STATE OF NORTH CAROLINA IREDELL COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24 CVS 1161
AMY VINCELETTE, individually and derivatively on behalf of Wellspring Nurse Source, LLC, Plaintiff, v. KELLY COURT; MELISSA PEIRCE; and WELLSPRING NURSE SOURCE, LLC, Defendants, v. WELLSPRING NURSE SOURCE, LLC, Nominal Defendant.	**ORDER ON DEFENDANTS' MOTION TO DISQUALIFY PLAINTIFF'S COUNSEL**

1. **THIS MATTER** is before the Court upon Defendants' Motion to Disqualify Plaintiff's Counsel (the "Motion") filed on 17 June 2024 in the above-captioned case (the "Current Action" or the "Action").[1]

2. Plaintiff Amy Vincelette ("Ms. Vincelette" or "Plaintiff") and Defendant Melissa Peirce ("Ms. Peirce") founded Wellspring Group, Inc. ("Wellspring") in 2001 as an IT staffing company.[2] Ms. Vincelette and Ms. Peirce were the initial owners of

[1] (ECF No. 19.)

[2] (Am. Compl. ¶¶ 5, 9, Iredell County Superior Court 20-CVS-1389 [hereinafter "Prior Lit."], ECF No. 38; *see also* Defs.' Br. Supp. 2, ECF No. 20.)

Wellspring with each owning a 50% share of the company.[3] Ms. Vincelette served as Wellspring's President and at all times was a director and officer of the company.[4]

3. Ms. Vincelette and Ms. Peirce later joined with Defendant Kelly Court ("Ms. Court") to start another staffing company, Defendant Wellspring Nurse Source, LLC ("Nurse Source"), which was focused on traveling nurses.[5] At least as of May 2020, Ms. Vincelette, Ms. Peirce, and Ms. Court each owned 1/3 of Nurse Source, were the company's only members, and served as the company's member-managers.[6] Ms. Vincelette currently contends that she remains a 1/3 owner of Nurse Source while Ms. Peirce and Ms. Court contend that she does not.[7]

4. On 27 May 2020, Ms. Vincelette, acting on behalf of Wellspring, and Ms. Vincelette and Ms. Court, acting on behalf of Nurse Source, caused Wellspring and Nurse Source to sue Ms. Peirce and her husband Jamie Peirce (Wellspring's former Chief Financial Officer) (together, the "Peirces") in Iredell County Superior Court in a case styled as *Wellspring Group, Inc. and Wellspring Nurse Source, LLC v. Melissa T. Peirce and Jamie M. Peirce*, Case No. 20-CVS-1389 (the "Prior Litigation"). Wellspring and Nurse Source alleged in that Prior Litigation that the Peirces were liable for fraud, breach of fiduciary duty, conversion, constructive fraud, constructive

---

[3] (Prior Lit. Am. Compl. ¶ 5; Pl.'s Br. Opp'n Ex. A (Declaration of Amy Vincelette ("Vincelette Decl.")) ¶ 2.)

[4] (Prior Lit. Am. Compl. ¶ 6; Vincelette Decl. ¶ 2.)

[5] (Verif. Compl. ¶ 8.)

[6] (Verif. Compl. ¶ 10; Prior Lit. Am. Compl. ¶¶ 5–7.)

[7] (Verif. Compl. ¶¶ 1, 110.)

trust, civil conspiracy, and unfair and deceptive trade practices arising from the Peirces' alleged improper transfer of various assets and funds of Wellspring and Nurse Source to themselves or between the companies for their personal benefit.[8] On 9 December 2020, Wellspring and Nurse Source filed an amended complaint adding claims against the Peirces for civil embezzlement and declaratory judgment.[9] Ms. Peirce subsequently filed counterclaims against Wellspring and Nurse Source for indemnification, advancement, and breach of contract.[10]

5. The case was designated as a mandatory complex business case and assigned to Business Court Judge Mark A. Davis.[11]

6. Wellspring and Nurse Source were originally represented in the Prior Litigation by Peter Juran ("Mr. Juran") of Blanco, Tackabery & Matamoros, P.A., and the Peirces were represented by Kurt E. Lindquist II and Patrick G. Spaugh of Womble Bond Dickinson (US) LLP.[12]

7. By letter dated 29 July 2020 (the "Engagement Letter" or the "Letter"), Wellspring and Nurse Source, acting through Ms. Vincelette (who signed the Letter as "Partner"), retained Moore & Van Allen, PLLC ("MVA") to represent Wellspring

---

[8] (Prior Lit. Compl., ECF No. 9.)

