Superior Court of New Jersey

Appellate Division

Docket No. A-000085-25T3

JOHANN MEJIA ARBOLEDA,	:	WORKERS' COMPENSATION ACTION
Petitioner,	:	ON GRANT OF MOTION FOR LEAVE TO APPEAL FROM THE INTERLOCUTORY ORDER
vs.	:	OF THE NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PAYCHEX; PROP N SPOON	:	DIVISION OF WORKERS' COMPENSATION,
Respondents.	:	PLAINFIELD VICINAGE
	:	Claim Petition Nos. 2024-24034, 2025-8339
	:	Sat Below:
	:	HON. WILLIAM FEINGOLD, J.W.C.

BRIEF ON BEHALF OF APPELLANT PAYCHEX

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Date Submitted: October 14, 2025

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PRELIMINARY STATEMENT

Johann Mejia Arboleda ("Arboleda") filed a workers' compensation claim alleging multiple injuries during his employment with Prop N Spoon. Paychex, a professional employer organization ("PEO"), maintains a limited contractual relationship with Prop N Spoon to provide administrative services. In certain scenarios, this includes workers' compensation coverage through Paychex's carrier, American Zurich Insurance Company ("Zurich").

This appeal concerns only the disqualification order entered against Goldberg Segalla and the threshold issue of whether an attorney-client relationship was ever formed between Goldberg Segalla LLP ("Goldberg Segalla") and Prop N Spoon. It does not address the merits of the underlying workers' compensation claim or the parties' respective coverage obligations.

Goldberg Segalla was retained by Paychex, as insured by Zurich, with ESIS as the third-party administrator ("TPA"), to defend its interests in this claim. Goldberg Segalla's involvement began when Paychex, not Prop N Spoon, referred the matter for defense. At no point did Prop N Spoon contact the firm, seek legal advice from the firm, or request representation from the firm.

Goldberg Segalla then filed its initial answer using the Court's partially pre-filled electronic form. In the initial answer, the firm was listed as "Attorney for Respondent" and the "Respondent" field automatically populated with "Prop

N Spoon," as it was the named respondent in the claim petition. Within four days, the firm filed an amended answer clarifying the nature of its representation. No court proceedings took place in that four-day period, and no other documents were filed on the docket. To this date, Goldberg Segalla has not had any interaction at all with Prop N Spoon, except through Prop N Spoon's current attorney.

The judge of compensation entered an order disqualifying Goldberg Segalla from the case without any written opinion, statement of reasons, or oral opinion on the record. In the absence of the same, the judge's reasoning for dismissing the firm can only be gleaned in the record from statements made within the colloquy at oral argument on the motion for reconsideration.

The limited reasoning that does appear in the record appears to be internally inconsistent. First, the judge stated that Goldberg Segalla's ethical violation was specifically *not* the initial answer but "continuing representation" after the answer. Thereafter, the judge suggested it *was* the initial answer itself.

Goldberg Segalla respectfully submits that it has not violated the RPC 1.9; that there was no "continuing" representation of Prop N Spoon (because there was no representation of Prop N Spoon at all); and that the judge failed to apply the correct legal standard and conduct the painstaking factual analysis required by law before implementing the harsh remedy of disqualification.

In addition, insofar as the relevant order intends to require Paychex to retain a different attorney than Zurich, we respectfully submit that this decision is supported by no reasoning in the record.

The disqualification order, based solely on the filing of an initial procedural answer that was promptly amended and was not relied upon by the court or any party in any substantive way, lacks both factual and legal foundation. The judge of compensation did not clearly identify any attorney-client relationship between Goldberg Segalla and Prop N Spoon, nor did the court apply the correct legal standard or conduct the analysis required by law before imposing the harsh remedy of disqualification. The material facts are undisputed: there was no communication, no exchange of confidential information, and no mutual intent to form an attorney-client relationship between Goldberg Segalla and Prop N Spoon. Because the facts are clear and the legal error is manifest, the portion of the disqualification order requiring Goldberg Segalla's removal and separate counsel for Paychex and Zurich should be reversed.

PROCEDURAL HISTORY

On October 3, 2024, petitioner Arboleda filed Claim Petition No. 2024-24034 in the Plainfield Workers' Compensation Court, alleging injuries from a

work-related accident on July 25, 2024. (6a-7a). The Petition named "Prop N Spoon" as the "Employer" and "ESIS" as the "Insurance Carrier/TPA." (6a).

On October 8, 2024, petitioner filed Amended Claim Petition No. 1, adding Zurich as an additional insurance carrier. (8a-10a).

On October 31, 2024, Goldberg Segalla electronically filed an answer to the claim petition. (11a-12a). Goldberg Segalla's answer shows Zurich as the carrier, ESIS as the TPA, and Prop N Spoon as the respondent. (11a-12a). The answer took no position on employment relationship, causation, or coverage, and indicated that the claim cannot be accepted and denied at the time (11a-12a). The answer reserved all defenses and the right to amend. (11a-12a).

There were no proceedings and no entries on the docket between October 31, 2024 and November 4, 2024.

Four days later, on November 4, 2024, Goldberg Segalla filed an amended answer clarifying that Goldberg Segalla appeared solely on behalf of Paychex (as insured by Zurich and administered by ESIS), and explicitly stated that Goldberg Segalla did not represent Prop N Spoon. (13a). Additionally, the amended answer denied the claim on behalf of Paychex for lack of employment and coverage. (13a).

On December 12, 2024, petitioner filed Amended Claim Petition No. 2, adding "Harlan Silverson" as a different name of the employer, and updating the 'status of the employer' field to "uninsured." (15a-17a).

On February 4, 2025, the law firm Rubenstein, Berliner & Shinrod LLC filed an answer on behalf of Prop N Spoon, with the insurance carrier listed as "Uninsured." (18a). The answer admitted employment and that the accident occurred during employment. (18a).

On February 17, 2025, Prop N Spoon filed a Notice of Motion for Adjudication of Insurance Coverage, which, in addition to seeking coverage from Zurich, requested the disqualification of Goldberg Segalla based on an alleged violation of RPC 1.9. (19a–73a).

On March 17, 2025, Goldberg Segalla filed opposition to Prop N Spoon's Motion for Adjudication of Insurance Coverage. (74a-87a).

On April 3, 2025, Arboleda filed Claim Petition 2025-8339 alleging the same work accident and same injuries, and listing Prop N Spoon as the employer, but now listing "Twin City Fire Ins. Co. C/O/ The Hartford" ("Hartford") as the "Insurance Carrier/TPA." (88a-89a).

On April 22, 2025, the law firm of Weber Gallagher Simpson Stapleton Fires & Newby ("Weber Gallagher") filed an Answer to Claim Petition No. 2025-8339. (93a-94a). The Answer lists "Prop N Spoon" as the respondent,

Weber Gallagher as the attorney for respondent, "Twin City Fire Ins. Co. C/O The Hartford" as the insurance carrier, and "The Hartford" as the TPA. (93a). The Answer denies insurance coverage, alleging that the policy had been cancelled. (93a). In a subsequent court filing, Hartford requested that it be dismissed from the case as a result of cancelling its policy. (113a-114a).

Both claim petitions were listed for motion hearings on April 30, 2025. (102a, ¶23). The judge of compensation advised the parties that he intended to decide the Motions on the papers, indicating he would deny Goldberg Segalla's request for any proceedings on the record. (95a, 90a-92a) . With no testimony, no oral argument, no other proceedings taking place on the record, the judge of compensation issued an order dated May 1, 2025 under the heading of both Claim Petitions. (1a-2a). It orders, in relevant part: "…Goldberg Segalla shall substitute out of the case secondary to a conflict of interest, and Zurich and Paychex shall engage separate counsel." (2a). Upon information and belief, said order was docketed only in Claim Petition 2025-8339 on May 1, 2025 and as a result was served only on the parties to 2025-8339 on that date. It was served on the parties in both claim petitions via email on May 5, 2025. (3a).

On May 20, 2025, Goldberg Segalla filed a motion for reconsideration of the May 1, 2025 Order. (96a-111a). No party filed written opposition to the motion for reconsideration.

The matter was listed for a hearing on the motion for reconsideration on July 2, 2025, and oral argument took place on that date. (T).

On July 10, 2025, in consideration of issues highlighted at oral argument and raised in subsequent correspondence with the judge, Goldberg Segalla submitted a supplemental letter brief, highlighting practical issues with the electronic filing system, specifically, that the system automatically associates the filing attorney with the named respondent in the claim petition, regardless of the actual client being represented. The brief noted that filings submitted by Weber Gallagher in the companion claim petition (CP No. 2025-8339) similarly listed Weber Gallagher as counsel for Prop N Spoon, despite representing The Hartford only. (112a-124a). On July 11, 2025, the judge of compensation advised the parties that the judge would "await responses from all parties." (125a). Upon information and belief, no responses were provided from other parties.

On July 15, 2025, the judge of compensation e-mailed a court order, dated July 7, 2025, denying the motion for reconsideration and stating that the reasons for the decision had been placed on the record. (4a-5a). This Order was entered into the docket for Claim Petition 2024-24034 on July 17, 2025.

