

*Superior Court of New Jersey
Appellate Division*

PENELOPE MAUER,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY; NEW JERSEY
DEPARTMENT OF HUMAN SERVICES; ANN KLEIN
FORENSIC CENTER; THE BOARD OF TRUSTEES OF
THE ANN KLEIN FORENSIC CENTER; REED
GLADEY; ANN KENYON; GLENN FERGUSON;
ELIZABETH CONNOLLY; VALERIE MIELKE; AND
JOHN DOES 1-10 BEING AGENTS, SERVANTS AND
EMPLOYEES OF DEFENDANTS AS A CONTINUING
INVESTIGATION MAY REVEAL (WHO ARE
FICTITIOUSLY NAMED BECAUSE THEIR TRUE
IDENTITIES ARE UNKNOWN),

Defendants-Respondents.

PENELOPE MAUER,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY; STATE OF NEW JERSEY,
DEPARTMENT OF HEALTH, DIVISION OF
BEHAVIORAL HEALTH SERVICES; TRENTON
PSYCHIATRIC HOSPITAL; ROBYN WRAMAGE-
CAPOROSO, CHIEF EXECUTIVE OFFICER; ROBIN
MURR, DIRECTOR OF HUMAN RESOURCES,
TRENTON PSYCHIATRIC HOSPITAL; ANN KLEIN
FORENSIC CENTER; KRISTIN HUNT, DIRECTOR OF
HUMAN RESOURCES, ANN KLEIN FORENSIC
CENTER; AND JOHN DOES 1-10 BEING AGENTS,
SERVANTS AND EMPLOYEES OF DEFENDANTS AS A
CONTINUING INVESTIGATION MAY REVEAL (WHO
ARE FICTITIOUSLY NAMED BECAUSE THEIR TRUE
IDENTITIES ARE UNKNOWN),

Defendants-Respondents.

Docket No. A-000108-24

Civil Action

On Appeal From:
Superior Court of New Jersey
Mercer County, Law Division

Docket No. Below:
MER-L-197-17

Docket No. Below:
MER-L-388-22

Sat Below:
Hon. Douglas H. Hurd, P.J.Cv.

BRIEF OF PLAINTIFF-APPELLANT PENELOPE MAUER

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PRELIMINARY STATEMENT

Conflict of interest rules exist for lawyers to protect the integrity of the client-lawyer relationship by ensuring that a lawyer's personal interests or obligations to other clients do not compromise their ability to fully and zealously represent their current client, preventing situations where a lawyer might be tempted to favor one client over another due to conflicting loyalties, potentially harming the client's case. In this case, the State of New Jersey through its Attorney General has brought a criminal action against William Tambussi, Esq. and the indictment implicates other unnamed lawyers in the firm of Brown & Connery, LLP. It is unclear why the State of New Jersey Attorney General has not ceased its relationship with the firm of Brown & Connery, LLP. Counsel for the State of New Jersey has only stated it has not asked Brown & Connery, LLP to discontinue its representation, with no further explanation. This does not address the conflict and, perhaps more importantly, this statement does not address the interests of the individual defendants and the legitimate concern about Brown & Connery, LLP's representation of all defendants when co-defendant State of New Jersey through the Attorney General has indicted the firm's senior partner and implicated other lawyers in the firm in criminal wrongdoing. To protect the integrity of the client-lawyer relationship, Brown & Connery, LLP should be disqualified.

In this matter, William Tambussi, Esq., the partner who was indicted, was Counsel of Record and Designated Trial Counsel for the defendants in this case. After his indictment, William Tambussi, Esq. withdrew his appearance – an acknowledgment of his conflict of interest. Nevertheless, his law firm continues to represent the defendants.

The firm, Brown & Connery, LLP, is a partnership. In a partnership, the conflict of one partner is the conflict of all partners. Therefore, Mr. Tambussi's conflict is imputed to his partners. However, his partners contend that Brown & Connery, LLP – the law firm where Mr. Tambussi *remains employed and continues to work as a partner* (Pa167) – can continue representing the State of New Jersey and the other defendants as if Mr. Tambussi, the former Counsel of Record and Designated Trial Counsel in this matter, had not been indicted by the State of New Jersey.

Plaintiff filed a motion to disqualify Brown and Connery, LLP from representing the defendants in this matter, including the State of New Jersey. The motion judge requested backup from the defendants confirming they wanted Brown and Connery, LLP to continue representing them. Defendants' counsel provided Certifications of attorney liaisons stating none of the defendants had requested Brown and Connery, LLP withdraw. At oral argument, the motion judge requested further evidence that the defendants wanted Brown and Connery, LLP to continue

representing them. Defendants' counsel then provided a very brief certification from an Assistant Attorney General providing no additional information. Nothing was provided by the defendants themselves.

Nevertheless, the motion judge denied plaintiff's motion, stating that there is no conflict because William Tambussi, Esq. was indicted in his "personal capacity" and his partners are "zealous advocates" for the defendants.

For the reasons that follow, this Court should reverse the Order of the Law Division denying plaintiff's motion to disqualify the Brown & Connery, LLP law firm from representing the defendants, including the State of New Jersey, in this matter.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

On June 13, 2024, the State of New Jersey indicted William Tambussi, Esq., (Tambussi) a partner at the law firm of Brown & Connery, LLP, for engaging in racketeering through a criminal enterprise led by George Norcross (Norcross). (See Indictment filed June 13, 2024, Pa9-Pa119). The indictment brought by the Attorney General of the State of New Jersey, states that Tambussi is "the long-time personal attorney" to Norcross, and accuses him of an "active participant in the Norcross Enterprise's plot to use the City of Camden's government to bring a condemnation

¹ The Procedural History and Statement of Material Facts are combined for ease of reference.

action” against a developer whom Norcross and others are alleged to have extorted in connection with disputes over property and development rights in the city.

On June 20, 2024, after being indicted by the State of New Jersey, William Tambussi, Esq. filed a “Notice Of Withdrawal Of Appearance Of William M. Tambussi, Esquire Only” that withdrew his appearance on behalf of the defendants – but not the firm of Brown & Connery, LLP where he is a named partner. (See Notice Of Withdrawal Of Appearance Of William M. Tambussi, Esq., Pa164-Pa165).

Brown & Connery, LLP was hired by the Attorney General to defend the State of New Jersey and the other defendants in this matter. Brown & Connery, LLP agreed to comply with Outside Counsel Guidelines effective November 1, 2022. The Outside Counsel Guidelines state: “Counsel representing a State client must adhere to all of the requirements of the RPCs, including, but not limited to, RPC 1.7, RPC 1.8, and RPC 1.16.” (Pa128).

On July 3, 2024, plaintiff filed a motion seeking to disqualify the law firm of Brown & Connery, LLP in light of Tambussi’s conflict of interest based on a “significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer,” R.P.C. 1.7(a)(2), and R.P.C. 1.10 which imputes an attorney’s conflict of interest of a partner to the lawyers who are

associated in a firm “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.”

Plaintiff’s motion was denied by Order dated July 31, 2024. (Pa182). This Court granted plaintiff’s motion for leave to appeal on September 12, 2024. (Pa185).

LEGAL ARGUMENT

Point I

Due to the Indictment of Its Partner William Tambussi, Esq., and the Alleged Involvement in Criminal Wrongdoing of Unnamed Lawyers of the Firm of Brown & Connery, LLP, the Firm Must Be Disqualified from Representing the Defendants in this Matter (Pa182; T)

A. Brown & Connery, LLP Have a Conflict Contrary to the Outside Counsel Guidelines

The indictment of Tambussi by the New Jersey Attorney General, to whom Brown & Connery, LLP reports, presents a significant risk of materially limiting the representation of the defendants in this matter, including the State of New Jersey. The Outside Counsel Guidelines, effective November 1, 2022, addresses this situation by prohibiting “positional conflicts” arising from counsel’s “advocacy of positions that conflict with important State interests.” (See Outside Counsel Guidelines effective November 1, 2022, Pa129). There can be no question that the firm of Brown & Connery, LLP has a positional conflict as a result of the indictment of Tambussi by the New Jersey Attorney General.

Further, the Outside Counsel Guidelines note “The State’s Conflicts Requirements Go Beyond Those the RPCs Mandate.” (Pa128). The Outside Counsel Guidelines note, “The Division of Law has a duty to protect the public interest. As part of this responsibility, the Division sets policies to ensure the legal system operates in a manner that safeguards the public’s confidence in the integrity and impartiality of its administration.” (Pa127). Certainly, having a firm that is mentioned throughout the Tambussi Indictment as part a participant in the criminal enterprise does not “safeguard[] the public’s confidence” or “protect the public interest.”

The motion judge stated, “[t]he record before me does not cast any doubt on the defendants’ position that Ms. Dohn and Ms. Taraschi will be able to, and have been, zealous advocates for their clients.” (T7:20-23). Putting aside the fact that this statement is not supported in the record, the fact that two attorneys in the firm may be “zealous advocates” is irrelevant. Brown and Connery, LLP has a conflict and must be disqualified.

