STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: October 29, 2021]

JOANNE AUDETTE, *Plaintiff,*	:	
	:	
v.	:	**C.A. No. PC-2021-03727**
	:	
WD & ASSOCIATES, INC. and WILLIAM M. DELMAGE, *Defendants.*	:	

DECISION

STERN, J. Before the Court is Plaintiff Joanne Audette's Motion to Disqualify Defendants'—WD & Associates, Inc. and William M. Delmage—Counsel, the law firm of Duffy & Sweeney, Ltd. (D&S), and its attorneys, from representing Defendants in this action, pursuant to Rules 1.9(a) and 1.10(a) of the Supreme Court Rules of Professional Conduct. Defendants object to the motion. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts & Travel

In 1990, Plaintiff Joanne Audette (Audette) began building a book of insurance business clients, working for herself in the insurance industry while she attended law school. (Audette Aff. in Supp. of Mot. to Disqualify Defs.' Counsel, July 23, 2021 (Audette Aff.) ¶ 3.) In 1996, Audette became a member of the Rhode Island bar and started a small general law practice focused on estate planning. *Id.* Audette and Defendant WD & Associates, Inc. (WD) were "friendly competitors" at this time—she knew both Defendant William M. Delmage (Delmage), the 100% shareholder of WD, and his wife Tammie (William and Tammie, collectively the Delmages) —and around 2009, Delmage approached Audette with a proposal that, rather than continuing as

competitors, they combine their books of business. *Id.* ¶¶ 2, 4, 5. Audette agreed, and she and Delmage entered into a written agreement, which they operated under until about 2015. *Id.* ¶ 6. In 2015, Audette became a part-time employee of WD as its in-house attorney, primarily focusing on "answer[ing] questions by insurance clients about regulatory compliance" issues and, at times, providing legal advice to WD. *Id.* ¶¶ 7, 8. WD took over the responsibility of servicing Audette's book of business, but her clients remained her own and she maintained her private law practice outside of WD. *Id.* ¶ 8.

In 2018, Audette and the Delmages met about some operating issues within WD, and the Delmages proposed that Audette become a full-time employee of WD as its Chief Operating Officer (COO). *Id.* ¶¶ 11-12. Based on their verbal agreement, Audette assumed the role of COO in early 2019 and, shortly after, Audette and Delmage discussed WD buying Audette's book of business in exchange for WD stock. *Id.* ¶¶ 13-14, 16. At the same time, Delmage began considering a merger between WD and another insurance company. *Id.* ¶ 17. Given the possibility of a merger or buyout, Delmage and Audette memorialized their verbal agreements in the March 10, 2020 Employment Agreement (2020 Agreement). *Id.* ¶¶ 18-19.

The 2020 Agreement contemplated a term of six years, providing details regarding Audette's salary, bonuses, severance unless Audette was terminated for cause, and a buyout of her book of insurance business. *Id.* ¶ 19. Pursuant to the 2020 Agreement, Audette transferred her insurance clients to WD, at a value of approximately $150,000 per year, and in exchange Audette should have received $150,000 in WD stock and an additional $50,000 in incentive stock for continued employment; the transfer was to take place on or before July 1, 2020. *Id.* ¶ 20. However, the stock transfer did not occur on or before July 1, 2020. *Id.* ¶ 22.

In the fall of 2020, further discussions about a potential merger ensued and WD obtained outside counsel, Michael Sweeney (Sweeney) of D&S, to negotiate the merger with the other insurance company. *Id.* Sweeney entered into a joint representation of Delmage, individually, WD, and the other insurance company as to the potential merger. *Id.*; Sweeney Aff. in Supp. of Defs.' Obj., Aug. 19, 2021 (Sweeney Aff.), Ex. 2 (Redacted Engagement Letter dated Nov. 24, 2020). In connection with the merger discussions, Audette provided Sweeney with a copy of the 2020 Agreement. (Audette Aff. ¶ 23.) In February 2021, Delmage and Audette exchanged text messages about the buyout of her book of business and, in March 2021, Audette suggested to Delmage that they hire an attorney to draft the buyout agreement. *Id.* ¶¶ 25-26. The email (March 31st email[1]) stated: "I think we should hire an attorney to draft and [*sic*] agreement that is fair to both of us. We can each pay half and ask them to represent both of us (if anyone will do that). Maybe Sweeney?" *Id.* ¶ 26.