On September 11, 2025, the Appellate Division granted Paychex's Motion for Leave to Appeal.

STATEMENT OF FACTS

Petitioner Arboleda filed Claim Petition 2024-24034 alleging injuries from a July 25, 2024 work accident while employed by Prop N Spoon. (6a). He initially named ESIS as the insurance carrier, later amended the petition to add Zurich, and then amended it again to identify Prop N Spoon as uninsured. (6a, 8a, 15a–17a). He subsequently filed Claim Petition 2025-8339 naming Hartford as the carrier. (88a–89a). The petitions and all amendments were submitted electronically (6a-7a, 8a-10a, 15a-17a, 88a-89a), as were all the answers filed by counsel for Hartford and Prop N Spoon (18a, 93a-94a).

Paychex, a PEO, has a limited contractual relationship with Prop N Spoon to provide administrative services, including workers' compensation insurance in certain scenarios. (24a-73a). Petitioner was never reported to Paychex by Prop N Spoon. (82a). Petitioner worked for and was paid directly by Prop N Spoon. (84a-85a). Petitioner did not name Paychex as a party in either of his claim petitions. (6a-7a, 8a-10a, 15a-17a, 88a-89a).

Goldberg Segalla was retained to defend the interests of Paychex, as insured by Zurich, with ESIS acting as TPA. (76a, 99a). Goldberg Segalla had no contact at all with Prop N Spoon prior to the filing of the initial answer.

The Court's electronic system uses a partially pre-filled form for respondent answers. Fields are pre-filled based on the information the petitioner

included in the claim petition, including the respondent's name. Upon information and belief, the system automatically associates the answer filing attorney with the named respondent listed in the claim petition, regardless of the actual client being represented.

While Paychex was still investigating the claim, Goldberg Segalla filed an initial answer on behalf of Paychex, using the standard electronic form, and taking no position on employment, coverage, or whether the injury occurred in the course of employment. (11a). The answer indicated that the claim cannot be accepted nor denied and reserved all defenses and the right to amend the answer. (11a). Due in part to limitations in the Court's electronic filing system, which does not permit the named respondent to be completely removed from the "Respondent" field, the answer showed Prop N Spoon as the respondent and Goldberg Segalla as counsel for the respondent. (11a). This is the same system-generated formatting that appeared in The Hartford's answer, which listed Hartford's counsel Weber Gallagher as counsel for the named respondent, Prop N Spoon. (93a-94a). Goldberg Segalla's initial answer did not contain any affirmative statements indicating that the firm represented Prop N Spoon. (11a-12a).

Four days later, Goldberg Segalla filed an amended answer, clarifying its representation of Paychex and not Prop N Spoon. (13a-14a). Goldberg Segalla

additionally took positions on the merits as related to Paychex. (13a). Again, due in part to limitations in the electronic filing system, this amended answer continues to show Prop N Spoon in the respondent field. (13a).

Prop N Spoon never sought legal representation from Goldberg Segalla. (76a-78a, 99a-101a). At no point did Goldberg Segalla ever communicate with, provide legal advice to, or receive confidential information from Prop N Spoon. (76a-78a, 99a-101a). The firm did not engage in any conduct that could reasonably be construed as forming an attorney-client relationship with Prop N Spoon. (76a-78a, 99a-101a). No evidence has ever been introduced suggesting that an attorney-client relationship was formed between Goldberg Segalla and Prop N Spoon other than the initial answer itself. (19a-20a,76a-78a, 99a-101a, T).

Prop N Spoon retained the law firm of Rubenstein, Berliner & Shinrod, which filed an answer on its behalf. (18a). On February 17, 2025, Prop N Spoon filed a Motion for Adjudication of Insurance Coverage, seeking both coverage from Zurich and the disqualification of Goldberg Segalla. (19a–73a). The motion was supported by an affidavit from Dean Ivey, Controller of Prop N Spoon, which addressed the PEO relationship with Paychex but did not mention any facts relevant to the formation of an attorney-client relationship with Goldberg Segalla. (21a–23a).

In a letter brief accompanying the motion, under the heading "Preliminary Issue: Ethical Violation," Prop N Spoon argued that Goldberg Segalla, by filing the answer and then the amended answer, had engaged in a "change in representation" that "creates a per se conflict of interest," citing RPC 1.9. (20a). The disqualification issue was not addressed in the "Legal Argument" section of the same brief. (20a).

Goldberg Segalla opposed the motion with a certification of counsel. (74a–87a). The certification explained that the initial filing was a standard part of the investigative process and noted limitations in the Courts On-line system. (77a). It further advised the judge that Goldberg Segalla had not represented Prop N Spoon, provided it with legal advice, exchanged any information, or taken any action that could reasonably be construed as forming an attorney-client relationship. (77a–78a).

The judge held no oral argument but issued the May 1, 2025 order disqualifying Goldberg Segalla and requiring Paychex and Zurich to retain separate counsel. (1a–3a, 90a–92a, 95a). The order was issued without any proceedings on the record, and the judge's reasons were not placed on the record or in writing. (95a, 90a-92a).

On May 20, 2025, Goldberg Segalla filed a motion for reconsideration with respect to the May 1, 2025 order. (96a–111a).

A consolidated oral argument on multiple motions in both claim petitions, and including the motion for reconsideration, took place on July 2, 2025. (T). With respect to the disqualification issue, before hearing argument from either party, the judge of compensation provided "preliminary comments that kind of guide you in the way I'm thinking." (T9:11-13). The judge stated "I think the ethical violation that's cited by [counsel for Prop N Spoon] at 1.9, I don't think filing the answer is the ethical violation. It is continuing representation after filing that answer. I know you are going to argue that you didn't form on attorney-client relationship, and, therefore, there is no violation of 1.9. But I don't know if the Court has the authority to allow you to continue when somebody raises this issue and it is not being waived." (T9:21-T10:6).

The judge asked counsel for Prop N Spoon: "Would you agree with me, Mr. Rubenstein, that that act in and of itself, of filing the Answer, is not unethical? But should they continue to represent, faced with that fact, that's the gravamen of the ethical violation?" (T16:11-16)

Counsel disagreed, and responded in part "…the document they filed, which is a sworn document taking a position in the case on behalf of a party to the case, is sufficient." (T17:2-5).

The judge stated: "I agree with that part. Because I really don't have the right, nor should I ask, what the relationship was. I just have the document. That

document speaks for itself, and it was sworn to and certified." (T17:6-10). With respect to the disqualification issue, the judge then stated "I've already decided it," and instructed the parties to move on to other issues. (T18:3)

The judge also expressly stated that there would be no prejudice to Paychex by being ordered to retain a new attorney, despite there being no factual findings on this issue: "…[M]y order disqualifying [Goldberg Segalla] from continuing based on the ethical issue, are you arguing that's prejudicial to your client? I mean, they can hire another attorney and they can proceed with this matter. And I fail to see any prejudice, any harm." (T22:14-19).

Goldberg Segalla also attempted to address the issue of whether Paychex was being ordered to retain separate counsel from Zurich. Goldberg Segalla argued that RPC 1.7B would permit Paychex and Zurich to waive any potential conflict between themselves and to be represented by the same counsel. (T19:14-19). The judge solicited responses: "Does anyone want to comment on that issue, as far as the separate representation? I know it is in the Order. Go ahead, Mr. Rubinstein." (T19:20-23). Mr. Rubinstein's answer to this inquiry appears again to address only the issue of whether Goldberg Segalla could proceed in this case, and not whether Zurich would need to obtain different counsel than Paychex. He stated: "If an attorney is conflicted out of a case, they are conflicted out of a case. But not just conflicted out of representing one

party…They are disqualified. My client is not waiving them participating in any aspect of this case." (T19:24-T20:7). The judge stated "That's true" and did not address the issue further on the record. (T20:10).

The judge did not provide any written opinion or statement of reasons for denying the motion for reconsideration. He did not provide any separate statement of reasons on the record except for the conclusion: "But I do not find that it rises to the level of giving the judge a basis, for the reasons that I previously stated, to disturb the Order of May 1st, 2025." (T35:19-22). As described above since there were no reasons stated in the prior order, and since there were not proceedings at all on the record prior to this oral argument, "the reasons that I previously stated" here can presumably only be referring to the statements made within the oral argument, as quoted above.

In a supplemental letter brief, submitted on July 10, 2025, Goldberg Segalla provided additional context regarding common procedural practices in the New Jersey Workers' Compensation Courts. (112a-124a). Specifically, the letter brief highlighted the practical considerations that explained why the initial answer was filed in the manner it was. The letter brief pointed out that this is standard practice, as evidenced by multiple filings by Weber Gallagher, counsel for The Hartford, in Claim Petition 2025-8339, in which Weber Gallagher was likewise listed as counsel for Prop N Spoon, despite representing only The

Hartford. (112a-124a). The letter brief highlighted that while Goldberg Segalla's initial filing followed this same standard practice, it appears to be the only instance in which disqualification was pursued and ultimately ordered. Indeed, counsel for Hartford remains in the companion case.