[9] (Prior Lit. Am. Compl.)

[10] (Prior Lit. Defs.' Ans. and Counterclms., ECF No. 39.)

[11] (Prior Lit. Designation Order, ECF No. 1; Prior Lit. Assignment Order, ECF No. 2.)

[12] (Prior Lit. Compl. signature block; Prior Lit. Ans. and Counterclms. signature block.)

and Nurse Source in the Prior Litigation.[13] The Engagement Letter specifically stated that MVA would "be responsible for evaluating and advising [Wellspring and Nurse Source] regarding claims against [the Peirces]" and that MVA would "also represent [Wellspring and Nurse Source] in the litigation or settlement of such claims."[14] The Engagement Letter further stated that MVA would "keep confidential the information [MVA] acquire[d] during [MVA's] representation of [Wellspring and Nurse Source] in accordance with the Rules of Professional Conduct governing lawyers."[15] The Engagement Letter indicated that MVA's William M. Butler ("Mr. Butler") would "be primarily responsible for services performed for [Wellspring and Nurse Source] in [the Prior Litigation]."[16] Mr. Juran withdrew as counsel for Wellspring and Nurse Source on 13 October 2020.[17]

8. Also in July 2020, Ms. Vincelette retained Mr. Butler and MVA to represent her in her "capacity as an owner of Wellspring Group and a member-manager of

---

[13] (Engagement Letter, ECF No. 37.) Defendants filed two Motions to Seal, (ECF Nos. 42, 45), concerning Plaintiff's position that the Engagement Letter should be maintained under seal. By email dated 7 October 2024, however, Plaintiff advised the Court and the parties that she no longer wished to keep the Engagement Letter under seal. Defendants subsequently withdrew the Motions.

[14] (Engagement Letter 1.)

[15] (Engagement Letter 2.)

[16] (Engagement Letter 2.) Mr. Butler filed a notice of appearance as counsel for Wellspring and Nurse Source in the Prior Litigation on 20 July 2020. (Prior Lit. ECF No. 10.)

[17] (Prior Lit. ECF No. 29.)

Nurse Source separately from Kelly Court."[18] Similarly, Ms. Court retained Rob Wilder ("Mr. Wilder") of Wilder Pantazis Law Group to represent her individual interests in the Prior Litigation.[19]

9. Neither the Engagement Letter nor the evidence before the Court suggests that Mr. Butler and MVA entered into any agreement with Ms. Vincelette or Nurse Source concerning the use in subsequent litigation of the confidential information the firm obtained through its joint representation of Ms. Vincelette and Nurse Source in the Prior Litigation. Nor does the Letter or the evidence of record reflect their consent to Mr. Butler's and MVA's representation of Ms. Vincelette in the event a conflict developed between Ms. Vincelette and Nurse Source in the Prior Litigation or in the event the two clients were later involved in related litigation against one another.

10. On 21 January 2022, the parties entered into a Confidential Settlement Agreement and Release (the "Settlement Agreement" or the "Agreement") resolving the Prior Litigation.[20] Mr. Butler and Mr. Wilder negotiated the Agreement on behalf of Nurse Source and Wellspring.[21] Ms. Vincelette executed the Agreement on behalf of Wellspring, and Ms. Vincelette and Ms. Court executed the Agreement on behalf

---

[18] (Vincelette Decl. ¶ 6.) Neither MVA nor Ms. Vincelette has produced any engagement letter that may govern this representation.

[19] (Vincelette Decl. ¶ 7.)

[20] (Verif. Compl. Ex. D.)