B. The Brown and Connery, LLP Partnership Cannot Continue Representing the Defendants Where one of its Partners is Disqualified

“[M]otion[s] for disqualification call[] 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 [their] counsel.” Dental Health Assocs. S. Jersey, P.A. v. RRI Gibbsboro, LLC, 471 N.J. Super. 184, 192 (App. Div. 2022)

(fourth alteration in original) (quoting Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988)).² “[T]he court maintains an independent interest in assuring that conflict-free representation occurs, since the existence of conflict undermines the integrity of the court” and exposes it to “unjustified attacks over the fairness of the proceedings.” State v. Davis, 366 N.J. Super. 30, 38 (App. Div. 2004) (citing State in the Int. of S.G., 175 N.J. 132, 140 (2003)).

Litigants “are entitled to retain qualified counsel of their own choice, [but] there is no right to demand to be represented by an attorney disqualified because of an ethical requirement.” Alam v. Ameribuilt Contractors, 474 N.J. Super. 30, 36 (App. Div. 2022) (quoting Reardon v. Marlayne, Inc., 83 N.J. 460, 477 (1980)).

As our Supreme Court has held for almost forty (40) years, “[f]or all intents and purposes, the client of one partner is a client of all the partners.” Dewey, 109 N.J. at 214 (citing Opinion No. 128, 91 N.J.L.J. 309 (1968)). Accordingly, Mr. Tambussi’s conflict is indisputably imputed to his partners, including Kathleen Dohn, Esq.

² The motion judge stated, without analysis, that “the Dewey case relied on by plaintiff likewise does not support disqualification in this case because Dewey has an easily distinguishable set of facts and relies on a now outdated version of RPC 1.9.” The motion judge’s disregard of Dewey, a New Jersey Supreme Court case, was error. Dewey has not been overturned by our Supreme Court and the principles for which Dewey is cited are still applicable today.

Before the Law Division, defendants contended that Mr. Tambussi “performed no substantive work in the defense of this consolidated matter.” However, even if that is true, his partners have knowledge which is imputed to Mr. Tambussi. As our Supreme Court has held, “[e]ach partner’s professional knowledge is justifiably imputed to the entire firm, regardless of actual disclosure.” Id. at 215 (citing State v. Bellucci, 81 N.J. 531, 541 (1980); see also In re Lankenau, Docket No. DRB 16-442 and Docket No. DRB 17-143 (2017) noting that in a partnership “knowledge is imputed to the other partners and vice versa.”).

The State of New Jersey is a defendant in this matter represented by Brown & Connery, LLP, and the State of New Jersey is the plaintiff in the case against Mr. Tambussi. Further, it is undisputed that the Attorney General, who brought the case against Mr. Tambussi, is responsible for supervising all outside counsel, including Mr. Tambussi’s law firm, Brown & Connery, LLP. As our Supreme Court has stated, “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.” Dewey, 109 N.J. at 217. Clearly, Mr. Tambussi is “prohibited” from representing the State of New Jersey as a result of his indictment. Accordingly, it is improper for his partners to continue representing the same clients. As the Court noted in Dewey, “[i]f one attorney in the firm is disqualified, the entire firm is precluded from

representing the client in that suit.” Id. at 217 (citing Reardon v. Marlayne, Inc., 83 N.J. 460, 470-71 (1980)).

The motion judge’s statement that “RPC 1.7 is not implicated because . . . the indictment as to Tambussi was as to his personal capacity and he has no involvement in this litigation” (T7:5-11) ignores the fact that Tambussi was Counsel of Record and Designated Trial Counsel on behalf of the defendants in this matter for more than two (2) years, until he withdrew after he was indicted.

C. Public Entities Cannot Waive Conflicts

Below defendants’ counsel claimed that none of the defendants objected to their representation. However, there is no evidence of that in the record. Further, even if that were true, a public entity cannot waive conflicts of interest. See R.P.C. 1.7(b)(1): “a public entity cannot consent to any such representation”; see also Outside Counsel Guidelines effective November 1, 2022, Pa129 (“State agencies cannot waive any conflicts that the Rules of Professional Conduct (‘RPCs’) prohibit, and counsel should neither request nor expect the Attorney General to grant such a waiver”).

The right to counsel of one’s choosing is not unlimited. As our Supreme Court has noted, “a person’s right to retain counsel of his or her choice is limited in that **there is no right to demand to be represented by an attorney disqualified**

because of an ethical requirement.” Dewey, 109 N.J. at 218 (citing Reardon, 83 N.J. at 477) (emphasis added).

Nevertheless, the motion judge requested evidence that the defendants wanted Brown and Connery, LLP to continue representing them. (Pa168). In response to the motion judge’s request, defendants’ counsel provided nearly identical Certifications from two attorneys serving as litigation liaisons. (Pa172-Pa173; Pa175-Pa177).

At oral argument, the motion judge requested additional evidence. Defendants’ counsel then provided a four (4) paragraph Certification from an Assistant Attorney General stating “[t]he Defendants have not requested that Brown & Connery, LLP withdraw as their counsel” and “[t]he Division of Law has not terminated Brown & Connery, LLP’s representation.” (Pa180-Pa181). First, the certifications provided do not establish that the defendants are aware that their former Designated Trial Counsel has been indicted by the State of New Jersey. Second, the certifications do not establish that the defendants want Brown and Connery, LLP to continue representing them. Nevertheless, the Court denied the plaintiff’s motion.

D. The Indictment References Brown and Connery, LLP and an Unnamed Partner, Lawyer-2, as Being Participants in the Wrongdoing of Tambussi and His Co-Defendants

Not only does the Indictment name Tambussi as a defendant, it alleges criminal wrongdoing by others in his firm arising out of the practice of law. The

criminal wrongdoing alleged by the State of New Jersey was assisted by Brown and Connery, LLP and other unnamed attorneys in the firm, including “Lawyer-2.”

A comprehensive analysis of the Indictment contradicts the motion judge’s statement that “Brown and Connery is not adverse to the State or to the Attorney General” (T6:20-21) because the Indictment specifically references Brown & Connery, LLP multiple times. Near the beginning, the Indictment describes “WILLIAM M. TAMBUSI” as “an attorney and **partner at the law firm of Brown & Connery, LLP.**” (Indictment, page 8, Pa16) (emphasis added). The motion judge’s repeated statement that Tambussi was Indicted “in his personal capacity” is unclear because the judge does explain what is meant by “personal capacity” but to the extent the motion judge’s decision tried to distance Brown and Connery, LLP from the Indictment it failed to account for the explanation of who Tambussi is (see above) and the numerous references to the involvement of Brown and Connery, LLP in the criminal conspiracy.

Further, the Indictment alleges misconduct not only by Mr. Tambussi but also by Brown & Connery, LLP:

128. Between October 18 and October 24, 2016, PHILIP A. NORCROSS and WILLIAM M. TAMBUSI, **and members of their respective law firms**, coordinated to devise a plan by which the CRA, a City government entity and client of WILLIAM M. TAMBUSI’s firm, would seek to condemn Developer-1’s view easement affecting the Triad Parcel.

129. As described in further detail below, this plan involved no meaningful participation by the CRA, the government entity legally entitled to exercise the right of condemnation.

[(Indictment, pages 50 and 51, Pa58-Pa59).]

As set forth above, the Indictment refers to a “Lawyer-2” at Brown & Connery, LLP who is an accomplice of Mr. Tambussi and an unindicted co-conspirator:

134. On October 20, 2016, **WILLIAM M. TAMBUSI’s law partner, Lawyer-2, who represented the CRA, emailed the then-Executive Director of the CRA to inform her of an “urgent issue” with the LPT development project.** In this email, Lawyer-2 wrote that “[t]he proposal is for CRA to file an application in Court to ask the Court to confirm that the power of eminent domain is available to extinguish the view easement. The idea is to get the complaint filed today or tomorrow. Phil Norcross is going to brief the Mayor [DANA L. REDD] who I believe will then discuss with [the then-chair of the CRA board].”

135. According to billing records, although they did not charge the CRA for it, **Brown & Connery, LLP attorneys, including WILLIAM M. TAMBUSI and Lawyer-2, worked at least 86 hours, over a 7-day period, preparing an order to show cause requesting that the court declare that the CRA had the power to condemn Developer-1’s view easement.** Fewer than five hours of this more than 86 hours of legal work involved contact with officials of the CRA, the client.

[(Indictment, page 53, Pa61) (emphasis added).]

As set forth in the Indictment, it was Mr. Tambussi’s position as an attorney, and his relationship with his partners at Brown & Connery, LLP, including the unindicted co-conspirator “Lawyer-2” and Brown & Connery, LLP’s client, CRA,

that enabled the criminal enterprise to be successful in shaking down developers and other business people in South Jersey. As set forth in the Indictment:

139. Later that same day, this deal fell through. In a recorded conversation, GEORGE E. NORCROSS, III discussed this with PHILIP A. NORCROSS and referred to **the plan to use WILLIAM M. TAMBUSSI and the CRA to act against Developer-1**, “So, here’s what I’m thinking about. I just talked to Tambussi . . . I want to go in, **I want to encourage Tambussi to do his thing . . . I think we just do it. F**k ‘em. F**k ‘em. Just do it.**”

[(Indictment, pages 55-56, Pa63-Pa64) (emphasis added).]