The judge requested responses to the July 10, 2025 letter brief, but on July 15, 2025, without hearing any responses from any party, the judge e-mailed the parties an order denying the motion for reconsideration. (125a, 4a-5a). The Order is dated July 7, 2025. (4a). The Order was not served on Goldberg Segalla by any means until July 15, 2025. (5a). The Order does not contain any statement of reasons, but instead states: "Reasons on record." (4a). The order was not entered into the docket on the online filing system until July 17, 2025.

The Appellate Division granted Paychex's Motion for Leave to Appeal on September 11, 2025.

STANDARD OF REVIEW

The determination of whether counsel should be disqualified is an issue of law subject to de novo plenary appellate review. City of Atlantic City v. Trupos, 201 N.J. 447, 463 (2010).

"Disqualification of counsel is a harsh discretionary remedy which must be used sparingly…" Dental Health Assocs. S. Jersey, P.A. v. RRI Gibbsboro, LLC, 471 N.J. Super. 184, 192 (App. Div. 2022) (quoting Cavallaro v. Jamco

Prop. Mgmt., 334 N.J. Super. 557, 572 (App. Div. 2000). Motions seeking this harsh remedy should be "viewed skeptically in light of their potential abuse to secure tactical advantage." Escobar v. Mazie, 460 N.J. Super. 520, 526 (App. Div. 2019). “Disqualification motions are often made for tactical reasons” that undermine or delay the underlying proceedings. Dewey v. R. J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988).

“[T]he burden of establishing disqualification is on the movant.” Escobar, supra, 460 N.J. Super. at 529 (citing City of Atl. City v. Trupos, 201 N.J. 447, 450 (2010)).

“[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 or her counsel." Id. (quoting Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988) (internal quotations removed). In order to balance those competing interests, the court “must engage in a painstaking analysis of the facts." Id. (quoting Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 205 (1988) (internal quotations removed).

For an illustration of how painstaking the factual analysis should be, see, e.g. Twenty-First Century Rail Corp. v. N.J. Transit Corp., 210 N.J. 264, 267 (2012) (discussing the retainer agreement, examining statements made in confidence between client and attorney in anticipation of representation,

examining an opinion letter drafted by the attorney for the client, and examining a legal bill including hours expended and total billed amount); Estate of Kennedy v. Rosenblatt, 447 N.J. Super. 444 (App. Div. 2016) (examining specific documents exchanged between attorney and client, and even metadata of a law firm's electronic file).

The mere appearance of impropriety is insufficient, as the New Jersey Supreme Court expressly removed the appearance of impropriety standard from the Rules of Professional Conduct. See, In re Supreme Court Advisory Comm. on Prof'l Ethics Op. No. 697, 188 N.J. 549, 552 (2006) ("the appearance of impropriety standard no longer retains any continued validity"). See also, State v. Hudson, 443 N.J. Super. 276, 280 (App. Div. 2015) ("The appearance of impropriety may not be used as a basis to find a conflict of interest under RPC 1.7 or RPC 1.9.").

LEGAL ARGUMENTS

I. The Disqualification Order Lacks the Required Legal and Factual Foundation (not raised below)

As discussed in the Standard of Review section, disqualification is a harsh remedy that must be supported by a clear legal basis and a painstaking analysis of the facts. Here, the disqualification order was entered without either.

This issue could not have been raised below because the judge of compensation did not explain his reasoning or legal standard until oral argument on the motion for reconsideration.

The judge of compensation did not engage in a painstaking analysis of the facts. The judge instead appears to have relied solely on the initial answer itself and/or an undefined concept of "continuing representation." The only relevant facts were contained in the certification of counsel submitted in opposition to the motion for adjudication of insurance coverage, and the judge of compensation did not address those facts in any detail on the record.

At no point did the judge of compensation make a clear finding that an attorney-client relationship existed between Goldberg Segalla and Prop N Spoon.

While a judge of compensation has discretion to decide motions on the papers, that discretion does not relieve the court of its obligation to apply the correct legal standard or to ensure that any order is supported by an adequate factual foundation. A hearing is required when the court cannot "with confidence decide the issue on the basis of the information contained in those papers," particularly where "there remain gaps that must be filled before a factfinder can with a sense of assurance render a determination." See Trupos 201 N.J. at 463 (citing Dewey, 109 N.J. at 222).

In fact, the judge expressly stated that he believed he lacked the authority entirely to even conduct the required painstaking analysis of the facts unless the party who raised the objection subsequently waived the same: "But I don't know if the Court has the authority to allow you to continue when somebody raises this issue and it is not being waived." (T9:21-T10:6). The judge of compensation went on to state that he had no power to examine the facts that would determine if an attorney-client relationship had been formed: "Because I really don't have the right, nor should I ask, what the relationship was." (T17:6-8). Because the judge of compensation believed he lacked the authority to conduct any factual analysis at all, his decision regarding disqualification was not based on the painstaking analysis of the facts required by law.

Further, whereas the relevant law requires a court to weigh the right of the client to freely choose its counsel, the judge of compensation here expressly excluded this element from any balancing test. The judge of compensation stated: "I mean, they [Paychex] can hire another attorney and they can proceed with this matter. And I fail to see any prejudice, any harm." (T22:17-18). Clearly, the right that must be balanced is the right to retain a particular attorney. To hold otherwise would render the consideration moot in every case except the exceedingly rare situation where not a single other attorney could possibly accept the case.

The judge failed to meaningfully consider the factual record or give any weight to Paychex's right to be represented by counsel of its choosing. Instead, the judge of compensation relied on the mere appearance of representation, an approach the Supreme Court has rejected. See, In re Supreme Court Advisory Comm. on Prof'l Ethics Op. No. 697, 188 N.J. at 552 (confirming that the "appearance of impropriety" is no longer a valid basis for disqualification).

Because the disqualification order rests on an incomplete legal analysis and is unsupported by the facts in the record, it should be reversed.

II. Goldberg Segalla never formed an attorney-client relationship with Prop N Spoon (74a-78a, 96a-101a)

Although the judge of compensation does not appear to have made an affirmative finding of any violation of a Rule of Professional Conduct on the record, upon information and belief, the only RPC raised as justification of Goldberg Segalla's disqualification in this matter is RPC 1.9. The only section of this rule relevant to the issues in this case is RPC 1.9(a), which states:

> 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. RPC 1.9(a).

The parties do not dispute that the matter at issue is "the same" or that Prop N Spoon's interests are materially adverse to Paychex's. The issue is whether Goldberg Segalla represented Prop N Spoon in this matter. The Rules

of Professional Conduct do not expressly define what it means to have "represented a client."

The formation of an attorney-client relationship is fact-specific. The relationship can be express or implied. However, it begins with the prospective client seeking legal services. See, e.g. Herbert v. Haytaian, 292 N.J. Super. 426, 436 (App. Div. 1996) ("When, as here, the prospective client requests the lawyer to undertake the representation, the lawyer agrees to do so and preliminary conversations are held between the attorney and client regarding the case, then an attorney-client relationship is created.); Id. ("An attorney-client relationship may be implied 'when (1) a person seeks advice or assistance from an attorney, …" quoting Bays v. Theran, 418 Mass. 685 (1994)); Id. at 436-7 ("A relationship of client and lawyer arises when: (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person… quoting The Restatement of the Law Governing Lawyers (Proposed Final Draft No. 1) § 26 (1996)).

In this case, the attorney certification submitted in opposition to the motion for adjudication of insurance coverage stands factually unchallenged: Prop N Spoon never sought advice from Goldberg Segalla. Prop N Spoon never had any contact at all with Goldberg Segalla. The first act necessary for the formation of an attorney-client relationship was never performed. Therefore, no

attorney-client relationship was formed between Prop N Spoon and Goldberg Segalla, and there is no conflict of interest for Goldberg Segalla to represent a party adverse to Prop N Spoon.

To the extent the judge of compensation found that the filing of the initial answer itself created an attorney-client relationship between Goldberg Segalla and Prop N Spoon, no legal support or any other precedent has been provided by the judge or any party for such a finding, particularly where the association was generated automatically by the court's electronic filing system. There is no evidence in the record that any party relied upon the initial answer, took any action with respect to the initial answer before it was amended four days later, or that any party was even aware of the filing before it was amended. No proceedings took place in the interim, and no other documents were filed on the docket.

Separate and apart from the lack of any support for the contention that the initial answer constitutes a *per se* attorney-client relationship, there are policy considerations that additionally weigh against such a finding. Where attorneys are frequently retained to represent employers and insurance carriers in workers' compensation claims and utilize the partially pre-filled answer form provided by the electronic filing system, minor clerical issues such as this often arise. The very same issue is present in Claim Petition 2025-8339, where the answer filed

by Weber Gallagher, counsel for The Hartford, was also system-generated to associate the attorney with Prop N Spoon, despite representing only the carrier. To subject any such law firm to immediate *per se* disqualification based solely on the appearance of representation in procedural filings, without any underlying engagement, communication, or intent, would have the potential to significantly disrupt proceedings in the Division of Workers' Compensation and incentivize the tactical use of motions for disqualification that the Escobar court warned against.

Insofar as the judge of compensation premised his decision to disqualify on "subsequent representation," Goldberg Segalla did not represent Prop N Spoon in the first place. There can be no subsequent representation of an adverse party if there was no initial representation of a different party in the litigation.