Days later, Audette emailed Sweeney (April 2nd email), asking if he could draft the buyout; the email stated:

> "As we discussed some time back WD and I have an agreement for WD to purchase a book of business from me in exchange for stock in WD. Our agreement calls for a 10% share of WD in exchange for the goodwill asset and a non-compete. We were wondering if we could hire you to draft the purchase agreement for us. If you would be willing to do that what would your fee be? If you aren't willing or able can you refer us to someone else?" *Id.* ¶ 27.

In response, Sweeney stated, "[y]es . . . [l]et's have a call with [Delmage] mid next week." *Id.* According to Audette, her email to Sweeney made it clear that she was asking Sweeney to

---

[1] Audette's Affidavit in Support of her Motion to Disqualify Defendants' Counsel includes embedded images of relevant text messages and emails. (Audette Aff. 10-16, 19-25.)

represent both her and WD, and "[a]s far as [she] was concerned, Sweeney was representing [her] as [her] lawyer at that time." *Id.* ¶ 28.

On the other hand, Sweeney states that he was not privy to the March 31st Email to Delmage suggesting a joint representation, that he always dealt with Audette in her capacity as General Counsel for his client WD, that the April 2nd email did not mention a joint representation, and that he understood the "us" in the April 2nd email to mean WD, not WD and Audette. (Sweeney Aff. ¶¶ 2-6.) According to Sweeney, Audette did not ask Sweeney to represent her in any legal matter, he did not agree to represent Audette, he never told Audette that he represented her, and he—per WD's request—prepared a standard draft Asset Purchase Agreement (APA) for her book of business. *Id.* ¶¶ 7-11.

On April 30, 2021, Sweeney sent Audette and Delmage a draft of the buyout agreement, an APA, and stated that "[t]here [were] a few issues between this and the employment agreement that we should discuss after you've had a chance to review." (Audette Aff. ¶ 30.) The buyout of Audette's book of business never occurred.

Delmage received an offer from another insurance company that proposed an outright purchase of WD, and during his consideration of this offer, it became apparent that the 2020 Agreement could pose an obstacle to the sale. *Id.* ¶ 32. Different options to settle the 2020 Agreement were proposed and discussed among Audette, Sweeney, and the Delmages. *Id.* ¶¶ 32-33. Text messages between Delmage and Audette reflect that the parties disagreed on the value of the 2020 Agreement, that Delmage mentioned that he and Audette would be meeting with Sweeney, and that Audette reminded Delmage that he "[was] being charged probably around $400/hr. every time [he] talk[ed] to or email[ed] [Sweeney] or [Sweeney] negotiate[d] with [Audette]." *Id.* ¶ 34.

Sweeney points to an email, dated May 4, 2021, that Audette sent to the Delmages concerning the 2020 Agreement where Audette states: "From [her] perspective [Sweeney] represents WD not [her] so [she] can't just take [Sweeney's] advice on that matter if [she does not] feel it's in [her] best interest." (Sweeney Aff. ¶ 12; Sweeney Aff., Ex. 1.) On May 6, 2021, during a conference call between Sweeney, Delmage, and Audette concerning the offer to purchase WD, Sweeney stated that "it became apparent to [him] there was a dispute due to the [2020 Agreement's] severance terms[,] [that he then] informed Ms. Audette that [he] needed to speak with Mr. Delmage alone[,] [and that he] advised Ms. Audette during this call that [he] represented WD, Inc. . . . not her in an individual capacity." *Id.* ¶ 15. Further, Sweeney states that he never gave Audette individualized legal advice, that the APA identifies Sweeney as counsel only for WD, that D&S never billed Audette, and that Audette never paid D&S in connection with the APA or any other matter. *Id.* ¶¶ 16-19.

