



**SUPERIOR COURT OF NEW JERSEY**  
VICINAGE I

**Bernard. E. DeLury, Jr.**  
*Presiding Judge*

Criminal Division  
Criminal Court Complex  
4997 Unami Boulevard  
Mays Landing, N.J. 08330  
609-402-0100 ext. 4736

**Not for Publication Without Approval of the Committee on Opinions**

July 22, 2025

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Re: **State v. La'Quetta Small: Motion to Disqualify Counsel**  
Ind. No. 24-09-2951 & 24-12-3927

Dear Counsellors:

**INTRODUCTION**

This matter comes before the Court on the State's motion to disqualify Michael Schreiber, Esq. ("Mr. Schreiber") as counsel for Defendant La'Quetta Small ("Defendant") in connection with the above-captioned criminal matter. The State contends an impermissible conflict of interest exists because Mr. Schreiber previously represented [REDACTED], who may be a witness in the instant matter, in an unrelated juvenile delinquency matter. For the reasons set forth below, the State's application is hereby **DENIED**.

## **STATEMENT OF FACTS**

Defendant La'Quetta Small was indicted on September 17, 2024, under Indictment No. 24-09-2951, for second-degree Endangering the Welfare of a Child, contrary to N.J.S.A. 2C:24-4(a). Mr. Schreiber entered an appearance for Defendant on May 14, 2024, and has since filed various motions, including motions to suppress evidence allegedly obtained in violation of the New Jersey Wiretap Act and to dismiss the indictment.

During the investigation leading to these charges, law enforcement obtained a search warrant for [REDACTED]'s electronic devices. It is alleged that some of the incidents forming the basis of the charges were recorded by [REDACTED] on an iPad or other electronic devices.

At a conference on June 12, 2025, the State raised for the first time a potential conflict relating to Michael Schreiber's prior representation of [REDACTED] in an unrelated juvenile delinquency matter that concluded in early 2023.

On June 16, 2025, the State called [REDACTED] as a witness at an evidentiary hearing on the defense's suppression motion. The Court conducted a colloquy with [REDACTED] to ascertain whether he would waive any conflict. [REDACTED] declined to do so, stating: "I don't know what [Mr. Schreiber] can use against me." The Court excused [REDACTED] from the courtroom. Subsequently, counsel for Defendant's co-defendant offered to cross-examine [REDACTED]. Mr. Schreiber disputed that any conflict existed, emphasizing that his representation of [REDACTED] did not involve confidential information that could prejudice [REDACTED] in this case. The State subsequently decided not to call [REDACTED] as a witness in the motion. Counsel for the co-defendant, Marty Small, indicated they may call [REDACTED] in the defense case in the motion.

The Court directed the parties to further litigate the conflict issue, postponing [REDACTED]'s testimony. On July 17, 2025, the Court held oral argument. The Court ultimately denied the State's motion to disqualify Michael Schreiber on the record. This Letter Decision is issued by the Court to supplement and further articulate the reasons for its ruling as previously stated on the record.

## **ARGUMENTS OF THE PARTIES**

### **I. STATE'S POSITION**

The State moves for disqualification, claiming an actual or potential conflict under RPC 1.7(a) and 1.9(c) due to Mr. Schreiber's prior representation of [REDACTED]. The State asserts that Mr. Schreiber received confidential information about [REDACTED], including psychological and social history protected by statute, and may use such information to [REDACTED]'s detriment in the current indictment. The State notes that [REDACTED] is a material witness regarding the underlying recordings. The State highlights that [REDACTED] has expressly refused to waive any perceived conflict. The State further argues that Mr. Schreiber's questions during past proceedings demonstrate knowledge of [REDACTED]'s personal circumstances. The State requests an in-camera review of Mr. Schreiber's file with Defendant and any written waivers.