Goldberg Segalla never represented Prop N Spoon; and therefore, could not have violated RPC 1.9(a) with respect to Prop N Spoon in this matter. To hold otherwise would allow attorneys to unilaterally form attorney-client relationships without consent or knowledge from the client. Expanding the definition of representation in such a way would create uncertainty for both attorneys and clients. Attorneys could be bound by obligations they never intended to assume, while clients could be exposed to claims for fees from attorneys they never agreed to retain. Such a shift would be inconsistent with

the purpose and structure of RPC 1.9 and would disrupt routine litigation practices.

III. The order is ambiguous, but to the extent it purports to order Paychex to retain different counsel than Zurich, that holding is entirely unsupported by any findings or legal basis in the record and should be reversed. (96a-101a)

In relevant part, the order dated May 1, 2025 states: "Goldberg Segalla shall substitute out of the case secondary to a conflict of interest, and Zurich and Paychex shall engage separate counsel." The meaning of the word "separate" in this context is arguably ambiguous, and there is no relevant context in the record that would shed light on the intended interpretation.

Goldberg Segalla represents Paychex, as insured by Zurich, in this matter. The order, having disqualified Goldberg Segalla as counsel, could reasonably be interpreted as directing Paychex, as insured by Zurich, to retain "counsel separate from Goldberg Segalla." This interpretation is supported by the fact that the clause is contained in the same sentence. Naturally, it can be read to further explain the idea introduced in the first clause, not as an entirely separate idea. This interpretation is also supported by the colloquy at oral argument, wherein counsel for Prop N Spoon stated: " If an attorney is conflicted out of a case, they are conflicted out of a case. But not just conflicted out of representing one party…They are disqualified. My client is not waiving them participating in any aspect of this case." (T19:24-T20:7). The judge of compensation agreed.

Clearly, "them" here refers to Goldberg Segalla, and the reference to waiver further supports the contention that this whole discussion was about Paychex retaining counsel separate from Goldberg Segalla – as Prop N Spoon would have no standing to waive any conflict as between Paychex and Zurich.

Finally, this interpretation, that the order merely requires Paychex to retain counsel separate from Goldberg Segalla, not separate from Zurich, is supported by the judge of compensation's statement near the conclusion of oral argument, where he addressed this issue without specific reference to Zurich at all: "they shall engage--Goldberg, Segalla shall substitute out, and Paychex shall engage separate counsel." (T39:8-11)."

However, if the sentence is read to have the effect of forcing Paychex to retain different counsel than Zurich, that holding has no factual or legal support in the record and must be reversed.

In the workers' compensation context, the issue of a conflict of interest between the insurer and the insured is addressed in detail in the case of Alam v. Ameribuilt Contractors, 474 N.J. Super. 30 (App. Div. 2022). There, the judge of compensation entered an order disqualifying the law firm purporting to represent both the employer and the workers' compensation insurer. The Appellate Division granted motion for leave to appeal this interlocutory order. In a statement of reasons supporting the order, the judge of compensation wrote:

"The attorney assigned by an insurance carrier to provide a defense to the insured does not and cannot represent the interests of the insurance carrier." Alam v. Ameribuilt Contractors, 474 N.J. Super. 30, 35 (App. Div. 2022). The Appellate Division reversed, noting that the insurer had not taken any position adverse to the insured in the case, that successful defense of the claim would inure to the benefit of both the insured and the insurer, and that there was no dispute that the insurer would cover the loss if the defense was unsuccessful. Id. at 37.

The record contains no analysis or explanation as to why separate representation was required. The issue of a conflict between Paychex and Zurich, insofar as it appears at all in the record, does not appear until the May 1, 2025 order. There is no evidence indicating the interests of Paychex and Zurich are not aligned, and RPC 1.7(b) would allow for such a conflict to be waived as between those parties. No opportunity was provided for Paychex and Zurich to address any alleged conflict of interest between them or to consider a waiver. For these reasons, Paychex should not be compelled to retain separate counsel from Zurich in the within claim.

CONCLUSION

The judge of compensation's disqualification order should be reversed. The order was entered without sufficient factual foundation and without

application of the correct legal standard. The judge did not clearly identify an attorney-client relationship between Goldberg Segalla and Prop N Spoon, did not weigh Paychex's right to counsel of its choosing, and did not provide any basis for requiring separate counsel for Paychex and Zurich.

The disqualification was based solely on a procedural filing that was promptly amended and never substantively relied upon by any party. There was no communication between Goldberg Segalla and Prop N Spoon, no exchange of confidential information, and no mutual intent to form an attorney-client relationship.

Because the material facts are undisputed and the legal error is apparent, the Appellate Division should reverse the portion of the disqualification order that disqualifies Goldberg Segalla and compels separate counsel, and permit Paychex to proceed with its chosen counsel.

Dated: October 14, 2025 */s/Bei Yang*

Bei Yang, Esq.

Superior Court of New Jersey

Appellate Division

Docket No. A- 000085-25T3

JOHANN MEJIA ARBOLEDA,	:	WORKERS' COMPENSATION
	:	ACTION
	:	
Petitioner,	:	ON GRANT OF MOTION FOR
	:	LEAVE TO APPEAL FROM THE
	:	INTERLOCUTORY ORDER
vs.	:	OF THE NEW JERSEY
	:	DEPARTMENT OF LABOR AND
	:	WORKFORCE DEVELOPMENT
PAYCHEX; PROP N SPOON,	:	DIVISION OF WORKERS'
	:	COMPENSATION,
	:	PLAINFIELD VICINAGE
Respondents,	:	
	:	Claim Petition Nos.: 2024-24034,
	:	2025-8339
	:	
	:	Sat Below:
	:	
		HON. WILLIAM FEINGOLD, J.W.C.

BRIEF ON BEHALF OF RESPONDENT PROP N SPOON

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Date Submitted: November 6, 2025

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[1] Respondent cross-references the Appendix on Behalf of Appellant Paychex as "AA1a," etc..

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PRELIMINARY COUNTERSTATEMENT

Johann Mejia Arboleda ("Arboleda") was in the employ of Prop N Spoon when he was injured. Prior to the date Arboleda was injured, Prop N Spoon had entered into a Professional Employer Organization ("PEO") arrangement with Appellant Paychex. The PEO arrangement with Paychex provided Prop N Spoon's statutorily required workers' compensation insurance coverage through an arrangement maintained by Paychex and Zurich American Insurance Company ("Zurich American").

When Prop N Spoon received Arboleda's workers' compensation claim, it timely tendered the claim to Paychex. Paychex and/or Zurich American assigned the claim to Goldberg Segalla, LLP ("Goldberg Segalla"), which then entered an appearance on behalf of Prop N Spoon and asserted defenses on behalf of Prop N Spoon through its Answer to Claim Petition ("Initial Answer").

The Initial Answer was filed pursuant to a sworn statement that it was true and correct, under penalties of perjury. The Initial Answer said nothing about being a conditional filing or that it was filed under a reservation of rights to pursue a coverage dispute against Prop N Spoon.

Shortly thereafter, Goldberg Segalla filed an Amended Answer to Claim Petition ("Amended Answer"), wherein it claimed that its representation was limited solely to Paychex and/or American Zurich. Among other things, the

Amended Answer asserted that Arboleda's claim was not covered by the PEO-provided workers' compensation coverage because he was not reported to Paychex and could not be considered a 'covered employee'.

Goldberg Segalla advised the court under penalties of perjury that it represented Prop N Spoon without qualification by means of the Initial Answer and then abandoned that representation in favor of the representation of other parties in the same litigation, taking adverse positions to those of Prop N Spoon by means of the Amended Answer.

Following the abandonment by Goldberg Segalla, this firm was retained by Prop N Spoon to pursue coverage for Arboleda's workers' compensation claim and to seek the disqualification of Goldberg Segalla. The firm was successful, and this appeal followed.

The reasoning for the disqualification is patent. Under Rule of Professional Conduct ("R.P.C.") 1.9(a), a lawyer who has represented a client in a matter may 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*. By its own admission, Goldberg Segalla represented Prop N Spoon and then sought to abandon that representation in favor of a party taking positions diametrically opposed to Prop N Spoon. The Judge of Compensation correctly found that

Goldberg Segalla's continuing representation of Paychex and/or American Zurich violated R.P.C. 1.9(a), absent consent from Prop N Spoon.

PROCEDURAL HISTORY

On October 3, 2024, Arboleda filed Claim Petition 2024-24034 alleging a work-related injury on July 25, 2024. (AA6a-7a.) The Claim Petition originally named ESIS as the "Insurance Carrier/TPA". An Amended Claim Petition was filed on October 8, 2024, naming American Zurich as the Insurance Carrier. (AA8a.)

On October 31, 2024, Goldberg Segalla entered an appearance on behalf of Prop N Spoon by means of filing the Initial Answer. (AA11a-12a.) The Initial Answer clearly named Goldberg Segalla as "Attorney for the Respondent," and clearly named Prop N Spoon as the "Respondent." (AA11a.) The Initial Answer did not reserve any rights with respect to the representation of Prop N Spoon, and provided no indication that there was any pending or threatened coverage claim or defense against Prop N Spoon. At the time of the filing of the Initial Answer, Goldberg Segalla certified under penalties of perjury that the filing (which would necessarily include its representation of Prop N Spoon) was accurate. (AA12a.)