Days after the text messages between Audette and Delmage, Audette emailed Sweeney and notified him of her withdrawal of her proposed "offer in compromise" concerning the 2020 Agreement. (Audette Aff. ¶ 35; Audette Aff., Ex. B (Audette Offer).) Sweeney then conveyed Delmage's position, namely that Delmage did not agree with what she believed she was entitled to under the 2020 Agreement, and told Audette that she should "have [her] attorney call him [(*i.e.*, Sweeney)] – or [she could] call [Sweeney] if [she] plan[ned] to represent [herself]." (Audette Aff. ¶ 36.) Audette responded by stating that she did not "need an attorney to represent [her] as there is nothing to represent [her] on[,] [that she] intend[ed] to continue to honor the terms of the contract as [she] ha[d] been doing[,] [and that] . . . [i]f WD breaches then [she would] file suit[.]" *Id.*

On May 21, 2021, through her newly retained counsel, Audette told Sweeney that she had no intention of resigning from her employment with WD and demanded the buyout of her book of

business. *Id.* ¶ 38. On May 24, 2021, Sweeney emailed Audette asking if she had an attorney representing her and notifying her that she had a conflict with WD by threatening to file suit against them "among many other claims in emails and texts." *Id.* ¶ 36. On May 28, 2021, WD, through counsel from D&S (Attorney Nakasian), notified Audette that it was voiding the 2020 Agreement and terminating her employment for cause because, in connection with the 2020 Agreement executed while Audette was General Counsel of WD, she "knowingly acquired a pecuniary interest adverse to WD" in violation of Rule 1.8(a) of the Rules of Professional Conduct and acted in her own interests in violation of her duty of loyalty to WD. *Id.* ¶ 39; Audette Aff., Ex. C.

On June 3, 2021, Audette filed this action alleging, among other claims: (1) that WD breached the 2020 Agreement by wrongfully voiding that agreement and terminating her employment and that, if the buyout provision violates Rule 1.8(a), it is severable from the remaining provisions; and (2) that Defendants have been unjustly enriched by Audette's book of insurance business. (Compl. ¶¶ 29-32, 42.) On July 23, 2021, Audette filed the instant Motion to Disqualify Defendants' Counsel.

II

Standard of Review

On a number of occasions, this Court has recognized the well-established principle that "the proponent of a motion to disqualify has a high burden to meet[,]" *Quinn v. Yip*, No. KC-2015-0272, 2018 WL 3613145, at *3 (July 20, 2018), because motions to disqualify can effectually "separate a client from a chosen attorney." *Fregeau v. Deo*, No. C.A. PC 03-4179, 2005 WL 1837011, at *3 (R.I. Super. Aug. 2, 2005) (citing *Evans v. Artek Systems Corp.*, 715 F.2d 788, 791-92 (2nd Cir. 1983)). *See In re Yashar*, 713 A.2d 787, 790 (R.I. 1998) (party seeking disqualification of a judge carries a substantial burden); *Olivier v. Town of Cumberland*, 540 A.2d 23, 27 (R.I.

1988); *see also Haffenreffer v. Coleman*, 2007 WL 2972575, at *2 (D.R.I. 2007) ("A party seeking disqualification of an opposing party's counsel bears a 'heavy burden of proving facts required for disqualification.'").

Rule 1.9(a) of the Supreme Court Rules of Professional Conduct provides that:

> "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." Sup. Ct. R. Prof. Conduct 1.9(a).

Thus, there are three elements to this rule's application: (1) its proponent must be a former client of the lawyer; (2) the lawyer must be representing another person in a matter that is the same or a substantially related matter; and (3) the person the lawyer is representing must have an interest that is materially adverse to the former client.

III

Analysis

The dispute among the parties and issue before this Court is whether Audette is a former client of D&S.