[21] (Vincelette Decl. ¶ 16; Def.'s Br. Supp. 3; Pl.'s Br. Opp'n 5.)

of Nurse Source.[22] The Peirces each signed the Agreement in their individual capacities.[23]

11. Under the Settlement Agreement, Ms. Peirce agreed to assign, transfer, convey, and deliver to Wellspring and Nurse Source her respective ownership interests in Wellspring and Nurse Source and resign as a member, officer, employee, and agent of both companies.[24] Ms. Peirce conveyed her ownership interest in Wellspring in accordance with the Agreement,[25] and Ms. Vincelette subsequently sold Wellspring to a third-party purchaser.[26] Ms. Peirce has not conveyed her ownership interest in Nurse Source, however, and Ms. Vincelette alleges that Ms. Court and Ms. Peirce have collaborated to cause Nurse Source to refrain from taking action to require Ms. Peirce to convey her interest to the LLC.[27] According to Ms. Vincelette, "[Ms. Peirce's] and [Ms. Court's] attempt to prevent Nurse Source from acquiring [Ms. Peirce's] ownership interest was in bad faith and for the blatant purpose of attempting to illegitimately deprive [Ms. Vincelette] of her ownership interest in Nurse Source."[28]

---

[22] (Verif. Compl. Ex. D.)

[23] (Verif. Compl. Ex. D.)

[24] (Verif. Compl. Ex. D ¶ 3(a); Verif. Compl. ¶¶ 27–28.)

[25] (Vincelette Decl. ¶ 17.)

[26] (Verif. Compl. ¶ 127.)

[27] (Verif. Compl. ¶¶ 102–14; *see also* Verif. Compl. ¶¶ 26–33, 64–66, 114–18.)

[28] (Pl.'s Br. Opp'n 6.)

12. As a result, on 16 April 2024, Ms. Vincelette initiated the Current Action, asserting claims both individually and derivatively on behalf of Nurse Source against Ms. Court, Ms. Peirce, and Nurse Source (collectively, the "Defendants"). Ms. Vincelette brings (i) derivative claims against Ms. Court and Ms. Peirce for declaratory judgment, breach of fiduciary duty, breach of contract, injunction/specific performance, and civil conspiracy arising from "[Ms. Court's] and [Ms. Peirce's alleged] efforts to prevent Nurse Source from acquiring [Ms. Peirce's] Nurse Source ownership interest pursuant to the Settlement Agreement";[29] (ii) direct claims against Ms. Court and Ms. Peirce for declaratory judgment and breach of contract "relat[ing] to [Ms. Peirce's] and [Ms. Court's allegedly] unlawful effort to deprive [Ms. Vincelette] of her ownership interest in Nurse Source";[30] and (iii) direct claims against Nurse Source for action on account, breach of contract, conversion, unjust enrichment, and violation of Conn. Gen. Stat. § 34-255i(a) concerning the inspection and copying of Nurse Source's records.[31]

13. As noted above, Defendants filed the current Motion on 17 June 2024, contending that Mr. Butler and MVA should be disqualified from representing Ms. Vincelette in this Action because "[t]he North Carolina Rules of Professional Conduct do not allow MVA to sue its former client in a lawsuit with substantially similar

---

[29] (Verif. Compl. ¶¶ 135–60; Pl.'s Br. Opp'n 7.)

[30] (Verif Compl. ¶¶ 161–77; Pl.'s Br. Opp'n 7.)

[31] (Verif. Compl ¶¶ 178–213.) Nurse Source is a Connecticut limited liability company registered to do business in North Carolina. (Verif. Compl ¶ 4.)

claims."[32] Ms. Vincelette responds that Defendants should not be permitted to "deprive [her] of her chosen counsel by improperly conflating critical facts and ignoring well-established legal principles,"[33] particularly because the only claims she claims to bring adverse to Nurse Source "are not based on and do not involve any claims, defenses, or facts that were at issue in the Prior Litigation."[34]

14. After full briefing,[35] the Court held a hearing on the Motion on 5 September 2024 (the "Hearing"), at which all parties were represented by counsel. The Court concluded at the Hearing that additional briefing on the Motion would assist the Court in resolving the Motion.[36] Supplemental briefing was thereafter completed on 23 September 2024.[37] The Motion is now ripe for resolution.

15. In *Worley v. Moore*, 370 N.C. 358 (2017), the Supreme Court of North Carolina provided helpful guidance to trial courts considering, as here, a party's motion to disqualify an opposing party's counsel under North Carolina Rule of Professional Conduct 1.9(a). The Supreme Court broadly explained in *Worley* that Rule 1.9(a) "balances an attorney's ethical duties of confidentiality and loyalty to a former client with a party's right to its chosen counsel" and "permits disqualification

---

[32] (Defs.' Br. Supp. 1.)