The Initial Answer took legal positions on behalf of Prop N Spoon by: disputing the nature, extent, and causation of permanent disability; demanding any and all treating records; reserving all defenses against Arboleda; and, reserving the

right to cross-examine and to call witnesses and expert witnesses. (AA11a.) The Initial Answer did not reserve any coverage rights or set forth any limitations regarding the nature and extent of Goldberg Segalla's representation of Prop N Spoon.

On November 4, 2024, Goldberg Segalla electronically filed the Amended Answer. (AA13a-14a.) In the body of the Amended Answer, Goldberg Segalla for the first time claimed that it was entering a "special appearance," to, "defend the interests of Paychex, as insured by Zurich and administered by ESIS as the third-party administrator." (AA13a.) In the Amended Answer, Goldberg Segalla further claimed that it did not represent Prop N Spoon. (AA13a.) The Amended Answer denied coverage of the claim, clearly taking a position adverse to the interests of Prop N Spoon. (AA13a.)

On November 11, 2024, Goldberg Segalla filed an answer to Arboleda's Motion for Medical and Temporary Benefits, in which it asserted a coverage defense against Prop N Spoon as a basis to deny the motion alleging, among other things, that Prop N Spoon had concealed Arboleda's employment from Paychex and thereby effectively elected to waive workers' compensation coverage for Arboleda. (AA74a-87a.) The argument was clearly adverse to the interests of Prop N Spoon.

Simultaneously, Goldberg Segalla filed a motion to dismiss Arboleda's claim for, "Lack of Employment/Coverage (as it pertains to Paychex, as insured by Zurich/ESIS)." This position was clearly adverse to Prop N Spoon. (RA1a-8a.)

Due to Goldberg Segalla's abandonment of Prop N Spoon and Arboleda's filing of a claim against the company in an 'uninsured' capacity, this office was retained by Prop N Spoon. An Answer to Arboleda's claim was filed on behalf of the company on February 4, 2025. (AA18a.)

A Motion for Adjudication of Insurance Coverage and Disqualification was filed on February 17, 2025. (AA19a-73a.) The motion sought an interim decision on the identification of the insurance carrier responsible to provide coverage to Arboleda, and disqualification of Goldberg Segalla as counsel to any party to the litigation based upon its initial representation of Prop N Spoon and its actions in thereafter taking positions adverse to Prop N Spoon, in violation of R.P.C. 1.9(a). (AA19a-21a.)

On March 17, 2025, Goldberg Segalla filed opposition to the coverage and disqualification motion, again taking positions adverse to the interests of Prop N Spoon. (AA74a-87a.)

On April 3, 2025, Arboleda filed a companion Claim Petition (C.P. No. 2025-8339) alleging the same injuries as the case at bar, but naming Twin City Fire Ins. Co. c/o The Hartford, as the Insurance Carrier/TPA. (AA88a-89a.) On April

22, 2025, the law firm of Weber Gallagher, et al., filed an answer to the companion claim. (AA93a-94a.) Unlike Goldberg Segalla's filing in this matter, Weber Gallagher's filing denied coverage from the outset due to the alleged cancellation of The Hartford's policy. (AA93a.)

On May 1, 2025, ruling on the papers, the Judge of Compensation granted Prop N Spoon's motion. (AA1a-2a.) The Court ordered that: American Zurich was to provide causally-related treatment and temporary total disability benefits to Arboleda – *without prejudice* – pending the outcome of the coverage dispute; The Hartford was to provide the parties with pertinent information regarding its alleged cancellation of its workers' compensation policy; Goldberg Segalla was to substitute out of the case as a result of their conflict-of-interest; and, American Zurich and Paychex were to engage separate counsel. (AA1a-2a.)

On May 20, 2025, Goldberg Segalla filed a motion for reconsideration, claiming several errors made by the Judge of Compensation in issuing the disqualification order. (AA96a-110a.)

On July 2, 2025, the Court held oral argument on Goldberg Segalla's motion for reconsideration. Finding that no new evidence was presented and that there was no information that the Court had not considered before issuing the Disqualification Order, the Court denied the motion for reconsideration. (AA4a.)

COUNTERSTATEMENT OF FACTS

Prop N Spoon entered into a PEO arrangement with Paychex, whereby Paychex took over human resources functions for its employees and, among other things, provided workers' compensation coverage to its workers. (AA21a-73a.)

Following Prop N Spoon's tender of Arboleda's workers' compensation claim to Paychex, Paychex and/or America Zurich assigned the defense of the claim to Goldberg Segalla. Goldberg Segalla filed the Initial Answer, entering an appearance on behalf of Prop N Spoon and reserving Prop N Spoon's defenses to the claim. (AA11a-12a.) Shortly thereafter, Goldberg Segalla filed the Amended Answer, abandoning its representation of Prop N Spoon, claiming to represent Paychex and American Zurich in the same litigation, and setting forth legal positions adverse to the interest of Prop N Spoon. (AA13a-14a.) Goldberg Segalla later filed additional pleadings, setting forth additional claims against Prop N Spoon and denying any coverage to Arboleda. (AA74a-87a, RA1a-8a.)

Following Goldberg Segalla's abandonment of Prop N Spoon, this office filed an Answer on behalf of Prop N Spoon in its alleged 'uninsured' status and filed a Motion to Adjudicate Insurance Coverage. (AA19a-73a.) The motion sought the determination of coverage for Arboleda and the disqualification of Goldberg Segalla for its change in representation in violation of R.P.C. 1.9(a). (AA19a-22a.)

Goldberg Segalla submitted written opposition to the coverage and disqualification motion, which the Judge of Compensation found to be unpersuasive. The Judge of Compensation granted the motion and ordered Paychex and/or American Zurich to provide workers' compensation benefits to Arboleda, without prejudice pending the outcome of the coverage dispute. (AA1a-3a.) The order also disqualified Goldberg Segalla and required that Paychex and American Zurich to retain separate counsel. (AA2a.)

Goldberg Segalla filed a motion for reconsideration. Supporting documents were again submitted and oral argument was granted. Finding that Goldberg Segalla had submitted nothing that the court had not already considered when it issued the disqualification order, the Judge of Compensation denied reconsideration. (AA4a-5a.) This appeal followed.

STANDARD OF REVIEW

There are two (2) standards at issue in this matter. First, is the standard of review for the decisions of a Judge of Compensation. Second, is the extent to which arguments not raised before the Judge of Compensation are deemed waived and unreviewable.

I. Standard of review of a Judge of Compensation.

When sitting in review of a Judge of Compensation, the Appellate Division owes "substantial deference" to findings of fact made by the judge. Ramos v. M &

F Fashions, Inc., 154 N.J. 583, 294 (1998). Determinations of the legal consequences that flow from a Judge of Compensation's findings of fact are not entitled to special deference. Keim v. Above All Termite & Pest Control, 256 N.J. 47 (2023). Thus, the factual determinations made by the judge sitting below are due substantial deference, though the legal conclusions drawn from the facts are not.

In this matter, the facts before the judge sitting below were those presented by Goldberg Segalla. Nothing in the Court Rules permits the Appellant to use the Appellate Division as a device to distance itself from, or modify or supplement, the facts it presented in the first instance or in its motion for reconsideration. The court should defer to the findings of the Judge of Compensation.

Appellant seems to argue that there is some heightened standard of review for disqualification matters. There is not. This is particularly true in cases involving the violation of R.P.C. 1.9(a).

Appellant cites to Dental Health Assocs. S. Jersey, PA v. RRI Gibbsboro, LLC, 471 N.J. Super. 184 (App.Div. 2022), which involved partners moving among law firms, where a partner who joined Archer Greiner was involved in litigation at the partner's prior firm that was arguably adverse to the defendants in the case at bar. The case did not involve a law firm entering an appearance on behalf of the moving litigant, subsequently disclaiming that representation, and

entering an appearance in the same litigation for an adverse party. The case is entirely distinguishable on its facts.

Appellant cites to Escobar v. Mazie, et al., 460 N.J. Super. 520 (App.Div. 2019), which involved a plaintiff in a legal malpractice matter seeking to disqualify defendant's counsel because a mediator in plaintiff's underlying action later joined defense counsel's office. At no time had defense counsel entered an appearance on behalf of the plaintiff and later attempted to represent a party adverse to the plaintiff in the same litigation. The case is clearly distinguishable.

Appellant cites to Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201 (1988), which involved Brown & Williamson's ("B&W") attempt to disqualify one of plaintiff's counsel after a partner in B&W's predecessor counsel joined Wilentz Goldman & Spitzer. The court went through a detailed analysis of the propriety of the Wilentz firm's continued representation, precisely none of which is relevant to this case. The case did not involve a firm entering an appearance on behalf of the plaintiff and then seeking to represent and adverse party in the same litigation.