Audette argues that she is a former client of D&S because she asked Sweeney to represent both her and WD in drafting the APA. *See* Audette Aff. ¶ 28. Defendants argue that Audette was never a client of D&S; at all times, D&S represented WD and dealt with Audette as WD's in-house counsel. *See* Defs.' Obj. to Mot. 10-14. In so arguing, Defendants point out that although Audette mentioned to Delmage that they should hire an attorney to represent both of them to draft the APA, this was not communicated to Sweeney, and contrary to what Audette claims was her subjective belief, Audette has since acknowledged that she was not represented by Sweeney. *See id.*

Our Supreme Court has stated that "[g]enerally, the relationship of attorney and client arises by reason of agreement between the parties." *State v. Cline*, 122 R.I. 297, 309, 405 A.2d 1192, 1199 (1979). "[T]he existence of an attorney-client relationship is a question of fact." *DiLuglio v. Providence Auto Body, Inc.*, 755 A.2d 757, 766 (R.I. 2000). The party claiming "the existence of an attorney-client relationship . . . [has the] burden to prove the existence of any such relationship." *Id.* The existence of this relationship can be proven by express agreement or implied through "the conduct of the parties[,]" such as when "the advice and assistance of the attorney are sought and received in matters pertinent to the attorney's profession as a lawyer . . . ." *Id.*

The United States District Court for the District of New Hampshire utilized an analysis focused on the possible disclosure of confidential information in determining whether an implied attorney-client relationship existed for purposes of a motion to disqualify. *See Maturi v. McLaughlin Research Corp.*, No. 01-318-M, 2001 WL 1669254, at *3-4 (D.N.H. Dec. 31, 2001). There, the court stated:

> "A party may establish an implied attorney-client relationship if (i) the party submitted confidential information to the attorney, and (ii) the party did so with the reasonable belief that his lawyer was acting as the party's attorney. For purposes of a motion to disqualify, confidential information is information that if revealed could put [one party] at a disadvantage or the other party at an advantage. . . . [W]hen the former relationship is an implied one . . . the court must inquire into the substance of the information that passed between [the party and the attorney]." *Id.* at * 3 (citations and internal quotations omitted).

The First Circuit has utilized a totality of the circumstances approach, based on the well-established principle pertaining to implied contracts that "to imply a contract, including one between an attorney and a client, the law requires more than an individual's subjective, unspoken belief that the person with whom he is dealing has become his lawyer." *Rhode Island Depositors Economic Protection Corp. v. Hayes*, 64 F.3d 22, 27 (1st Cir. 1995) (citing *Sheinkopf v. Stone*, 927

F.2d 1259, 1265 (1st Cir. 1991)). Instead, the belief '"must be objectively reasonable under the totality of the circumstances."' *Id.* (quoting *Sheinkopf*, 927 F.2d at 1265).

In our state courts, this principle has also been articulated in similar ways over many years. For example, in *Bailey v. West*, 105 R.I. 61, 249 A.2d 414 (1969), our Supreme Court stated that

> "[A]n implied contract . . . arises where the intention of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed from their acts, or, as it has been otherwise stated, where there are circumstances which, according to the ordinary course of dealing and the common understanding of [wo]men, show a mutual intent to contract." *Bailey*, 105 R.I. at 64, 249 A.2d at 416.

Nevertheless, in the specific context of implied attorney-client relationships, the decisions of our federal sister courts provide helpful guidance and analysis. For instance, in *Hayes*, the court determined that although a partnership was represented by an attorney, the limited partners were not the individual clients of that attorney where the partners' claim that they were clients "ultimately rest[ed] on a subjective belief completely unsupported by any indicia that the belief was objectively reasonable or that the limited partners actually relied on such a belief." *Hayes*, 64 F.3d at 27. There, the facts in the record reflected that (1) the attorney told the limited partners that they should retain separate counsel; (2) the attorney was under the impression that he was representing the entity and any reference to the "group" was a reference to the entity; (3) the limited partners pointed to nothing that indicated that the attorney agreed to represent them as limited partners; (4) the attorney denied ever agreeing to represent the limited partners; (5) the attorney made it clear that he represented the entity, not the limited partners; (6) the attorney billed the partnership and the partnership paid the attorney's fees out of partnership funds; and (7) the limited partners sought separate counsel when their liability became clear. *Id.* To the court, the record clearly demonstrated a relationship between the attorney and the *partnership*, and it was not

objectively reasonable for the limited partners to believe an implied attorney-client relationship existed between each of them individually and the attorney. *Id.*

