Gregg Belt – with which appeal, Gregg Belt was seeking to have this Court vacate the VAPO (because having it on his record would hinder his ongoing and future work prospects with the elderly).
- On July 19, 2014, the VAPO against Gregg Belt expired by its own terms – without Mr. Meehan ever seeking to extend it.
- On August 7, 2014, Mr. Meehan filed his subject disqualification motion with the trial court.
- On January 21, 2015, the trial court entered its written order disqualifying Mr. Bolliger from representing Gregg Belt any further on appeal.
- On April 28, 2015 (i.e., 20+ months after Mr. Bolliger invited Mr. Meehan to stipulate to vacate his frivolous VAPO against Gregg Belt), Mr. Meehan stipulated to vacate his frivolous VAPO against Gregg Belt, after all.

represent Gregg Belt further on appeal. Mr. Bolliger also presented the express wording of RPC 1.7 and RPC 1.9 – as well as the case law which germanely applies RPC 1.7 and RPC 1.9 to those facts and this issue.<sup>2</sup>

As those authorities demonstrate, in promulgating RPC 1.7 and RPC 1.9, the Supreme Court did not draft into the rules a concept that “an attorney may never, under any circumstances, represent more than one client in the same or substantially related matter.” The Supreme Court also did not draft into the rules a concept that “an attorney may represent more than one client in the same or substantially related matter – yet, only if each affected client gives informed consent, confirmed in writing.” The Supreme Court also did not draft into the rules that “informed consent, confirmed in writing” is required when a joint representation presents merely a “theoretical,” “possible,” or “potential” of a subsequent conflict – or when the “parties are aligned.” Mr. Meehan repetitively alleged in his RB that Mr. Bolliger did not obtain “informed consent, confirmed in writing” from Mr. Cudmore in order for Mr. Bolliger to represent Gregg Belt further on appeal. However, here, that was not required. In general civil matters (like this case), RPC 1.7 and RPC 1.9 allow an attorney to represent more than one client in a matter – and they **condition** the attorney’s need to obtain “informed consent, confirmed in writing” from the affected client with their phrases “**directly adverse,**” “**significant risk,**” “**materially limited,**” and “**materially adverse**” – or

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<sup>2</sup> Personal Restraint of Maribel Gomez, 180 Wn.2d 337, 325 P.3d 142 (2014), Friends of North Spokane County Parks v. Spokane County, 184 Wn.App. 105, 336 P.3d 632 (Div. 3 2014), Marriage of Wixom, 182 Wash.App. 881, 332 P.3d 1063 (Div. 3 2014), State v. Vicuna, 119 Wn.App. 26, 79 P.3d 1 (2003), State v. Ramos, 83 Wn.App. 622, 922 P.2d 193 (1996), Teja v. Saran, 68 Wn.App. 793, 846 P.2d 1375 (1993), and In re Richardson, 100 Wn.2d 669, 675 P.2d 209 (1983).

situations where there has been a “**changing of sides**”<sup>3</sup> – such that an **actual** or **active** conflict of interest must be present. In those regards, remember Mr. Cudmore’s declaration in the case, in which he expressed himself as follows:

**I like Gregg Belt.** He is the son of my good friend, Dona Belt. I have known Dona for about 35 years. **I don’t want or need an order of protection against Gregg Belt. I ask the Court to get rid of it.**

(Emph. added.) The record contains no evidence to the contrary. Remember, too, Comment 8 to RPC 1.7, which states as follows (with emphasis added):

The **mere possibility** of subsequent harm does not itself require disclosure and consent.

Here, Mr. Meehan has failed to identify any single instance whereby Mr. Bolliger’s representation of Gregg Belt ever rose to the level of “**directly adverse,**” “**significant risk,**” “**materially limited,**” or “**materially adverse**” with respect to Mr. Cudmore – or where Mr. Bolliger engaged in a “**changing of sides**” against Mr. Cudmore. That is because no such single instance exists. Because of that, Mr. Bolliger’s representation of Gregg Belt never amounted to an **actual** or **active** conflict of interest with respect to Mr. Cudmore – and, therefore, **Mr. Bolliger never was required to obtain “informed consent, confirmed in writing” from Mr. Cudmore** in order for Mr. Bolliger to represent Gregg Belt further on appeal. As such, Mr. Bolliger would not be violating either RPC 1.7 or RPC 1.9 if the trial court had allowed Mr. Bolliger to represent Gregg Belt further on appeal.

In his RB, Mr. Meehan completely avoided addressing any of the

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<sup>3</sup> Comment 2 to RPC 1.9 provides as follows: “The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a **changing of sides** in the matter.” (Emphasis added.)

foregoing operative facts and legal authorities. Instead, Mr. Meehan only cited inapposite and unavailing cases, next discussed.

**1. Mr. Meehan’s “Substantially Related Matter” Case Is Inapposite**

In Disciplinary Proceedings Against Stansfield, 164 Wn.2d 108, 187 P.3d 254 (2008), the Court adopted the ABA Model Rules of Professional Conduct’s definition for the phrase “same or substantially related matter” contained in RPC 1.9(a). Stansfield is inapposite because Mr. Meehan uses it to make only a straw man argument. Mr. Bolliger has raised no issue about the phrase “same or substantially related matter.” Mr. Bolliger acknowledges that his joint representation of Mr. Cudmore and Gregg Belt occurred only in the **same** matter: Mr. Meehan’s instant, frivolous Gregg Belt VAPO case.

