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Attorney for Plaintiffs,
David P. Morrisette
and Sandra S. Morrisette

David P. Morrisette and	:	SUPERIOR COURT OF NEW JERSEY
Sandra S. Morrisette,	:	LAW DIVISION - WARREN COUNTY
5 Fairview Heights	:	
Phillipsburg, NJ 08865	:	DOCKET NO. WRN-L-000378-24
Plaintiffs,	:	
v.	:	Civil Action
Town of Phillipsburg Town Council,:	:	
the governing body of the municipality, :	:	NOTICE OF CROSS-MOTION
with offices at Municipal Building, :	:	TO DISQUALIFY AS COUNSEL IN THIS
120 Filmore Street, :	:	PROCEEDING THE FIRM AND COUNSEL
Phillipsburg, New Jersey 08865, :	:	OF FLORIO PERRUCCI STEINHARDT
Defendant. :	:	CAPPELLI & TIPTON, LLC

TO: Clerk, Superior Court of New Jersey
for the Warren County Vicinage
Somerset County Courthouse
20 North Bridge Street, Second Floor
Somerville NJ 08876-1262

and The Municipal Clerk
Town of Phillipsburg
Municipal Building
120 Filmore Street
Phillipsburg, NJ 08865
for the Defendant, Town of Phillipsburg Town Council

and Mark R. Peck, Esq.
Florio Perrucci Steinhardt Cappelli & Tipton, LLC

91 Larry Holmes Drive, Suite 200
Easton, PA 18042
Attorneys for Intervention Movant, Peron Construction, Inc.

PLEASE TAKE NOTICE that on December 6, 2024 at 9 a.m., or as soon as the court will consider this matter, the Plaintiffs, David P. Morrisette and Sandra S. Morrisette, by and through undersigned counsel, will cross-move this Court for an order disqualifying the firm of Florio Perrucci Steinhardt Cappelli & Tipton, LLC, and counsel employed by that firm including the motion filing counsel, Mark R. Peck, from representation of movant, Peron Construction, Inc., in these proceedings.

The serious conflicts of interest involving the firm and its employed counsel are detailed in the enclosed letter brief, which also opposes the motion to intervene filed on behalf of Peron Construction, Inc., whose principal is a name partner in the firm and one of its founders.

A proposed form of order is enclosed.

Respectfully submitted,

Respectfully submitted,

/s/ Peter Dickson
Peter Dickson
Attorney for Plaintiffs

Dated: November 26, 2024

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David P. Morrisette and		: SUPERIOR COURT OF NEW JERSEY
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5 Fairview Heights		:
Phillipsburg, NJ 08865		: DOCKET NO. WRN-L-000378-24
Plaintiffs,	:	
v.	:	Civil Action
Town of Phillipsburg Town	:	
Council,;	:	
the governing body of the municipality,	:	
with offices at Municipal Building,	:	
120 Filmore Street,	:	ORDER
Phillipsburg, New Jersey 08865,	:	
Defendant.	:	

This matter having been brought before the Court on the Cross-Motion by the Plaintiffs, David P. Morrisette and Sandra S. Morrisette, by and through their counsel, Peter Dickson, to Disqualify the Firm and Counsel of Florio Perrucci Steinhardt Cappelli & Tipton, LLC, and counsel employed by that firm, including Intervention Movant’s counsel, Mark R. Peck, from representing the movant, Peron Construction, Inc., in these proceedings; and

The Court having considered the papers and submissions submitted in support of this cross-motion and in opposition, and having considered any oral argument on the matter, and good cause appearing;

It is on this _____ day of _____, 2024, ORDERED that:

1. The firm of Florio Perrucci Steinhardt Cappelli & Tipton, LLC, and counsel employed by the firm, including Mark R. Peck, are disqualified from representing Peron Construction, Inc., in this matter, and

2. Plaintiffs shall serve a copy of this Order on all parties in this matter within seven (7) days of its filing.

J.S.C.

The Cross-Motion was

Opposed

Unopposed

PETER DICKSON
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MEMBER N.J. AND D.C. BARS

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November 26, 2024

The Honorable Kevin Shanahan
Assignment Judge
Superior Court
Somerset County Courthouse
20 North Bridge Street, Second Floor
Somerville NJ 08876-1262

Re: Morrisette v. Town of Phillipsburg Town Council, WRN-L-000378-24
Opposition to Motion to Intervene and
Letter Brief in Support of Cross-Motion to Disqualify

Dear Judge Shanahan:

This law firm represents the plaintiffs in this matter. Please accept this letter brief in lieu of a more formal brief in support of our cross-motion to disqualify counsel for the movant Peron Construction, Inc. (Peron), and in opposition to the motion of Peron to intervene in this matter. The Peron motion should be denied without prejudice until non-conflicted counsel represents Peron. In the alternative, the motion should be denied as to both right and permissive intervention. The court will please note that a case information statement did not accompany the motion to intervene. R. 4:33-3.