In *Furtado v. Oberg*, C.A. No. CV 15-312-JJM-LDA, 2019 WL 430893 (D.R.I. Feb. 4, 2019), *aff'd,* 949 F.3d 56 (1st Cir. 2020), the United States District Court for the District of Rhode Island looked to the following factors to determine whether an implied attorney-client relationship existed:

> "whether the client: (1) affirmatively sought individualized legal advice; (2) expressed his belief that the attorney represented him as an individual to the attorney . . . ; (3) received legal advice from the attorney on issues individual to him . . . ; (4) told others that the attorney represented him . . . ; (5) personally paid for the attorney's services at issue and/or (6) sought separate counsel when a dispute arose[.]" *Furtado*, 2019 WL 430893, at *3 (internal citations omitted).

The facts in *Furtado* indicated that: the claimant did not ask the attorney to represent him; the attorney did not agree to represent him or tell him that she represented him; there were no communications solely between the claimant and attorney; the attorney never gave him legal advice or billed him; and, when a dispute arose, the claimant sought another attorney. *Id.* The court determined that, under the totality of the circumstances, the facts did not support the existence of an attorney-client relationship, despite the claimant's subjective belief, which the court found was objectively unreasonable. *Id.* at *4.

As was the case in *Hayes*, the attorney in *DiLuglio* did enter into and maintain an attorney-client relationship with two entities in connection with a stock acquisition, incorporation, and ongoing corporate matters where, by his own admission, he performed legal services for those entities. *DiLuglio*, 755 A.2d at 767. However, the court found that the attorney did not represent a shareholder individually in connection with the transactions at issue where that individual was not billed for the attorney's services and was represented by his own counsel. *Id.* at 766. As in

Furtado, here the circumstances indicated that the individual's subjective belief that the attorney was his personal attorney was unreasonable. *Id.*

In the instant matter, there is no question that there was no express written agreement between Audette and Sweeney. Rather, the questions are whether any objectively reasonable indicia support Audette's belief that she was represented by Sweeney in connection with the APA and whether she can demonstrate that she relied on such a belief. Based on the record before the Court and the high burden on the movant, both of these questions are answered in the negative.

Audette never clearly articulated to Sweeney that she wanted him to represent both her and WD in drafting the APA, and Sweeney did not receive the March 31st email to Delmage where this idea was made clear. Sweeney represented WD and, in his capacity as WD's counsel, he dealt with Audette as WD's in-house counsel; thus, in Audette's April 2nd email, when Audette referenced "us[,]" Sweeney made a reasonable assumption that Audette was referring to the entity. There is nothing that indicates that Audette affirmatively and clearly asked Sweeney to represent her or that Sweeney agreed to represent Audette in her individual capacity. For instance, Audette points to Sweeney's response to her March 31st email as Sweeney's affirmative agreement to represent her and WD. However, Audette asked Sweeney two questions in that email: (1) whether he would be willing to draft the purchase agreement for them and, if so, what the fee would be; and (2) whether he could refer them to someone else, if he was either unwilling or unable to represent them. Sweeney answered "yes" to the entire email, not one particular question, and suggested a call with Delmage. (Audette Aff ¶ 27.) The Court finds that it was not objectively reasonable for Audette to take Sweeney's response, the "yes" which could have been directed to either question, as an affirmative agreement to represent both her individually and WD in drafting the APA.

