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September 16, 2025

The Hon. Michael V. Cresitello, Jr.  
Assignment Judge, Superior Court  
Somerset County Courthouse  
20 North Bridge Street, Floor 3  
Somerville, NJ 08876

RE: Morrisette v. Town of Phillipsburg Town Council and Peron Construction, Inc.  
Docket No.: WRN-L-000378-24

Dear Judge Cresitello:

This firm represents the Defendant-Intervenor, Peron Construction, Inc., in the above matter.

Kindly accept this letter brief in lieu of a formal brief in opposition to the motion to disqualify the firm of Bob Smith & Associates, LLC (“Bob Smith Firm”) from representing defendant Peron Construction, LLC (“Peron”). For the reasons set forth below, neither the Rules of Professional Conduct, New Jersey case law, nor simple logic support the proposition that a state senator, or members of his law firm, is barred from practicing before judges within his senatorial district. Tellingly, Plaintiff’s argument in support of disqualification does not include citation to the Rules of Professional conduct, or any example of a violation thereof; no significant New Jersey case law demonstrating clear guidelines for disqualification; nor reliance on any authority other than counsel’s self-described expertise.

**THERE ARE NO GROUNDS TO DISQUALIFY THE LAW FIRM OF BOB SMITH &  
ASSOCIATES IN THIS MATTER**

**I. A Senator's Role in Judicial Appointments Is Institutional, Not Adjudicative**

The New Jersey Constitution provides that “[t]he justices of the Supreme Court and the judges of the Superior Court shall be nominated and appointed by the Governor with the advice and consent of the Senate.” N.J. Const. art. VI, § VI, ¶ 1. This appointment process is institutional and legislative; it does not vest adjudicative authority in any individual senator.

Your Honor is aware that once appointed, judges are bound by the New Jersey Code of Judicial Conduct, which mandates that “[a] judge shall uphold the independence and integrity of the judiciary.” Canon 1. Judges also must “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” Canon 2A.

New Jersey courts have long recognized the centrality of judicial independence and impartiality no matter the situation. *State v. Deutsch*, 34 N.J. 190, 206, 168 A.2d 12 (1961) (judges must refrain from sitting where their objectivity and impartiality may fairly be brought into question.) (quoting *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11, 16 (1954)); *Knight v. Margate*, 86 N.J. 374, 391 (1981) (holding that the independence of the judiciary is essential to the separation of powers and constitutional governance); *State v. Tucker*, 264 N.J. Super. 549, 554, 625 A.2d 34 (App. Div. 1993), certif. denied, 135 N.J. 468, 640 A.2d 850 (1994) (highlighting that acting in a biased or partial manner threatens the integrity of the judicial process).

Accordingly, a senator's role in the appointment process, or confirmation of a judge, does not undermine the independence or impartiality of the judiciary once judges assume office. Although the Plaintiffs continuously emphasize that they are not claiming that Senator Smith may use his influence

over the career of Judge Allende, and that there is no claim that Judge Allende's decision on the matter can be influenced by senatorial courtesy for confirmation, the motion in question clearly states the exact opposite. At the same time, the plaintiffs cite absolutely no rule or caselaw that supports their position, instead asking that the Court draw "the inescapable inference" that the Bob Smith law firm was chosen for its political influence and not its over 35 years of representing land use applicants statewide.

## **II. Rules of Professional Conduct Do Not Presume Conflicts of Interest Based on Legislative Roles**

The plaintiffs try to argue that some sort of nefarious conflict of interest exists and therefore the Bob Smith law firm should be disqualified. Rather than simply accept an "inescapable inference," the court should instead look to the rules that actually govern such matters. The Rules of Professional Conduct ("RPC" or RPCs") which govern attorney conduct define conflicts of interest narrowly and include specific violations and standards. RPC 1.7(a) prohibits representation involving concurrent conflicts of interest where representation is directly adverse to another client or materially limited by duties to another client or personal interest. RPC 1.9(a) prohibits representation materially adverse to former clients in the same or substantially related matter. RPC 1.10(a) imputes such conflicts to a firm. The RPCs do not prohibit the Bob Smith Law firm from representing this client in this litigation.

None of the provisions in the RPCs presumes that a legislator-attorney has a conflict of interest merely because he or his firm appears before judges appointed with Senate confirmation or confirmed with senatorial courtesy. Furthermore, the Appellate Division has held that disqualification is a "harsh discretionary remedy which must be used sparingly." *Cavallaro v. Jamco Prop. Mgmt.*, 334 N.J. Super. 557, 572 (App. Div. 2000) (holding that disqualification of counsel was appropriate where the defendant's counsel blatantly violated discovery subpoena and notice provisions resulting in the

defendant obtaining privileged medical information and records). Additionally, a court must consider a balancing of interests when considering a motion to disqualify counsel, not simply speculation. *Dewey v. R.J. Reynolds Tobacco Co.*, 109 N.J. 201 at 218 (stating, “a motion for disqualification calls for [the Court] to balance competing interests, weighing the ‘need to maintain the highest standards of the profession’ against ‘a client's right freely to choose his counsel’”).