[33] (Pl.'s Br. Opp'n 1.)

[34] (Pl.'s Br. Opp'n 7.)

[35] (*See* ECF Nos. 20, 30, 35.)

[36] (*See* Order Requesting Supplemental Briefing, ECF No. 38.)

[37] (*See* ECF Nos. 39, 40, 43, 44.)

of an attorney from representing a new client if there is a substantial risk that the attorney could use confidential information shared by the client in the former matter against that same client in the current matter." *Id.* at 359. The Supreme Court held that "[t]his analysis requires the trial court to determine whether confidential information that would normally have been shared in the former matter is also material to the current matter. To do so, the trial court must objectively assess the scope of the representation and whether the matters are substantially related." *Id.* Recognizing the importance of a party's right to choose its counsel, the Court noted that "[t]he movant seeking to disqualify his former counsel must meet a particularly high burden of proof." *Id.* at 364 (citing *Gov't of India v. Cook Indus.*, 569 F.2d 737, 739 (2d Cir. 1978) ("[T]here is a particularly trenchant reason for requiring a high standard of proof on the part of one who seeks to disqualify his former counsel[.]")).

16. Rule 1.9(a) provides as follows:

> 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.[38]

N.C. St. B. Rev. R. Prof'l Conduct r. 1.9(a).

17. In interpreting that Rule, the Supreme Court in *Worley* established a three-prong test:

> Under Rule 1.9(a), a party seeking to disqualify opposing counsel must establish that (1) an attorney–client relationship existed between the former client and the opposing counsel in a matter such that confidential information would normally have been shared; (2) the present action

[38] The parties agree that Nurse Source has not provided written consent to Mr. Butler's and MVA's representation of Ms. Vincelette in this action.

> involves a matter that is the same as or substantially related to the subject of the former client's representation, making the confidential information previously shared material to the present action; and (3) the interests of the opposing counsel's current client are materially adverse to those of the former client.

Worley, 370 N.C. at 364–365.

18. Trial courts applying Rule 1.9(a) are to:

> consider[ ] the circumstances surrounding each representation to objectively assess what would "normally" have occurred within the scope of that representation. *See id.* r. 1.9 cmt. 3 ("A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services."). The test is whether, objectively speaking, "a substantial risk" exists "that the lawyer has information to use in the subsequent matter." *Id.; see id.* r. 1.9 cmt. 2 ("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 in question."). The test does not rely on the subjective assessment provided by the former client or the attorney.

Id. at 365.

19. As to the first prong of the test under Rule 1.9(a), the Supreme Court explained:

> The scope of [an attorney-client relationship] is a matter of contract, and a lawyer may reasonably limit the scope and expectations of the representation "by agreement with the client or by the terms under which the lawyer's services are made available to the client." N.C. St. B. Rev. R. Prof'l Conduct r. 1.2 cmt. 6. The commentary to Rule 1.9(a) anticipates the use of engagement letters that outline both the scope of representation and limitations on confidentiality at the time the former client engaged counsel. . . . [U]nder the rule, the emphasis is not on the traditional notions of the formation of an attorney–client relationship, but on the scope of that relationship, when ascertaining the reasonable expectation of confidentiality under the circumstances. *See Allegaert v. Perot*, 565 F.2d 246, 250 (2d Cir. 1977) (Disqualification is not warranted unless "the attorney was in a position where he *could* have received information which his former client might reasonably have assumed the

> attorney would withhold from his present client."). . . . [T]he trial court should apply the objective test of whether a client in [the former client's] position would normally have shared confidential information given the terms of the engagement letter and the type of disclosure that usually occurs within that common representation arrangement.

Id. at 366.

20. The Supreme Court further held that:

> If the trial court determines that confidential information would normally have been shared within the scope of the past representation, it must then consider whether that information is material to the present action by deciding if the two matters are "substantially related." A former client must objectively demonstrate "a substantial risk that [confidential] information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." *Id.* Through an objective, fact-intensive inquiry, the trial court is best suited to determine whether such a substantial risk exists. *See id.* (considering "the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services"); *see also* Restatement (Third) of The Law Governing Lawyers § 132 cmt. d(iii) (Am. Law Inst. 2017) ("The substantial-relationship test . . . focus[es] upon the *general features* of the matters involved and inferences as to the likelihood that confidences were imparted by the former client that could be used to adverse effect in the subsequent representation." (emphasis added)).

