

THE VALERIE B. ALPER TRUST, VALERIE ALPER, LUCAS ALPER, HEATHER ALPER, HERMAN ZELL, MARSHA ZELL, FARAH ZELL, SANDRA ZELL, AND SAM ZELL,

Plaintiffs-Respondents,

v.

RENEE WOLFSON, INDIVIDUALLY AND AS CO-TRUSTEE OF THE QUALIFIED TERMINABLE INTEREST TRUST AND RESIDUARY TRUST OF THE LAST WILL AND TESTAMENT OF RICHARD SIMON AND AS ATTORNEY IN FACT FOR BETTY SIMON; JOSEPH WOLFSON, INDIVIDUALLY AND AS MANAGER OF JMRV ASSOCIATES AND BETTY SIMON TRUSTEE, LLC; WOLFSON FAMILY QUALIFIED PERSONAL RESIDENCE TRUST, DAVID WOLFSON, TRUSTEE; BETTY SIMON TRUSTEE, LLC; WILLIAM WOLFSON, INDIVIDUALLY; JENNIFER WOLFSON, INDIVIDUALLY, JOHN DOES 1 – 5 AND XYZ ENTITIES 1 – 5;

Defendants-Appellants.

Superior Court of New Jersey,
Appellate Division

Docket No. A-000737-25

On appeal from:
Superior Court of New Jersey,
Chancery Division, Probate Part,
Atlantic County,
Docket No. 135201

Sat below:
Hon. Hon. J. Christopher Gibson, P.J.Ch.

DEFENDANT-APPELLANTS' BRIEF

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Submitted December 16, 2025

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PRELIMINARY STATEMENT

This interlocutory appeal seeks review of the lower Court’s denial of (1) Defendants’ motion to disqualify Richard M. King, Jr., Esquire (“Mr. King”) as counsel for the Plaintiffs in this litigation and (2) Defendants’ related motion to quash subpoenas. This appeal should be granted because Mr. King has disqualifying conflict under RPC 1.9 based on his prior representation of Joseph Wolfson and Renee Wolfson in a substantially related lawsuit captioned Alper, et al. v. Simon, et al., Docket Number ATL-C-07-08. In an attempt to sidestep this disqualifying conflict, Mr. King points to the 2016 Order memorializing his appointment as Trustee of the Valerie B. Alper Trust (“VBAT”). But that Order does not suggest, let alone confirm, that Joseph Wolfson and Renee Wolfson agreed to Mr. King representing the VBAT, Valerie Alper, Marsha Zell, Herman Zell, and the adult Alper/Zell children in a lawsuit against the Wolfsons. Nor does that Order confirm that Mr. King explained to the Wolfsons that he intended to represent virtually all of the Wolfsons’ extended family in a lawsuit against the Wolfsons. In short, Mr. King did not do what is required under the Rules of Professional Conduct.

PROCEDURAL AND FACTUAL BACKGROUND²

Mr. King is the third court-appointed Trustee of the VBAT, a Plaintiff in this matter. Mr. King also represents *all the other Plaintiffs* in this matter, including:

- Valerie Alper (Renee Wolfson's sister);
- Marsha Zell (Renee Wolfson's sister);
- Herman Zell (Marsha's husband);
- The adult Alper children; and
- The adult Zell children.

This case follows substantially related litigation between the parties beginning with Alper, et al. v. Simon, et al., Docket Number ATL-C-07-08. (Da14). In that lawsuit, Valerie Alper and the VBAT sued the late Jacob Simon, Joseph Wolfson, Renee Wolfson and various Simon family business alleging that those defendants breached various fiduciary duties to the VBAT by not sharing the profits from the sale of property. (Da60); (Da14). A key factual issue in that litigation was the manner in which the Simon family businesses used intrafamily loans and repaid such loans. (Da88 – 89).

Before the trial in Alper, et al. v. Simon, et al., Mr. King's prior law firm – then known as Ford, Flower & Hasbrouck – *represented Joseph Wolfson, Renee*

² Because the Procedural History and Statement of Facts are intertwined, Defendant-Appellants have combined the two sections for the Court's ease of reference.

Wolfson and Jacob Simon in their individual capacities. (Da57). Mr. King was a partner at the firm and personally worked on the case. (Da224). Indeed, Mr. King said his firm “got fired basically.” (T19-5). That is true, as evidenced by a 2010 letter from Mr. King’s prior firm to Jacob Simon, Joseph Wolfson and Renee Wolfson. (Da57). In that letter, Mr. King’s firm criticized the merits of their clients’ defense.

The case of Alper, et al. v. Simon, et al. was tried before the Honorable Carol E. Higbee, P.J.Cv. (now retired) over 19 days between November 2010 and January 2011. (Da70). Valerie Alper and the VBAT failed to prove her claims at trial. (Da132). Up to that point, the Trustees of the VBAT were Valerie’s brother, Jacob Simon and Valerie’s mother, Betty Simon. However, after the trial, Judge Higbee decided that the Court should appoint a trustee given Valerie’s vitriol against her family. (Da129). That decision was the genesis of a series of court-appointed trustees for the VBAT. On October 18, 2011, the Court appointed Kyle Kievit, Esquire as Trustee of the VBAT. (Da134). While Mr. Kievit was Trustee of the VBAT, there was no active litigation involving the VBAT. On February 9, 2015, Stephen Hankin, Esquire became the second court-appointed Trustee of the VBAT. (Da138). While Mr. Hankin was Trustee of the VBAT, there was no active litigation involving the VBAT.

