

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
08 CVD 12310

GARY D. RENTZ, DONNA A. RENTZ,)
KRISTA C. LISTER)

v.)

BRAD COOPER)

DEFENDANT'S MOTION TO DISQUALIFY
ALICE STUBBS FROM REPRESENTING
PLAINTIFFS

NOW COMES the Defendant, by and through counsel, and respectfully moves this Court to disqualify Alice Stubbs from representing Plaintiffs on the basis such representation constitutes a conflict of interest under Rules 1.9(a) and 3.7(a) of the North Carolina Revised Rules of Professional Conduct.

1. Under North Carolina Rules of Professional Conduct 1.9(a) "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 unless the former client gives informed consent, confirmed in writing." *Ferguson v. DDP Pharmacy, Inc.*, 174 N.C.App. 532 (2005) (citing North Carolina Revised Rules of Professional Conduct, Rule 1.9(a) (2005)).
2. Two matters are substantially related if "there is a reasonable probability that confidences were disclosed in the prior representation which could be used against the former client in the current litigation." *Plant Genetic Sys., N.V. v. Ciba Seeds*, 933 F. Supp. 514 (M.D.N.C. 1996); North Carolina Revised Rules of Professional Conduct, Rule 1.9(a), cmt. 3 (2005).
3. Interests are materially adverse if "the lawyer was so involved in the [former] matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question." North Carolina Revised Rules of Professional Conduct, Rule 1.9(a), cmt. 2 (2005).
4. Ms. Stubbs formerly represented Ms. Nancy Cooper in a separation action. During the course of this representation Ms. Stubbs memorialized Ms. Cooper's express wishes to share custody of her children with Mr. Cooper, her husband. See Attachment # 1 Separation Agreement ¶ 13.
5. Ms. Stubbs now represents Plaintiffs in an action to deprive Mr. Cooper of custody of his children. This representation is directly in contravention of Ms.

Cooper's wishes. Consequently, Plaintiffs' interests are materially adverse to the interests of Ms. Stubbs' former client, Ms. Cooper.

6. Moreover, the matter in which Ms. Stubbs previously represented Ms. Cooper is substantially related to the matter before this Court because "there is a reasonable probability" that Ms. Stubbs learned information that could be used against Ms. Cooper's wishes in current litigation. Specifically, it is certain that Ms. Stubbs learned particular information unequivocally demonstrating that Mr. Cooper is a fit parent.
7. Third parties have standing to challenge conflicted representation where they have "a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *Love v. Tyson*, 119 N.C.App. 739 (1995) (citing *Black's Law Dictionary* (6th ed. 1990)).
8. Mr. Cooper has a stake in Ms. Stubbs' representation of Plaintiffs' because the information Ms. Stubbs acquired through the course of representing Ms. Cooper, if not made known to this Court, would inure to his detriment. Consequently, Mr. Cooper has standing to challenge Ms. Stubbs' conflicted representation of Plaintiffs.
9. Because Ms. Stubbs learned information in the course of her representation of a former client and because she now seeks to use that information to the detriment of her former client, Ms. Stubbs, under Rule 1.9, should be disqualified from representing Plaintiffs.
10. In addition, counsel asks this Court to disqualify Ms. Stubbs from representing Plaintiffs on the basis of Rule 3.7(a) of the North Carolina Revised Rules of Professional Conduct.
11. Rule 3.7(a) prohibits attorneys from "act[ing] as advocate at a trial in which the lawyer is likely to be a necessary witness." This rule does not apply where "(1) the testimony relates to an uncontested issue, (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client." North Carolina Revised Rules of Professional Responsibility.
12. Upon information and belief, Ms. Stubbs' is privy to unprivileged information regarding Mr. Cooper's general fitness as a parent. Moreover, upon information and belief, Ms. Stubbs information is particularly important because it comes directly from Mr. Cooper's now deceased spouse, the person who was in the best position to comment on Mr. Cooper's parenting abilities. Because Mr. Cooper's fitness as a father is in issue in the matter before this Court and because Ms. Stubbs has critical information related to his fitness, Ms. Stubbs should be disqualified from representing Plaintiffs as a potentially necessary witness in these proceedings.