Further, the New Jersey Supreme Court requires a showing of actual adversity or conflict of interest, not mere speculation. In *City of Atlantic City v. Trupos*, 201 N.J. 447, 462 (2010), the Court held that disqualification under RPC 1.9 requires proof of a substantial relationship between past and current matters creating a conflict of interest. Similarly, in *Twenty-First Century Rail Corp. v. N.J. Transit Corp.*, 210 N.J. 264 (2012), the Court ordered disqualification because the same law firm represented one party in the same discrete project and then later appeared on the opposite side of the same matter.

In contrast, where the alleged conflict is attenuated or hypothetical, disqualification is not appropriate. *See e.g. State v. Jimenez*, 175 N.J. at 485 (public defender not disqualified from representing criminal defendant where she had previously represented an alternate suspect in an unrelated matter). Courts consistently reject attempts to expand disqualification beyond actual, demonstrable conflicts of interest. The senator’s constitutional role in judicial appointments is not remotely similar to the types of conflicts of interest requiring disqualification as demonstrated in *Trupos* and *Twenty-First Century Rail*.

Further, plaintiffs conflate the rules for government officials such as board members with the rules for private counsel. The case law cited in Plaintiff’s brief refers to the Local Government Ethics Law and to standards governing the conduct of public officials, not to the standards for disqualification of private counsel under the RPCs. As the court explained in *Cavallaro v. Jamaco Prop. Mgmt.*,

disqualification of counsel is a “harsh discretionary remedy” that requires more than mere assumption or conjecture. Even when applying the wrong standard to the case, the plaintiffs have failed to identify an appearance of or actual conflict of interest on the part of the Bob Smith law firm.

For example, in *Wyzykowski v. Rizas*, 132 N.J. 509, 524 (1993), the Court held that under the Local Government Ethics Law, even “a potential for conflict” may warrant disqualification of a *public official* whose impartial judgment could be compromised. Likewise, in *Piscatelli v. Garfield Zoning Bd. of Adjustment*, 237 N.J. 333, 352–53 (2018) (quoting *Grabowsky v. Twp. of Montclair*, 221 N.J. 536, 554, 115 A.3d 815 (2015)), the court emphasized that courts need not probe an *official’s motives* because the broader goal is to ensure impartial justice and maintain public confidence in the integrity of governmental proceedings.

These rulings, however, are inapplicable here. Both *Wyzykowski* and *Piscatelli* concern the duties of *public officials* to avoid even the appearance of impropriety in carrying out proceedings. They do not govern or expand the standards for attorney disqualification under the RPCs.

Plaintiffs’ reliance on these cases is therefore misplaced. Indeed, the plaintiffs’ argument seeks the opposite outcome from the holdings of *Wyzykowski* and *Piscatelli*. Those cases instruct that when potential conflicts arise, the remedy is for the *official* to step aside to protect public confidence. Yet here, Plaintiffs ask the Court to leave the judge in place while disqualifying counsel based on the specious reason that all elected officials and those appointed by them are by default perceived as corrupt. This inversion of precedent has no support in New Jersey law and should be rejected. In short, if a judge feels unable to render an impartial decision the remedy is not the disqualification of counsel. Under those circumstances, the judge should recuse themselves.

### **III. Logical Consequences Demonstrate the Absurdity of the Plaintiffs' Motion**

Senator Smith has been a member of the Judiciary Committee (the “Committee”) for 23 years. During that time, numerous state senators, including Mr. Smith, have participated in the appointment and confirmation of judges. If the mere fact of legislative participation in judicial appointments required disqualification, then no senator-lawyer or member of the law firm could appear before any judge that had been confirmed by the committee. This would effectively bar senators from practicing law in a courtroom, an outcome incompatible with New Jersey’s long-standing tradition of a citizen legislature. The Supreme Court has cautioned that statutes and rules should not be interpreted to yield “absurd” or anomalous results.” *State v. Provenzano*, 34 N.J. 318, 322 (1961). Such an interpretation would not only distort the RPCs but also undermine the principle of equal access to courts for attorney-legislators.

For the foregoing reasons, it is respectfully requested that the plaintiffs’ motion to disqualify the Bob Smith law firm should be denied.

Respectfully submitted

Jeremy Solomon, Esq.

Cc: Michael Collins, Esq.  
Peter Dickson, Esq.