Tambussi and Brown & Connery, LLP represented the “City and the CRA” and “WILLIAM M. TAMBUSSI . . . Sought to Conceal the Norcross Enterprise’s Plot” by “fil[ing] a pre-trial motion in the Superior Court of Camden County, on August 31, 2023, to preclude any reference to GEORGE E. NORCROSS, III and PHILIP A. NORCROSS in the matter.” (Indictment, pages 62-63, Pa70-Pa71).

It is unfortunate but evident that Brown & Connery, LLP and its partners, including the unidentified co-conspirator “Lawyer-2”, participated in the criminal enterprise with Mr. Tambussi and his co-defendants. In fact, as set forth above, Brown & Connery, LLP represented the public entities the defendants used to wield power and influence and to extort private citizens. And as a result of their schemes, in which Brown & Connery, LLP participated, Mr. Tambussi and his co-defendants enriched themselves and their businesses.

As set forth in the Indictment, “The Norcross Enterprise Reap[ed] the Financial Benefits of the Private Interests Extorted from Developer-1.” Indeed, as a result of a lawsuit in which defendant Tambussi and Brown & Connery, LLP represented the City of Camden, “Developer-1 agreed to settle the case, despite believing he was in the right, because he had concerns over corruption in Camden which made him believe that he would not be treated fairly by the court system.” (Indictment, page 76, Pa84).

The Indictment states that part of the aim of the Enterprise of which Mr. Tambussi was a part included:

Enriching and rewarding members, allies, and associates of the Enterprise, including with political endorsements, appointments to public positions, **influencing government contracts**, and placement in lucrative private sector jobs[.]

[Indictment, page 83, Pa91 (emphasis added).]

Based on the facts set forth in the Indictment as alleged by the State of New Jersey, there can be no question that Mr. Tambussi’s illegal activity, which included “Racketeering Conspiracy,” “Theft by Extortion” and “Official Misconduct,” unquestionably involved the Brown & Connery, LLP law firm. As a result, Mr. Tambussi enriched himself and enriched Brown & Connery, LLP. As our Supreme Court has held, “[t]he shared economic interest of the entire firm in the clients of individual members also **supports treating a partnership as one attorney.**” Dewey, 109 N.J. at 215 (citing Bellucci, 81 N.J. at 541) (emphasis added). The

motion judge’s statement that “[n]o defendant entities or individuals are part of the Office of the Attorney General that issued the indictment against Mr. Tambussi in his personal capacity” (T8:2-5) is simply erroneous because the Office of the Attorney General is charged with representing the State of New Jersey in all legal matters and supervises all outside counsel so therefore the fact that “[n]o defendant entities or individuals are part of the Office of the Attorney General that issued the indictment” (see *ibid.*) is not dispositive or even germane to the analysis.

Brown & Connery, LLP, a partnership, and William Tambussi, one of its partners, are two sides of the same coin. As Mr. Tambussi withdrew from representation of the State of New Jersey and the other defendants in this matter, so also must the Brown & Connery, LLP law firm.

CONCLUSION

For the foregoing reasons and for the reasons previously set forth, this Court should enter and Order reversing the Order of the Law Division dated July 31, 2024 and disqualifying Brown & Connery, LLP from representing the State of New Jersey and the other defendants in this matter.

Respectfully submitted,

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By: *s/ Donald F. Burke*
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Dated: October 28, 2024

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

PENELOPE MAUER,
Plaintiff-Appellant,
v.
STATE OF NEW JERSEY, NEW
JERSEY DEPARTMENT OF
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FORENSIC CENTER; THE
BOARD OF TRUSTEES OF THE
ANN KLEIN FORENSIC CENTER;
REED GLADEY; ANN KENYON;
GLENN FERGUSON; ELIZABETH
CONNOLLY; AND VALERIE
MIELKE,
Defendants-Respondents.

Docket No. A-0108-24T4

Civil Action No. MER-L-197-17

Sat Below: Hon. Douglas H. Hurd, J.S.C.

PENELOPE MAUER,
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v.
STATE OF NEW JERSEY; STATE
OF NEW JERSEY, DEPARTMENT
OF HEALTH, DIVISION OF
BEHAVIORAL HEALTH
SERVICES; TRENTON
PSYCHIATRIC HOSPITAL;
ROBYN WRAMAGE-CAPROSO,
CHIEF EXECUTIVE OFFICER,
TRENTON PSYCHIATRIC
HOSPITAL; ROBIN MURR,
DIRECTOR OF HUMAN
RESOURCES, TRENTON
PSYCHIATRIC HOSPITAL; ANN

Docket No. A-0108-24T4

Civil Action No. MER-L-388-22

Sat Below: Hon. Douglas H. Hurd, J.S.C.

KLEIN FORENSIC CENTER;
KRISTIN HUNT, DIRECTOR OF
HUMAN RESOURCES, AND ANN
KLEIN FORENSIC CENTER,

Defendants-Respondents.

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STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

On January 26, 2017, Plaintiff-Appellant, Penelope Mauer (“Mauer”), filed suit against Defendants-Respondents, the State of New Jersey, New Jersey Department of Human Services (“DHS”), Ann Klein Forensic Center (“AKFC”), the Board of Trustees of the Ann Klein Forensic Center (“Board”), Reed Gladey, Ann Kenyon, Glenn Ferguson, Elizabeth Connolly, and Valerie Mielke, alleging she was retaliated against in violation of the Conscientious Employee Protection Act (“CEPA”) for reporting patient abuse (“Mauer I”). (Da9-Da18).² During the relevant time period, the DHS was organized into various divisions, which included the Division of Mental Health and Addiction Services (“DMHAS”). (Da3-4; Da19-48; Pa171-73). The DMHAS operated the State psychiatric hospitals, including AKFC. (Da3). On or about March 9, 2022, William M. Tambussi, Esq. and Kathleen E. Dohn, Esq. of Brown & Connery, LLP (“B&C”) were designated as trial counsel for Defendants-Respondents on all claims.³ (Pa162).

¹ Given the issue that is the subject of this appeal, the Statement of Facts and Procedural History are so intertwined that they are combined for ease of reference.

² “Pb” refers to Mauer’s brief; “Pa” refers to Mauer’s appendix; “Da” refers to Defendants-Respondents’ appendix; “T” refers to the transcript from the July 31, 2024 hearing.

³ Defendants-Respondents were initially represented by Deputy Attorney General Megan Gorman Cohen. (Da4; Da49-73). On May 2, 2018, Jemi Lucey, Esq., Greenbaum, Rowe, Smith & Davis, LLP, was substituted as counsel for

On March 2, 2022, Mauer filed a second lawsuit against Defendants-Respondents, the State of New Jersey, Department of Health (“DOH”), Division of Behavioral Services, Trenton Psychiatric Hospital (“TPH”), Robyn Wramage-Caporoso, Robin Murr, AKFC, and Kristin Hunt alleging retaliation and breach of contract because she was denied social worker positions at TPH and AKFC (“Mauer II”). (Da74-126). During the relevant time period, the State Psychiatric hospitals, including TPH and AKFC, were operated by the DOH due to an executive re-organization. (Da80). B&C was retained to represent the Defendants-Respondents in this matter. (Da3-4; Da19-48; Pa175-77). By order dated November 9, 2022, the trial court consolidated both matters. (Da127-31).

On June 13, 2024, an indictment was issued against six defendants, including William Tambussi, Esq. in his personal capacity. (Pa9-119). B&C is not indicted. Ibid. On June 20, 2024, Mr. Tambussi withdrew his appearance on behalf of all Defendants-Respondents in this consolidated matter. (Pa121-22). Prior to his withdrawal, Mr. Tambussi’s involvement in this matter was limited strictly to the

the Defendants-Respondents. Ibid. On February 11, 2019, Christine P. O’Hearn Esq. of B&C was substituted as counsel for the Defendants-Respondents. Ibid. On or about July 30, 2021, Ms. O’Hearn withdrew as counsel for Defendants-Respondents and Kathleen E. Dohn, Esq. of B&C was substituted as counsel for Defendants-Respondents. Ibid. Despite the withdrawal of Ms. O’Hearn, B&C has remained counsel for the Defendants-Respondents since February 11, 2019. Ibid.

filing of the designated trial counsel notice. (Da7). He performed no substantive work in the defense of this consolidated matter. Ibid. All substantive work was performed by Ms. O’Hearn, Ms. Dohn, and Ms. Taraschi. Ibid. Ms. Dohn and Ms. Taraschi continue to represent all Defendants-Respondents. Ibid.

