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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 Case No: 20STFL07222

12 Petitioner:

13 NICOLE CURTIS,

14 vs.

15 Respondent:

16 SHANE MAGUIRE.

17 **MEMORANDUM OF POINTS AND**
18 **AUTHORITIES IN SUPPORT OF EX**
19 **PARTE REQUEST FOR ORDER**

20 Date: September 13, 2022

21 Time: 8:30 a.m.

22 Dept.: 7

23 Hon. Alexander C. D. Giza

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 A. Petitioner, NICOLE CURTIS (“Petitioner”) and Respondent, SHANE MAGUIRE
4 (“Respondent”) are the parties in the pending custody action. Respondent has been
5 represented by Land Legal Group, APC. since October 21, 2021. Erin Brown, Esq. (“Ms.
6 Brown”) was employed by Land Legal Group, APC., and performed work as an attorney
7 representing Respondent. Ms. Brown is recently employed by Skarin Law Group, APC.,
8 attorneys for Petitioner. Skarin Law Group should be vicariously disqualified as counsel for
9 Petitioner.

10 **II. LEGAL ARGUMENT**

11 **A. SKARIN LAW GROUP, APC. BE VICARIOUSLY DISQUALIFIED**

12 Rule 3-310(E) of the Rules of Professional Conduct of the State Bar of California provides: “A
13 *member shall not, without the informed written consent of the client or former client, accept*
14 *employment adverse to the client or former client where, by reason of the representation of*
15 *the client or former client, the member has obtained confidential information material to the*
16 *employment.”*

17 In the context of an employee in a legal setting who has relocated to another private firm
18 that is now adverse to the employee’s former client, no published California case holds that an
19 ethical wall (previously referred to as the “Chinese Wall”) will suffice to defeat the rule of
20 vicarious qualification of the entire firm. To the contrary, the courts have held that there is
21 simply “no gray area” and that “the entire firm must be vicariously disqualified even if [the
22 employee] has been ethically screened from day one.” *Henriksen v. Great Am. Sav & Loan*
23 (1992) 11 Cal.App.4th 109, 115-1116.

24 As noted by another court, “[c]learly, the California precedent has not rushed to accept
25 the concept of disqualifying the attorney but not the firm, nor has it enthusiastically embarked
26 upon erecting Chinese walls.” *Klein v. Superior Court* (1988) 198 Cal.App.3d 894, 912-913;
27 see *Peat, Marwick, Mitchell & Co. v Superior Court* (1988) 200 Cal.App.3d 272, 293-294.

1 It has been held that disqualification is proper as a prophylactic measure to prevent
2 possible future prejudice to the opposing Party from information the attorney should not have
3 possessed. See *Gregori v Bank of America* (1989) 207 Cal.App.3d 291, 309 [*“disqualification*
4 *is proper where, as a result of a prior representation or through improper means, there is a*
5 *reasonable probability counsel has obtained information the court believes would likely be*
6 *used advantageously against an adverse Party during the course of the litigation”*]; See
7 *McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1120.

8 In *In re Complex Asbestor Litigation*, the court of appeal explained disqualification was
9 warranted, not because the disqualified attorney had a direct duty to protect the adverse
10 Party’s confidences, but because the situation implicated the attorney’s ethical duty to
11 **maintain the integrity of the judicial process.** See *In re Complex Asbestos Litigation* (1991)
12 232 Cal.App.3d 572, 593. [Emphasis Added].

13 In this case, Ms. Brown was the lead associate attorney representing Respondent. The
14 probability exists that Ms. Brown has obtained information that could be used advantageously
15 against Respondent in the pending litigation. Please see the Declaration of Joseph Land in
16 Support of the instant ex parte request for order that includes redacted billing statements
17 reflecting the work Ms. Brown has done on behalf of Respondent.

18 **B. MONETARY SANCTIONS MUST BE IMPOSED AGAINST PETITIONER FOR**
19 **NECESSITATING THIS EX PARTE APPLICATION WITHOUT CAUSE.**

20 Code of Civil Procedure section 128.5(a) permits this Court to order a party who engages
21 in frivolous litigation tactics to pay the reasonable expenses, including fees, incurred by a
22 party as a result of those tactics. Here, counsel for Petitioner was made aware of the conflict
23 in representation and has refused to recuse himself, let alone respond to our meet and confer
24 on the issue. Because of Petitioner’s actions by and through her attorney of record,
25 Respondent will incur approximately \$5,000 for bringing this application and for any future
26 hearings on the issues. It is respectfully requested that Skarin Law Group be ordered to pay
27 attorney’s fees and costs as sanctions in the amount of \$5,000.00.

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1 **III. CONCLUSION**

2 For the foregoing reasons, Respondent's ex parte Request for Order should be granted in its
3 entirety.

4 Respectfully Submitted,

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6 Date: September 12, 2022

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8 Joseph Land, Esq.
9 LAND LEGAL GROUP, APC.
10 Attorneys for Respondent,
11 SHANE MAGUIRE.
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