As the court knows, this is the third challenge by plaintiffs to Ordinances

adopted by the Council of the Town of Phillipsburg to permit Peron to construct a large distribution warehouse on the last undeveloped riverfront property in the Town. The first, WRN-L-248-21, has by orders of the court been held in abeyance pending the disposition of the subsequent challenges. Peron has never sought to intervene in that matter. The second, WRN-L-541-22, was dismissed by consent. Peron never sought to intervene in that matter, either. As the complaint in this matter shows, this is a challenge to Ordinance 2024-14, which purports as did the previous challenged ordinances to amend the relevant redevelopment plan to permit the construction of the warehouse. The four count complaint pleads that the redevelopment plan amendment was adopted in violation of the public's due process rights, inconsistency with the Master Plan and a lapse of more than ten years since adoption of a master plan or re-examination report, disqualifying conflicts of interest involving the Florio Perrucci firm, and arbitrary and capricious decisionmaking.

1. Peron Can Not Be Represented By a Partner Of Its Owner

The Certification of Michael Perrucci, Esq., that accompanies the motion, states that Mr. Perrucci is the "owner" of Peron, a fact that also appears in his biography on the website of the law firm of Florio, Perrucci, Steinhardt, Capelli & Tipton, P.C. Peron is represented on this motion by Mark Peck, Esq. a partner in the Florio Perrucci firm, who has also represented Peron in the proceedings at the

Township Land Use Board and Council. Consistent with longstanding corporate law, an owner of a corporation is a legal person separate and apart from the corporation. Mr. Perrucci is not Peron, and vice versa. Mr. Perrucci is a named partner in the Florio Perrucci firm and Mr. Peck is his law partner. Mr. Perrucci has a personal, pecuniary interest in Peron, a client of the Florio Perrucci law firm, and is therefore conflicted from any representation of Peron himself. His conflict is imputed to all of the lawyers in the firm. No lawyer in the firm can represent Peron in this proceeding or any other.

There is conclusive authority. Your Honor previously noted in WRN-L-248-21 that the Florio Perrucci firm's representation of Peron is a violation of R.P.C. 1.10(a). You referred to Advisory Committee On Professional Ethics Opinion 743, "R.P.C. 1.10(a) - Imputing Conflicts of Interest That Are Based on a Personal Interest of the Lawyer" (June 23, 2022). We attach a copy of the opinion. The opinion summarizes as follows:

The Advisory Committee on Professional Ethics received an inquiry regarding a law firm that was retained to advise a client entity in a commercial loan refinancing. The client entity is fully owned by a parent limited liability company that has two members who each own equal shares. A shareholder in the law firm is one of the two members of the parent company. The Committee found that the lawyer with the financial stake has a conflict of interest based on a personal interest of the lawyer, Rule of Professional Conduct 1.7(a)(2), and that the affected lawyer's conflict of interest is imputed to the firm under Rule of Professional Conduct 1.10(a).

The only factual differences are that Mr. Perrucci owns all of Peron without any intermediate LLC and the nature of the representation. These differences are immaterial and in all other respects, the opinion and this matter are indistinguishable. No lawyer in Florio Perrucci can represent Peron.

We note that in previous proceedings Mr. Perrucci implied that he is not a partner in Florio Perrucci. On its face this is without merit, as he and the firm continue to hold him out to the public as a named partner. His website biography begins: "Mike Perrucci is Co-Founder and Partner of Florio Perrucci Steinhardt Cappelli Tipton & Taylor [sic]. Mike is also the owner of Peron Construction, Inc., a real estate development company, ..."¹

2. Peron Can Not Meet The Elements For Intervention As Of Right

Motions to intervene are governed by R. 4:33-1. It establishes the four criteria for determining intervention as of right. The applicant must (1) make a timely application; (2) claim an interest relating to the property or transaction which is the subject of the action; (3) show it is so situated that disposition of the action may as a practical matter impair or impede the ability to protect that interest; and (4) demonstrate its interest is not adequately represented by existing parties.

¹ <https://www.floriolaw.com/attorney/michael-j-perrucci/>
Retrieved on November 25, 2024. This part of the website has not been updated: Lester Taylor has left the firm.

Plaintiffs concede that the Peron motion meets the first and second elements. But Peron doesn't attempt to meet the third and fourth elements, nor can it.