On July 3, 2024, Mauer filed a Motion to Disqualify B&C as counsel for Defendants-Respondents. (Pa1-3). Defendants-Respondents opposed the motion and per the directives of the trial court, supplemented the record with the following certifications: (1) Erick J. Lucadamo, Legal Specialist, DHS, Office of Legal and Regulatory Affairs stated, in part, that Defendants-Respondents have not requested that B&C withdraw as their counsel and Defendants-Respondents are satisfied with the representation that B&C has provided in this matter and desire for B&C to remain their counsel (Pa172-73); (2) Kimberly E. Jenkins, Director, DOH, Office of Legal and Regulatory Affairs stated, in part, Defendants-Respondents have not requested that B&C withdraw as their counsel, that DOH is satisfied with the representation that B&C has provided and desire for B&C to remain their counsel, and none of the individually named Defendants have requested that B&C withdraw as counsel (Pa175-77); and (3) Stephanie Cohen, Assistant Attorney General, Litigation Practice Group, Division of Law stated, in part, Defendants-Respondents have not requested that B&C withdraw as their counsel and the Division of Law has

not terminated B&C's representation of Defendants-Respondents as counsel in this matter. (Pa180-81).

On or about July 31, 2024, the trial court entered an Order denying Mauer's Motion to Disqualify B&C as counsel for the Defendants-Respondents, finding there is no conflict of interest under RPC 1.7, RPC 1.9, RPC 1.10 and no positional conflict under the Outside Counsel Guidelines requiring disqualification. (Pa182-83; T4-9). The trial court made the following findings:

- “Factually it is important to note that Brown & Connery is not adverse to the State or the Attorney General. Brown & Connery represents the State, and in particular the Department of Human Services, the Department of Health, Ann Klein Forensic Center, and Trenton Psychiatric Hospital, and the individual defendants. It's important to recognize who the actual parties in interest are. These entities are not part of the Attorney General's Office and are not factually connected to anything having to do with the indictment.” (T6-7).
- “RPC 1.7 is not implicated because Brown and Connery and the attorneys handling the defense, Ms. Dohn and Ms. Taraschi, do not have any adverse interest to these entities and the individual defendants. As noted above, the indictment as to Mr. Tambussi was in his personal capacity and he has no involvement in this litigation. The case of J.G. Ries and Sons, 384 NJ Super 216, the Appellate Division, 2006 at page 223, states that, “RPC 1.7 reflects the fundamental understanding that an attorney will give complete and undivided loyalty to the client and should be able to advise the client in such a way as to protect the client's interests utilizing his professional training, ability, and judgment to the utmost.” The record before me does not cast any doubt on the defendants' position that Ms. Dohn and Ms. Taraschi will be able to, and have been, zealous advocates for their clients.” (T7).
- “When one considers the named defendants in this case, it is clear that RPC 1.10(a) is inapplicable because no concurrent conflict of interest exists pursuant to RPC 1.7(a). No defendant entities or individuals are part of the Office of the Attorney General that issued the indictment against Mr. Tambussi in his personal capacity. Additionally, there is no significant risk

that Brown & Connery’s representation of the defendants will be materially limited in any manner by Brown & Connery’s responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. As noted above, neither Brown & Connery, nor Ms. Dohn, nor Ms. Taraschi, have any adverse interest at all to the clients they represent in this matter. This is supported by the three certifications submitted as part of this motion.” (T7-8).

- “For the same reasons stated above, there likewise is no positional conflict to justify a court order disqualification of Brown & Connery. The outside counsel guidelines are not implicated and do not result in a disqualification because once again there is nothing in the indictment that will cause Brown & Connery, Ms. Dohn, or Ms. Taraschi to advocate any positions that conflict with or are adverse to the interests of the defendants in this case. (T8).
- “Finally, there is no basis to support plaintiff’s position that RPC 1.9 is implicated. And the Dewey⁴ case relied on by plaintiff likewise does not support disqualification in this case because Dewey has an easily distinguishable set of facts and relies on a now outdated version of RPC 1.9.” (T9).

On or about August 20, 2024, Mauer filed a Motion for Leave to Appeal the Law Division’s July 31, 2024 Order. (Pa185). On or about September 12, 2024, Mauer’s motion was granted and the appeal was accelerated. Ibid.

⁴ Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201 (1988).

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED MAUER’S MOTION TO DISQUALIFY BROWN & CONNERY AS COUNSEL FOR DEFENDANTS-RESPONDENTS BECAUSE NO CONFLICT OF INTEREST EXISTS UNDER THE OUTSIDE COUNSEL GUIDELINES OR RULES OF PROFESSIONAL CONDUCT

A. Standard of Review

“[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) (citing J.G. Ries & Sons, Inc. v. Spectrasery, Inc., 384 N.J. Super. 216, 222 (App. Div. 2006) (additional citations omitted)).

“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)). The movant bears the burden of proof that disqualification is appropriate. Trupos, 201 N.J. at 462-63. The movant “must carry a ‘heavy burden’ and must meet a ‘high standard of proof’ before a lawyer is disqualified.” Carlyle Towers Condo. Ass’n v. Crossland Sav., FSB, 944 F. Supp. 341, 345 (D.N.J. 1996) (quoting Alexander v. Primerica Holdings, Inc., 822 F.Supp. 1099, 1114 (D.N.J. 1993)).

Motions to disqualify “must be carefully scrutinized,” because they “are viewed with ‘disfavor’ and disqualification is considered a ‘drastic measure which

courts should hesitate to impose except when absolutely necessary.” Carlyle Towers Condo. Ass’n, 944 F. Supp. at 345 (quoting Alexander, 822 F.Supp. at 1114). As such, “disqualification 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).

“[D]isqualifying an attorney or an office of attorneys based on a conflict ‘must have some reasonable basis’ grounded in an actual conflict.” State v. Smith, 478 N.J. Super. 52, 64 (App. Div. 2024) (quoting State v. Harvey, 176 N.J. 522, 529 (2003)). See also United States v. Norwood, 566 F. App’x 123, 127 (3d Cir. 2014). Thus, “[d]isqualification motions require careful scrutiny of the underlying facts and a ‘sense of practicality’ to avoid unjust results.” Carreno v. City of Newark, 834 F. Supp. 2d 217, 224 (D.N.J. 2011) (internal citations omitted). “Disqualification must generally be based in ‘fact.’ . . . and ‘surmise alone cannot support an order of disqualification.”” Ibid. (quoting Trupos, 201 N.J. at 464. 469).

B. The DHS, DOH, AKFC, TPH, and Individual Defendants Employed Therein are the Clients Whom Brown & Connery, LLP was Retained to Represent in this Consolidated Matter

“Longstanding Attorney General guidance and New Jersey case law make clear the State is ‘so varied, so multifaceted, so extensive that to regard it as one unitary monolithic employer/client is unrealistic.”” (Pa155-56 (quoting In re Advisory Comm. on Pro. Ethics Op. 621, 128 N.J. 577, 597 (1992))). This conclusion

is applicable to the many departments within the State. (Pa156). As former Attorney

General Grewal noted:

Several Departments have various functions that are distinct and essentially unrelated. For example, Treasury includes, among other entities, the Division of Pensions and Benefits, the Division of Purchase and Property, and the Division of Taxation. . . . The units in a Department do not necessarily share confidential information as part of their day-to-day operations, engage in the same functions, or have the same management teams. Moreover, such units generally retain outside counsel to perform discrete functions that do not involve all of the operations of the larger entity to which that unit belongs. . . . In light of the complexity and diversity of the government entities within a single Department or Authority, the representation of one subsidiary unit within a Department or Authority while being adverse to another subsidiary unit will not necessarily create a conflict.

[Pa156-57.]

Thus, “the RPC conflict analysis requires identifying with particularity which unit is truly the party in interest and is therefore the relevant government client.” (Pa157). “In some instances, the client may be a Department or an Authority, but in other cases the client may be a subsidiary unit other than a Department or an Authority.” Ibid. Factors that may be considered to identify the particular government client include, but are not limited to: (1) “Whether the matter involves an operation or responsibility that is unique to a particular government unit and is distinct from the operations of the other unites within the relevant Department or the Authority.”; (2) “Whether retention of outside counsel is limited to a circumscribed

and well-defined role. For example, counsel’s retention is limited to serving as bond counsel, or providing tax advice to a pension fund.”; (3) “Whether outside counsel is dealing primarily with personnel inside the unit when providing advice or formulating litigation and settlement strategy.”; or (4) Whether resolution of the matter will directly affect the authority, funding, or privileges of another government unit within the relevant Department or Authority.” (Pa157).