Appellant cites to Estate of Kennedy v. Rosenblatt, 447 N.J. Super. 444 (App.Div. 2016), which comes somewhat closer to being relevant, but still misses the mark. The matter involved a conflict-of-interest issue that arose after plaintiffs' attorney filed and later dismissed a professional negligence action while at his former firm. The attorney refiled the action after joining his new firm. The new

firm had represented a defendant in the original action. That defendant continued to be represented by the same individual attorneys, but the attorneys had all since moved to another firm. Again, the structure of the relationships at issue did not involve a firm entering an appearance on behalf of the plaintiff, later withdrawing that representation, and entering an appearance for an adverse party in the same litigation.

Appellant further cites to In re Supreme Court Advisory Comm. on Prof'l Ethics Op. No. 697, 188 N.J. 549 (2006). Again, the citation is not relevant to the matter before this court. The ruling involved two questions: (1) whether it was *per se* prohibited for an attorney and his/her law firm to serve as bond counsel for the governing body of a municipality and concurrently represent a private client before one of the boards or agencies (including the municipal court) of the municipality; and (2) whether it was *per se* prohibited for an attorney or law firm serving as special litigation counsel for a governing body of a municipality to concurrently represent a client before one of the boards or agencies (including municipal court) of the municipality.

The opinion did not address whether it is *per se* prohibited for an attorney or law firm to represent a party in litigation, and later represent an adverse party to the same litigation. We already know the answer to that question. As explicitly

stated in R.P.C. 1.9(a), the answer is no, unless the original party consents in writing to the new representation.

Lastly, Appellant cites to State of New Jersey v. Hudson, 443 N.J. Super. 276 (App.Div. 2015) for the proposition that the "appearance of impropriety" is not the standard for disqualification. The facts of the matter are nothing like those presented in this case. The matter involved the State's attempt to disqualify an attorney who represented a criminally-charged police officer based upon counsel's representation of members of the New Jersey Fraternal Order of Police, and previous representation of one of the police officers involved in the investigation of his current client.

The lower court reasoned that the defendant police officer faced a significant risk that his defense would be hamstrung when his attorney was required to cross-examine a former client, about whom he had information due to his prior representation, but which he could be precluded from using. State v. Hudson, at 281-282. Once again, while an interesting decision in the abstract, the matter did not involve an attorney switching sides in the same matter. The case is distinguishable on its facts.

II. Matters not raised below are deemed waived.

As a general rule, an appellate court will not consider issues that were not raised below, except where an issue goes to the jurisdiction of the trial court or

concerns a matter of substantial public interest. J.K. v. N.J. State Parole Bd., 247 N.J. 120, 138, n.6 (2021); State v. Jones, 232 N.J. 308, 321 (2018); State v. Lawless, 214 N.J. 594, 605, n.2 (2013); State v. Robinson, 200 N.J. 1, 20-22 (2009); Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973); Reynolds Offset Co., Inc. v. Summer, 38 N.J. Super. 542, 548 (App.Div. 1959); Pressler & Verniero, Current N.J. Court Rules, cmt. 3, on R. 2:6-2 (2022).

In its motion for leave to appeal, Goldberg Segalla raised three arguments: (1) the "interests of justice" (not raised below); (2) The Judge of Compensation applied the incorrect standard (not raised below), and that there was no attorney client relationship; and, (3) ambiguity of the lower court order.

In its appeal, Goldberg Segalla now argues: (1) the disqualification order lacks legal and factual foundation (not raised below); (2) there was no attorney client relationship (tangentially raised below); and, (3) ambiguity of the lower court order.

To the extent Goldberg Segalla presents issues in its appeal that it did not have the courtesy or foresight to address with the Judge of Compensation, and then failed to raise in its motion for leave to appeal, the court should exercise its discretion and refuse to consider them.

LEGAL ARGUMENTS

POINT I

The "legal and factual foundation" of the disqualification order was neither raised below nor in Appellant's motion for leave to appeal. The argument is deemed waived. Even if the court considers the argument, the argument fails. (Not raised below.)

Appellant's argument that the disqualification order lacks "legal and factual foundation" was not raised before the Judge of Compensation during the original motion or the motion for reconsideration. Furthermore, the argument was not raised in Appellant's motion for leave to appeal. While this is presumably the last time the Appellant's shifting sands of argument will change, arguments not raised below should not be entertained by this court. Arguments not raised in Appellant's motion for leave to appeal should be rejected out of hand.

Should the court entertain this waived argument, the Appellant's argument still fails. The Judge of Compensation's choice to rule on the papers complied with both the Workers' Compensation Law and Supreme Court precedent.

N.J.A.C. § 12:235-3.5(c) provides that motions to dismiss for lack of prosecution pursuant to N.J.S.A. § 34:15-54, and motions to suppress defenses, are to be listed for hearing. "All other motions shall be disposed of on the papers, unless a Judge of Compensation directs oral argument or further proceedings..." Id.

Furthermore, the Supreme Court has directed that motions for disqualification should be decided on the papers where possible:

> [s]uch a motion 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.

City of Atlantic City v. Trupos, 201 N.J. 447, 463, citing, Dewey, supra, 109 N.J., at 222.

The law regarding the conflict present in this case could not be more clear. R.P.C. 1.9(a) is succinct. The Rule states that:

> 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.

By its terms, R.P.C. 1.9(a) is not discretionary. Once the factual predicates are satisfied, the only question is whether the original client will consent to the adverse representation. Once it was determined that Goldberg Segalla represented Prop N Spoon in this matter, Goldberg Segalla was precluded from representing a different, materially adverse, client in the same matter, unless Prop N Spoon consented to such representation in writing. Where the original client will not consent to the adverse representation, disqualification is mandatory.

The Judge of Compensation made the factual determination that Goldberg Segalla had entered an appearance on behalf of Prop N Spoon. This was a simple and obvious factual determination given the Answer filed by Goldberg Segalla on behalf of Prop N Spoon. Goldberg Segalla certified under penalties of perjury that it represented Prop N Spoon, the firm took legal positions on behalf of Prop N Spoon, and the firm reserved the right to assert additional defenses on behalf of Prop N Spoon. This was a clear, unambiguous, and certified filing by Goldberg Segalla. (AA11a-12a.)

The Judge of Compensation further determined that Goldberg Segalla attempted to abandon that representation and took positions adverse to Prop N Spoon. Once again, this was an obvious factual determination based upon the Amended Answer filed by Goldberg Segalla wherein it expressly abandoned the representation of Prop N Spoon and asserted legal positions clearly adverse to Prop N Spoon. (AA13a-14a.)

Once these two simple and obvious facts were demonstrated – *by Goldberg Segalla's unambiguous court filings* – Prop N Spoon's rights under R.P.C. 1.9(a) were vested. The final factual determination was equally simple and obvious. From the beginning, Prop N Spoon has stated that it would not consent to Goldberg Segalla's representation of any adverse party in this matter. Therefore, Goldberg

Segalla could not continue to represent any party adverse to Prop N Spoon in this matter.

No further factual legal analysis was required or warranted. New Jersey strictly construes R.P.C. 1.9(a). "If there be any doubt as to the propriety of an attorney's representation of a client, such doubt must be resolved in favor of disqualification." G.F. Industries v. American Brands, 245 N.J. Super. 8, 13 (App.Div. 1990), citing, Reardon v. Marlayne, Inc., 83 N.J. 460, 471 (1982).

Because the 'legal and factual foundation' of the disqualification order was not raised below, and was not raised in Appellant's motion for leave to appeal, the court should deem the issue waived and refuse to consider it. Should the court consider the argument, the argument fails because the facts were clear and straightforward. Goldberg Segalla entered an appearance on behalf of Prop N Spoon, abandoned that representation, and then sought to represent an adverse party in the same litigation. All of these facts are set forth in Goldberg Segalla's own pleadings. Nothing more is needed for R.P.C. 1.9(a) to apply. The Judge of Compensation should be upheld.

POINT II

The argument that Prop N Spoon needed to contact Goldberg Segalla on its own in order to establish an attorney client relationship ignores the realities of assigned counsel in insured cases.

Goldberg Segalla regularly appears in the Workers' Compensation Courts of the State of New Jersey as assigned counsel for a number of insurance carriers and third-party administrators. In that role, Goldberg Segalla regularly represents employer-respondents. Goldberg Segalla and the Appellant would have this court believe that the firm only maintains an attorney client relationship with those employer-respondents who separately approach and retain the firm, notwithstanding those employer-respondents have contracted for such coverage through the insurance carriers and third-party administrators, have manifested their intent to have assigned representation through their agreements with insurance carriers and third-party administrators, and despite the fact that it is the insurance carriers and third-party administrators who actually assign the cases to Goldberg Segalla in the first place. The argument is wholly detached from the reality of insured cases.

In New Jersey, "[i]nsurance defense counsel routinely represent two clients: the insurer and the insured." Longo v. Am. Policyholder's Ins. Co., 181 N.J. Super. 87, 90 (Law Div. 1981). An attorney assigned by an insurance company to represent an insured person or entity, "owes that person the same unswerving

allegiance that he would if he were retained and paid by the defendant himself." Liebermann v. Employers Ins. of Wausau, 84 N.J. 325, 338 (1980), quoting, Liebermann v. Employers Ins. of Wausau, 171 N.J. Super. 39, 49 (App.Div. 1979). While the attorney owes a duty of good faith and due diligence in the discharge of his duties to both parties, "the rights of one cannot be subordinated to those of the other." Id.