The wording of the third element is not that "the disposition of the action may as a practical matter *affect its interest*," or anything like it, because that would merely duplicate the second element. The third element requires a movant to show that "the disposition of the action may as a practical matter *impair or impede the ability to protect that interest*." The movant, in other words, must show that the disposition of the matter may offer a significant practical roadblock to protection of its interest. The only argument offered here is that the composition of the Council may change and so may its perspective on the merits of the Peron warehouse proposal, because the warehouse has become a political issue. Perrucci Certification, para. 14, Peron Brief, third page (the brief is not paginated). Simply to state the claim in this manner shows its absurdity. Peron does not and can not show how it can, *merely by participating as a party in this matter*, prevent or inhibit the citizens of Phillipsburg, if they so choose, from replacing the incumbent Council members with new members who will oppose the warehouse proposal. Nor can Peron show how, *merely by participating as a party in this matter*, it can hinder or prevent the Council from settling this challenge on terms that Peron might not like.

Peron doesn't even try to meet the fourth element, that its interests are not being adequately represented by existing parties. As noted, Peron didn't try to intervene in the two prior challenges to prior amendments to the redevelopment plan. Peron doesn't and can't identify any shortcomings of the Town's previous legal defenses, and doesn't and can't identify any way in which the Town's legal defense might be inadequate here.

More or less directly on point and directly adverse to Peron's motion is City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1 (App. Div. 2006).² The was also an action under the Local Redevelopment And Housing Law (LRHL), an action to acquire a property by eminent domain. The redeveloper, who by agreement would pay all costs of the acquisition including fees and costs, moved to intervene as of right and permissively. The court denied these motions and was upheld by the Appellate Division.

The trial court found "intervention was inappropriate because of the City's responsibility to the public and because of the legislative mandate that the City, not the redeveloper, act as the condemning authority." Asbury, 388 N.J. Super. at 7. On appeal, as Peron argues here, the redeveloper argued that the City might

² This case is prominently discussed in Pressler & Verniero, Current N.J. Court Rules, comment on R. 4:33-1, note 2.4 "Adequacy of Representation," and also in comment on R. 4:33-2, note 1 "General Principles," so its absence from the Peron motion is inexplicable. R.P.C. 3.3(a)(3).

not have the political will to aggressively pursue the condemnation action. The trial court found, and the Appellate Division affirmed, that the City had "more than adequately" represented the redeveloper's interests, and accordingly could not meet the fourth and final test for intervention as of right. Id. at 8, 10-11. It found the redeveloper's arguments that the City might not seek to obtain the best possible price to be "speculative and conclusory," Id. at 11, which perfectly describes Peron's arguments here. Peron's motion for intervention as of right must be denied.

3. Peron Can Not Meet The Elements For Permissive Intervention

Rule 4:33-2 governs applications for permissive intervention, and provides in relevant part that such intervention may be granted if "the claim or defense and the main action have a question or fact in common," which does not describe this motion at all. The court is directed to consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Asbury is also instructive and conclusive. Peron has offered no reason to believe that its participation would not be "merely cumulative" and represent "double teaming" the plaintiffs. 388 N.J. Super. at 22. Indeed, in its brief, it signal that it will file a motion to dismiss, which is a tactic not pursued in the two earlier challenges and would likely be cumulative of the trial procedures in R. 4:69.

CONCLUSION

For the reasons in this brief, plaintiffs respectfully request that the Florio Perrucci firm be disqualified from representing Peron, and the Peron motion to intervene be denied without prejudice. In the alternative, plaintiffs respectfully request that the Peron motion to intervene be denied.

Respectfully submitted,

The Law Offices of Peter Dickson

/s/ Peter Dickson
Peter Dickson
NJ Attorney ID # 001661979
Attorney for Plaintiffs

Enclosure: Advisory Committee On Professional Ethics Opinion 743, "R.P.C. 1.10(a) - Imputing Conflicts of Interest That Are Based on a Personal Interest of the Lawyer" (June 23, 2022)

Issued by the Advisory Committee on Professional Conduct
June 23, 2022

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey



OPINION 743

**RPC 1.10(a) – Imputing Conflicts of Interest
That Are Based on a Personal Interest of the
Lawyer**

The Advisory Committee on Professional Ethics received an inquiry regarding a law firm that was retained to advise a client entity in a commercial loan refinancing. The client entity is fully owned by a parent limited liability company that has two members who each own equal shares. A shareholder in the law firm is one of the two members of the parent company. The Committee found that the lawyer with the financial stake has a conflict of interest based on a personal interest of the lawyer, Rule of Professional Conduct 1.7(a)(2), and that the affected lawyer’s conflict of interest is imputed to the firm under Rule of Professional Conduct 1.10(a).