Here, Mauer I concerns alleged retaliation Mauer suffered in 2016 while employed by AKFC, a State psychiatric hospital. (Pa171-73; Da3-4; Da9-48). At that time, DHS was organized into various divisions, including DMHAS. Ibid. DMHAS operated the State psychiatric hospitals. Ibid. DHS, AKFC, and their former employees—Elizabeth Connolly, Acting Commissioner, DHS; Valerie Mielke, Assistant Commissioner, DMHAS; Reed Gladey, Director of Social Work, AKFC; Ann Kenyon, Director of HR, AKFC; and Glenn Ferguson, CEO, AKFC—are the named defendants. Ibid. All of the alleged conduct giving rise to this matter concerns Mauer’s employment with AKFC and employees of AKFC. Ibid. As such, representatives of DHS and the individual defendants employed by DHS and AKFC have been the main point of contact for B&C throughout the entirety of the defense of this matter. Ibid.

Based upon the factors articulated by former Attorney General Grewal, the government clients that B&C was retained to represent in Mauer I are DHS, AKFC,

and the individual defendants employed within DHS and AKFC. (Pa155-58). Neither DHS, AKFC, nor any of the individual defendants are part of the Office of Attorney General that issued the indictment against Mr. Tambussi in his personal capacity. They are separate entities within the State.

Mauer II concerns alleged retaliation and breach of contract that Mauer suffered in 2020 and 2021 while applying for positions with TPH and AKFC. (Pa174-77; Da3; Da5; Da74-126; Da19-49). At that time, due to an executive re-organization, the State Psychiatric hospitals were operated by the DOH. Ibid. DOH, TPH, AKFC, and their employees—Robyn Wramage-Caporoso, CEO, TPH; Robin Murr, Director of HR, TPH; and Kristin Hunt, Director of HR, AKFC—are the named defendants. Ibid. All of the alleged conduct giving rise to this matter occurred within TPH and AKFC and concerns their respective employees. Ibid. As such, representatives from DOH and the individual defendants employed by TPH and AKFC have been the main point of contact for B&C throughout the entirety of the defense of this matter. Ibid.

Based upon the factors articulated by Attorney General Grewal, the government clients that B&C was retained to represent in Mauer II are DOH, TPH, AKFC, and the individual defendants employed within TPH and AKFC. (Pa155-58). Neither DOH, TPH, AKFC nor any of the individual defendants are part of the Office of the Attorney General that issued the indictment against Mr. Tambussi in

his personal capacity. They are separate entities within the State.

As the trial court properly concluded, B&C represents DHS, DOH, AKFC, TPH, and the individual defendants. “These entities are not part of the Attorney General’s Office and are not factually connected to anything having to do with the indictment.” (T6-7).

C. There is No Positional Conflict Under the Outside Counsel Guidelines that Prohibits Brown & Connery, LLP From Continuing its Representation of the Defendants-Respondents in this Consolidated Matter

The Outside Counsel Guidelines promulgated by the Division of Law define “positional conflicts” as conflicts arising from “counsel’s advocacy of positions conflicting with important State interests.” (Pa129-30). The Guidelines note that outside counsel “should generally avoid advocating a position that would limit the authority of the State client, would expand the scope of potential liability of the State client, or would require the State client to divulge information that the State client generally regards as confidential or privileged.” (Pa129). As such, “[o]utside counsel have a continuing obligation to ascertain whether positions they intend to assert on behalf of other clients are inconsistent with the interests of the State” Ibid. Further, the Guidelines provide that “[a]fter consultation with outside counsel, the Division shall determine, in its sole discretion, whether an impermissible positional conflict exists, or whether other circumstances exist that would undermine

the public confidence in the fair and proper operation of State government.” (Pa129-30).

As detailed above, Defendants-Respondents submitted three certifications from their clients confirming that, following the indictment of Mr. Tambussi in his personal capacity, Defendants-Respondents have not requested B&C withdraw as their counsel in this consolidated matter. As such, and contrary to Mauer’s assertions (Pb10), there is no dispute that Defendants-Respondents made no request that B&C withdraw as their counsel in this consolidated matter. Thus, the Division of Law has not determined that an impermissible “positional conflict” exists under the Outside Counsel Guidelines.

Indeed, the indictment against Mr. Tambussi does not create a “positional conflict” under the Outside Counsel Guidelines prohibiting B&C from continuing to represent Defendants-Respondents for several reasons. First, Mr. Tambussi was indicted strictly in his personal capacity. (Pa9-119). Mr. Tambussi performed no substantive work at any point during the defense of this consolidated matter. (Da7). His involvement was limited strictly to filing the designated trial counsel notice. Ibid. Nevertheless, Mr. Tambussi has withdrawn his appearance as designated trial counsel for Defendants-Respondents. (Pa121-22). He will have no further involvement in this matter.

Second, B&C was not indicted. (Pa9-119). Nothing in the indictment against Mr. Tambussi in his personal capacity will cause B&C and the attorneys handling the representation, Ms. Dohn and Ms. Taraschi, to advocate any positions in the course of this representation or any other representation that will conflict with or be adverse to the interests of their clients in this case—DHS, DOH, AKFC, TPH, and the individual defendants employed in therein—or the State as a whole. Mauer fails to articulate how the alleged facts in the indictment pertaining to real estate transactions in the City of Camden have any relation whatsoever to: (1) her former employment with Defendant AKFC, a State psychiatric hospital; (2) her allegations of retaliation in 2016 during her employment with AKFC; and (3) her allegations of retaliation and breach of contract against TPH, another State psychiatric hospital, and AKFC, for being denied social worker positions with them in 2020 and 2021. (Da9-18; Da74-126). There is no relation between the alleged real estate transactions in the City of Camden that are the subject of the indictment against Mr. Tambussi individually and Mauer’s allegations against State psychiatric hospitals AKFC and TPH. None of the Defendants, AKFC, TPH, DHS or DOH (the departments overseeing AKFC and TPH), nor any of the individually named defendants employed therein, are part of the Attorney General’s Office or factually connected to anything related to the indictment.

Neither B&C nor the attorneys handling the defense, Ms. Dohn or Ms. Taraschi, are adverse to their clients or the State as a whole. Accordingly, as the trial court properly concluded, “there is no positional conflict” and the “outside counsel guidelines are not implicated and do not result in a disqualification because once again there is nothing in the indictment that will cause Brown & Connery, Ms. Dohn, or Ms. Taraschi to advocate any positions that conflict with or are adverse to the interests of the defendants in this case.” (T8).

D. Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201 (1988) Does Not Support Disqualification of Brown & Connery, LLP Because it Has a Distinguishable Set of Facts and Relies Upon a Now Outdated Version of RPC 1.9

Mauer’s appeal is predicated almost entirely upon the New Jersey Supreme Court’s 1988 decision in Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201 (1988). That is fatal to the appeal, as Dewey is both factually distinguishable from this consolidated matter and based upon an outdated version of RPC 1.9 that is no longer in effect.

In Dewey, 109 N.J. at 205, the plaintiff brought an action against several tobacco and cigarette companies. After serving as co-counsel for several years, the plaintiff’s firm hired an attorney that had previously worked for defendant’s counsel. Id. at 207. Defendant then moved to disqualify plaintiff’s firm on that basis. Id. at 208. The Supreme Court concluded the firm “should be” disqualified under RPC 1.9(a) from representing Dewey. Id. at 216. However, because disqualification

motions call for the court to “balance competing interests,” the Court denied the motion because “an order disqualifying counsel on the eve of trial would do more to erode the confidence of the public in the legal profession and the judicial process than would an order allowing the firm to continue its representation of the plaintiff.” Id. at 218-19.

Here, unlike in Dewey, 109 N.J. at 215-16, RPC 1.9 is not implicated in the first place because it concerns duties to former clients. Defendants-Respondents are not former clients of B&C. B&C has represented Defendants-Respondents for the past five years in this consolidated matter. As the trial court properly concluded, “there is no basis to support [Mauer]’s position that RPC 1.9 is implicated.” (T9). Further, unlike in Dewey, 109 N.J. at 209, none of the attorneys at B&C who have actively represented Defendants-Respondents for the past five years have switched to a law firm representing Mauer. Simply put, there is no side-switching here.

More importantly, Dewey, 109 N.J. at 214, is legally distinguishable from this case because its holding is premised entirely upon a prior version of the RPCs that utilized the now abolished appearance-of-impropriety standard. Sixteen years after Dewey was decided, the appearance-of-impropriety standard was abolished by the 2004 amendments to the RPCs. See e.g. Trupos, 201 N.J. at 464 (noting the 2004 “overhaul” of the RPCs “eliminated the ‘appearance of impropriety’ language from the Rules of Professional Conduct”); In re Supreme Ct. Advisory Comm. on Pro.

Ethics Op.697, 188 N.J. 549, 562 (2006) (“as part of the 2004 amendments to the Rules of Professional Conduct and as recommended by the Pollock Commission, we ‘[e]liminated the ‘appearance of impropriety’ language from the Rules of Professional Conduct”); Report of the New Jersey Supreme Court Commission on the Rules of Professional Conduct at pg. 8 (“In keeping with the Commission’s recommendation to abandon the appearance of impropriety as an ethical standard, the Commission has deleted reference to that standard from proposed RPC 1.9.”); Martin v. AtlantiCare, No. 10-6793, 2011 U.S. Dist. LEXIS 122987, at *13 n.10 (D.N.J. Oct. 25, 2011) (“Because of the change in the RPC’s, the viability of the following quote in Dewey, 109 N.J. at 220, is doubtful as applicable to the imputed disqualification issue”) (Da167-192).