**2. Mr. Meehan’s “Materially Limited” Case Is Inapposite**

In Disciplinary Proceedings Against Egger, 152 Wn.2d 393, 98 P.3d 477 (2004), attorney Mr. Egger undertook to persuade one of his clients (Ms. Gudeman) to make a risky loan of \$300,000 to a third-party married couple (the Kuniholms, who then were in bankruptcy proceedings), so that the Kuniholms could repay \$66,000 they owed to another of Mr. Egger’s clients (Ms. Kirkham). The Supreme Court adopted the hearing officer’s and the Disciplinary Board’s conclusion of law that Mr. Egger’s representation of Ms. Gudeman was “**materially limited**” by Mr. Egger’s responsibilities to his other client, Ms. Kirkham. RPC 1.7(a). Id. at 411-12. Therefore, under RPC 1.7(b), Mr. Egger was required to obtain “informed consent, confirmed in writing” from his client Ms. Gudeman – which he failed to do. Egger is

inapposite because, in the instant case, the record demonstrates that there is no **“materially limited”** situation present. Mr. Bolliger never asked Mr. Cudmore to loan money to a third person, so that the third person could repay money the third person owed to Gregg Belt.

### **3. Mr. Meehan’s “Switching Of Sides” And “Hot Potato” Cases Are Inapposite**

In Sanders v. Woods, 121 Wn.App. 593, 89 P.3d 312 (Div. 3 2004), an attorney and his law firm had represented an employer in reviewing, and providing comments on, noncompete and confidentiality agreements to be used by the employer against future ex-employees. Later, on behalf of the employer, the law firm wrote demand letters to two ex-employees, which letters involved the substance of the very same noncompete and confidentiality agreements. Later still, the employer sued another ex-employee, alleging her breach of the very same noncompete and confidentiality agreements. That latter ex-employee hired the same attorney to defend him against the employer’s suit. After noting that the employer’s and the latter ex-employee’s respective interests in their case were **“materially adverse”** under RPC 1.9(a), this Court disqualified the attorney from representing his new client (the latter ex-employee) against his former client (the employer) – because the attorney’s attempt to do so amounted to a “switching of sides.”

In ILA, Local Union 1332 v. ILA, 909 F.Supp. 287 (1995), the International Longshoremens’ Association (“ILA”) revoked the charter of its Local 1332. In response, the Local and its president sued the ILA and its officers and moved for a preliminary injunction to compel reinstatement of Local

1332's charter. Three, separate attorneys began representing defendant ILA. However, it came to light both that (1) a partner of one of those three attorneys previously had represented Local 1332's president "in a matter which is related to the instant case" and (2) all three attorneys presently were representing Local 1332 in another case. Local 1332 and its president therefore moved to disqualify the three attorneys from representing defendant ILA, on grounds of their violation of Pennsylvania's Rules 1.7 and 1.9. With respect to (1) above, the court found that, under Rule 1.9(a), the current representation was "**materially adverse**" to the representation of Local 1332 in the prior case – and Local 1332 had not provided its "consent[] after full disclosure of the circumstances and consultation" for the current representation. With respect to (2) above, the court found that, in the current representation, the three attorneys were representing one current client (the ILA) against claims brought by another current client (Local 1332). "This is the most direct of conflicts and therefore satisfies the '**directly adverse**' requirement" of 1.7(a). *Id.* at 293 (emphasis added). Here, too, Local 1332 had not provided its informed consent for the three attorneys to represent the ILA in Local 1332's suit against the ILA. The three attorneys then "offered to withdraw from the other cases in order to cure the conflicts of interest in this case." *Id.* The court rejected that offer, and disqualified the three attorneys from representing the ILA any further in Local 1332's suit against the ILA, holding:

However, an attorney may not drop one client like a "hot potato" in order to avoid a conflict with another, more remunerative client. [Citations omitted.] Such behavior is unethical as it violates attorneys' duty of loyalty. [Citation omitted.] (*Id.*)

Sanders and ILA are inapposite because, in the instant case, Mr. Bolliger

did not engage in any “switching of sides.” Mr. Bolliger did not previously represent Mr. Cudmore in the case, and then later “drop him like a hot potato” so as to begin representing “more remunerative” Gregg Belt against Mr. Cudmore in the case (indeed, there is no evidence in the record even to suggest that Gregg Belt is “more remunerative,” which he is not). Rather, Mr. Bolliger appeared in this case, from its very inception, on behalf of **both** Mr. Cudmore and Gregg Belt. Moreover, in this case, the record demonstrates that Mr. Cudmore’s and Gregg Belt’s interests never, ever were against, or adverse to, the other – let alone did they ever rise to the heights of “**directly adverse**,” “**significant risk**,” or “**materially limited**” (as prescribed by RPC 1.7(a)) or “**materially adverse**” (as prescribed by RPC 1.9(a)).

**4. Mr. Meehan’s “Disclosing Client Confidences” Case Is Inapposite**

In Marriage of Wixom, 182 Wn.App. 881, 332 P.3d 1063 (Div. 3 2014), with respect to proceedings to modify a parenting plan, the trial court imposed \$55,000 in attorneys’ fees and costs – jointly and severally – against Mr. Wixom and his attorney, Mr. Caruso. Mr. Wixom and Mr. Caruso both appealed that imposition, with Mr. Caruso representing both Mr. Wixom and himself on appeal. In the appeal, Mr. Caruso filed briefing in which he requested that this Court shift the entire \$55,000 burden to Mr. Wixom. This Court took “the unusual step of disqualifying” Mr. Caruso from representing Mr. Wixom any further on appeal. Id. at 884. In his RB (pp. 14-15), Mr. Meehan cites the Wixom case, wrongly opining that the basis for Mr. Caruso’s disqualification was to “protect[] against even the **appearance of the possibility** that confidential information was disclosed in the

representation of the former client.” (Emph. added.) To further his opinion, Mr. Meehan shared with this Court only the following quote from Wixom:

A reason behind disqualifying an attorney from representing a client against a former client is that the attorney may hold confidences of the former client that could be used, sometimes subtly, against the former client.