Where a suit involves claims that may or may not be covered, insurers must either defend under a 'reservation or rights' or refuse to defend with the potential obligation to reimburse the insured should the claim later be determined to be covered claim. Flomerfelt v. Cardiello, 202 N.J. 432 (2010).

Appellant's citation to Herbert v. Haytaian, 292 N.J. Super. 426 (App.Div. 1996), is curious. Plaintiff's chosen counsel in the matter was in fact disqualified under R.P.C. 1.9(a), because the matter was substantially related to a sexual harassment investigation such counsel had performed for the defendant. Although the case at least references R.P.C. 1.9(a), the matter did not involve assigned counsel in an insured matter and is otherwise distinguishable from the case at bar.

The holding in Herbert v. Haytaian is similar to Twenty-First Century Rail Corp., and FKSB JV, v. N.J. Transit Corp., 210 N.J. 264 (2012), which involved the disqualification of an attorney who was retained to provide advice to a client (FKSB) in connection with a dispute over delays on a construction project. That

counsel later undertook representation of an adverse party (N.J. Transit) involved in litigation over the same construction project. Despite the Trial Court's and Appellate Division's refusal to disqualify counsel, the Supreme Court held that because the conflicting representation involved the same law firm and the same matter, disqualification was warranted.

The Supreme Court was clear:

> […] RPC 1.9(a) begins with a prohibition that precludes an attorney from engaging in the representation of an adverse client in the same matter unless the former client consents in writing. RPC 1.9(a). Therefore, if the prior and the subsequent matters are indeed the same, the representation, absent written consent of the former client, is prohibited.
>
> Twenty-First Century Rail, at 275-276.

Once the "same matter" is identified, a court need not inquire further. There is no inherent right to a 'painstaking analysis' when the conflicting representation involves the same matter. "Indeed, in [City of Atlantic City v. Trupos], it was only because the matters in which the attorney undertook the prior and subsequent representation were not the same, but at most were substantially related, that we were required to devise a test to decide the issue." Id., citing, City of Atlantic City v. Trupos, supra, 465-467.

Nothing was presented to the Judge of Compensation indicating that Goldberg Segalla employs some hitherto unknown multi-step insurance defense retention process whereby it receives files from Paychex and/or American Zurich

and then separately meets with the ultimate insured before it is formally retained. Goldberg Segalla was retained and assigned in the same manner that insurance defense counsel is regularly retained and assigned every day around the State. The court can give no weight to the argument that Goldberg Segalla did not represent Prop N Spoon because the company did not approach Goldberg Segalla on its own.

POINT III

The disqualification order requires Paychex and American Zurich to retain new counsel. Nothing prohibits joint representation with counsel other than Goldberg Segalla.

Prop N Spoon can have no objection to Paychex, ESIS, and/or American Zurich having joint representation, provided it is with a firm other than Goldberg Segalla. The disqualification order can be read simply to require those parties to retain a firm other than Goldberg Segalla. The court should not engage in a tortured construction of the language so as to create an appealable issue.

Although the case does not discuss R.P.C. 1.9(a), Appellant's reference to Alam v. Ameribuilt Contractors, 474 N.J. Super. 30 (App.Div. 2022) is worth discussion. The matter involved an injured worker who was also the 50% owner of the business that employed him. Travelers assigned the defense of the workers' compensation case to Brown & Connery, LLP ("B&C"). The injury involved a motor vehicle accident, and B&C raised certain defenses to the claim which would obviously be expected to favor the employer and be adverse to the injured worker.

The parties had settlement discussions that resulted in an agreement to settle the matter pursuant to N.J.S.A. § 34:15-20 (i.e., settlement with dismissal).

At the hearing to approve the settlement, the Judge of Compensation determined that because the injured worker was part owner of Ameribuilt, B&C was conflicted and could not take a position on behalf of Ameribuilt that was adverse to the injured worker/owner. The Judge of Compensation entered an order disqualifying B&C and ordered Travelers to assign counsel for itself and Ameribuilt. The Judge of Compensation was concerned that Traveler's control over B&C presented a concurrent conflict under R.P.C. 1.7, vis-à-vis the injured worker and Ameribuilt.

One of the reasons the Appellate Division reversed and remanded the matter was B&C's specific acknowledgement that, although Travelers assigned the file to B&C, the "attorney client relationship was with the named insured." Alam, at 38. This is precisely what happened in Prop N Spoon's case and precisely what Appellant now claims is insufficient to create an attorney-client relationship. Paychex and/or American Zurich assigned the Prop N Spoon claim to Goldberg Segalla. Goldberg Segalla presumably performed a conflict check, collected enough information to comfort itself that it could certify to the truth and accuracy of Respondent's Answer to Claim Petition, and then entered an appearance on

behalf of Prop N Spoon. There was nothing unusual or extraordinary in this fairly common method of retention.

The Alam court even noted that the Judge of Compensation, "correctly relied on Montanez v. Irizarry-Rodriguez for the proposition that, 'it is clear that insurance counsel is required to represent the insured's interest as if the insured hired the counsel directly.'" Alam, at 37, citing, Montanez v. Irizarry-Rodriguez, 273 N.J. Super. 276, 286 (App.Div. 1994). This is the fundamental nature of insured cases, though Appellant would have this court believe that American Zurich insureds are regularly, fortuitously calling Goldberg Segalla and seeking representation in cases where they also happen to have a contractual PEO relationship with Paychex. The argument must be rejected.

CONCLUSION

Appellant's main argument was not raised below or in its motion for leave to appeal. The argument should be rejected. Even if the court considers the argument, it fails. The Appellate Division need not defer to the Judge of Compensation's legal conclusions, but must defer to the findings of fact. The factual underpinnings of the order disqualifying Goldberg Segalla were clear and penned by the firm's own hand. Once the obvious facts were determined, disqualification was mandatory. The Judge of Compensation applied the correct

standard and provided the correct procedures. The Judge of Compensation should be upheld.

Appellant's claim that it did not represent Prop N Spoon, because Prop N Spoon did not separately call and hire the firm before the case was assigned to Goldberg Segalla by Paychex and/or American Zurich is nonsensical and must be rejected.

With regard to Paychex and American Zurich having joint representation in the future, the order of the Judge of Compensation can be read as simply requiring the parties to retain counsel other than Goldberg Segalla and should be read in that manner. Prop N Spoon can have no objection to Paychex and American Zurich having joint representation by a firm other than Goldberg Segalla and makes none.

For the foregoing reasons, the appeal should be denied.

Dated: November 6, 2025

Andrew J. Clark

Superior Court of New Jersey

Appellate Division

Docket No. A-000085-25T3

JOHANN MEJIA ARBOLEDA,	:	WORKERS' COMPENSATION ACTION
Petitioner,	:	ON GRANT OF MOTION FOR LEAVE TO APPEAL FROM THE INTERLOCUTORY ORDER
vs.	:	OF THE NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PAYCHEX; PROP N SPOON	:	DIVISION OF WORKERS' COMPENSATION,
Respondents.	:	PLAINFIELD VICINAGE
	:	Claim Petition Nos. 2024-24034, 2025-8339
	:	Sat Below:
	:	HON. WILLIAM FEINGOLD, J.W.C.

REPLY BRIEF ON BEHALF OF APPELLANT PAYCHEX

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PRELIMINARY STATEMENT

The disqualification order presents a legal question subject to de novo review—whether the compensation court applied the correct legal standard and whether its legal analysis and ruling are supported by a sufficient factual foundation. Prop N Spoon's opposition rests on the theory that its PEO enrollment conferred both coverage and defense, and that Goldberg Segalla's initial answer, interpreted in that context, established an attorney-client relationship. This theory improperly expands the scope of this appeal by introducing coverage issues that are not before the Court and was not the basis for the disqualification order, which relied solely on a procedural filing with system-generated association. The record contains no findings on the PEO agreement or timeline, no determination that Paychex was a co-employer for this petitioner, and no clear findings of any attorney-client relationship existed between Goldberg Segalla and Prop N Spoon before disqualification.

In fact, the PEO Service Agreement limits coverage to properly reported employees and disclaims any duty to provide legal advice. Wage records show petitioner worked for and was paid directly by Prop N Spoon months before PEO enrollment yet was never reported to Paychex. These facts, combined with inaccurate statements to the court, undermine Prop N Spoon's credibility and its reliance on the PEO arrangement.

For these reasons, Prop N Spoon's opposition and its reliance on the PEO arrangement lack merit and should be disregarded. The disqualification order should be reversed so the case can proceed on its merits without further delay.

PROCEDURAL HISTORY

Paychex respectfully relies on the Procedural History set forth in its original merits brief filed on October 14, 2025.

STATEMENT OF FACTS

Paychex continues to rely on the Statement of Facts set forth in its original merits brief filed on October 14, 2025.