Thus, as the trial court properly concluded, Dewey “does not support disqualification in this case because Dewey has an easily distinguishable set of facts and relies on a now outdated version of RPC 1.9.” (T9).

E. There is No Conflict of Interest Under RPC 1.7(a) or RPC 1.10 that Prohibits Brown & Connery, LLP From Continuing its Representation of the Defendants-Respondents in this Consolidated Matter

RPC 1.7(a) provides that

a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s

responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

In other words, “RPC 1.7 prohibits two types of concurrent representations: (1) direct adversarial representations, and (2) representations that pose a significant risk of material limitation in the lawyer’s responsibility to a client.” Richardson v. DeFazio, No. A-4169-14 (App. Div. Mar. 7, 2016) (slip op. at 8). (Da143-47).

In determining whether a significant risk will exist, courts look to “the likelihood that a difference in interests’ will arise, and ‘if it does, whether it will materially interfere with the lawyer’s independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.’” In re Op. No. 17-2012 of Advisory Comm. on Pro. Ethics, 220 N.J. 468, 469 (2014) (quoting Model Rules of Pro. Conduct R. 1.7 cmt. 8 (2013)). See also Infosphere Consulting, Inc. v. Habibi Life, LLC, 2020 U.S. Dist. LEXIS 141332, at *8 (D.N.J. Aug. 7, 2020) (finding no significant risk of materially limited representation when two co-defendants’ interest were aligned against the plaintiff’s position). (Da148-51).

RPC 1.10(a) provides that

[w]hen 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.

See also Dittimus-Bey v. Taylor, 2013 U.S. Dist. LEXIS 161404, at *8 n.3 (D.N.J. Nov. 12, 2013) (finding in the event a personal conflict may at some time require [the attorney]’s withdrawal as counsel for Plaintiffs, the conflict would not necessarily disqualify the other attorneys at her firm under RPC 1.10). (Da152-55).

i. There is No Concurrent Conflict of Interests Under RPC 1.7(a)

There is no concurrent conflict of interest under RPC 1.7(a) here for two reasons. First, as set forth above, the clients whom B&C represents in this consolidated matter—DHS, DOH, AKFC, TPH, and the individual defendants employed therein—are neither part of nor employed by the Office of the Attorney General that issued the indictment against Mr. Tambussi in his personal capacity. (Pa155-58; Pa171-77). These clients are separate, independent departments within the State. B&C’s representation of these clients will not be directly adverse to another client. RPC 1.7(a)(1). All clients are aligned against Mauer’s position in this consolidated matter and united in their defense that Mauer suffered no retaliation or breach of contract.

Second, for the same reasons set forth above in Section I.C., there is no significant risk that B&C’s representation of its clients—DHS, DOH, AKFC, TPH, and the individual defendants employed therein—will be materially limited in any manner by B&C’s responsibilities to another client, a former client, or a third person

or by a personal interest of the lawyer. RPC 1.7(a)(2). Again, the indictment is solely against Mr. Tambussi in his personal capacity and pertains to alleged real estate transactions in the City of Camden and is wholly unrelated to Mauer's allegations of retaliation and breach of contract in this consolidated employment matter against State psychiatric hospitals AKFC and TPH. (Pa9-119; Da9-18; Da74-126). Mr. Tambussi has withdrawn as designated trial counsel for Defendants-Respondents and will have no further involvement in this consolidated matter. (Pa121-22). B&C and the attorneys handling the defense—Ms. Dohn and Ms. Taraschi—are not indicted and do not have any adverse interest to their clients in this consolidated matter, the State as a whole, or the Office of the Attorney General. (Pa9-119). They will continue to vigorously and zealously defend their clients in this matter, as they have done for the past five years. This zealous advocacy is neither hampered by nor impacted by the unrelated indictment against Mr. Tambussi in his personal capacity.

In sum, disqualification must have some reasonable basis grounded in an actual conflict. State v. Smith, 478 N.J. Super. at 64. Mauer falls woefully short of this heavy burden, as she fails to articulate: (1) any significant risk that B&C's representation of Defendants-Respondents will be materially limited by Ms. Dohn and Ms. Taraschi's responsibilities to another client, a former client, a third party, or by their own personal interests (RPC 1.7(a)(2)); (2) how the Attorney General's

unrelated indictment of Mr. Tambussi in his personal capacity will impair Ms. Dohn and Ms. Taraschi's ability to vigorously and zealously advocate for the clients; or (3) how the unrelated indictment will "materially interfere" with Ms. Dohn and Ms. Taraschi's independent "professional judgment in considering alternatives or foreclose courts of action that reasonably should be pursued on behalf of the client." In re Opinion No. 17-2012, 220 N.J. at 469. The indictment will have no such impact on Ms. Dohn and Ms. Taraschi's representation of their clients. This is confirmed by the Defendants-Respondents, who have not requested that B&C withdraw as their counsel in this consolidated matter. (Pa169-81; Da7).

As the trial court correctly concluded

RPC 1.7 is not implicated because Brown and Connery and the attorneys handling the defense, Ms. Dohn and Ms. Taraschi, do not have any adverse interest to these entities and the individual defendants. As noted above, the indictment as to Mr. Tambussi was in his personal capacity and he has no involvement in this litigation. The case of J.G. Ries and Sons, 384 NJ Super 216, the Appellate Division, 2006 at page 223, states that, "RPC 1.7 reflects the fundamental understanding that an attorney will give complete and undivided loyalty to the client and should be able to advise the client in such a way as to protect the client's interests utilizing his professional training, ability, and judgment to the utmost." The record before me does not cast any doubt on the defendants' position that Ms. Dohn and Ms. Taraschi will be able to, and have been, zealous advocates for their clients.

(T7). For these reasons, there is no concurrent conflict of interest under RPC 1.17(a) and the appeal should be denied.

ii. There is No Conflict of Interest Under RPC 1.10(a)

RPC 1.10(a) is equally inapplicable here because no concurrent conflict of interest exists pursuant to RPC 1.7(a). There is nothing on this record to suggest that Mr. Tambussi is adverse to the DOH, DOH, AKFC, TPH, and the individual defendants employed therein in this matter. As the trial court correctly concluded, considering the named defendants, “it is clear that RPC 1.10(a) is inapplicable because no concurrent conflict of interest exists pursuant to RPC 1.7(a). No defendant entities or individuals are part of the Office of the Attorney General that issued the indictment against Mr. Tambussi in his personal capacity.” (T7-8).

Nevertheless, even assuming arguendo that Mr. Tambussi is prohibited from representing these clients due to a “personal interest” by virtue of the unrelated indictment, the plain language of RPC 1.10(a) is clear that B&C may continue the representation. RPC 1.10(a) specifically provides that B&C may continue the representation provided that Mr. Tambussi’s “personal interest” “does not present a significant risk of materially limiting the representation of the client” by Ms. Dohn, Ms. Taraschi, or the remaining lawyers in the firm. For all of the reasons set forth above, Mr. Tambussi’s alleged “personal interest” presents no such risk. Again, this is echoed by the Defendants-Respondents, who have not requested that B&C withdraw as their counsel in this consolidated matter. (Pa169-81; Da7).

As the trial court correctly concluded

When one considers the named defendants in this case, it is clear that RPC 1.10(a) is inapplicable because no concurrent conflict of interest exists pursuant to RPC 1.7(a). No defendant entities or individuals are part of the Office of the Attorney General that issued the indictment against Mr. Tambussi in his personal capacity. Additionally, there is no significant risk that Brown & Connery's representation of the defendants will be materially limited in any manner by Brown & Connery's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. As noted above, neither Brown & Connery, nor Ms. Dohn, nor Ms. Taraschi, have any adverse interest at all to the clients they represent in this matter. This is supported by the three certifications submitted as part of this motion.

(T7-8). For all of these reasons, Mauer fails to demonstrate any conflict of interest under RPC 1.7(a) or RPC 1.10 that prohibits B&C from continuing its representation of the Defendants-Respondents in this consolidated matter. As such, the appeal should be denied.

F. Disqualifying Brown & Connery, LLP From Representing the Defendants-Respondents at this Stage of the Proceedings, Particularly Where No Conflict of Interest Exists and the Defendants-Respondents Have Not Requested that Brown & Connery, LLP Withdraw, Would be Unduly Prejudicial to the Defendants-Respondents

This is a complex consolidated employment matter involving numerous claims, factual allegations, and parties spanning several years. (Da1-7). It has been pending since 2017. Ibid. B&C—the third counsel representing Defendants-Respondents—has served as counsel since February 2019. Ibid. B&C has litigated Mauer I from written discovery through the summary judgment stage and was

preparing for trial prior to the filing of Mauer II. Ibid. The parties are in the midst of discovery in Mauer II. Ibid. The discovery end date is December 26, 2024. Given the complexity of this consolidated matter, it would be unduly prejudicial to the Defendants-Respondents to disqualify B&C when (1) no concurrent conflict of interest exists and (2) Defendants-Respondents have not requested that B&C withdraw as their counsel. Requiring Defendants-Respondents to find new counsel—against their wishes—at this stage of the proceedings would substantially delay a decision on the merits, as it would take a significant amount of time to secure new counsel and for them to become up to speed on both matters (Mauer I and Mauer II).