13. Furthermore, and upon information and belief, Ms. Stubbs is privy to unprivileged information regarding Heather Metour, the woman with whom Mr. Cooper had a one-time sexual liaison several years ago. Ms. Stubbs acquired this information while interviewing Ms. Metour during the course of her representation of Ms. Cooper.
14. Plaintiffs argue that Mr. Cooper's liaison with Ms. Metour renders him an unfit parent. This fact, especially in light of Ms. Cooper's own extramarital encounter, should have no bearing on Mr. Cooper's fitness as a parent. However, to the extent that Plaintiffs' argue that it is relevant, upon information and belief, Heather Metour told Ms. Stubbs information that highly mitigates the nature of this liaison. Specifically, she told Ms. Stubbs that the encounter occurred several years ago, was very brief, and that Mr. Cooper called her the next day and made clear that such a liaison never happen again. As such, this information is critical to Mr. Cooper's ability to bolster his argument that he is in fact a fit parent.
15. Upon information and belief, Ms. Metour is unavailable to testify about the nature of her relationship with Mr. Cooper because she is currently represented by counsel as she is the defendant in an unrelated alienation of affection lawsuit and has indicated through counsel that she will avoid service of subpoena and will not testify in any proceedings related to the Coopers' relationship.
16. Moreover, this information, at the time given, constituted a statement against Ms. Metour's pecuniary interest because Ms. Cooper could have initiated proceedings against Ms. Metour for alienation of affection. This fact coupled with Ms. Metour's unavailability renders Ms. Metour's statements admissible under North Carolina Rule of Evidence 804.
17. Because Ms. Stubbs is the only person able to testify to Ms. Metour's statements about the nature of Ms. Metour's liaison with Mr. Cooper, she is an indispensable witness in these proceedings and consequently must be disqualified from representing Plaintiffs under Rule 3.7 of the North Carolina Revised Rules of Professional Responsibility.
18. Importantly, none of the three exceptions to Rule 3.7 are applicable in this instance. Ms. Stubbs' would not be called upon to testify to anything uncontested, or to anything that involved the cost of her legal services. Moreover, substantial hardship does not exist where the party represented by the conflicted attorney could have foreseen the conflict or where this party is not prejudiced by that attorney's non-representation. North Carolina Revised Rules of Professional Responsibility Rule 3.7 cmt. 4.
19. In the case before this Court, Plaintiffs know that their daughter, Ms. Stubbs' former client, believed Defendant to be a fit parent and wanted Mr. Cooper to have joint custody of their children. Plaintiffs therefore could have easily

foreseen a conflict in Ms, Stubbs' representation of their glaringly conflicting interests.

20. In contrast, great prejudice would inure to Mr. Cooper if he were unable to put forth crucial information rebutting Plaintiffs' allegations that he is an unfit parent.
21. Finally, Rule 1.10(a) of North Carolina Revised Rules of Professional Responsibility prohibits "lawyers associated in a firm" from "represent[ing] a client when any one of them practicing alone would be prohibited from doing so by Rule[] 1.9..."
22. Because Ms. Stubbs is barred from representing Plaintiffs' under Rule 1.9, all other attorneys in Ms. Stubbs' law firm, Tharrington Smith, are similarly prohibited from representing Plaintiffs.

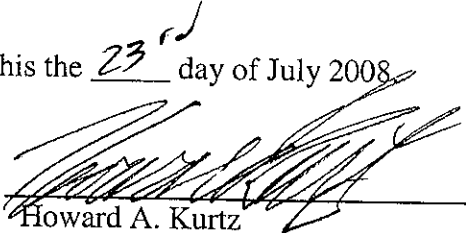
Wherefore, Defendant asks this Court to:

(1) Disqualify Ms. Stubbs and the entirety of her firm from representation of Plaintiffs;

OR

(2) Order any other relief this Court deems appropriate.

RESPECTFULLY SUBMITTED this the 23rd day of July 2008.


Howard A. Kurtz

North Carolina State Bar Number: 19134

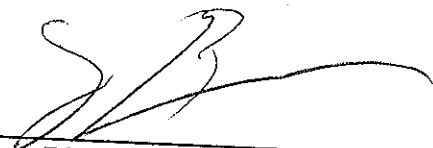
Kurtz & Blum PLLC

16 W. Martin St.; 10th Floor

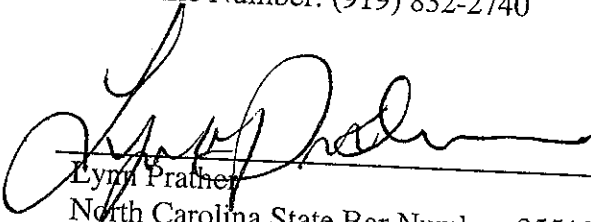
Raleigh, North Carolina 27601

Telephone Number: (919) 832-7700

Facsimile Number: (919) 832-2740



Seth Blum
North Carolina State Bar Number: 19819
Kurtz & Blum PLLC
16 W. Martin St.; 10th Floor
Raleigh, North Carolina 27601
Telephone Number: (919) 832-7700
Facsimile Number: (919) 832-2740



Lynn Prather
North Carolina State Bar Number: 35512
Kurtz & Blum PLLC
16 W. Martin St.; 10th Floor
Raleigh, North Carolina 27601
Telephone Number: (919) 832-7700
Facsimile Number: (919) 832-2740