Rule of Professional Conduct 1.7 provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

* * * *

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Rule of Professional Conduct 1.7(a)(2) conflicts not involving a public entity may be waived if the client gives informed consent, with certain exceptions. RPC 1.7(b)(1).

The lawyer in the firm who owns 50% of the client entity has a personal financial stake in the legal services to be provided by the firm to the client. This is a "personal interest of the lawyer" within the meaning of Rule of Professional Conduct 1.7(a)(2). In re Mason, 244 N.J. 506 (2021). A lawyer's professional judgment, when advising a client in a financial transaction, could be influenced by the lawyer's interest as a stakeholder in the business. "When a lawyer has a personal economic stake in a business deal, he must see to it that his client understands that his objectivity and his ability to give his client his undivided loyalty may be affected." In re Wolk, 82 N.J. 326, 333 (1980); see also ACPE Opinion 462 (1980) (lawyers may serve on a close corporation's board of directors while concurrently representing the corporation in litigation or other business matters, but it is advisable to first obtain "informed consent of all persons having a financial interest in the corporation"). It is well-established that lawyers who have a personal financial interest in a client's business have a conflict of interest.

Conflicts of interest generally are imputed to all other lawyers in the law firm. Rule of Professional Conduct 1.10(a) provides:

When lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7 or RPC 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

As the American Bar Association explained in the comments to Model Rule of Professional Conduct 1.10:

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a)(1) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(a)(2) and 1.10 (b).

[3] The rule in paragraph (a) does not prohibit representation when neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

See also Restatement of the Law – The Law Governing Lawyers, § 125 comment g (American Law Institute 2000) (noting that personal interest conflicts may not be known to the other lawyers in the firm or be uncovered by a conflict-checking system; further, “personal interests of a lawyer may be idiosyncratic or otherwise of such a kind that it is improbable that affiliated lawyers would be impaired in their representation of clients due to such interests”).

The exception for imputing “personal interest” conflicts in Rule of Professional Conduct 1.10(a) is narrow and generally includes only interests arising due to family relationships or personal beliefs, not business or investment interests. See Michels, K., New Jersey Attorney Ethics, § 24:3-1(a), p. 618 (Gann 2022) (the ABA comments suggest that the RPC 1.10(a) exception for imputing personal conflicts “does not apply when the affected lawyer’s interest is pecuniary or proprietary”). Family-based or belief-based personal interests ordinarily are not considered to present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm. Conflicts arising from a lawyer’s personal business interests –

particularly when those business interests affect the client's objectives of legal representation – ordinarily would present a significant risk of materially limiting the representation of the client by the other lawyers in the firm. See In re Gilman, 184 N.J. 298 (2005) (business interest of partner in firm presented a conflict that is imputed to other lawyers in the firm).

A lawyer who owns 50% of the client entity has a personal conflict of interest pursuant to Rule of Professional Conduct 1.7 when representing that client in a financial transaction. This investment interest of the lawyer in the client entity could materially and adversely impair the representation of the client by the remaining lawyers in the firm. The other lawyers in the firm would be aware that their colleague has a personal financial interest in the client's transaction. Therefore, the conflict is imputed to the firm under Rule of Professional Conduct 1.10(a). Lawyers must obtain consent of other business owners to waive the conflict when a lawyer has a financial stake in a client entity.

Most personal interests that present concurrent conflicts of interest under Rule of Professional Conduct 1.7(a)(2) involve lawyers representing separate clients with adverse interests when those lawyers are related as husband and wife, parties to a civil union, parent and child, or siblings, or have nonmarital cohabiting relationship. See ACPE Opinion 600 (July 1987). Generally, if the lawyer handling the case has a close relationship with a lawyer on the other side (even when the lawyer on the other side is not handling the case for the adverse client but is merely a lawyer with the firm), the relationship must be disclosed to the client and the client must provide informed consent to cure the conflict. Ibid.

If, however, the lawyer with the relationship is not handling the case, the conflict is not likely to materially and adversely impair the representation of the client by the remaining lawyers in the firm. Ibid. This personal interest conflict generally is not imputed to the firm

under RPC 1.10(a), though the affected lawyer should be screened from the matter. Ibid. In this case, the client need not be informed of the relationship or provide consent to a conflict. Ibid.

Accordingly, when a lawyer has a financial interest in the client entity, the lawyer has a conflict of interest based on a personal interest, Rule of Professional Conduct 1.7(a)(2), and the affected lawyer's conflict of interest ordinarily is imputed to the firm under Rule of Professional Conduct 1.10(a). The exception for imputing "personal interest" conflicts in Rule of Professional Conduct 1.10(a) is narrow and generally includes only interests arising due to family relationships or personal beliefs, not business or investment interests.