Additionally, according to Sweeney, during the May 6 conference call, Sweeney affirmatively stated to Audette that he did not represent her. Furthermore, in the APA sent to Audette and WD on April 30, 2021 (prior to the time Audette claims it became clear to her that he did not represent her), Sweeney listed himself as WD's attorney. Thereafter, he billed WD and there is no evidence Audette ever paid Sweeney or D&S in connection with drafting the APA. Moreover, Audette's text to Delmage on May 8 suggests that Delmage was being charged every time that Sweeney negotiated with Audette, which supports the Court's determination that she understood at that time that Sweeney was acting on WD's behalf and not hers.

Sweeney also suggested to Audette that she obtain counsel when her interests and the interests of WD started to appear adverse to one another. Subsequently, Audette did retain outside counsel. More importantly, prior to the discussion where it became apparent to Sweeney that Audette's interests in the 2020 Agreement were adverse to WD's, Audette herself acknowledged in an email to the Delmages that she was not represented by Sweeney. (Sweeney Aff. ¶ 12; Sweeney Aff., Ex. 1 (Audette acknowledging that "[f]rom [her] perspective [Sweeney] represents WD not [her] so [she] can't just take [Sweeney's] advice on that matter if [she does not] feel it's in [her] best interest").)

Thus, contrary to Audette's contention that she was under the impression that Sweeney represented her, the record demonstrates not only that she did not believe that she was represented by Sweeney but that she did not rely on such a belief.

In fact, the record is replete with indicia indicating that Sweeney was representing WD and, for purposes of drafting the APA, was acting in WD's interest. Audette asserts that the May 4 email where she explained to the Delmages that Sweeney did not represent her was sent after Sweeney drafted the APA, after she made a settlement offer to the Delmages, and after it became

clear to her that Sweeney was representing the Delmages and "no longer working to resolve the problem for [their collective] mutual benefit." (Audette Suppl. Aff. in Supp. of Mot. to Disqualify Defs.' Counsel, Aug. 24, 2021 (Audette Suppl. Aff.) ¶ 5.) According to Audette's timeline, between April 19th, when Audette sent Sweeney new details for the terms of the APA, and May 4th, when Audette acknowledged that Sweeney did not represent her, the following took place: Sweeney drafted the APA, in which he was listed as attorney for WD; Delmage received an offer for an outright buyout of WD; Sweeney took the lead on the negotiations for the buyout; Sweeney suggested that the 2020 Agreement could pose as an obstacle to the buyout; Audette drafted and presented the Delmages with an offer in compromise for the 2020 Agreement (as the offer in compromise reflects the terms of the offer to WD); and, at some point in those fifteen days, Audette came to understand that Sweeney was not working for her and WD's mutual benefit. (Audette Aff. ¶ 32; Audette Suppl. Aff. ¶ 2; Pl.'s Mot., Ex. B.)

However, there is no evidence in the record that Sweeney was ever working for Audette and WD's "mutual benefit" in resolving the buyout of her book of business or in resolving the 2020 Agreement as a whole. *Contra* Audette Suppl. Aff. ¶ 5. First, when Audette emailed Sweeney on April 19, 2021, to tell him that there was a change in the plan concerning the buyout and recited to Sweeney her and Delmage's new terms, Sweeney suggested that her proposed terms would result in a capital gain tax so she should get advice from her accountant. (Audette Suppl. Aff. ¶ 2.) Rather than give her legal advice, as Audette claims Sweeney did in this email, Sweeney told her to seek an expert for advice on the implications of the new plan that she and Delmage negotiated, between themselves. To the extent that it is considered "legal advice" for an attorney to make another attorney aware of a potential tax consequence, although that advice can also be obtained from non-attorneys, this nevertheless does not meet the heavy burden required for a

motion to disqualify opposing counsel. *See Quinn*, 2018 WL 3613145, at *3.