Id. at 909. However, Mr. Meehan failed to bring the rest of that paragraph to this Court’s attention. The paragraph, in full, reads as follows (with Mr. Meehan’s omitted part shown in bold):

A reason behind disqualifying an attorney from representing a client against a former client is that the attorney may hold confidences of the former client that could be used, sometimes subtly, against the former client. **RPC 1.8(b); RPC 1.9(c)(1). To his credit, [Mr.] Caruso did not employ any confidential information when advocating that any sanctions should be imposed only upon [Mr.] Wixom. We hold, however, that, Caruso my not in any later filing, through new counsel, disclose any confidences of [Mr.] Wixom, unless the disclosure reasonably responds to any accusation made by [Mr.] Wixom against [Mr.] Caruso.**

Id. The point here is that, this Court did not disqualify Mr. Caruso on grounds of the mere **appearance of the possibility** for “disclosing client confidences” (as Mr. Meehan wrongly claims). Rather, this Court both (1) credited Mr. Caruso for **not actually** “disclosing client confidences” of Mr. Wixom during the appeal to date and (2) allowed Mr. Caruso to continue appealing on his own behalf, so long as he would continue to **refrain from actually** “disclosing client confidences” of Mr. Wixom. In the instant case, the record demonstrates that Mr. Bolliger, too, **never actually** “disclosed client confidences” of either Mr. Cudmore or Gregg Belt – which is why Mr. Meehan has not even alleged that Mr. Bolliger **actually** did so.

This Court disqualified Mr. Caruso because the position he chose to take

on appeal was “**directly adverse**” to his client’s, Mr. Wixom’s, interest on appeal under RPC 1.7(a)(1) – and because, to say the least, there was a “**significant risk**” that Mr. Caruso’s position “**materially limited**” his ability to properly defend Mr. Wixom’s interests in the appeal under RPC 1.7(a)(2). Id. at 899-900. Thus, Mr. Caruso’s position on appeal created an **active** and **actual** conflict of interest with respect to his client, Mr. Wixom. Wixom is inapposite because those factors never have applied in this case.

##### **5. Mr. Meehan’s “Breach Of Fiduciary Duty” Case Is Unavailing To Him**

In Global Enterprises, LLC v. MPBA, 52 F.Supp.3d 1162 (W.D.Wash. 2014), law firm MPBA previously had represented Global in the Richard Stabbert case, in which MPBA succeeded in getting all claims against Global dismissed. Thereafter, Global became involved in the EVYA case. In the EVYA case, Global was represented by its long-term law firm, BMJ. MBPA appeared in the EVYA case on behalf of Global’s co-defendant, MMSI. However, based upon their prior attorney-client relationship (in the Richard Stabbert case), Global complained that MBPA “breached its fiduciary duty” to Global by failing to defend Global in the EVYA case, as well. Id. at fn. 8. The court disagreed, holding as follows (with emphases added):

The parties have all agreed that MMSI and Global’s interests were **fully aligned** and no conflict existed. Specifically, Global agrees that “**there was no conflict of interest between MMSI and Global** since Global was fully and completely indemnifying MMSI. **And no conflict of interest ever developed in the case.**” . . . . Id. at 1172.

. . . . [RPC 1.7 and RPC 1.9] indicate that a lawyer has a fiduciary duty of loyalty and confidentiality, which is not bounded by the scope of the representation. These fiduciary duties prohibit MBPA from taking a position adverse to Global, or revealing information it learned about Global. **However, none of the ethical rules or cases cited by Global**

**support the proposition that, as a result of its representation of Global in the Richard Stabbert case, MBPA had a [fiduciary] duty to provide [Global] counsel in the EVYA case. Id. at 1173.**

Mr. Bolliger cannot discern why Mr. Meehan cited Global. That said, Global is unavailing to Mr. Meehan. In the instant case, the record demonstrates that, as in Global, no conflict of interest ever existed, or developed, between Mr. Cudmore and Gregg Belt – which is why Mr. Meehan never has identified one – and that Mr. Cudmore and Greg Belt always were “fully aligned” in the case. As such, in accordance with Global, Mr. Bolliger did not have a fiduciary duty to provide Mr. Cudmore counsel on appeal.

**6. Mr. Meehan’s “Per Se” And “Nonconsentable” Conflict Cases Are Inapposite**

In certain scenarios (not here present), an attorney’s contemplated joint representation of two clients in the same or substantially related matter constitutes a “per se” conflict – which, for the contemplated joint clients, is “nonconsentable.” The inherent risk of a conflict arising between the joint clients is just too great, too likely. Mr. Meehan cited the following cases in proffering the “per se” and “nonconsentable” conflict doctrines to the Court for this case: State v. Horn, 325 S.W.3d 500 (2010) (in criminal prosecution, where victim initially told police her husband had repeatedly assaulted her, but later changed her mind about wanting him prosecuted, attorney could not represent both the criminal defendant husband and the victim wife, even with “informed consent, confirmed in writing” from both of them, because the joint representation involved a nonconsentable “assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal” – in violation of Missouri’s identically