Id. at 367.

21. Finally, the Supreme Court explained that "[i]n assessing whether two matters are 'substantially related' ":

> the trial court should consider, *inter alia*, the following illuminative factors: (1) the initial engagement letter, including the scope of the representation and any limitations on confidentiality; (2) the factual background leading to the past representation, including common representation of others and any concurrent representation of the former client; (3) the amount of time spent with the attorney; (4) the subject matter of the two representations; and (5) all of the facts and circumstances of the current litigation, particularly as compared with those of the past representation. A former client's subjective perception

> or conclusory allegations that he shared confidential information during the past representation should not be considered. (citations omitted).

Id.

22. Applying the Supreme Court's holdings in *Worley* to the Court's consideration of Defendants' Motion, the Court concludes, in the exercise of its discretion, that Mr. Butler and MVA should be disqualified from representing Ms. Vincelette in this Action against Nurse Source.

23. First, there is no dispute that Mr. Butler and MVA represented Nurse Source in the Prior Litigation, including in negotiating the terms of the Settlement Agreement in that action,[39] and that the nature of the attorney-client relationship was one in which confidential information would normally have been shared.[40] There is also no dispute that Mr. Butler and MVA purport to represent Ms. Vincelette in this Action in pursuing direct and derivative claims against Ms. Peirce, Ms. Court, and Nurse Source that arise, in part, from Nurse Source's alleged breach of the Settlement Agreement that Mr. Butler and MVA negotiated.[41]

24. Ms. Vincelette first argues that Mr. Butler and MVA should be permitted to represent her in this Action because she is not adverse to Nurse Source in pursuing

---

[39] (Prior Lit. signature block, Vincelette Decl. ¶ 16; Def.'s Br. Supp. 3; Pl.'s Br. Opp'n 5.)

[40] (*See* Engagement Letter 2 ("The Firm will keep confidential the information we acquire during our representation of you in accordance with the Rules of Professional Conduct governing lawyers. This professional obligation and the legal privilege for attorney-client communications exist to encourage candid and complete communication between client and lawyer.").)

[41] (*See* Verif. Compl.)

her derivative claims for Nurse Source's benefit—contending that those claims are brought on behalf of Nurse Source, a natural co-plaintiff whose interests are aligned with her own on those claims.[42] Since Defendants have conceded that their Motion "centers on the direct claims that plaintiff individually brings against Nurse Source,"[43] the Court elects not to consider whether Mr. Butler's and MVA's representation of Ms. Vincelette in the assertion of her derivative claims provides a basis for Mr. Butler's and MVA's disqualification as Plaintiff's counsel in this Action.

25. Ms. Vincelette next contends that, because her direct claims concern recovery of "amounts owed by Nurse Source to Amy Vincelette from authorized and unauthorized transfers of funds from Wellspring Group to Nurse Source or that Nurse Source agreed to pay Wellspring Group,"[44] those claims do not concern matters that were placed at issue in the Prior Litigation, no confidential information shared in the Prior Litigation could therefore be material to the issues in the Current Action, and thus the Current Action cannot be "substantially related" to the Prior Litigation.[45] After careful review, the Court disagrees.

---

[42] (Pl.'s Br. Opp'n 9, 11–12.)

[43] (Defs.' Reply Br. 3, ECF No. 35.)

[44] (Pl.'s Br. Supp. 7.)

[45] (Pl.'s Br. Opp'n 9 (contending that Plaintiff's direct claims "are not the same or substantially related to the Prior Litigation"), 10 ("The Prior Litigation did not involve any claims relating to amounts that Nurse Source owed Wellspring Group."); *see also* Pl.'s Br. Opp'n 12–14; Pl.'s Supp. Br. Opp'n 7–13.)