Second, Audette states that "Sweeney, who was [then] taking the lead on negotiations for selling WD, told [Audette] that he agreed with [her] that the [2020 Agreement] could *pose an obstacle to a sale*[.]" (Audette Aff. ¶ 32 (emphasis added).) This statement suggests that Sweeney was concerned about the sale of his client, WD, and the obstacle that the 2020 Agreement could pose to that sale, not the obstacle that the sale could pose to the 2020 Agreement or Audette's interest therein. Furthermore, Audette asked Sweeney whether they could "convince a buyer to take into account a future lower salary for [her] as a result of the buy-out of [her] book of business" to result in an "increase in the purchase price" for WD "at little cost to the Delmages." *Id.* Although Sweeney told Audette that "he thought this could be done" and Audette "believed" that Sweeney "was [her] lawyer at the time" that she asked this question, Audette's inquiry in regard to the buyout of WD for a higher purchase price was also in the interest of maximizing the purchase price for Sweeney's client, WD, not solely to maximize the value of Audette's interest in the 2020 Agreement.

Plainly, to demonstrate an implied attorney-client relationship, "the law requires more than an individual's subjective, unspoken belief that the person with whom he is dealing, who happens to be *a* lawyer, has become [*her*] lawyer." *Sheinkopf*, 927 F.2d at 1265. A reasonable attorney, in the role of in-house counsel, asking questions of an outside attorney representing the entity in the sale of its business and framing those questions in the interest of the entity, cannot form an objectively reasonable belief that the outside attorney is giving him or her *individual* legal advice and has become his or her *personal* attorney.

Audette did not point to any evidence that demonstrates that she (1) affirmatively sought *individualized legal advice* with respect to the APA, the 2020 Agreement, or any other matter; (2)

expressed her belief to Sweeney or the Delmages that Sweeney represented her as an individual (rather, the opposite is true); (3) received legal advice from Sweeney on the APA or the 2020 Agreement; or (4) personally paid for Sweeney's services in connection with the APA. *See Furtado*, 2019 WL 430893, at *3 (holding these factors, among others, dispositive to its inquiry). Although Audette was first under the belief that she did not need to obtain counsel, when a dispute arose, she sought separate counsel. *See id.* (indicating that a party seeking other counsel is also relevant to the inquiry). The Court finds that, under the totality of the circumstances, there is no implied attorney-client relationship between Audette and Sweeney. Furthermore, any subjective belief on Audette's part to the contrary is not reasonable.

Finally, if the Court looks to whether Audette submitted confidential information to Sweeney, as did the court in *Maturi*, the Court comes to the same conclusion: she did not. *See Maturi*, 2001 WL 1669254, at *3-4. Although Audette states that Sweeney agreed that the 2020 Agreement could be an obstacle to the sale and indicated that it might be possible to convince the buyer to take her contract with a lower future salary and increase the overall purchase price for the Delmages, the 2020 Agreement was not confidential and Audette did not demonstrate that she submitted any information to Sweeney in connection with her inquiry about the future lower salary that would put her at a disadvantage or WD at an advantage. Sweeney was privy to information that affected his client, including the 2020 Agreement and any options Audette would or did present to Delmage to settle that agreement. Audette has not demonstrated that the substance of the information that passed between her and Sweeney would have been otherwise unknown to Sweeney or could put her at a disadvantage.

Having found that there was no attorney-client relationship between Sweeney and Audette, the Court holds that the lack of an implied relationship is dispositive to this motion. As such, there

is no need to determine whether the matters are substantially related, whether the interests are materially adverse, or whether other attorneys at D&S should also be disqualified under Rule 1.10(a) of the Rules of Professional Conduct.

IV

Conclusion

Based on the foregoing, because Plaintiff has failed to demonstrate the existence of an attorney-client relationship, the Court denies Plaintiff's Motion to Disqualify. Counsel for Defendants shall prepare the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Joanne Audette v. WD & Associates, Inc. and William M. Delmage**

CASE NO: **PC-2021-03727**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **October 29, 2021**

JUSTICE/MAGISTRATE: **Stern, J.**

ATTORNEYS:

For Plaintiff: **Steven E. Snow, Esq.; Jeffrey H. Gladstone, Esq.**

For Defendant: **Stacey P. Nakasian, Esq.; Stephanie F. Friedel, Esq.**