worded version of our own RPC 1.7(b)(3)); People v. Hernandez, 231 Ill.2d 134, 896 N.E.2d 297 (2008) (in separate, ongoing criminal prosecutions, it was a “per se” conflict for an attorney to represent the two separate criminal defendants – each of whom was the crime victim in the other defendant’s case); and State ex rel. S.G., 175 N.J. 132, 814 A.2d 612 (2003) (in criminal prosecution, law firm could not represent the criminal defendant where the crime victim also was a client of the firm, because the joint representation was nonconsentable under New Jersey’s former RPC 1.7(c)(1) (which no longer exists) – which stated “in certain cases or categories of cases involving conflicts or apparent conflicts, consent to continued representation is immaterial”). Each of Mr. Meehan’s cases discussed and relied upon a criminal defendant’s Sixth Amendment right to effective assistance of counsel (which excludes even the potential for a conflict of interest).<sup>4</sup> Each of those cases is inapposite because, in the instant case, the record demonstrates that (1) Mr. Bolliger’s joint representation of Mr. Cudmore and Gregg Belt does not involve a criminal prosecution of one of them, where the other is the crime victim, (2) Sixth Amendment rights therefore are not here implicated, and (3) Mr. Cudmore’s and Gregg Belt’s respective interests in this case never, ever were against, or adverse to, the other – let alone did they ever rise to the heights of “**directly adverse**,” “**significant risk**,” or “**materially limited**” (as prescribed by RPC 1.7(a)) or “**materially adverse**” (as prescribed by RPC 1.9(a)).

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<sup>4</sup> Mr. Meehan’s out-of-state cases aside, the test for a conflict of interest in a criminal case in Washington State is set forth in State v. Regan, 143 Wn.App. 419, 427, 177 P.3d 783 (Div. 3 2008) (in order to establish any violation of the Sixth Amendment based upon a conflict of interest, a defendant must demonstrate that an **actual** conflict of interest **adversely affected** the lawyer’s performance).

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Regarding the actual wording of RPC 1.7 and RPC 1.9, Mr. Meehan (1) ignored addressing the record's operative facts and the pertinent case law presented in Mr. Bolliger's AB and, instead, (2) cited only inapposite and unavailing cases which **contain egregious fact patterns that bear no resemblance to this case.** Hence, Mr. Bolliger's request for CR 11 fees remains ongoing.

Mr. Meehan peppered his RB with his allegation that Mr. Bolliger did not obtain "informed consent, confirmed in writing" from Mr. Cudmore in order for Mr. Bolliger to represent Gregg Belt further on appeal. However, here, that was not required. In general civil matters (like this case), RPC 1.7 and RPC 1.9 allow an attorney to represent more than one client in a matter – and they **condition** the attorney's need to obtain "informed consent, confirmed in writing" from the affected client with their phrases "**directly adverse,**" "**significant risk,**" "**materially limited,**" and "**materially adverse**" – or situations where there has been a "**changing of sides**" – such that an **actual** or **active** conflict of interest must be present. In those regards, Mr. Cudmore declared as follows in this case:

**I like Gregg Belt.** He is the son of my good friend, Dona Belt. I have known Dona for about 35 years. **I don't want or need an order of protection against Gregg Belt. I ask the Court to get rid of it.**

(Emph. added.) The record contains no evidence to the contrary. Also, Comment 8 to RPC 1.7 states as follows (with emphasis added):

The **mere possibility** of subsequent harm does not itself require disclosure and consent.

Here, Mr. Meehan has failed to identify any single instance whereby Mr.

Bolliger's representation of Gregg Belt ever rose to the level of **"directly adverse," "significant risk," "materially limited,"** or **"materially adverse"** with respect to Mr. Cudmore – or where Mr. Bolliger engaged in a **"changing of sides"** against Mr. Cudmore. That is because no such single instance exists. Besides, Mr. Bolliger representing Gregg Belt further on appeal could not conceivably work to Mr. Cudmore's disadvantage where, as here, **Mr. Meehan didn't even file his disqualification motion until after the VAPO against Gregg Belt already had expired by its own terms, without Mr. Meehan seeking to extend it.** Thus, Mr. Bolliger's representation of Gregg Belt never amounted to an **actual** or **active** conflict of interest with respect to Mr. Cudmore – and, therefore, **Mr. Bolliger never was required to obtain "informed consent, confirmed in writing" from Mr. Cudmore** in order for Mr. Bolliger to represent Gregg Belt further on appeal.

Based upon the foregoing (and the discussion of this issue in Mr. Bolliger's AB), Mr. Bolliger respectfully asks this Court to hold that the trial court erred by disqualifying Mr. Bolliger under RPC 1.7 and RPC 1.9 from representing Gregg Belt further on appeal.

**B. The Court Erroneously Failed To Apply The Dispositive Legal Doctrine Of Substituted Judgment, Thereby Causing The Court Erroneously To Disqualify Mr. Bolliger From Representing Gregg Belt Any Further On Appeal On The Court's Stated Grounds Of RPC 1.7 And RPC 1.9 (Because, In The Court's Erroneous View, Once Mr. Cudmore Became A Guardianship Ward, A Conflict Of Interest Instantly And Automatically Sprung Up Between Mr. Cudmore And Gregg Belt)**

In the section with this title in his AB, Mr. Bolliger identified the operative facts (recalled in fn. 1 above) which support the application of the legal

doctrine of substituted judgment to this case. Mr. Bolliger also presented the legal authorities which are pertinent to those facts and that doctrine.<sup>5</sup> The legal authorities hold that the legal doctrine of substituted judgment restrains the trial court from adopting Mr. Meehan's proffered notion to it (that a conflict of interest instantly and automatically sprang up between Mr. Cudmore and Gregg Belt when Mr. Cudmore eventually became a guardianship ward). It is clear from the following colloquy that the trial court adopted Mr. Meehan's incorrect notion at the hearing on his disqualification motion (with emphases added):

MR. BOLLIGER: Is it the court's position that up until the time I withdrew from representing Mr. Cudmore that there was no conflict?

THE COURT: . . . . **But at this point I think that particularly with Mr. Lamberson being appointed as guardian that there is and the court having found that there was a need for a protection order than on this appeal Mr. Belt's excuse me Mr. Cudmore's interests are being represented through Mr. Lamberson that there is a conflict.**

To more specifically answer your question I guess I hadn't – I thought about whether or not that was in fact a conflict. I don't know under these circumstances I have sufficient factual basis to say there was a conflict or there was not a conflict.

MR. BOLLIGER: So the basis of your ruling is essen – I'm not trying to box your words in I'm just trying to clarify. Essentially since my withdrawal from representing Mr. Cudmore or maybe even **from the December 27<sup>th</sup> entry of the guardianship**

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<sup>5</sup> The Certified Professional Guardian Board *Standards of Practice* 405.1, the National Guardianship Association ("NGA") *Model Code of Ethics for Guardians*, the NGA *Standards of Practice*, the Washington State Lay Guardianship Program's training materials, *Detention of Schuoler*, 106 Wn.2d 500, 723 P.2d 1103 (1986), *Guardianship of Ingram*, 102 Wn.2d 827, 689 P.2d 1363 (1984), *Matter of Disciplinary Proceedings Against Petersen*, 180 Wn.2d 768, 329 P.3d 853 (2014), *Raven v. DSHS*, 177 Wn.2d 804, 306 P.3d 920 (2013), RCW 11.88.005 (titled "Legislative Intent," describing the "least restrictive alternative" doctrine relating to guardianship case AIPs) – as well as a list of other, common scenarios which also demonstrate that **a competent person's wishes are legally honored even after the person later becomes incapacitated**: e.g., with respect to last wills and testaments, health care directives, and "do not resuscitate" forms.

**against Mr. Cudmore from that point forward I'm representing a current client, Mr. Belt, against a former client, Mr. Cudmore. Is that fair to say?**

THE COURT: **Correct that is fair to say.**<sup>6</sup>

However, under substituted judgment, if Mr. Cudmore's sole **competent expression** on the subject was that no VAPO should have been entered to "protect" him from Gregg Belt, then Mr. Cudmore's **competent expression** must legally survive his later adjudication of incapacity. Here, Mr. Cudmore's sole **mentally competent** expression on the subject was both clear and unequivocal, as follows (with emphases added):<sup>7</sup>

**I like Gregg Belt.** He is the son of my good friend, Dona Belt. I have known Dona for about 35 years. **I don't want or need an order of protection against Gregg Belt. I ask the Court to get rid of it.**

This record contains no competent evidence to the contrary (which is why Mr. Meehan didn't identify any.)<sup>8</sup>

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<sup>6</sup> December 5, 2014 RP, p. 21.

<sup>7</sup> Remember, Mr. Cudmore's personal physician of 14 years, Dr. Vaughn (who was successfully treating Mr. Cudmore for Alzheimer's), applied the requirements of In re Bottger's Estate, 14 Wn.2d 676, 129 P.2d 518 (1942) to Mr. Cudmore. In Dr. Vaughn's July 18, 2013 declaration, he provided his professional medical opinion – that Mr. Cudmore was **mentally competent** to direct Mr. Bolliger to prepare particular new estate planning documents for Mr. Cudmore, including a new Will. In his RB, p. 2, fn.1, Mr. Meehan cavalierly refers to Dr. Vaughn's declaration as stating only that "Cudmore had bare testamentary capacity." Mr. Bolliger searched online legal research databases for Washington State case law, "all states" case law – and federal district court, court of appeals, and supreme court case law – and was unable to find a single instance of the phrase "bare testamentary capacity." Even Mr. Bolliger's Google® search netted only the following: "No results found for 'bare testamentary capacity.'" In his RB, Mr. Meehan avoided even trying to explain why – where a person's medical doctor declares the person to be **mentally competent** for testamentary purposes pursuant to the requirements of In re Bottger's Estate, supra – that isn't sufficient indicia of mental competence for the same person to contemporaneously declare that he doesn't want or need a VAPO to "protect" him from another.

<sup>8</sup> The 10-days-earlier writing which Mr. Meehan's client, Mr. Lamberson, elicited from Dr. Vaughn doesn't count. **First**, it is not signed under penalty of perjury. **Second**, whereas it mentions that Dr. Vaughn is treating Mr. Cudmore for Alzheimer's, its main thrust is that Mr. Cudmore is unable to take care of himself, his medicines, and his finances – and that he no longer drives. Well, Mr. Cudmore and Mr. Bolliger always agreed with that. Indeed, Mr. Cudmore acknowledged those limitations in his September 12, 2013 declaration. But those observations are not here determinative, because (1) Mr. Cudmore already was residing in a full-care living facility, which was taking care of his daily needs, (2) he already had secured new power of attorney documents to ensure assistance with both his financial decision making and his health care decision making, (3) **he was free to, and did, depart The Manor any time it pleased him**, and (4) he continued to demonstrate tremendous other independencies. AB, fact ¶ 1 – and

In his RB, Mr. Meehan tried only to deflect the Court's attention away from this substituted judgment issue. *First*, Mr. Meehan alleged that "[Mr. Bolliger] never informed [Mr.] Cudmore of the risks of joint representation." However, there is nothing in this record to support Mr. Meehan's allegation – and Mr. Meehan does not have any personal knowledge about discussions which took place between Mr. Cudmore and Mr. Bolliger. *Second*, Mr. Meehan repeated his oft-made claim that "[Mr. Bolliger] never received permission from [Mr.] Cudmore as a former client to continue representing [Gregg] Belt." However, as clearly demonstrated above and in Mr. Bolliger's AB, **this is not a case in which "informed consent, confirmed in writing" ever was required, because no active or actual conflict ever existed or arose between Mr. Cudmore and Gregg Belt.** Moreover, assuming Gregg Belt later was to achieve total success on appeal (i.e., assuming this Court would vacate the VAPO against Gregg Belt), that outcome **could have no conceivable adverse effect upon Mr. Cudmore – because, by the time Mr. Meehan finally got around to filing his disqualification motion with the trial court, the VAPO already had expired by its own terms – without Mr. Meehan ever seeking to extend it.** Thus, Mr. Meehan's elusive arguments are entirely off the point of this substituted judgment issue.

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CP 35-36 and 66. **Third**, that writing does not state the reason Mr. Lamberson asked for it to be created. For all we know (because Mr. Meehan has left us to speculate), Mr. Lamberson told Dr. Vaughn he needed the writing from him because of some falsehood – e.g., that Mr. Cudmore wanted to begin living on his own again, or that somebody was trying to financially exploit Mr. Cudmore. Contrasted with that, Dr. Vaughn's July 18, 2013 declaration – that **Mr. Cudmore did, indeed, have testamentary mental capacity** – identified the entire context of that question, including the governing legal requirements set forth in In re Bottger's Estate, *supra*. Regarding this third point, in his July 18, 2013 declaration, Dr. Vaughn also stated as follows:

When Mr. Cudmore's stepson, Tim Lamberson, asked me on July 8, 2012 to opine generally about Mr. Cudmore's mental capacity, Mr. Lamberson did not ask me to address the aforementioned Supreme Court legal standard. [CP 140]

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In the 2+ months between Mr. Bolliger filing his substituted judgment memorandum (12/17/14) and the trial court's denial of Mr. Bolliger's motion for reconsideration thereon (2/20/15), Mr. Meehan completely avoided briefing the substituted judgment issue. Also, the disqualification order (which was prepared by Mr. Meehan) contains no findings regarding the substituted judgment issue. Here on appeal, Mr. Meehan ignored addressing the record's operative facts and the pertinent legal authorities presented in Mr. Bolliger's AB with respect to substituted judgment. For that latter reason, too, Mr. Bolliger's request for CR 11 fees remains ongoing.

Based upon the foregoing (and the discussion of this issue in Mr. Bolliger's AB), Mr. Bolliger respectfully asks this Court to hold that the trial court erred by disqualifying Mr. Bolliger under RPC 1.7 and RPC 1.9 from representing Gregg Belt further on appeal – because application of the substituted judgment doctrine precludes Mr. Meehan's notion (that a conflict of interest instantly and automatically sprang up between Mr. Cudmore and Gregg Belt when Mr. Cudmore eventually became a guardianship ward). Under substituted judgment, because Mr. Cudmore's sole **competent expression** on the subject was that no VAPO should have been entered to “protect” him from Gregg Belt, Mr. Cudmore's **competent expression** must legally survive his later adjudication of incapacity.

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**C. In Disqualifying Mr. Bolliger From Representing Gregg Belt Any Further On Appeal On RPC 1.7 And RPC 1.9 Grounds, The Trial Court Erroneously Declined To Dismiss Mr. Meehan's Disqualification Motion On Grounds Of Waiver Owing To Mr. Meehan's Extreme Delay In Filing His Motion**

In the section with this title in his AB, Mr. Bolliger identified the operative facts (recalled in fn. 1 above) which demonstrate that Mr. Meehan's disqualification motion was extremely delayed. Mr. Bolliger also presented the case law which is pertinent to those facts and this issue.<sup>9</sup>

However, in his RB, Mr. Meehan avoided addressing Mr. Bolliger's discussion of the operative facts and application of the cited decisional law to those facts. Instead, Mr. Meehan merely posited that Mr. Meehan's disqualification motion was not untimely because it did not become ripe until Mr. Bolliger withdrew from representing Mr. Cudmore any further and continued representing Gregg Belt alone. Mr. Meehan's position requires us to recognize an additional collection of facts from the record, as follows.

1. On **January 27, 2014**, Mr. Bolliger not only (1) withdrew from representing Mr. Cudmore any further in this Gregg Belt VAPO case [CP 305-07], but he also (2) continued to litigate on behalf of Gregg Belt alone, by sending a letter to the judge to remind the judge that he still had not finally ruled upon Gregg Belt's 6-month-old *Motion for Reconsideration*. [CP 308-13]
2. In response, on **February 3, 2014**, Mr. Meehan wrote the judge a letter [CP 403-07], in which he **falsely asserted** to the judge that (1) Mr. Bolliger "never filed a formal notice of appearance" on behalf of Gregg Belt, (2) "I do not believe that Mr. Bolliger is counsel of record in this matter," and, (3) therefore, "I do not believe that Mr. Bolliger has any standing to address these

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<sup>9</sup> First Small Business Inv. Co. v. Intercapital Corp., 108 Wn.2d 324, 738 P.2d 263 (1987), Matter of Firestorm, 129 Wn.2d 130, 916 P.2d 411 (1996), and Eubanks v. Klickitat County, 181 Wn.App. 615, 326 P.3d 796 (2014), review denied, 181 Wn.2d 1012 (2014). Those cases hold that disqualification of counsel is a drastic remedy that exacts a harsh penalty from the parties, as well as punishing counsel; therefore, disqualification of counsel should be imposed only when absolutely necessary. A **several-months delay** in bringing a motion to disqualify opposing counsel constitutes a **waiver** on the part of the moving party and therefore is **grounds for denial** of the motion – even where the motion is brought during the initial trial court proceedings – and **even if the underlying basis for the motion itself is meritorious** (which, as explained above, here it is not).

matters.” **Nowhere in his letter did Mr. Meehan ask the judge to disqualify Mr. Bolliger on grounds of RPC 1.7 or RPC 1.9.**

3. On **February 11, 2014**, Mr. Bolliger therefore wrote another letter to the judge, in which Mr. Bolliger pointed out that (1) he had, indeed, filed his *Notice of Appearance* on behalf of Gregg Belt (back on July 18, 2013) and (2) it actually was only **Mr. Meehan** who never had filed a *Notice of Appearance* in this case. [CP 321-27]

4. On **February 12, 2014**, Mr. Bolliger faxed Mr. Meehan a letter, in which he stated as follows [CP 109-11]:

I write to inform you that, in the above-referenced case, I will be seeking CR 11 fees against you for your wrongful pursuit of the VAPO order of protection against Gregg Belt.