## II. DEFENSE POSITION

Defendant, through Mr. Schreiber, opposes the State's motion as unfounded, untimely, and not supported by law or fact. Mr. Schreiber emphasizes that his prior representation of [REDACTED] was limited in scope, ended in 2023, and did not involve the same or a substantially related matter as this prosecution. He attests that he learned no confidential information from [REDACTED] that could be used at present, and that any references to [REDACTED]'s juvenile adjudication or general character are based on facts provided by Defendant or matters of public knowledge in the community. The defense also stresses the prejudice that would result from disqualification at this late stage, after Mr. Schreiber has invested significant time and effort in Defendant's defense. Defendant has submitted a certification confirming her waiver of any conflict and affirming her wish to retain Mr. Schreiber.<sup>1</sup>

## LEGAL ANALYSIS

### I. APPLICABLE LAW

R.P.C. 1.9(a) reads:

A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing.

A motion to disqualify under R.P.C. 1.9(a),

should ordinarily be decided on the affidavits and documentary evidence submitted, and an evidentiary hearing should be held only when the court cannot with confidence decide the issue on the basis of the information contained in those papers, as, for instance, when despite that information there remain gaps that must be filled before a factfinder can with a sense of assurance render a determination, or when there looms a question of witness credibility.

Ibid. (quoting Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218, 222 (1988)).

"[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." Twenty-First Century Rail Corp. v. N.J. Transit Corp., 210 N.J. 264, 273-74 (2012) (quoting Dewey, *supra*, 109 N.J. at 218). "[T]he initial burden of production—that the lawyers[] for whom disqualification is sought formerly represented their present adverse party and that the present litigation is materially adverse to the former client—must be borne by the party seeking disqualification." Atlantic City v. Trupos, 201 N.J. 447, 462 (2010).

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<sup>1</sup> On July 11, 2025, the State brought to the Court's attention that the Defense's brief, filed under the designation "public," included quotations from the juvenile records of [REDACTED]. That day, the Court signed an Order of Deletion to remove the filing from eCourts and to allow Mr. Schreiber to file his submissions under the designation "Confidential."

"If that burden of production . . . is met, the burden shifts to the attorneys[] sought to be disqualified to demonstrate that the matter or matters in which he or they represented the former client are not the same or substantially related to the controversy in which the disqualification motion is brought." *Id.* at 462-63.

"[F]or purposes of RPC 1.9, matters are deemed to be "substantially related" if (1) the lawyer for whom disqualification is sought received confidential information from the former client that *can be used against that client* in the subsequent representation of parties adverse to the former client, or (2) facts relevant to the prior representation are both relevant and material to the subsequent representation." Atlantic City v. Trupos, 201 N.J. 447, 467 (2010) (emphasis added).

In 2004, "[t]he New Jersey Supreme Court ultimately declared the use of the appearance of impropriety doctrine moribund by stating: [W]e hold that the appearance of impropriety standard no longer retains any continued validity in respect of attorney discipline." State v. Hudson, 443 N.J. Super. 276, 288 (App. Div. 2015) (quoting In re Supreme Court Advisory Comm. on Prof'l Ethics Op. No. 697, 188 N.J. 549, 568 (2006)) (internal quotations omitted). "[A]pppearance of impropriety doctrine may not serve as a basis to disqualify counsel because of a perceived conflict of interest. Disqualification must be based on an actual conflict or potential conflict of interest, as now defined by the RPCs." Hudson, 443 N.J. Super. at 289. In Hudson, the court remanded the matter for further inquiry as to "whether the nature of the legal representation support a finding [the attorney] gained confidential information during the representation of [his former client], *which could be used to his detriment during cross-examination* were he to testify in the defendant's criminal case." *Id.* at 292 (emphasis added).

In New Jersey, juvenile adjudications of delinquency are not indictable convictions subject to N.J.R.E. 609 (Impeachment by Evidence of Conviction of Crime). State in Interest of P., 167 N.J. Super. 290 (App. Div. 1979). "Juvenile offenses are . . . excluded from evidence because the Legislature has determined that they are not to be deemed criminal offenses, and accordingly, they may not be used to impeach credibility." State v. Reynolds, 41 N.J. 163, 179 (1963) (citing State v. Wolak, 26 N.J. 464, 482, (1958)). Thus, adjudications of delinquency may not be used to impeach a witness's credibility. See State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999).