26. In the Prior Litigation, Butler and MVA alleged on behalf of Wellspring and Nurse Source that "[a]mong the schemes and mechanisms utilized by [the Peirces] to accomplish their plan [to embezzle and defraud] was their use of funds of [Wellspring and Nurse Source] for purposes of their own and involved transferring funds back and forth between the companies in methods that were not approved and did not accomplish business purposes of debited company."[46] Butler and MVA further alleged that the Peirces' "actions were unfair and deceptive in that they took care to hide actions and camouflage them as business transactions of the companies, when in fact they were solely done for the benefit of the [Peirces]."[47]

27. In asserting and maintaining this claim for Nurse Source,[48] counsel for Nurse Source would normally have investigated, both before and during the Prior Litigation, the details concerning the various intercompany loans and transactions between Wellspring and Nurse Source that gave rise to their unfair trade practices claim against the Peirces. In connection with this investigation, a client in Nurse Source's position would normally have shared confidential information with its counsel concerning at least (i) its accounts, (ii) its financial condition, including its assets and liabilities, (iii) its approved business purposes, (iv) its approved methods

[46] (Prior Lit. Compl. ¶ 41; Prior Lit. Am. Compl. ¶ 41.)

[47] (Prior Lit. Compl. ¶ 42; Prior Lit. Am. Compl. ¶ 42.)

[48] Since these allegations were made in the Prior Litigation, the prosecution of claims in that litigation based on those allegations was necessarily within the scope of Mr. Butler's and MVA's prior representation of Nurse Source. *See* Engagement Letter (indicating representation extends to the "litigation or settlement" of Nurse Source's claims against the Peirces).

for transferring funds between it and Wellspring, (v) its approved methods for transferring funds between it and Ms. Peirce, Ms. Court, and/or Ms. Vincelette, (vi) its transactions with Wellspring, (vii) its reasons for entering into its transactions with Wellspring, (viii) any grounds it might have to avoid payment of any alleged debt to Wellspring, (ix) any reasons it may have for not pursuing collection of any debts that Wellspring might owe to Nurse Source, and (x) its knowledge of the Peirces' conduct in transferring funds between and from the two companies.[49]

28. Later, in deciding to resolve the Prior Litigation through the Settlement Agreement, a client in Nurse Source's position would normally share with its counsel confidential information concerning at least (i) its assessment of its strengths and weaknesses in the Prior Litigation, (ii) its willingness to continue with the Prior Litigation, (iii) its reasons for, and intent in, entering into the Settlement Agreement, (iv) its understanding of, and its ability to comply with, the terms contained in the Settlement Agreement, (v) its reasons for seeking any terms that it unsuccessfully sought to include in the Settlement Agreement, (vi) its reasons for not seeking to include in the Settlement Agreement any terms it considered but did not attempt to include, (vii) its willingness to pursue counterparties for breach of the Settlement

[49] Although Plaintiff correctly notes that Comment 3 to Rule 1.9 cautions that "[i]n the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation," Rule 1.9 cmt. 3, the confidential information the Court finds would normally be shared in connection with Nurse Source's unfair trade practice claim in the Prior Litigation is specific and granular and would not generally be shared with counsel absent a specific need.

Agreement, and (viii) the relative importance it assigned to the different terms in the Settlement Agreement.

29. All of this confidential information—which normally would have been shared with counsel in prosecuting and settling Nurse Source's claims in the Prior Litigation—is relevant to Plaintiff's direct claims against Nurse Source, and Nurse Source's potential defenses to those claims, in the Current Action. For example, Plaintiff contends in her fourth and sixth claims for relief in this Action that Nurse Source agreed to pay Wellspring (and, by assignment, Ms. Vincelette) certain funds arising out of the Settlement Agreement that resolved Nurse Source's claims against the Peirces. The confidential information that would have normally been shared to prosecute and settle the Prior Litigation is therefore directly relevant to Plaintiff's claims that are based on an alleged breach of the Settlement Agreement resolving the Prior Litigation.

30. Moreover, a comparison of the two actions makes clear that Mr. Butler and MVA negotiated the same Settlement Agreement for Nurse Source in the Prior Litigation that they are now suing Nurse Source in this litigation for allegedly breaching. As a result, the confidential information that a client in Nurse Source's position would normally have shared with its counsel to facilitate counsel's investigation and prosecution of the Prior Litigation and its negotiation and drafting of the Settlement Agreement would be available for that same counsel's use to materially advance counsel's new client's interests against counsel's former client Nurse Source in suing for breach of that Agreement.