5. On **February 13, 2014** – i.e., nearly 7 months into the case – Mr. Meehan finally filed his own *Notice of Appearance*. [CP 331-32]

6. On **August 7, 2014**, Mr. Meehan **for the first time** filed his disqualification motion with the trial court – which he aimed at disqualifying Mr. Bolliger from representing Gregg Belt further on appeal. [CP 143]

In Mr. Meehan’s responsive posit mentioned above, he acknowledges that his disqualification motion became ripe no later than the point at which Mr. Bolliger withdrew from representing Mr. Cudmore any further and continued representing Gregg Belt alone. As fact ¶ 1 immediately above reveals, those both occurred on January 27, 2014. Mr. Meehan quickly thereafter continued to litigate in the trial court against Mr. Bolliger and Gregg Belt: Mr. Meehan wrote a letter to the judge, (1) falsely accusing Mr. Bolliger of never having appeared on behalf of Gregg Belt in the case and (2) wrongly asserting that, therefore, Mr. Bolliger lacked standing to proceed on Gregg Belt’s behalf. However, **Mr. Meehan never asked the judge to disqualify Mr. Bolliger on grounds of RPC 1.7 or RPC 1.9.** Rather, Mr. Meehan waited until **6+ months later** – on August 7, 2014 – to get around to filing his trial court RPC 1.7 and RPC 1.9 disqualification motion.

Thus, by the time Mr. Meehan got around to filing his disqualification motion with the trial court, (1) the proceedings below already had concluded (without Mr. Meehan ever having raised the issue with the court), (2) appellate proceedings already had commenced ( $\approx$  5 months earlier), and (3) **the VAPO against Gregg Belt already had expired by its own terms – without Mr. Meehan ever seeking to extend it.** That latter point itself makes it clear that, if Gregg Belt later was to achieve total success on appeal (i.e., if this Court would vacate the VAPO against Gregg Belt), that outcome **could have no conceivable adverse effect upon Mr. Cudmore.** (Indeed, Mr. Meehan later acceded to the very outcome which Gregg Belt was seeking on appeal – vacating the VAPO against Gregg Belt – yet, only **after** Mr. Meehan enticed the trial court into granting his disqualification motion against Mr. Bolliger.) The disqualification order (which was prepared by Mr. Meehan) contains no findings regarding this issue of waiver based upon Mr. Meehan’s extreme delay in filing his disqualification motion.

Based upon the foregoing (and the discussion of this issue in Mr. Bolliger’s AB), Mr. Bolliger respectfully asks this Court to hold that the trial court erroneously declined to dismiss Mr. Meehan’s disqualification motion on grounds of Mr. Meehan’s waiver of his motion, owing to his extreme delay in filing it.

#### **D. Conclusion**

Mr. Meehan prosecuted the guardianship case against Mr. Cudmore to try to keep him from dis inheriting Mr. Lamberson. To wrongfully aid his effort, Mr. Meehan pursued a VAPO case against one of Mr. Cudmore’s guardian-

ship case witnesses, Gregg Belt. Because the facts averred in the VAPO petition were so extremely weak, Mr. Meehan conjured up additional fairy tale facts during oral argument [AB, fn. 4 and AB, fact ¶ 15], which successfully persuaded the judge to grant a 1-year VAPO against Gregg Belt. Thus, Mr. Meehan's VAPO case against Gregg Belt was frivolous from its onset.<sup>10</sup>

5+ months later, Mr. Cudmore was adjudicated as incapacitated – and, so, 1 month after that, Mr. Bolliger properly withdrew from representing Mr. Cudmore any further in the Gregg Belt VAPO case. Mr. Bolliger and Mr. Meehan then quickly continued to litigate this case before the trial court. **Mr. Meehan waited another 6+ months after that to file his instant disqualification motion with the trial court. By then, the 1-year VAPO against Gregg Belt already had expired by its own terms, without Mr. Meehan ever seeking to extend it.** As such, the trial court should have denied Mr. Meehan's disqualification motion on grounds of his extreme delay in filing it.

On the merits, the facts in this record and the pertinent decisional law construing the actual wording of RPC 1.7 and RPC 1.9 – all of which Mr. Meehan ignored addressing in his RB – justify a holding from this court that the trial court erred in disqualifying Mr. Bolliger from representing Gregg Belt further on appeal on grounds of RPC 1.7 and RPC 1.9. That is because

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<sup>10</sup> The fine point of this issue arises from the contrivance Mr. Meehan engaged in by pursuing a VAPO case against Gregg Belt. As Mr. Meehan purports, he pursued the VAPO to “protect” Mr. Cudmore from Gregg Belt – and, so, by general definition (says Mr. Meehan), a conflict of interest would be present with one attorney representing both Mr. Cudmore and Gregg Belt in the case. Of course, that would be true **only if** the attorney who was **defending Gregg Belt against the VAPO** was the same attorney who (on Mr. Cudmore's behalf) **pursued the VAPO against Gregg Belt**. However, that condition is not here present. Here, **Mr. Bolliger** – who was defending Gregg Belt against the VAPO case – **did not (on Mr. Cudmore's behalf) pursue the VAPO case against Gregg Belt**. Thus, Mr. Bolliger was not representing “both sides” of the Gregg Belt VAPO case. Stated another way, Mr. Bolliger was not representing either of Mr. Cudmore or Gregg Belt “against” the other. Rather, Mr. Lamberson (represented by Mr. Meehan) pursued the VAPO case against Gregg Belt – and Mr. Cudmore and Gregg Belt (represented by Mr. Bolliger) opposed the VAPO case against Gregg Belt.

