

**Supreme Court  
of the State of Washington**

Patricia Landes,  
Petitioner,

v.

Patrick Cuzdey,  
Respondent.

No. 97724-1

COA No. 51841-4-II

**Reply in Support of  
Motion to Disqualify Attorney  
Drew Mazzeo**

**1. Reply Argument**

Mr. Mazzeo and Ms. Strickler failed to carry out their duties to their respective clients prior to the sale of the practice to Mr. Mazzeo. They failed to identify the conflict of interest that would result if Cuzdey's file were transferred to Mr. Mazzeo as part of the sale. They failed to notify Cuzdey of the conflict or of his option to take possession of the file or have it transferred to a new attorney. The result is that Ms. Strickler's duties to Cuzdey as a former client were transferred to Mr. Mazzeo despite the conflict that was created as a result. The conflict disqualifies Mr. Mazzeo from representing Landes.

Landes' response misunderstands the process established in RPC 1.17 and fails to address the question of what happens

when lawyers fail to follow that required process. Rule 1.17 requires both buyer and seller, prior to completing a sale, to identify conflicts of interest that would arise as a result of the sale. RPC 1.17, Comments [7] and [16]. The seller may provide the buyer with basic information about the seller's clients in order to detect conflicts of interest. RPC 1.17, Comment [7]; RPC 1.6(b)(7).

All of the seller's clients must be notified of the contemplated sale. RPC 1.17(c). This includes former clients. *See* RPC 1.17(c) and Comment [8] (clients who cannot be reached will almost universally be former clients rather than current clients); Comment [11] (referring to the duties of the lawyers to protect information relating to the representation of former clients under RPC 1.9). Former clients must be notified so the selling lawyer can determine where to send their files, seeing as the selling lawyer will no longer be practicing or maintaining those files. *See* RPC 1.17(b) (the entire practice is sold); RPC 1.17(c)(2) (there are only three options for the client's file: transfer to the buyer, transfer to another lawyer, or client takes possession of the file); RPC 1.17, Comment [8] (the rule providing for a court order to authorize disposition of a client file is necessary because "A lawyer or law firm ceasing to practice cannot be required to remain in practice" to maintain files of former clients who cannot be reached).

At the time notice is given to the seller's clients, if **the buyer or seller** knows of a conflict of interest that would result from the sale, the client must be notified of the conflict. RPC 1.17, Comment [16]. If the conflict is one that can be resolved through informed consent, the lawyers should seek whatever consent would be required. *See* RPC 1.17, Comment [11] (referring to the lawyers' duty to "secure the client's informed consent for those conflicts that can be agreed to").

Landes is incorrect when she tries to place the entire duty on the seller. While the seller has a duty to her clients to screen for conflicts and provide notice, the buyer has a duty **to his own clients** to screen for conflicts and ensure that those conflicts do not come to fruition, by making sure notice is given to the seller's clients so those clients can consent to the conflict or be excluded from the sale by taking their business elsewhere. Both the buying and selling lawyers share the duty to screen conflicts and provide notice. The buyer cannot escape the consequences of a conflict by claiming it was the seller's responsibility.

If the conflict is non-consentable, the lawyers must notify the client of "the need for the client to obtain a substitute legal practitioner or retrieve the file." RPC 1.17, Comment [16]. In this situation, there is no need to notify the client of the 90-day presumed consent rule because consent is not possible. *Id.* When such a conflict is identified prior to sale, the client file cannot be

transferred to the buyer. *Id.* Instead the client must be told to take their file elsewhere, prior to the sale. In this way, the advance screening and notice required by the rule protect the clients of both seller and buyer from any conflicts that would otherwise result from the sale.

But in this sale, Mr. Mazzeo and Ms. Strickler failed to identify the conflict of interest that would arise regarding Cuzdey. They failed to notify Cuzdey of the sale or of the conflict. Cuzdey was not given the opportunity to take his file elsewhere. It cannot be presumed that Ms. Strickler retained the file because she was retiring from practice. Surely one of the purposes of selling her practice was so she could transfer the duty to maintain client files on to the buyer.

If Ms. Strickler did not retain the file and nobody gave Cuzdey the opportunity to take it elsewhere, the only possible, remaining conclusion is that the file was transferred to Mr. Mazzeo as part of the sale. And although Mr. Mazzeo denies having possession of Cuzdey's file, he does not sign a sworn declaration to that effect. He does not indicate that he has searched the files he received from Ms. Strickler to be sure Cuzdey's file is not there.

However, in this situation it should make no difference whether Mr. Mazzeo ever actually received Cuzdey's file. Mr. Mazzeo and Ms. Strickler botched the sale. They failed to protect

their clients by properly screening for conflicts of interest. They failed to notify Cuzdey of the sale or of the need for him to take his file elsewhere. Due to these breaches of duty, Mr. Mazzeo should be subject to any conflicts of interest he failed to detect or properly resolve. Ms. Strickler's former representation of Cuzdey should be imputed to Mr. Mazzeo as a matter of law.

"A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client..." RPC 1.9(a). Mr. Mazzeo should be disqualified from representing Landes in this or any substantially related matter.

Having been on opposite sides of this case in superior court, Mr. Mazzeo knew that Ms. Strickler represented Cuzdey. He knew or should have known that Cuzdey would have to be excluded from the sale in order to avoid a conflict with his representation of Landes. Mr. Mazzeo could have protected his client by properly detecting and resolving the conflict prior to the sale, in accordance with RPC 1.17.

The rule provided the process for protecting Landes from this conflict. Mr. Mazzeo should have obtained a client list from Ms. Strickler. He could have detected any conflicts and notified Ms. Strickler of those conflicts. He and Ms. Strickler could have notified Cuzdey in accordance with the rule and insisted that

Cuzdey take his file elsewhere. This would have excluded Cuzdey from the sale and prevented any conflict.

Because Mr. Mazzeo failed to protect his client by following RPC 1.17 and screening out conflicts from the sale, he and Ms. Landes are stuck with the conflict that results. Mr. Mazzeo now has a duty to Cuzdey as a former client to not represent an adverse party in the same or a substantially related matter. He is disqualified from any further representation of Landes against Cuzdey.

## **2. Conclusion**

This Court should disqualify Drew Mazzeo and his firm, Lifetime Legal, from any further representation of Landes in this or any substantially related matter, in any court.

Any disqualification order should also order Mr. Mazzeo to deliver to Cuzdey any existing hard copies of Cuzdey's client files received from Ms. Strickler and a complete copy of any digital files, and then to destroy all copies in his or his firm's possession. The Court should prohibit Mr. Mazzeo from disclosing to any person any information about Cuzdey that Mr. Mazzeo may have obtained from Ms. Strickler's files.

In the alternative, if factual findings are needed, this Court should refer the matter to superior court for a period of discovery followed by an evidentiary hearing, and stay all

proceedings in this Court pending a report from superior court with findings of fact.

In the event this Court denies the Petition for Review and then declines to address disqualification, this Court's order should so specify, so the issue can remain open to be resolved by the superior court on remand.

DATED this 25<sup>th</sup> day of October, 2019.

*/s/ Kevin Hochhalter*  
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## **Certificate of Service**

I certify, under penalty of perjury under the laws of the State of Washington, that on October 25, 2019, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Courts' Portal.

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DATED this 25<sup>th</sup> day of October, 2019.

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## Transmittal Information

**Filed with Court:** Supreme Court  
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