Because Prop N Spoon's opposition relies on the PEO arrangement as the foundation for its attorney-client theory, Paychex provides the following additional facts to clarify the record and ensure the Appellate Division has a complete and accurate understanding of the circumstances surrounding that arrangement.

1. PEO Arrangement Timeline

After the July 2, 2025 oral argument, which directed Paychex/Zurich to provide benefits without prejudice and disqualified Goldberg Segalla as Paychex's counsel, Prop N Spoon produced petitioner's wage records for the first time. (1ra). These records were not available at the time of the disqualification order and are offered solely to clarify the timeline. They show

petitioner was employed and paid directly by Prop N Spoon as early as October 5, 2023 (1ra), over nine months before the July 25, 2024 accident (6a) and over five months before Prop N Spoon enrolled in the Paychex PEO program on March 24, 2024 (71a). Paychex first learned of petitioner only after the accident and received no premium for him. (79a, 82a).

Prop N Spoon's certification to the compensation court stated it elected participation in a PEO before the petitioner was hired and suggested that any reporting would occur during a year-end audit. (21a). Wage records directly contradict this narrative, confirming petitioner was employed months before PEO enrollment (1ra, 71a) and never reported to Paychex (79a, 82a). These inaccuracies were used to support Prop N Spoon's motion for coverage and disqualification (19a–23a) and repeated in its opposition to Paychex's motion to stay below.

2. PEO Service Agreement Terms

The PEO Service Agreement, included in Prop N Spoon's own motion (19a–20a, 24a-70a), makes clear that Paychex's services apply only to "Covered Employees" (25a). Employees qualify as Covered Employees only if they are properly reported, processed through Paychex payroll, and accepted into the system (25a). The Agreement requires submission of new-hire documentation within three days and warns: "To avoid risk of non-coverage, you should not

allow them to work until they have become Covered Employees" (35a, 25a). It further states: "We do not undertake to provide workers' compensation for anyone other than Covered Employees" and that Prop N Spoon remains responsible for all obligations, including workers' compensation, for those that are not Covered Employees (36a, 25a).

The Agreement clearly states that Paychex assumes only those duties expressly undertaken and does not provide legal or insurance advice or act as a fiduciary. (59a, 66a). No additional duties or warranties can be implied. (59a, 66a).

LEGAL ARGUMENTS

I. Standard of Review and Response to Prop N Spoon's Waiver Argument (1a, 4a)

Prop N Spoon argues that our position is waived and that deciding on papers was proper. Both arguments fail. "[A] determination of whether counsel should be disqualified is, as an issue of law, subject to de novo plenary appellate review." City of Atlantic City v. Trupos, 201 N.J. 447, 463 (2010). While appellate courts give deference to factual findings made by a Judge of Compensation, that deference does not extend to whether the correct legal standard was applied, whether the legal analysis stands, or whether those facts provide a sufficient foundation for the legal consequence imposed. The judge's discretion to decide motions on the papers under N.J.A.C. 12:235-3.5(c) does

not relieve the court of its obligation to apply the correct legal standard or ensure that any order rests on an adequate factual foundation.

Our argument that the disqualification order lacks the required legal and factual foundation could not have been raised below because the court did not articulate its reasoning until the July 2, 2025 oral argument on the motion for reconsideration, which was the last proceeding addressing disqualification. Only then did it become clear that the court relied exclusively on a procedural filing, stating: "I really don't have the right, nor should I ask, what the relationship was. I just have the document. That document speaks for itself" (T17:7–9). The former "appearance of impropriety" standard no longer applies under New Jersey law. See In re Supreme Court Advisory Comm. Op. No. 697, 188 N.J. 549, 552 (2006). There is no clear finding of an attorney-client relationship between Prop N Spoon and Goldberg Segalla before ordering disqualification.

Prop N Spoon's effort to distinguish Dewey, Escobar, Dental Health, Estate of Kennedy, and related authorities misses the point. These cases were cited for their controlling principles: disqualification is a harsh remedy, cannot rest on superficial indicators, demands a careful balancing of interests, and must be viewed skeptically to prevent tactical abuse. Those principles apply here regardless of factual differences. The trial court's reasoning, based solely on a

procedural filing, does not provide a factual foundation sufficient to sustain disqualification under RPC 1.9(a).

II. Prop N Spoon's PEO-Based Theory Improperly Expands the Issue, Is Unsupported by the Record, and Was Not the Basis for Disqualification (1a, 4a)

Prop N Spoon asserts that the PEO arrangement entitled it to both coverage and defense and that Goldberg Segalla's initial answer, interpreted within that framework, created an attorney-client relationship.

This theory improperly broadens the scope of this appeal by introducing coverage issues that are not before the Court. The sole issue on appeal is whether the disqualification order was proper, a determination that hinges on whether an attorney-client relationship existed between Prop N Spoon and Goldberg Segalla.

That theory was not clearly advanced below and was not the basis for the disqualification order. The July 2, 2025 oral argument transcript confirms the judge focused exclusively on the system-generated association on the initial answer and RPC 1.9, and made no findings regarding the PEO relationship, the Service Agreement, or any obligations arising from it.

Prop N Spoon's opposition further mischaracterizes Paychex as an insurer, which is incorrect under New Jersey Workers' Compensation law. A PEO is not an insurance carrier; it secures coverage through a licensed insurer only for properly reported Covered Employees. Under N.J.S.A. 34:8-72, a PEO's

liability is limited to circumstances where it is deemed a co-employer, and even in those cases, only for covered employees. The compensation court made no such finding here.

III. There Is No Duty to Defend Under the PEO Agreement (1a, 4a)

Prop N Spoon's argument relies on vague references to the PEO arrangement but identifies no provision imposing a duty to defend. Should the Court consider this theory, the express terms of the PEO Agreement refute it.

As the Supreme Court has held, "If the policy terms are clear, courts should interpret the policy as written and avoid writing a better insurance policy than the one purchased." See Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 101-102 (2009) (quoting President v. Jenkins, 180 N.J. 550, 562 (2004)). The Service Agreement itself makes clear that Paychex's role is limited: services apply only to "Covered Employees," defined as individuals properly reported and paid for, with new-hire documentation required within three days. It warns that work should not begin until enrollment is complete and states that the client remains responsible for workers' compensation coverage for any unreported employees. The Agreement also expressly disclaims any obligation to provide legal advice or representation and prohibits implying duties beyond those stated.

A PEO arrangement does not create an automatic duty to defend, particularly when the client fails to meet reporting obligations or seeks benefits

beyond the contract. Imposing such a blanket duty would encourage fraud and liability shifting, destabilize PEO arrangements, and burden compliant employers with higher premiums and intrusive audits. In this case, the petitioner was employed and paid directly by Prop N Spoon for months before the PEO arrangement but was never reported to Paychex and no premiums were paid. Despite this noncompliance, Prop N Spoon now seeks to compel Paychex to provide benefits and defense, and disqualify its chosen counsel, an outcome that contradicts the Agreement and basic principles of fairness.

In short, the PEO Agreement imposes no duty to defend, and the compensation court did not rely on it in ordering disqualification; the decision was based solely on the initial answer. Accordingly, Prop N Spoon's PEO-based theory should be disregarded.

IV. Prop N Spoon's Misrepresentations Undermine Its Reliance on the PEO Arrangement and Credibility (1a, 4a)

Goldberg Segalla filed the initial answer on behalf of Paychex while Paychex was still investigating the claim, using the standard electronic form provided by the Division. The answer neither accepted nor denied the claim and expressly reserved all defenses and the right to amend. No boxes on coverage, employment, or causation were checked, and the association with Prop N Spoon was system-generated, not affirmatively asserted. The answer was truthful to the best of counsel's knowledge at the time and does not violate any rule under

penalty of perjury. After investigation, the answer was amended promptly within four days, without any proceedings or docket entries.

In contrast, Prop N Spoon's Certification asserted that the petitioner was hired after the company enrolled in the Paychex PEO program and would be reported during a year-end audit. Wage records directly contradict this narrative. They show the petitioner was employed and paid directly by Prop N Spoon as early as October 2023, over five months before PEO enrollment and over nine months before the alleged accident, yet was never reported to Paychex and no premium was ever paid to Paychex for this employee. The inaccurate Certification supported Prop N Spoon's motion for coverage and disqualification and its opposition to Paychex's motion to stay at the workers' compensation court. Prop N Spoon's actions disregarded its statutory obligation to maintain workers' compensation coverage for all employees under N.J.S.A. 34:15-79 and to avoid false or misleading statements made to evade payment of benefits or premiums under N.J.S.A. 34:15-57.4.

CONCLUSION

The opposition's reliance on the PEO arrangement to establish attorney-client relationship with Goldberg Segalla is unsupported by the record, not relied upon by the workers' compensation court, and contrary to the PEO Agreement's express terms. Imposing a duty to defend under these circumstances would also

be inequitable and create systemic risks for compliant businesses and the workers' compensation system. Therefore, their PEO-based theory should be disregarded.

There is no basis for an attorney-client relationship to be formed between Prop N Spoon and Goldberg Segalla. The disqualification order should be reversed so this case can proceed on its merits without further delay.

Dated: November 19, 2025 */s/Bei Yang*

Bei Yang, Esq.