In an Order dated December 21, 2016, Mr. King was appointed as the third court-appointed Trustee of the VBAT. (Da145). Paragraph 2 of that Order states,

“The parties, with specific reference to plaintiffs, have waived in open court all conflicts to the appointment of Richard M. King, Jr., Esquire as Trustee to the Valerie B. Alper Trust.” (Da146). Notably, the waiver in that Order was with specific reference to Plaintiffs Valerie Alper and the VBAT. Additionally, the waiver was limited to Mr. King’s *appointment* as Trustee of the VBAT. The Order does not state that Joseph Wolfson and Renee Wolfson agreed to Mr. King representing the VBAT, Valerie Alper, Marsha Zell, Herman Zell, and the adult Alper/Zell children in a lawsuit against the Wolfsons.

This matter and Alper, et al. v. Simon, et al. are inextricable. The Order memorializing Mr. King’s appointment as Trustee of the VBAT is captioned Alper, et al. v. Simon, et al., Docket Number ATL-C-07-08. (Da145). At that time, there was no active litigation involving the VBAT. In February 2021, more than four (4) years after he was appointed as Trustee of the VBAT, Mr. King sought instructions to litigate and his notice of motion was captioned Alper, et al. v. Simon, et al., Docket Number ATL-C-07-08. (Da148). Importantly, Mr. King’s motion was denied and he was ordered to not spend any more of the VBAT’s funds on litigation. (Da152).

In April 2024, Mr. King asked to be relieved as Trustee of the VBAT and his notice of motion was captioned Alper, et al. v. Simon, et al., Docket Number ATL-C-07-08. (Da154). In his supporting certification, Mr. King stated that (1) he was ordered to not spend any of the VBAT’s funds on litigation, (2) Valerie wanted him

to resign as Trustee, and (3) he preferred to resign as Trustee. (Da159, ¶ 16); (Da160, ¶ 29). Mr. King explicitly used the phrase “the end of all litigation.” (Da161, ¶ 32).

Mr. King withdrew his request to be relieved as Trustee and three (3) months later, on July 16, 2024, he filed a complaint on behalf of the VBAT which sought to compel the probate of the Last Will and Testament of Betty Simon and to invalidate the transfer of the Ventnor condominium that Betty Simon lived in prior to her passing. (Da165). In his forwarding letter to the Court, Mr. King referenced the history between the parties and Alper, et al. v. Simon, et al., Docket Number ATL-C-07-08. (Da177).

Then, on November 27, 2024, Mr. King filed suit against the Wolfsons on behalf of the VBAT, Valerie Alper, Herman Zell, Marsha Zell, and the Alper/Zell children. (Da181). Just like the prior litigation, this matter involves various property transactions between various Simon family members/entities and targets property transactions dating back to 2007. (Da211). Defendants moved to dismiss the complaint on numerous grounds and that motion was not decided until June 2025. (T14-5).

On June 30, 2025, Defense counsel learned of the conflict and immediately raised the issue to Mr. King given that he is suing his former clients in substantially related litigation without their informed consent in writing. (Da221). Mr. King admitted to the prior representation and the fact that he personally worked on the

file. (Da224). Mr. King indicated that he forgot anything he learned while representing Joseph and Renee Wolfson in Alper, et al. v. Simon, et al. At the same time, the 167-paragraph Complaint filed by Mr. King in November 2024 is supported by his own Certification stating that he has personal knowledge of all the allegations in the Complaint. (Da218).

Defendants moved to disqualify Mr. King. (Da3). The disqualification motion was supported by the detailed certification of Joseph Wolfson confirming that he never consented to Mr. King representing the Alpers and the Zells in litigation against the Wolfsons. (Da7). Defendants also moved to quash subpoenas served by Mr. King after Defendants raised the disqualification issue with him. (Da5); (Da228). As Mr. King put it, if he is disqualified, then he “shouldn’t be talking about anything.” (T6-4). The Court below denied both motions. (Da1). As to disqualification, the Court found that the 2016 Order appointing Mr. King as Trustee of the VBAT essentially constituted a waiver of the conflict since “conceptually there’s always the potential that it might be necessary for the trustee to initiate litigation on behalf of the trust for whatever reason ...” (T37-23). The Court further found that the Wolfsons did not raise the conflict until 2025 even though Mr. King was appointed as Trustee in 2016. (T38-9). Perhaps that analysis would apply if Mr. King’s representation was limited to the VBAT only. But Mr. King represents Valeire Alper, Herman Zell, Marsha Zell, Lucas Alper, Heather Alper, Farah Zell,

Sandra Zell, and Sam Zell. The 2016 Order has nothing to do with Mr. King's representation of those parties in a lawsuit against the Wolfsons.

LEGAL ARGUMENT

STANDARDS OF REVIEW

It is well established that “a determination of whether counsel should be disqualified is, as an issue of law, subject to de novo plenary appellate review.” City of Atl. City v. Trupos, 201 N.J. 447, 463 (2010). Appellate review of a trial court's discovery order is governed by the abuse of discretion standard. State in Interest of A.B., 219 N.J. 542, 554 (2014)

POINT I

NEITHER JOSEPH WOLFSON NOR RENEE WOLFSON PROVIDED THEIR *INFORMED* CONSENT TO MR. KING REPRESENTING THE ALPERS AND THE ZELLS IN A LAWSUIT AGAINST THE WOLFSONS. (T12-20); (T31-5); (T38-4).

RPC 1.9(a) provides that “[a] lawyer who has represented a client in a matter shall not thereafter represent another client in the same or 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 1.0(e) defines informed consent as “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed

course of conduct.” “[M]atters 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.” Trupos, 201 N.J. at 467.

Further, it is well-settled that a “conflict is imputed to all members of a law firm, disqualifying all if any one would be disqualified.” State ex rel. S.G., 175 N.J. 132, 138 (2003). RPC 1.10(a) provides: “When lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7 or RPC 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.”