(1) by the time Mr. Meehan got around to filing his disqualification motion, **the VAPO against Gregg Belt already had expired by its own terms, without Mr. Meehan ever seeking to extend it** and (2) no active or actual conflict of interest ever existed or arose between Mr. Cudmore and Gregg Belt in this case. (Indeed, for that latter reason, Mr. Bolliger never was required to obtain “informed consent, confirmed in writing” from Mr. Cudmore in order for Mr. Bolliger to represent Gregg Belt further on appeal).

Separately on the merits, the facts in this record and the pertinent legal authorities addressing the legal doctrine of substituted judgment – all of which Mr. Meehan ignored addressing in his RB – justify a holding from this court that application of the substituted judgment doctrine precludes Mr. Meehan’s notion (that a conflict of interest instantly and automatically sprang up between Mr. Cudmore and Gregg Belt when Mr. Cudmore eventually became a guardianship ward). Under substituted judgment, because Mr. Cudmore’s sole **competent expression** on the subject was that no VAPO should have been entered to “protect” him from Gregg Belt, Mr. Cudmore’s **competent expression** must legally survive his later incapacity.

In his RB (p. 23), trying to persuade this Court that it should award attorneys’ fees to him, Mr. Meehan alleges wrongdoing on Mr. Bolliger’s part as follows: “Bolliger has continued this appeal on his own behalf despite the fact that his former client has long since settled.” Mr. Meehan is suggesting that Mr. Bolliger should have to pay attorneys’ fees to Mr. Meehan because – once Mr. Meehan finally agreed to vacate his frivolous VAPO against Gregg Belt, after all – Mr. Bolliger did not abandon his own appeal of the disqualifi-

cation ruling. That makes no sense at all. Mr. Bolliger is pursuing this appeal solely because Mr. Meehan filed a bar complaint against Mr. Bolliger on grounds of RPC 1.7 and RPC 1.9 – and the ODC is awaiting the outcome of this appeal to substantively address Mr. Meehan’s bar complaint. AB, fact ¶¶ 24 and 33. Thus, Mr. Meehan has left Mr. Bolliger **no choice** but to appeal Mr. Meehan’s unmerited RPC 1.7 and RPC 1.9 allegations. With this appeal, Mr. Bolliger seeks only to avoid being subjected to unmerited discipline from the ODC. Gregg Belt’s earlier departure from this case is not grounds for an award of fees to Mr. Meehan. This Court could well ask itself, “Why is **Mr. Meehan** pursuing this appeal, despite the fact that his underlying, frivolous Gregg Belt VAPO case already has settled?” The sole answer is: because Mr. Meehan is pushing his unmerited bar complaint.

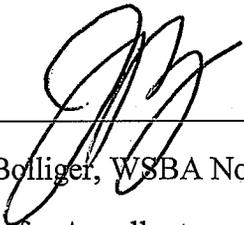
Mr. Bolliger again asks this Court to consider that it is **Mr. Meehan** who violated RPC 1.7(a) in this case, by engaging in the following **concurrent conflict of interest**: Mr. Meehan was purporting to protect the legal interests **OF** Mr. Cudmore (here, in Mr. Meehan’s VAPO case against Gregg Belt) while, concurrently, he was representing Mr. Lamberson **AGAINST** Mr. Cudmore (in Mr. Lamberson’s guardianship case against Mr. Cudmore). Mr. Meehan wrongfully has accused Mr. Bolliger of RPC 1.7 and RPC 1.9 violations – to deflect attention away from his own RPC 1.7(a) wrongdoing.

Based upon the foregoing, Mr. Bolliger respectfully requests that this Court (1) hold Mr. Meehan accountable for his frivolous VAPO case against Gregg Belt and his frivolous disqualification motion against Mr. Bolliger and (2) therefore grant the relief requested in Mr. Bolliger’s AB.

DATED this 1 day of November, 2015.

**BOLLIGER LAW OFFICES**

By:



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John C. Bolliger, WSBA No. 26378

Attorneys for Appellant

**DECLARATION**

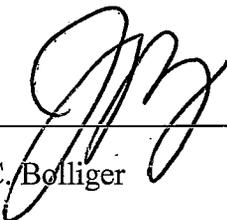
I, John C. Bolliger, declare as follows:

1. I am the above-named appellant, I have personal knowledge of the facts set forth above, and, if called to testify about the same, I can and will competently do so.

2. I swear under penalty of perjury under the laws of the state of Washington the foregoing is true and correct.

DATED this 1 day of November, 2015.

Kennewick, WA  
City, state where signed

  
\_\_\_\_\_  
John C. Bolliger

DECLARATION OF SERVICE

STATE OF WASHINGTON )
COUNTY OF BENTON ) ss.

I, John C. Bolliger, declare as follows:

On the date set forth below, I caused a true and correct copy of this document to be sent to the following persons and entities in the manner shown:

Shea C. Meehan
1333 Col. Park Trail, Ste. 220
Richland, WA 99352
[ ] regular mail
[ ] e-mail no.
[ ] facsimile no.
[X] Pronto Process & Messenger Service, Inc.
[ ] hand-delivery by John C. Bolliger
[ ] Federal Express

I swear under penalty of perjury under the laws of the state of Washington the foregoing is true and correct.

DATED this 1 day of November, 2015.

Kennewick, WA
City, state where signed

Signature [Handwritten Signature]