Motions to disqualify counsel must be “viewed skeptically” in light of their “potential abuse to secure tactical advantage.” Escobar, 460 N.J. Super. at 526. Mauer’s motion is nothing more than a litigation tactic designed to (1) delay an examination of the merits of her claims and (2) allow her counsel to complete discovery and dispositive motions in Mauer II and trial in the consolidated matter against an adversary that is not well versed in the case as B&C. This would be highly prejudicial to the Defendants-Respondents and cannot be permitted. Montclair Hosp., LLC v. Glen Ridge Borough, Nos. 8630-19, 2022-20, 4324-21, and 3702-22 (Tax July 26, 2023) (slip op. at 10). (Da156-66).

Finally, the DHS and DOH representatives to whom B&C has regularly reported for the past five years have attorneys at the State with whom they can confer and are fully cognizant of the indictment against Mr. Tambussi in his personal capacity. There is no surprise or misunderstanding on the part of the Defendants-Respondents. Defendants-Respondents have not requested that B&C withdraw as their counsel. (Pa169-81; Da7). Defendants-Respondents are entitled to the counsel of their choosing and they have selected B&C.

For all of the reasons set forth herein (1) there is no concurrent conflict of interest prohibiting B&C from continuing to represent the Defendants-Respondents and (2) it would be unduly prejudicial to Defendants-Respondents to disqualify B&C at this stage of the proceedings when no such conflict exists. As such, the appeal should be denied.

CONCLUSION

For all the reasons set forth above, the appeal should be denied.

Respectfully submitted,

BROWN & CONNERY, LLP

Attorneys for Defendants-Respondents

/s/ Therese M. Taraschi

Kathleen E. Dohn, Esq.
Therese M. Taraschi, Esq.

DATED: November 26, 2024

*Superior Court of New Jersey
Appellate Division*

PENELOPE MAUER,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY; NEW JERSEY
DEPARTMENT OF HUMAN SERVICES; ANN KLEIN
FORENSIC CENTER; THE BOARD OF TRUSTEES OF
THE ANN KLEIN FORENSIC CENTER; REED
GLADEY; ANN KENYON; GLENN FERGUSON;
ELIZABETH CONNOLLY; VALERIE MIELKE; AND
JOHN DOES 1-10 BEING AGENTS, SERVANTS AND
EMPLOYEES OF DEFENDANTS AS A CONTINUING
INVESTIGATION MAY REVEAL (WHO ARE
FICTITIOUSLY NAMED BECAUSE THEIR TRUE
IDENTITIES ARE UNKNOWN),

Defendants-Respondents.

PENELOPE MAUER,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY; STATE OF NEW JERSEY,
DEPARTMENT OF HEALTH, DIVISION OF
BEHAVIORAL HEALTH SERVICES; TRENTON
PSYCHIATRIC HOSPITAL; ROBYN WRAMAGE-
CAPOROSO, CHIEF EXECUTIVE OFFICER; ROBIN
MURR, DIRECTOR OF HUMAN RESOURCES,
TRENTON PSYCHIATRIC HOSPITAL; ANN KLEIN
FORENSIC CENTER; KRISTIN HUNT, DIRECTOR OF
HUMAN RESOURCES, ANN KLEIN FORENSIC
CENTER; AND JOHN DOES 1-10 BEING AGENTS,
SERVANTS AND EMPLOYEES OF DEFENDANTS AS A
CONTINUING INVESTIGATION MAY REVEAL (WHO
ARE FICTITIOUSLY NAMED BECAUSE THEIR TRUE
IDENTITIES ARE UNKNOWN),

Defendants-Respondents.

Docket No. A-000108-24

Civil Action

On Appeal From:
Superior Court of New Jersey
Mercer County, Law Division

Docket No. Below:
MER-L-197-17

Docket No. Below:
MER-L-388-22

Sat Below:
Hon. Douglas H. Hurd, P.J.Cv.

REPLY BRIEF OF PLAINTIFF-APPELLANT PENELOPE MAUER

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RULES

R.P.C. 1.76

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PRELIMINARY STATEMENT

In its opposition, Brown and Connery, LLP (Brown and Connery) fails to appreciate that disqualification is necessary because it represents the State of New Jersey in this consolidated matter and the State of New Jersey has brought criminal charges against Brown and Connery partner William Tambussi, Esq. and the indictment implicates the Brown and Connery law firm by referring to unnamed partners. The Brown and Connery law firm is a partnership. William Tambussi, Esq., a partner at Brown and Connery who for years had been counsel of record in this matter on behalf of the State of New Jersey, filed a “Designation of Trial Counsel” on March 9, 2022 designating himself “trial counsel for Defendants on all claims.” (Pa161). After his indictment by the State of New Jersey he withdrew his appearance – an acknowledgement of his conflict of interest. (Pa120).

Mr. Tambussi’s partners contend that Brown and Connery – the law firm where Mr. Tambussi remains employed and continues to work as a partner (Pa166) – can continue representing the State of New Jersey and the other defendants as if Mr. Tambussi, the former counsel of record, had not been indicted.

Brown and Connery seeks to sidestep the applicable legal analysis by claiming the State of New Jersey is different than other clients. Brown and Connery contends that the legal principles applicable to all attorneys and firms in New Jersey should not apply because Brown and Connery’s client here, the State of New Jersey, is

different than all other clients. Applying different rules to Brown and Connery because its client here is the State of New Jersey creates a two-tiered ethics system that is unsupported and would contribute to the steady decline in citizens' trust in government.

The proposition that Brown and Connery can continue to represent the State of New Jersey when the State of New Jersey has asserted that its senior partner and others in the firm committed criminal acts is outlandish. This proposition is premised on Brown and Connery's disavowing that it represents the State of New Jersey when it does and ignoring the positional conflict that is evident in the State of New Jersey contending that Brown and Connery's senior partner and others in the firm committed crimes.

For the foregoing reasons and the for the reasons previously set forth, this Court should vacate the Order denying plaintiff's motion to disqualify the Brown and Connery law firm from representing the State of New Jersey and the other defendants in this matter.

LEGAL ARGUMENT

Point I

William Tambussi's Conflict is Imputed to his Partners and Therefore Brown and Connery, LLP Should be Disqualified (Pa182; T)

As our Supreme Court has held almost forty (40) years ago, “[f]or all intents and purposes, the client of one partner is a client of all the partners.” Dewey v. R.J.

Reynolds Tobacco Co., 109 N.J. 201, 214 (1988) (citing Opinion No. 128, 91 N.J.L.J. 309 (1968)). Accordingly, Mr. Tambussi's conflict is indisputably imputed to his partners, including Ms. Dohn.

Brown and Connery contends that Dewey is not applicable because it involved duties to former clients and not duties to present clients but the legal principles enunciated in Dewey regarding disqualification of the firm when a partner is disqualified are directly applicable here, especially when the indictment charges wrongdoing of the firm and other lawyers there. The legal principle of disqualification of a firm when a partner has a conflict is sound and is applicable with greater force to conflicts involving present clients not less.

Defendants' counsel contends that Mr. Tambussi "performed no substantive work in the defense of this consolidated matter." (Db3). However, even if that is true, his partners have knowledge which is imputed to Mr. Tambussi. As our Supreme Court has held, "[e]ach partner's professional knowledge is justifiably imputed to the entire firm, regardless of actual disclosure." Id. at 215 (citing State v. Bellucci, 81 N.J. 531, 541 (1980)).

Defendants' reliance on a 2019 memo from former Attorney General Gurbir Grewal is inapposite. In neither the memo nor any cases cited by the defendants was an attorney in a partnership indicted by his own client. To be clear, the State of New Jersey is a defendant in this matter represented by Brown and Connery, and the State

of New Jersey is the plaintiff in the case against Mr. Tambussi. This unprecedented situation is not akin to the subject matter of the memo upon which defendants rely – potential conflicts between subsidiary entities of the State of New Jersey.