Here, all the elements of a disqualifying conflict under RPC 1.9 are present. **First**, Mr. King’s prior firm represented Joseph and Renee Wolfson in Alper, et al. v. Simon, et al., Docket Number ATL-C-07-08. Mr. King personally worked on the file. **Second**, Mr. King now represents the Alpers and the Zells. **Third**, the current matter is the same or substantially related to the matter in which Mr. King represented Joseph and Renee Wolfson. Below, Mr. King did not argue otherwise.

That is because the facts relevant to the prior litigation are relevant to the current litigation. This litigation is essentially another episode of the intrafamily litigation in the Simon family. **Fourth**, the interests of the Alpers, the Zells, and the VBAT are materially adverse to the Wolfsons. **Fifth**, Mr. King cannot produce a writing which *confirms* that that Joseph Wolfson and Renee Wolfson each gave their *informed consent* to Mr. King as to his proposed course of conduct (suing the Wolfsons on behalf of the Alpers and the Zells) after Mr. King “communicated adequate information and explanation” to the Wolfsons “about the material risks and reasonably available alternatives to the proposed course of conduct.” RPC 1.0(e); see also RPC 1.9(a). Nor can Mr. King seriously claim that he provided fair warning that he would be representing the Alpers and the Zells in a lawsuit against Wolfsons. Indeed, just before commencing this litigation, Mr. King “referred to the end of all litigation.”

Read together, RPC 1.9(a) and 1.0(e), require an informed consent writing which *confirms* that (1) the attorney explained to the former client the conflict engendered by the attorney’s proposed course of conduct, and (2) the former client consented to the attorney’s proposed course conduct. The entire purpose of requiring a writing which confirms informed consent is to avoid the circumstance (like the one at bar) where the attorney with a disqualifying conflict reads language into the writing that is not there.

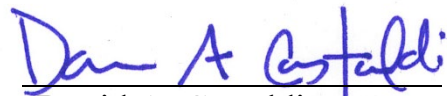
Importantly, the 2016 Order has nothing to do with Mr. King representing the Zells or the Alpers. Mr. King is a court appointed Trustee of the VBAT. Nobody ordered Mr. King to take on the role of counsel for the Alpers and the Zells. He made that decision himself. If Mr. King represented only the Zells, *he would have the same disqualifying conflict.*

CONCLUSION

For the above reasons, Defendants' appeal should be granted in its entirety, the Order denying Defendants' motion to disqualify Mr. King and motion to quash subpoenas be reversed, Mr. King (and his law firm) should be disqualified as Plaintiffs' counsel, and the matter should be remanded to the Court below for further proceedings.

Respectfully submitted,

JACOBS & BARBONE, P.A.


David A. Castaldi

Dated: December 16, 2025

THE VALERIE B. ALPER TRUST, VALERIE ALPER, LUCAS ALPER, HEATHER ALPER, HERMAN ZELL, MARSHA ZELL, FARAH ZELL, SANDRA ZELL, AND SAM ZELL,

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I. Preliminary Statement

This appeal raises two issues. The first issue is whether court-appointed Trustee Richard M. King, Jr., Esquire should be disqualified from representing the Plaintiffs-Respondents in the probate litigation below, even though (1) the Wolfsons waived any conflict associated with Mr. King's appointment as Trustee on the court record in 2016; (2) the Wolfsons failed to raise a conflict for nearly ten years despite multiple instances of court involvement, and; (3) this matter is not "substantially related" to the 2008 litigation from which the alleged conflict arises. The second issue is whether Defendants should be required to turn over estate and business information to estate beneficiaries and minority business owners, as the trial court has ordered them to do.

There is no dispute Mr. King's prior law firm represented the Wolfsons in a lawsuit between Valerie Alper and her family in which she alleged Mr. Wolfson and Jake Simon (now deceased) orchestrated a specific transaction in Absecon, New Jersey that deprived Valerie of funds to which she was entitled. It is also true Mr. King now represents Valerie in an action against the Wolfsons which alleges the Wolfsons orchestrated the dissipation and misappropriation of Betty Simon's assets in order to deprive Valerie of funds to which she is entitled.

We cannot disagree, Mr. King almost certainly would have a conflict and be disqualified if the current litigation involved the Absecon Transaction, if the

events occurred in close succession, if identifiable confidential information related to the current litigation was disclosed to him, if there was no waiver of the conflict and if the adversarial position between Wolfsons and Valerie B. Alper Trust (“VBAT”) had only recently developed. However, none of these factors are present in the current circumstances, which arise nearly 10 years after his appointment and decades after the transaction which was the subject of the prior litigation.

In reality, everyone involved in this litigation knew Mr. King had worked at his former firm when he was appointed, the moving attorneys are the individuals who recommended the Court appoint Mr. King, no one has identified the confidential information to which he was privy, everyone knew (or should have known) he would make independent decisions in the best interests of the VBAT and all parties waived any conflict arising from the prior representation. The only real “conflict” in this appeal arises from the Wolfson’s discontentment with Mr. King over many years because he did not simply agree with whatever they said, but instead took his appointment and fiduciary obligations to the VBAT seriously. The Wolfsons cried conflict only when they realized their fraud was about to be uncovered, and it is not a coincidence they raised the conflict issue for the first time in 10 years only weeks before the trial court

entered summary judgment declaring the Wolfsons had misappropriated \$975,000.

II. Counter-Statement of Facts and Procedural History¹

Nearly 10 years ago, The Honorable Mark Sandson asked Richard M. King, Jr., Esquire to serve as Trustee of the Valerie Alper Trust, which was actively litigating with the Wolfsons in Superior Court at the time. (Pa003-004).