## II. ANALYSIS

The issue before this Court is whether Mr. Schreiber's representation of Defendant in this matter is "the same or substantially related" to his prior representation of [REDACTED], and whether an actual or potential conflict exists so as to warrant disqualification.

The record demonstrates that Mr. Schreiber's prior representation of [REDACTED] in a separate juvenile matter, culminating in plea negotiations with no trial, was limited in scope and time. Mr. Schreiber attests, and the certifications offered corroborate, that he did not obtain confidential information during his brief, non-litigious representation of [REDACTED] which can now be used to [REDACTED]'s detriment. The psychological and case management materials referenced by the State do

not appear to have been reviewed in substance by Mr. Schreiber, and even if they had, the content is generic and would not provide a litigator with tactically useful “trigger points.” See Certification of Counsel (Schreiber); Certification of La’Quetta Small.

Moreover, the State has not demonstrated that the two representations are the same or substantially related. The juvenile matter involved entirely distinct circumstances and factual allegations. There is no evidence that information from those cases has relevance to the current prosecution.

Cross-examination of [REDACTED] regarding his recording of alleged incidents is rooted in the suppression motion and the operation of the Wiretap Act, not in his prior juvenile convictions or confidential history. The use of [REDACTED]’s criminal or social background, most of which is publicly known or known through the Defendant herself, does not constitute the use of confidential information in violation of the governing Rules of Professional Conduct.

The Defendant’s right to freely select counsel is paramount in criminal proceedings, subject only to overriding ethical considerations or demonstrable prejudice to a former client. La’Quetta Small has unequivocally consented to Mr. Schreiber’s continued representation and provided express waiver of any perceived conflict. See Certification of La’Quetta Small.

Additionally, the State’s request for in-camera review of Mr. Schreiber’s files, retainer, or attorney notes is unwarranted. There is no “legitimate need” or showing that such review is required to resolve the present dispute, especially in light of the certifications provided by both counsel and client. See *In re Kozlov*, 79 N.J. 232, 233-34 (1979).

Lastly, the competing overarching interest is the Defendant’s right to freely choose her counsel. The Defendant’s interest significantly outweighs [REDACTED]’s interest in avoiding cross-examination by his former attorney on an unrelated to the juvenile matter. Mr. Schreiber’s representation of the Defendant is not materially adverse to [REDACTED]’s interest. Nevertheless, Mr. Schreiber will be subject to the provisions under R.P.C. 1.9(c) and binding case law regarding confidentiality of juvenile proceedings.<sup>2</sup> Therefore, the Court finds that Mr. Schreiber is not disqualified or otherwise ineligible pertaining to his representation of La’Quetta Small in the instant matter based on his prior representation of [REDACTED]. As such, Mr. Schreiber may continue his representation of the Defendant.

### CONCLUSION

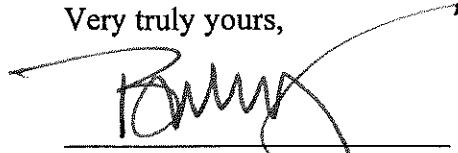
The Court, having thoroughly reviewed the record, the certification submissions, and the governing law, finds that the State has failed to satisfy its burden to demonstrate that Mr. Schreiber’s prior representation of [REDACTED] was substantially related to the current matter or that any actual or potential conflict exists warranting the remedy of disqualification. Accordingly, the

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<sup>2</sup> R.P.C. 1.9(c) reads: “A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.”

State's application to disqualify Mr. Schreiber is hereby **DENIED**. The Court has entered an Order on July 17, 2025.

Very truly yours,



Bernard E. DeLury, Jr., P.J.Cr.

BED/ep  
Encl.