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## Montana Supreme Court Disqualifies Law Firm Based on Lateral Lawyer's Concurrent Conflict

February 29, 2012

[\*Krutzfeldt Ranch LLC v. Pinnacle Bank\*, \\_\\_\\_ P.3d \\_\\_\\_, 2012 WL 273311 \(Mont. 2012\)](#)

### Brief Summary

The Montana Supreme Court disqualified a law firm that hired a lawyer with a concurrent conflict of interest involving direct adversity. Given the nature of the conflict, the Court declined to consider prejudice against the disqualified law firm's client or otherwise balance hardships.

### Complete Summary

After bringing a lawsuit against defendant bank, plaintiffs' lawyer retained a separate attorney for advice on settlement and tax-related issues (Tax Lawyer). The Tax Lawyer's final meeting with, and work for, plaintiffs was in the summer of 2010. Thereafter, the Tax Lawyer sent an engagement letter and a bill for his work to plaintiffs' lawyer, which was paid. On January 1, 2011, the Tax Lawyer moved to the bank's law firm, which was opposing plaintiffs in their lawsuit. On January 5, 2011, the Tax Lawyer sent a letter to plaintiffs' lawyer stating, "we feel we will be more responsive and efficient to your needs and the ever changing tax and regulatory world by utilizing the resources that [the bank's firm] has to offer."

Plaintiffs moved to disqualify the bank's law firm in the litigation. The trial court denied the motion, concluding that the Tax Lawyer and plaintiffs had a former attorney-client relationship, and that the Tax Lawyer had been effectively screened from the matter. The Montana Supreme Court reversed, holding that the trial court ruling was clearly erroneous.

Focusing on the doctrine that the existence of an attorney-client relationship hinges on the client's reasonable belief, the Court highlighted the fact that the Tax Lawyer's work for plaintiffs was necessarily intermittent, and therefore that it was reasonable for plaintiffs to continue to believe that a lawyer-client relationship existed even five months after their last meeting with the Tax Lawyer. The Court also focused on the engagement letter and the letter sent on January 5, 2011, both of which indicated the prospective nature of the Tax Lawyer's services. Finally, in concluding that the Tax Lawyer had a current-client relationship with plaintiffs, the Court found significant the fact that the Tax Lawyer had never communicated any intent to end the lawyer-client relationship.

The Court then considered whether the concurrent conflict of interest would prejudice plaintiffs. That step was necessary because it is generally well-established that a violation of a rule of professional conduct, although it may be relevant, does not *per se* and on its own necessarily justify disqualification.



The court found prejudice to plaintiffs because they effectively lost time and money on the Tax Lawyer, lost their trial date as a result of the Tax Lawyer's switching firms, and, perhaps most importantly, lost the Tax Lawyer's loyalty.

Finally, given that this case involved a violation of RPC 1.7 (current-client conflict of interest), the Court declined to balance hardships by weighing any prejudice suffered by the bank in losing its counsel.

### **Significance of Opinion**

Despite the Court's refrain that the violation of a rule of professional conduct is not alone sufficient to require disqualification, this opinion demonstrates that disqualification may be difficult to avoid upon a violation of RPC 1.7(a)(1) when there is a conflict involving direct adversity. This opinion further makes clear the importance of assessing potential conflicts *before* switching firms, and of clearly communicating the end of the lawyer-client relationship with, *inter alia*, disengagement letters.

For further information, please contact [Roy Pulvers](#).

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