In 2008, Valerie Alper, the VBAT and Valerie's minor children filed an action against Jacob Simon, Joseph Wolfson, Renee Wolfson and various Simon business entities alleging misconduct and trust management arising from a specific real estate transaction from which Valerie and the VBAT were excluded. (Da60-61). Prior July 2010, Mr. King's former law firm, Ford, Flower & Hasbrouck (the "Ford Flower firm"), represented the Wolfsons and Mr. Simon in the litigation. (Da57). The Ford Flower firm was CO-COUNSEL with the Jacobs & Barbone (the "Jacobs firm") at the time, on behalf of the Wolfsons. (Pa3; Da57-58). The Jacobs firm, ironically, is the firm that recommended Mr. King (who was then in his own firm) as the new Trustee, was present when any conflict relating to his prior involvement with the Wolfsons was waived, and is

¹Plaintiff's Counterstatement of Facts and Procedural History combined to avoid repetition due to the nature of the issues of this appeal, the procedural history and facts are inextricably related.

now the attorney for the Appellant in this case. (Pa3-4; Pa38-39; Pa85-89; Da145).

As explained in The Honorable Carol Higbee's 2011 Memorandum of Decision following trial of the 2008 litigation, "[t]he main thrust of Plaintiff's allegations [were] that Defendants Jacob, Renee and Joseph breached fiduciary duties owed to the VBAT as a result of a property sale that occurred in Absecon (the "Absecon transaction")." (Da74). The claims at trial, listed in court's opinion, were: (1) breach of fiduciary duty to the VBAT as a result of the Absecon Transaction (Da75); (2) self-dealing arising and breach of duty arising from the funding of the Absecon Transaction (Da88); (3) the VBAT's wrongful exclusion from the Absecon transaction (Da104), and; (4) breach of duty arising from diversion of business opportunity (the Absecon Transaction) from the VBAT (Da105).

As of late 2015, former Trustee Stephen Hankin, Esquire wished to be relieved of his position as Trustee of the VBAT, and Jeffrey Saper, Esquire, former counsel for Valerie and Heather Alper, requested to terminate the VBAT altogether. (Pa3-4; Pa38-39; Pa85-89). The VBAT and Mr. Wolfson were still at odds, and there was an active dispute regarding how the VBAT could separate its interest from the Simon business entities, as Herman Zell had done. (Pa38-39; Pa85-89).

Mr. Wolfson, represented by the Jacobs firm then and now, opposed the effort to end the VBAT and separate its interest from the Simon entities. (Pa38-39). Judge Sandson wanted to let Mr. Hankin resign as Trustee and appoint someone else. (Pa38-39). The Jacobs firm recommended Mr. King to the Court. (Pa3-4; Pa86). The Court agreed he was an appropriate appointee, and he was willing to take the appointment, but with one condition. (Pa3-4). Everyone involved had to acknowledge that he and his former firm had worked on behalf of the Wolfson's in litigation involving the Absecon Transaction during the 2008 litigation. (Pa4). This was neither a surprise nor ambiguous to the Wolfsons, as Mr. King's former firm was co-counsel with the Jacobs firm in the 2008 litigation. (Pa3²). Mr. Zell, a Plaintiff in this matter, was also involved in the 2008 litigation, siding with the Wolfsons against the VBAT. (Pa63). All parties consented to Mr. King's appointment in open court, which was incorporated into the 2016 Order. (Da145; Pa4).

At the moment of his appointment, Mr. King's duty of loyalty was committed entirely to the VBAT. To do anything else would have been contrary

² For several years before my 2015 appointment, I worked with Mr. Jacobs' law firm on matters in which we represented parties that were either cooperating, or as co-counsel. This included (but was not limited to) the matter of O'Boyle v. DiLorenzo, 2018 N.J. Super. Unpub. Lexis 1785 (2018) (Docket Nos. L-1985-09 and L-3692-10), which Mr. Jacobs and I lost in a 95-page decision written by The Honorable J. Christopher Gibson.

to his ethical obligations, and if he were the type of person to do otherwise, the Court would not have appointed him in the first place. Additionally, all parties were aware, as it was noted by Judge Higbee in her 2011 decision, the Trustee of the VBAT has the power “[t]o prosecute or defend any action for the protection of the trust . . .” (Da68-69).

It is possible the Wolfsons (not their attorneys) incorrectly assumed Mr. King’s prior familiarity with them would incline him to disserve the VBAT and accede to their conduct. However, shortly after his appointment, he became uncomfortable with certain aspects of the Wolfsons’ manipulation of finances as it related to the VBAT. As Trustee, he was compelled to pay a substantial phantom capital gain tax, although the Trust was not receiving distributions, despite owning 33% of the Simon businesses. (Pa4-6; Pa12-15; Pa54-59). This issue was a topic of disputes and court matters over several years. (Pa4-6). There was no mention of a conflict of interest at that time.

The issues were also clear to Plaintiff Herman Zell. Although Mr. Zell sided with the Wolfsons against the VBAT on the particular transaction before the Court in 2008, he did not agree with Mr. Wolfson’s effort to deny the VBAT its fair distributions as an owner of the businesses. (Pa63; Pa166; Da14).

In 2017, Mr. King wrote an informal report to the Court explaining his concerns about the financial treatment of the Trust by the Simon business

entities. (Pa4; Pa10). The Wolfsons requested to remove Mr. King as Trustee, but did not claim a conflict of interest at that time. (Pa4-5; Pa94).

In 2021, the Wolfsons obtained an order prohibiting Mr. King from filing an action he contemplated filing against them. (Pa5; Da151). The Wolfsons argued Trust funds should be used for housing and Valerie's well-being, and Mr. King was ordered not to use Trust funds for litigation, so he did not file the suit at that time. (Da151). Again, there was no mention of a conflict at that time.

Most recently, following the death of family matriarch Betty Simon, and a relatively recent revision to her Will, Mr. King learned the Wolfsons had systematically sought to retain for themselves all assets and benefits of the Simon businesses, and more importantly, they had manipulated Ms. Betty Simon's personal assets to reduce the inheritance of the VBAT and Betty Simon's other daughter, Marsha Zell (as well as the children of Valerie and Marsha). (Pa5-6; Pa166).

In 2024, after seeing and learning of the Boardwalk Property transactions (explained below) and learning the Trust and Valerie's children were beneficiaries of Betty Simon's recent Will, Mr. King filed a motion to allow the VBAT to sue the Wolfsons, in which he described the claims he intended to make to the trial court. (Da177). The Wolfsons opposed this request. (Da9-10). The Honorable Michael J. Blee allowed the lawsuit to be filed and denied the

Wolfsons' motion to reconsider. (Pa5-6). There was no mention of disqualification or a conflict of interest at that time.

As set forth in the detailed Verified Complaint, through a series of \$1 deeds, using a Power of Attorney in favor of Ms. Wolfson which does not permit gifting, the Wolfsons transferred to their own children a \$1,000,000 condo in which Ms. Betty Simon resided. (Pa199).

The following is an outline of the transaction:

On February 24, 2017, Betty Simon Trustee, LLC acquired 5000 Boardwalk, Unit 914, Ventnor, New Jersey 08406 (the "Boardwalk Property"). This was Ms. Betty Simon's residence. (Pa267).

On December 2, 2019, "Betty Simon Trustee, LLC, by JMRV Associates, Joseph Wolfson, Managing Member" transferred the Boardwalk Property to the "Qualified Terminable Interest Trust created under the Last Will and Testament of Richard Simon, Renee Wolfson, Trustee." The Deed was prepared by Joseph Wolfson, signed by Joseph Wolfson, and witnessed by William Wolfson. The transfer was for one dollar. (Pa272).

On December 9, 2019, the "Qualified Terminable Interest Trust created under the Last Will and Testament of Richard Simon, Renee Wolfson, Trustee" transferred the Boardwalk Property to "Betty Simon, by Renee Wolfson, Power of Attorney." The Deed was prepared by Joseph Wolfson, witnessed by William

Wolfson, and signed only by “Renee Wolfson, Trustee.” The transfer was for one dollar. (Pa278).

On December 16, 2019, “Betty Simon, by Renee Wolfson, Power of Attorney” transferred the Boardwalk Property to her and Joseph’s children, William Wolfson and Jennifer Wolfson. The Deed was prepared by Joseph Wolfson, witnessed by William Wolfson, and executed by “Renee Wolfson, POA.” The Boardwalk property was transferred for one dollar. (Pa287). The Power of Attorney does not include the authority to gift property. (Pa297).

William and Jennifer Wolfson sold the Boardwalk property to a third-party purchaser on July 1, 2024. The Deed was prepared by William Wolfson. The sale price was \$975,000. (Pa309).

This is not the only issue. Mr. Wolfson also claims the Simon businesses, for which he was the fiduciary manager, have no assets remaining and nothing to distribute to the VBAT and Marsha Zell (Valerie’s sister). (Pa013; Pa189). The VBAT currently owns a one-third interest in the Simon businesses, and Marsha Zell is a former owner entitled to certain residuary distributions from the businesses, and more particularly, certain payments due upon Betty Simon’s death. (Pa4; Pa166-200). The VBAT and Marsha Zell (wife of Herman Zell, who has similar rights as Marsha due to his Separation Agreement) are entitled to answers, and their interests are aligned. (Pa166-200). The Wolfsons must

provide them, whether it is through discovery or their obligation to the owners of the company Mr. Wolfson managed.

The Wolfsons' only defense to any of these claims is to attempt to disqualify the Trustee and block access to documents. As set forth below, Defendants do not meet the burden required for disqualification because they waived any potential conflict associated with Mr. King's appointment as Trustee and failed to object or raise a conflict at any time during the following nine years. Even absent the Wolfsons' waiver, they cannot demonstrate the present matter is substantially related to the 2008 litigation and have not asserted any confidential information disclosed to Mr. King or his firm in the 2008 litigation to support the alleged conflict.

III. Legal Argument

A. Motion to Disqualify Counsel

1. Standard of Review (T 21:20-22:12; 37:5-38:14)³

“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). Nevertheless, “[d]isqualification of counsel is a harsh discretionary remedy which must be used sparingly.” Cavallaro v.

³ “T” refers to the Transcript of Motion Proceedings dated September 9, 2025.

Jamco Prop. Mgmt., 334 N.J. Super. 557, 572 (App. Div. 2000). Such motions are “viewed skeptically in light of their potential abuse to secure tactical advantage.” Escobar v. Mazie, 460 N.J. Super. 520, 526 (App. Div. 2019). Additionally, “even when made in the best of faith, such [disqualification] motions inevitably cause delay in the underlying proceedings.” Dewey v. R. J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988) (internal citation omitted).

2. The Trial Court Correctly Denied Defendants’ Motion to Disqualify (T 37:5-38:14)

“RPC 1.9(a) prohibits a lawyer who formerly represented a client from representing another client ‘in the same or a substantially related matter in which that client’s interests are materially adverse’ to the former client’s interests unless the former client provides written informed consent.” Dental Health Assocs. South Jersey, P.A. v. RRI Gibbsboro, LLC, 471 N.J. Super. 184, 193 (App. Div. 2022).

[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.

Trupos, 201 N.J. at 467.

Whether two matters are “substantially related” depends on “the identification of any particular confidence[s] having been revealed.” Twenty-

First Century Rail Corp. v. N.J. Transit Corp., 210 N.J. 264, 278 (2012). To demonstrate exchange of confidential information from the prior relationship, the movant must make more than “bald and unsubstantiated assertions” that the client disclosed “business, financial and legal information” related to the matter for which disqualification is sought. O Builders & Assocs., Inc. v. Yuna Corp. of N.J., 206 N.J. 109, 129 (2011). Courts then undertake, “a fact-sensitive analysis to ensure that the congruity of facts, and not merely similar legal theories, governs whether an attorney ethically may act adverse to a former client.” Trupos, 201 N.J. at 467. It is not sufficient that the matters touch upon “the same subject matter” or the former firm “*may* have been privy to confidential information[.]” Id. at 468-469. In the absence of a specific claim by the movant, it is inappropriate to assume an attorney gained the type of personal information which would require disqualification. See McCarthy v. John T. Henderson, Inc., 246 N.J. Super. 225, 234 (App. Div. 1991) (overturning disqualification where one time representation arising from a different subject matter occurred over eight years earlier).

The initial burden of production is borne by the movant. Id. at 450. If the initial burden is met, it shifts to the attorney to demonstrate the matters are not substantially related. Id. “That said, the burden of persuasion on all elements under *RPC* 1.9(a) remains with the moving party, as it ‘bears the burden of

proving that disqualification is justified.” Id. (citing N.J. Div. of Youth & Family Servs. v. V.J., 386 N.J. Super. 71, 75 (Ch. Div. 2004)). A motion for disqualification requires 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” and engage in a “painstaking analysis of the facts.” Dewey v. R. J. Reynolds Tobacco Co., 109 N.J. 201, 205, 218 (1988) (internal citations omitted).

Defendants do not, and cannot, meet these burdens.

i. The Defendants Waived all Conflicts Arising from the 2008 Litigation (T 37:5-38:14)

Initially, all parties to the 2008 litigation “waived in open court all conflicts of interest to the appointment of Richard M. King, Jr., Esquire as Trustee to the Valerie B. Alper Trust.” (Da145). All parties were represented by independent counsel at the time of consent, and the Wolfsons’ counsel (then and now) was the person who recommended Mr. King to the Court to serve as Trustee. (Pa3-4; Pa86).

Effective consent must be informed and based on ‘full disclosure and consultation.’ N.J. Div. of Child Prot. & Permanency v. G.S., 447 N.J. Super. 539, 577 (App. Div. 2016).

The sufficiency of the disclosure and consultation, and thus the adequacy of the waiver, depends on the facts of the case, including, significantly, the sophistication of the parties. See Opinion 527, 113

N.J.L.J. 384 (1984) (“The weight to be given to the consents of [well-informed and sophisticated] litigants is considerably greater than that usually involved in the consents referred to in other cases...”) and In re Lanza, 65 N.J. 347, 352 (1974) (“The extent of the necessary disclosure. . . is a question that must be conscientiously resolved by each attorney in light of the particular facts and circumstances that a given case presents”).

[N.J. Advisory Comm. On Prof’l Ethics Op. 679, 141 N.J.L.J. 1405, (July 17, 1995)].

The same ethics opinion provides it may be “advisable” to recommend parties consult with separate and independent counsel before giving consent, and this is a factor in determining the adequacy of consent. Id.

With respect to the requirement that consent be “confirmed in writing,” RPC 1.0(b) provides, “informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. RPC 1.0(o) further explains:

Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, electronic communication, and embedded information (metadata) in an electronic document. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

The consent in this instance meets each requirement. There was certainly full disclosure of the potential conflict, as it arose from former representation of the Defendants themselves. The parties are sophisticated individuals, and all

were represented by independent counsel then and now. Consent was placed on the Court record and memorialized in the trial court's 2016 Order. The waiver was adequate and effective, and was required by Mr. King in order to avoid this exact situation. In fact, as mentioned previously, the Ford Flower firm was co-counsel with the Jacobs firm in the 2008 litigation, and the Wolfsons and their attorneys therefore knew the exact nature of any confidential information which may have been disclosed, but nevertheless recommended and accepted Mr. King as Trustee in the new adversarial proceedings in 2016, and knew or should have known he would thereafter have no obligation to the Wolfsons and could act only in the best interests of the VBAT.

ii. The Matters Are Not Substantially Related (T 25:25-26:14)

Waiver aside, Defendants also fail to demonstrate this matter and the 2008 matter are "substantially related" as that term is defined for the purposes of a disqualification motion.

Judge Higbee's 2011 decision describes the exact nature of each claim in the 2008 litigation, all of which arise from the "Absecon Transaction" which involved the purchase and development of a specific property between 2004 and 2006. (Da75-78). The Absecon Transaction is concluded, the trial is concluded, and the instant action has no relation to the specific transaction at issue in the 2008 litigation.

iii. The Defendants' Delay in Raising a Potential Conflict Mitigates Against Disqualification (T 37:5-38:14)

As explained above, the Wolfsons waived all conflicts and consented to Mr. King's appointment in 2016. They did not raise a conflict in September 2017 when Mr. King wrote to the Court regarding the distribution of business income and a resulting "phantom" tax liability to the VBAT. They did not raise a conflict in 2021 when Mr. King again requested to file suit against them. They did not raise a conflict when this action was contemplated or filed, or in their initial motion to dismiss. Defendants did not raise a conflict until nine years into Mr. King's appointment, and seven months into this probate litigation.

The Appellate Division has affirmed denial of a disqualification motion where the movant delayed in raising a conflict, despite being aware of the relevant facts for several years. Chattin v. Cape May Greene, Inc., 243 N.J. Super. 590, 609 (App. Div. 1990). The New Jersey District Court has agreed, finding:

Waiver is a valid basis for the denial of a motion to disqualify . . . [A] finding [of waiver] is justified . . . when a former *client* was concededly aware of the former attorney's representation of an adversary but failed to raise an objection promptly when he had the opportunity. In [this] circumstance, the person whose confidences and secrets are at risk of disclosure or misuse is held to have waived his right to protection from that risk.

[Alexander v. Primerica Holdings, Inc., 822 F. Supp. 1099, 1115 (D.N.J. 1993) (internal citations omitted) (alterations in original)]

More recently, in an unpublished decision, the Appellate Division adopted five factors set out in Alexander to determine whether the moving party seeking disqualification of an opponent's counsel had waived the right to that relief, including:

(1) the length of the delay in bringing the motion to disqualify, (2) when the movant learned of the conflict, (3) whether the movant was represented by counsel during the delay, (4) why the delay occurred, and (5) whether disqualification would result in prejudice to the non-moving party.” Ibid. Particularly important was whether the movant appeared to be using the motion as a technical maneuver.

[Delaney v. Dykstra Assocs., 2020 N.J. Super. Unpub. LEXIS 1355 *15.] (Pa156).

The facts underlying the alleged conflict have been known since 2016. The Defendants delayed raising the conflict for at least seven months and up to nine years, despite multiple instances of court contact and intervention, and with full knowledge that prosecuting or defending actions is within the Trustee's powers. The Defendants deposed Mr. Zell and filed several motions seeking to dismiss the litigation without raising an alleged conflict. (Da7-11). Raising a conflict at this time, seven months into a probate matter which is supposed to conclude in one year, is a tactical maneuver intended to delay discovery and prejudice the Plaintiffs, especially the VBAT, considering Mr. King has spent nearly a decade learning the complexities of the Simon businesses and family history. It would be an enormous task for a new attorney to obtain and

understand the history to which he has become acquainted, and an entirely inequitable and unjust result for the Plaintiffs.

B. Motion to Quash (T 60:18-61:21)

Trial court judges “are accorded wide discretion in exercising control over their courtrooms and trial proceedings[,]” Martin v. Newark Public Schools, 461 N.J. Super. 330, 340 (App. Div. 2019), and are “ultimately responsible for the progress of any litigation.” D.A. v. R.C., 438 N.J. Super. 431, 452 (App. Div. 2014). Appellate courts “generally defer to a trial court’s disposition of discovery matters unless the court has abused its discretion or its determination is based on a mistaken understanding of the applicable law.” State v. Brown, 236 N.J. 497, 521-522 (2019) (citing Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011)).

Although the ordinary “abuse of discretion” standard defies precise definition, it arises when a decision is “made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.” In other words, a functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue. It may be “an arbitrary, capricious, whimsical, or manifestly unreasonable judgment.”

[Flagg v. Essex County Prosecutor, 171 N.J. 561, 571 (2002) (internal citations omitted)].

The Appellate Division has ascribed review of a trial court’s decision whether to quash a subpoena as “an indulgent standard of review.” Platkin v. Smith & Wesson Sales Co., 474 N.J. Super. 476, 489 (2023).

In applying this standard, appellate courts must start from the premise that discovery rules “are to be construed liberally in favor of broad pretrial discovery,” Payton, supra, 148 N.J. at 535, 691 A.2d 321, because “[o]ur court system has long been committed to the view that essential justice is better achieved when there has been full disclosure so that the parties [may become] conversant with all the available facts,” Jenkins v. Rainer, 69 N.J. 50, 56, 350 A.2d 473 (1976). Consequently, to overcome the presumption in favor of discoverability, a party must show “good cause” for withholding relevant discovery by demonstrating, for example, that the information sought is a trade secret or is otherwise confidential or proprietary. See R. 4:10-3; Hammock by Hammock v. Hoffmann-LaRoche, Inc., 142 N.J. 356, 369, 662 A.2d 546 (1995) . . . The party attempting to show that “secrecy outweighs the presumption” of discoverability must be “specific[] as to each document”; “[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient.” Id. 142 N.J. at 381-82, 662 A.2d 546.

[Capital Health Sys. v. Horizon Healthcare Servs., 230 N.J. 73, 80 (2017)].

The Defendants have not, and cannot, show that the trial court abused its discretion with regard to denial of their motion to quash.

Defendants make no argument with regard to the substance of the requested documents or subpoenas, but instead rely on disqualification of counsel as the reason why Plaintiff’s subpoenas for information to which they are entitled to should be quashed. The trial court did not abuse its discretion or misapply the law in denying Defendants’ motion to quash. Plaintiffs are entitled

to the requested documents as owners and former owners of the subject businesses and as litigants.

IV. Conclusion

For the reasons set forth above, the trial court's denial of both motions should be affirmed.

Respectfully submitted,

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THE VALERIE B. ALPER TRUST, VALERIE ALPER, LUCAS ALPER, HEATHER ALPER, HERMAN ZELL, MARSHA ZELL, FARAH ZELL, SANDRA ZELL, AND SAM ZELL,

Plaintiffs-Respondents,

v.

RENEE WOLFSON, INDIVIDUALLY AND AS CO-TRUSTEE OF THE QUALIFIED TERMINABLE INTEREST TRUST AND RESIDUARY TRUST OF THE LAST WILL AND TESTAMENT OF RICHARD SIMON AND AS ATTORNEY IN FACT FOR BETTY SIMON; JOSEPH WOLFSON, INDIVIDUALLY AND AS MANAGER OF JMRV ASSOCIATES AND BETTY SIMON TRUSTEE, LLC; WOLFSON FAMILY QUALIFIED PERSONAL RESIDENCE TRUST, DAVID WOLFSON, TRUSTEE; BETTY SIMON TRUSTEE, LLC; WILLIAM WOLFSON, INDIVIDUALLY; JENNIFER WOLFSON, INDIVIDUALLY, JOHN DOES 1 – 5 AND XYZ ENTITIES 1 – 5;

Defendants-Appellants.

Superior Court of New Jersey,
Appellate Division

Docket No. A-000737-25

On appeal from:
Superior Court of New Jersey,
Chancery Division, Probate Part,
Atlantic County,
Docket No. 135201

Sat below:
Hon. Hon. J. Christopher Gibson, P.J.Ch.

DEFENDANT-APPELLANTS' REPLY BRIEF

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Submitted January 16, 2026

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**MR. KING REFUSES TO ACKNOWLEDGE THAT HE
ENGENDERED THIS DISQUALIFYING CONFLICT BY
DECIDING TO SUE HIS FORMER CLIENTS ON
BEHALF OF *ALL PLAINTIFFS* – NOT JUST THE VBAT.**

REPLY POINT II.....2

**MR. KING INSINCERELY ARGUES FOR THE FIRST
TIME ON APPEAL THAT THIS LITIGATION IS NOT
SUBSTANTIALLY RELATED TO THE PRIOR
INTRAFAMILY LITIGATION.**

REPLY POINT III3

**THERE WAS NO ACTIVE LITIGATION BETWEEN THE
PARTIES BETWEEN MR. KING’S APPOINTMENT AND
THE INSTANT LITIGATION.**

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 Ex. M – VBAT Complaint by Trustee King (7/16/2024).....Da164

¹ All documents in the appendix – including all documents with highlighting – are submitted in the same form as filed below.

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REPLY POINT I

MR. KING REFUSES TO ACKNOWLEDGE THAT HE ENGENDERED THIS DISQUALIFYING CONFLICT BY DECIDING TO SUE HIS FORMER CLIENTS ON BEHALF OF *ALL PLAINTIFFS* – NOT JUST THE VBAT.

Mr. King continues to make the tired argument that the Wolfsons “waived all conflicts” in 2016 by merely consenting to Mr. King’s appointment as trustee of the VBAT. But Mr. King has no writing to show this Court which confirms that he explained to his former clients that his appointment as trustee of the VBAT meant that he may sue them in the future and that his former clients consented to that. Indeed, as explained below in Reply Point III, there was no active litigation between the parties from the time Mr. King was appointed as trustee of the VBAT until he commenced this lawsuit. Stated differently, Mr. King cannot demonstrate that he obtained the *informed* consent of his former clients prior to suing them. Putting all of that to the side, Mr. King simply will not acknowledge that the Order appointing him as trustee of the VBAT does nothing to cure the disqualifying conflict engendered by his representation of all the individual Plaintiffs. Do Mr. King’s duties as trustee of the VBAT include representation of the Zells and the Alpers? The answer is no.

REPLY POINT II

MR. KING INSINCERELY ARGUES FOR THE FIRST TIME ON APPEAL THAT THIS LITIGATION IS NOT SUBSTANTIALLY RELATED TO THE PRIOR INTRAFAMILY LITIGATION.

Mr. King devotes three sentences to his new argument that this intrafamily litigation is not substantially related to the intrafamily litigation captioned Alper, et al. v. Simon, et al., Docket Number ATL-C-07-08. (Pb15). Of course, he never made that argument below and defense counsel told the Court as much. (T9-21); (Db8). It is well settled that this Court usually “will not entertain arguments raised for the first time on appeal.” In re D.F.S., 446 N.J. Super. 203, 220 (App. Div. 2016) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). As explained in Defendants’ merits brief, this intrafamily litigation is another episode of the litigation Valerie commenced in 2008. (Db2); (Db8); (T8-14).

REPLY POINT III

THERE WAS NO ACTIVE LITIGATION BETWEEN THE PARTIES BETWEEN MR. KING’S APPOINTMENT AND THE INSTANT LITIGATION.

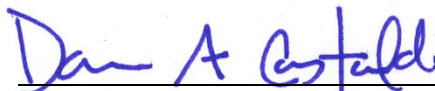
Mr. King attempts to blame the Wolfsons for not sooner raising the disqualifying conflict that Mr. King created when he commenced this litigation. (Pb16). The truth is that there was no active litigation between the parties until Mr. King commenced this lawsuit. In fact, in October 2021, the Trial Court ordered a moratorium on the intrafamily litigation by prohibiting Mr. King from using the VBAT’s funds for litigation. (Da152 at ¶ f). And *as recently as April 2024* – when Mr. King asked to be relieved as trustee of the VBAT – Mr. King referred to that Order and called it “**the end of all litigation**[.]” (Da159 at ¶ 15); (Da161 at ¶ 32) (emphasis added). So, Mr. King cannot seriously fault his former clients for not sooner seeking his disqualification when there was no active litigation between the parties for years until Mr. King commenced this lawsuit.

CONCLUSION

For the above reasons, as well as those set forth in Defendants' merits brief, Defendants' appeal should be granted in its entirety, the Order denying Defendants' motion to disqualify Mr. King and motion to quash subpoenas be reversed, Mr. King (and his law firm) should be disqualified as Plaintiffs' counsel, and the matter should be remanded to the Court below for further proceedings.

Respectfully submitted,

JACOBS & BARBONE, P.A.


David A. Castaldi

Dated: January 16, 2026