Additionally, defendants claim that “Neither DHS, AKFC, nor any of the individual defendants are part of the Office of Attorney General that issued the indictment against Mr. Tambussi in his personal capacity. They are separate entities within the State.” (Db10). While this argument is misplaced for the reasons set forth above, it also ignores the fact that **the State of New Jersey itself is a defendant in this matter, and Brown and Connery represent the State of New Jersey.**

Further, it is undisputed that the Attorney General, who brought the case against Mr. Tambussi, is responsible for supervising all outside counsel, including Mr. Tambussi’s law firm, Brown and Connery. As our Supreme Court has stated, “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” Dewey, 109 N.J. at 217; see also R.P.C. 1.10. Clearly, Mr. Tambussi is “prohibited” from representing the State of New Jersey as a result of his indictment. Mr. Tambussi essentially acknowledged that by withdrawing as counsel. (Pa163). Accordingly, it is improper for his partners to continue representing the same clients. As the Court noted in Dewey, “[i]f one attorney in the firm is disqualified, the entire

firm is precluded from representing the client in that suit.” Id. at 217 (citing Reardon v. Marlayne, Inc., 83 N.J. 460, 470-71 (1980)).

Defendants argue that their clients “have not requested that B&C withdraw as their counsel.” (Db24). First, defendants have provided anything to indicate their clients want Brown and Connery to continue representing them. At best, defendants make an argument from the silence of their own clients; but we shouldn’t presume that silence equals approval or even acquiescence. Second, even if the defendants did not object, public entities may not waive conflicts. Furthermore, the right to counsel of one’s choosing is not unlimited. As our Supreme Court has noted, “a person’s right to retain counsel of his or her choice is limited in that ‘**there is no right to demand to be represented by an attorney disqualified because of an ethical requirement.**’” Dewey, 109 N.J. at 218 (citing Reardon, 83 N.J. at 477) (emphasis added).

A. R.P.C. 1.10 Prohibits Brown and Connery, LLP from Representing the State of New Jersey and the Other Defendants

R.P.C. 1.10 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, Tambussi is prohibited from representing the State of New Jersey and, therefore, the other attorneys at Brown and Connery are prohibited from representing the State of New Jersey also. R.P.C. 1.7 provides, in pertinent part:

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

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

As the State of New Jersey is a defendant, there is a significant risk that Mr. Tambussi's representation will be materially limited by his personal interest; that is, the matters that are the subject of the indictment by the State of New Jersey. And because Mr. Tambussi is prohibited from representing the State of New Jersey by R.P.C. 1.7, the other attorneys in his firm are also prohibited from representing the State of New Jersey by R.P.C. 1.10.

B. Brown and Connery, LLP has a Positional Conflict with the State of New Jersey

Defendants claim that there is no positional conflict because "B&C was not indicted." (Db13). Yet that argument ignores the fact that the actions of Brown and Connery and its attorneys are mentioned throughout the indictment and one of its attorneys is the unindicted co-conspirator "Lawyer-2" whose identity has not been revealed. Tambussi was indicted because of his "advocacy of positions that conflict

with important State interests” and his law firm, Brown and Connery, played an integral role in the alleged scheme. (See Outside Counsel Guidelines effective November 1, 2022, Pa129).

The indictment specifically references Brown and Connery numerous times, stating: “WILLIAM M. TAMBUSI, is an attorney and **partner at the law firm of Brown and Connery.**” (Indictment, page 8, Pa16) (emphasis added). Further, the Indictment alleges misconduct not only by Mr. Tambussi but also by Brown and Connery:

128. Between October 18 and October 24, 2016, PHILIP A. NORCROSS and WILLIAM M. TAMBUSI, **and members of their respective law firms**, coordinated to devise a plan by which the CRA, a City government entity and client of WILLIAM M. TAMBUSI’s firm, would seek to condemn Developer-1’s view easement affecting the Triad Parcel.

129. As described in further detail below, this plan involved no meaningful participation by the CRA, the government entity legally entitled to exercise the right of condemnation.

[(Indictment, pages 50 and 51, Pa58-Pa59) (emphasis added).]

Indeed, the Indictment refers to a “Lawyer-2” at Brown and Connery who is an accomplice of Mr. Tambussi and an unindicted co-conspirator:

134. On October 20, 2016, **WILLIAM M. TAMBUSI’s law partner, Lawyer-2, who represented the CRA, emailed the then-Executive Director of the CRA to inform her of an “urgent issue” with the LPT development project.** In this email, Lawyer-2 wrote that “[t]he proposal is for CRA to file an application in Court to ask the Court to confirm that the power of eminent domain is available to extinguish the view easement. The idea is to get the complaint filed

today or tomorrow. Phil Norcross is going to brief the Mayor [DANA L. REDD] who I believe will then discuss with [the then-chair of the CRA board].”

135. According to billing records, although they did not charge the CRA for it, **Brown and Connery attorneys, including WILLIAM M. TAMBUSSI and Lawyer-2, worked at least 86 hours, over a 7-day period, preparing an order to show cause requesting that the court declare that the CRA had the power to condemn Developer-1’s view easement.** Fewer than five hours of this more than 86 hours of legal work involved contact with officials of the CRA, the client.

[(Indictment, pages 52 and 53, Pa60-Pa61) (emphasis added).]

In fact, as set forth in the Indictment, it was Mr. Tambussi’s position as an attorney, and his relationship with his partners at Brown and Connery, including the unindicted co-conspirator “Lawyer-2” and Brown and Connery’s client, CRA, that enabled the criminal enterprise to be successful in shaking down developers and other business people in South Jersey. As set forth in the Indictment:

139. Later that same day, this deal fell through. In a recorded conversation, GEORGE E. NORCROSS, III discussed this with PHILIP A. NORCROSS and referred to **the plan to use WILLIAM M. TAMBUSSI and the CRA to act against Developer-1,** “So, here’s what I’m thinking about. I just talked to Tambussi . . . I want to go in, **I want to encourage Tambussi to do his thing . . . I think we just do it. F**k ‘em. F**k ‘em. Just do it.**”

[(Indictment, pages 55-56, Pa63-Pa64) (emphasis added).]

Tambussi and Brown and Connery represented the “City and the CRA” and “WILLIAM M. TAMBUSSI . . . Sought to Conceal the Norcross Enterprise’s Plot” by “fil[ing] a pre-trial motion in the Superior Court of Camden County, on August

31, 2023, to preclude any reference to GEORGE E. NORCROSS, III and PHILIP A. NORCROSS in the matter.” (Indictment, pages 62-63, Pa70-Pa71).

It is unfortunate but evident that Brown and Connery and its partners, including the unidentified co-conspirator “Lawyer-2,” participated in the criminal enterprise with Mr. Tambussi and his co-defendants. In fact, as set forth above, Brown and Connery represented the public entities the defendants used to wield power and influence and to extort private citizens. And as a result of their schemes, in which Brown and Connery participated, Mr. Tambussi and his co-defendants enriched themselves and their businesses.

As set forth in the Indictment, “The Norcross Enterprise Reap[ed] the Financial Benefits of the Private Interests Extorted from Developer-1.” Indeed, as a result of a lawsuit in which defendant Tambussi and Brown and Connery represented the City of Camden, “Developer-1 agreed to settle the case, despite believing he was in the right, because he had concerns over corruption in Camden which made him believe that he would not be treated fairly by the court system.” (Indictment, page 76, Pa84).

The Indictment states that part of the aim of the Enterprise of which Mr. Tambussi was a part included:

Enriching and rewarding members, allies, and associates of the Enterprise, including with political endorsements, appointments to public positions, **influencing government contracts**, and placement in lucrative private sector jobs[.]

[Indictment, page 83, Pa91 (emphasis added).]

There can be no question that Mr. Tambussi's illegal activity, which included "Racketeering Conspiracy," "Theft by Extortion" and "Official Misconduct," unquestionably involved the Brown and Connery law firm. As a result, Mr. Tambussi enriched himself and enriched Brown and Connery. As our Supreme Court has held, "[t]he shared economic interest of the entire firm in the clients of individual members also supports treating a partnership as one attorney." Dewey, 109 N.J. at 215 (citing Bellucci, 81 N.J. at 541) (emphasis added).

Brown and Connery, a partnership, and William Tambussi, one of its partners, are two sides of the same coin. As Mr. Tambussi withdrew from representation of the State of New Jersey and the other defendants in this matter, so also must the Brown and Connery law firm which, as set forth above, is mentioned throughout the indictment as being a participating in the schemes of the Norcross/Tambussi Criminal Enterprise.

Substantive legal principles applicable to this case require disqualification of Brown and Connery. This is not simply application of an "appearance of impropriety" standard as Brown and Connery contends.

The proposition that a law firm whose partner has been indicted by the State of New Jersey's Attorney General, and the indictment implicates unnamed members of the firm, can remain as counsel to the State of New Jersey and report to the Office

of the Attorney General regarding the case is nothing less than bizarre. Brown and Connery's arguments to the contrary should be rejected.

CONCLUSION

For the foregoing reasons and for the reasons previously set forth, this Court should reverse the Order of the Law Division dated July 31, 2024 and disqualify Brown and Connery, LLP from representing the State of New Jersey and the other defendants in this matter.

Respectfully submitted,

LAW OFFICE OF DONALD F. BURKE
Attorneys for Plaintiff-Appellant
PENELOPE MAUER

By: *s/ Donald F. Burke*
Donald F. Burke, Esq.

Dated: December 26, 2024