31. Carefully considering each of the five "illuminative factors" set forth in *Worley*,[50] the Court concludes that, after objectively comparing the facts and circumstances of the Prior Litigation and the Current Action, there is a "substantial risk" that Nurse Source's confidential information that would have normally been shared in prosecuting and resolving the Prior Litigation would "materially advance" Plaintiff's position against Nurse Source in the Current Action.[51] The Court thus concludes that the two lawsuits are "substantially related" for purposes of Rule 1.9(a).[52]

32. In summary, the Court concludes that (i) it is undisputed that an attorney-client relationship existed between Nurse Source and Mr. Butler/MVA in the Prior Litigation such that confidential information would normally have been shared and

---

[50] *See Worley*, 370 N.C. at 367 (setting forth five "illuminative factors").

[51] Plaintiff's contention that, as a member of Nurse Source, she had "independent access" to all "records and information concerning the Prior Litigation, intercompany transfers, the amounts Nurse Source owed Wellspring Group, and any other issues to the Present Litigation," Pl.'s Br. Opp'n 16–17, does not defeat Defendants' Motion. Although she correctly points out that Comment 3 to Rule 1.9 states that "information that has been disclosed . . . to other parties adverse to the former client ordinarily will not be disqualifying," Rule 1.9 cmt 3, Plaintiff ignores that she shared information with Mr. Butler and MVA in the Prior Litigation at least in part because they were counsel for Nurse Source, and she has not shown that all of the confidential information Nurse Source would have normally shared with its counsel was also disclosed to Plaintiff.

[52] The Court finds further support for its conclusion in Comment 3 to Rule 1.9, which provides that "[m]atters are 'substantially related' for purposes of this Rule if they involve the same transaction or legal dispute." As explained above, both lawsuits have at their genesis allegations concerning the Peirces' alleged fraud and embezzlement, *compare* Prior Lit. Am. Compl. ¶¶ 13–50 *with* Verif. Compl. ¶¶ 12–19, and Ms. Vincelette's direct claims in the Current Action arise, in part, from Nurse Source's alleged breach of the Settlement Agreement that resolved Nurse Source's claims against the Peirces in the Prior Litigation. *See, e.g.*, *Ferguson v. DDP Pharmacy*, 174 N.C. App. 532, 537 (2005) (affirming disqualification where two actions "ar[ose] from the same operative facts").

(ii) Ms. Vincelette's interests in advancing her direct claims against Nurse Source in this Action are materially adverse to Nurse Source's interests. As discussed above, the Court further concludes that the Current Action involves a matter that is the same or substantially related to the subject of Mr. Butler's and MVA's representation of Nurse Source in the Prior Litigation, making the confidential information previously shared material to the Current Action.

33. Having reached these conclusions, the Court therefore concludes, based on Rule 1.9(a), as interpreted and applied by our Supreme Court in *Worley*, that Mr. Butler and MVA should be disqualified from representation of Plaintiff in this Action.[53]

34. **WHEREFORE**, based on the above, and in the exercise of the Court's discretion,[54] the Court hereby **GRANTS** Defendants' Motion and **ORDERS** that Mr. Butler and MVA are hereby disqualified from representation of Ms. Vincelette in this matter. In accordance with paragraph 12 of the Case Management Order entered in this Action on 11 July 2024,[55] discovery shall commence 30 days after the entry of

---

[53] In light of the Court's determination, the Court declines to consider Defendants' other arguments for disqualification, including Defendants' contention that Mr. Butler may not represent Ms. Vincelette in this action because he may need to serve as a material and necessary witness. (*See* Defs.' Br. Supp. 11–12.)

[54] The Court notes that our Supreme Court has long held that "[d]ecisions regarding whether to disqualify counsel are within the discretion of the trial judge." *Worley*, 370 N.C. at 363 (quoting *Travco Hotels, Inc. v. Piedmont Nat. Gas. Co.*, 332 N.C. 288, 295 (1992)).

[55] (Case Management Order, ECF No. 34.)

this Order so that Ms. Vincelette may retain new counsel prior to the initiation of discovery.

SO ORDERED, this the 8th day of October, 2024.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge