

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

KEVIN N. BASS,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER, et al.

Defendants.

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CIVIL ACTION NO. 5:25-cv-00244-H-BV

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO
DISQUALIFY COUNSEL FOR DEFENDANT DARREN G. GIBSON OR, IN THE
ALTERNATIVE, TO REQUIRE SEPARATE REPRESENTATION**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Texas Tech University Health Sciences Center ("TTUHSC") and the Individual Defendants file this Response in Opposition to Plaintiff's Motion to Disqualify Counsel for Defendant Darren G. Gibson or, in the Alternative, to Require Separate Representation (Doc. 46) (the "Motion"), and respectfully show the Court as follows:

I. INTRODUCTION

Plaintiff's Motion to Disqualify is not a legitimate effort to protect the integrity of these proceedings. It is an attempt by a non-client adversary to interfere with Defendant Gibson's chosen counsel based on a speculative and legally unsupported theory of conflict.

Plaintiff advances two purportedly "independent" grounds for disqualification: (1) that the Texas Attorney General lacks statutory authority to represent Defendant Darren G. Gibson, and (2) that joint representation of TTUHSC and Gibson creates an irreconcilable conflict under Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct. (Doc. 46 at 3–4). Neither theory withstands scrutiny, and neither satisfies the demanding standard governing disqualification in

federal court. *See In re American Airlines, Inc.*, 972 F.2d 605, 611 (5th Cir. 1992); *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir. 1992).

Plaintiff’s first theory—framed as an “ultra vires” argument—does not implicate disqualification at all. Whether the Attorney General has statutory authority to represent a particular defendant under Chapter 104 of the Texas Civil Practice and Remedies Code concerns the scope of the State’s indemnification and defense obligations, not whether counsel may appear in federal court. *See* Tex. Civ. Prac. & Rem. Code §§ 104.001–.004. Federal courts do not permit litigants to recast alleged statutory limitations as a basis for disqualification, and Plaintiff cites no authority holding otherwise. That omission is telling. Disqualification is an extraordinary remedy, and it cannot rest on a collateral challenge to the State’s internal representation decisions. *See FDIC v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1313–14 (5th Cir. 1995).

Plaintiff’s reliance on Chapter 104, Chapter 108, and various Attorney General Opinions only underscores the defect in his argument. Those authorities address indemnification and liability allocation—not litigation authority or conflicts of interest. *See* Tex. Civ. Prac. & Rem. Code §§ 104.001–.004, 108.001; Tex. Att’y Gen. Op. DM-0409 (1996). Even the Outside Counsel Contract on which Plaintiff relies confirms the Attorney General’s continuing supervisory authority over representation decisions, including the ability to “withdraw, modify, or expand” approval of legal services. (Doc. 46-1 at App. 3–4). Nothing in those materials supports the proposition that an opposing litigant may invoke them to disqualify counsel.

Plaintiff’s second theory—a purported “irreconcilable conflict”—is equally deficient. It rests entirely on the premise that TTUHSC and Gibson might pursue different litigation strategies. (Doc. 46 at 6–7). That premise is insufficient as a matter of law. The Fifth Circuit has repeatedly held that “speculative or potential conflicts” do not warrant disqualification and that relief is

appropriate only where a clearly identifiable conflict calls into question the fair and efficient administration of justice. *American Airlines*, 972 F.2d at 611; *Dresser*, 972 F.2d at 543.

The actual record reflects no such conflict. Defendants have appeared through unified counsel and asserted aligned defenses, including sovereign immunity, qualified immunity, and failure to state a claim. Plaintiff's assertion that TTUHSC must "distance itself" from Gibson—and that Gibson must "implicate" TTUHSC—finds no support in governing law. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978) (municipal liability requires policy or custom); *Filarsky v. Delia*, 566 U.S. 377, 389–90 (2012) (qualified immunity analysis focuses on the nature of the function performed, not the individual's employment status). These defenses are routinely asserted together and do not create the zero-sum conflict Plaintiff posits.

Nor do the disciplinary rules salvage Plaintiff's Motion. Rule 1.06 prohibits representation only where it "reasonably appears to be or become adversely limited" by duties to another client. Tex. Disciplinary R. Prof'l Conduct 1.06(b)(2). The Fifth Circuit has made clear, however, that the Texas Disciplinary Rules are "guidelines" that do not create substantive rights enforceable by opposing parties. *U.S. Fire Ins. Co.*, 50 F.3d at 1313–14. A non-client litigant cannot invoke those rules to disrupt an opponent's representation based on hypothetical conflicts or strategic disagreement.

Plaintiff's Motion ultimately depends on a series of assumptions that the record does not support and the law does not recognize. His statutory theory addresses the wrong issue, his conflict theory rests on speculation, and the authorities he cites do not bridge that gap. Consequently, the Motion fails at the threshold and on the merits, and it should be denied in its entirety.

II. LEGAL STANDARD

Federal courts possess inherent authority to regulate the conduct of attorneys appearing before them, including the power to disqualify counsel. That authority, however, is sharply limited: disqualification is “a severe sanction” that must be used sparingly and only when necessary to preserve the integrity of the judicial process. *American Airlines*, 972 F.2d at 611; *Horaist v. Doctor’s Hosp. of Opelousas*, 255 F.3d 261, 266 (5th Cir. 2001).

The Fifth Circuit requires courts to balance competing considerations—maintaining ethical standards on the one hand, and protecting a party’s right to counsel of choice on the other, and must guard against the use of disqualification motions as tactical devices. *American Airlines*, 972 F.2d at 611; *U.S. Fire Ins. Co.*, 50 F.3d at 1316. Courts in this District likewise recognize the “palpable risk” that disqualification motions—particularly those brought by an opponent—may be used to disrupt litigation or deny a party its chosen counsel. *Galderma Labs., L.P. v. Actavis Mid Atl. LLC*, 927 F. Supp. 2d 390, 394–95 (N.D. Tex. 2013). For that reason, disqualification is disfavored and should not be imposed absent a clear showing that continued representation would materially undermine the fairness or integrity of the proceedings. *See Horaist*, 255 F.3d at 266.

The Texas Disciplinary Rules provide guidance but do not establish controlling standards. *See Dresser*, 972 F.2d at 544 (motions to disqualify are governed by federal law, not local ethical rules alone). The Fifth Circuit has made clear that these rules are relevant but not controlling standards that “do not create substantive rights” enforceable by opposing parties. *U.S. Fire Ins. Co.*, 50 F.3d at 1313–14. Accordingly, an alleged violation of Rule 1.06, standing alone, does not warrant disqualification.

Nor may disqualification rest on speculative or hypothetical conflicts. The Fifth Circuit has squarely rejected disqualification based on the “mere possibility of conflict,” requiring instead a

real and present conflict that threatens the fairness or efficiency of the proceeding. *Dresser*, 972 F.2d at 543; *see also Wheat v. United States*, 486 U.S. 153, 164 (1988).

Plaintiff invokes a more relaxed “appearance of impropriety” formulation drawn from earlier decisions such as *Woods v. Covington County Bank*, 537 F.2d 804 (5th Cir. 1976), and *United States v. Kitchin*, 592 F.2d 900 (5th Cir. 1979). Those cases do not control the analysis here. Subsequent Fifth Circuit authority clarifies that disqualification requires a specifically identifiable conflict that threatens the integrity of the proceeding, not generalized concerns or abstract notions of impropriety. *American Airlines*, 972 F.2d at 611; *Dresser*, 972 F.2d at 543. To the extent *Woods* and *Kitchin* suggest a broader standard, they must be read in light of—and constrained by—this later, controlling authority.

Standing is an additional, independent requirement. Courts are particularly wary of disqualification motions brought by non-clients, recognizing the risk of tactical misuse. *American Airlines*, 972 F.2d at 611; *U.S. Fire Ins. Co.*, 50 F.3d at 1316. A non-client movant must demonstrate a concrete, particularized risk that the alleged conflict will prejudice the fairness of the proceedings—not merely that interests could diverge in theory. *Horaist*, 255 F.3d at 266.

These principles impose a demanding burden. The movant must identify a real, present, and specifically identifiable conflict—not a hypothetical or conjectural one. To wit, a movant must establish standing, identify a real and present conflict, and demonstrate a meaningful risk to the integrity of the proceeding. Plaintiff satisfies none of these requirements. His Motion relies on an overbroad formulation of the standard, speculative theories of conflict, and authorities that do not support disqualification.

Under controlling Fifth Circuit law, the absence of an actual conflict and cognizable prejudice is dispositive. The Motion therefore fails as a matter of law and should be denied.

III. ARGUMENT AND AUTHORITIES

A. Plaintiff Lacks Standing to Seek Disqualification

Plaintiff's Motion fails at the threshold because he lacks standing to seek disqualification. He is not—and has never been—a client of the Office of the Attorney General or undersigned counsel. As a result, he cannot invoke Rule 1.06 to challenge Defendants' representation absent a showing of concrete prejudice to the integrity of the proceedings. *See* Tex. Disciplinary R. Prof'l Conduct 1.06(b)(2). He makes no such showing here.

The Fifth Circuit has repeatedly cautioned that disqualification motions brought by non-clients are disfavored because they are particularly susceptible to abuse as litigation tactics. *American Airlines*, 972 F.2d at 611. Courts therefore require more than a theoretical or strategic disagreement with opposing counsel's representation; the movant must demonstrate that the alleged conflict "clearly" threatens the fair and efficient administration of justice. *Id.*; *Horaist*, 255 F.3d at 266; *see also Pistikopoulos v. Tex. A&M Univ.*, No. 10-16-00327-CV, 2017 WL 888379, at *3 (Tex. App.—Waco Mar. 1, 2017, no pet.) ("Additionally, case law shows that Pistikopoulos lacks standing to complain about the Attorney General's representation of Vestal in this matter because he has no 'legally protected interest' in the identity of Vestal's counsel.") (citing cases).

Plaintiff attempts to manufacture standing by relying on language in *American Airlines* suggesting that a litigant may "bring" a potential conflict to the Court's attention. (Doc. 46 at 5). That language does not confer a right to obtain disqualification. It recognizes only that courts may consider conflict issues when properly presented. The Fifth Circuit has made equally clear that the disciplinary rules "do not create substantive rights" enforceable by opposing parties. *U.S. Fire Ins. Co.*, 50 F.3d at 1313–14. Plaintiff cannot convert the Court's supervisory authority into a personal entitlement to disqualify opposing counsel.

Nor does Plaintiff establish the required showing of prejudice. His theory is that joint representation “suppresses” an adversarial dynamic between co-defendants. (Doc. 46 at 6). That is not a cognizable injury. The Fifth Circuit requires a concrete risk that the alleged conflict will undermine the fairness or integrity of the proceedings—not speculation that different litigation strategies might exist in theory. *Horaist*, 255 F.3d at 266; *Dresser*, 972 F.2d at 543.

The record confirms the absence of any such risk. Plaintiff identifies no actual conflict, no inconsistent position taken by Defendants, and no decision in which counsel’s representation has been impaired. Instead, he hypothesizes that TTUHSC and Gibson could pursue different defenses and asserts that counsel might be constrained if that were to occur. (Doc. 46 at 6–7.) That is precisely the type of “hypothetical conflict” the Fifth Circuit has rejected as insufficient. *Dresser*, 972 F.2d at 543.

Plaintiff’s reliance on generalized statements about the Court’s inherent authority is likewise unavailing. While the Court retains the power to address conflicts sua sponte, that authority does not relieve a movant of the burden to demonstrate a concrete, present risk to the integrity of the proceedings. *Wheat*, 486 U.S. at 160. Plaintiff has not met that burden.

Plaintiff’s position ultimately collapses into a request that the Court disqualify counsel based on conjecture about how Defendants might litigate their defenses in the future. Fifth Circuit precedent does not permit that result. Absent a concrete showing that the alleged conflict threatens the fairness of these proceedings, Plaintiff lacks standing to seek disqualification, and the Motion fails on this ground as a matter of law.

B. No Actual Conflict Exists

Plaintiff’s second theory—that joint representation creates an “irreconcilable conflict”—fails because it rests entirely on speculation, not an actual, present conflict. Fifth Circuit law is

clear: disqualification requires more than theoretical divergence of interests; it requires a concrete conflict that threatens the fairness of the proceeding. *Dresser*, 972 F.2d at 543. Plaintiff does not—and cannot—make that showing.

1. The Record Reflects a Unified Defense, Not Adverse Interests

The analysis begins with the actual record, not Plaintiff’s hypotheticals. Defendants have appeared through unified counsel and asserted aligned defenses, including sovereign immunity, qualified immunity, and failure to state a claim (*see* Doc. 27). There are no cross-claims, no finger-pointing defenses, and no inconsistent positions.

That matters. Courts evaluating disqualification focus on whether an actual conflict has manifested—not whether one could be imagined. *American Airlines*, 972 F.2d at 611. Where co-defendants pursue a common litigation strategy, joint representation is not only permissible but routine.

Plaintiff’s theory requires the Court to disregard the record and instead assume that Defendants must become adverse to one another in order to litigate effectively. The law imposes no such requirement. Alignment of defenses at the pleading stage is not evidence of conflict; it is the ordinary course of litigation. The absence of any actual adversity between Defendants forecloses Plaintiff’s attempt to establish a present conflict.

Further, Plaintiff contends that “AAG Smith’s briefing confirms” the alleged conflict because it does not “address” the contractual relationship between TTUHSC and Gibson. (Doc. 46 at 7). That argument mischaracterizes both the record and the governing standard.

There is no requirement that jointly represented defendants present differentiated defenses at the pleading stage to avoid disqualification. To the contrary, unified briefing is the expected result where defendants assert common threshold defenses such as sovereign immunity, qualified

immunity, and failure to state a claim. *American Airlines*, 972 F.2d at 611 (recognizing legitimacy of coordinated representation absent actual conflict).

More importantly, the absence of a particular argument is not evidence of impaired representation. Disqualification turns on whether counsel's representation is materially limited by conflicting duties—not on whether Plaintiff believes additional arguments could have been raised. *See* Tex. Disciplinary R. Prof'l Conduct 1.06(b)(2). Plaintiff identifies no instance in which counsel was unable to advance a position on behalf of either client.

Plaintiff's theory would invert the governing standard, allowing an opposing party to manufacture a "conflict" by pointing to arguments counsel did not make. The Fifth Circuit has rejected that approach, requiring a showing of an actual, present conflict—not speculation about litigation strategy. *Dresser*, 972 F.2d at 543. The record reflects coordinated advocacy, not constrained representation, and Plaintiff's attempt to reframe unified briefing as evidence of conflict fails as a matter of law.

Plaintiff's reliance on *Perillo v. Johnson*, 79 F.3d 441 (5th Cir. 1996), is misplaced. *Perillo* arises in the criminal ineffective-assistance context, where the Sixth Amendment guarantees a defendant the right to conflict-free counsel and permits post-conviction relief where an actual conflict adversely affected counsel's performance. *Id.* at 447. That framework does not govern civil disqualification analysis. Unlike in the criminal context, disqualification in civil cases does not turn on whether a different strategy might have been pursued, but on whether counsel's representation is presently and materially limited by conflicting duties. *See Dresser*, 972 F.2d at 543. Plaintiff's attempt to import a criminal ineffective-assistance standard into a civil disqualification motion is doctrinally incorrect and does not establish an actionable conflict here.

2. Plaintiff’s “*Monell* vs. Qualified Immunity” Theory is Legally Incorrect

Plaintiff’s central argument is that TTUHSC must “distance itself” from Gibson to avoid liability, while Gibson must “implicate” TTUHSC to establish qualified immunity. (Doc. 46 at 6–7). That premise is legally incorrect. As an initial matter, *Monell* involved a materially different situation. *Monell* addressed liability of local governmental entities under Section 1983 and does not apply to state agencies such as TTUHSC. *See Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989) (States and state agencies are not “persons” under § 1983).

A governmental entity’s liability under *Monell* requires proof that a constitutional violation resulted from an official policy or custom—not merely the actions of an individual defendant. *Monell*, 436 U.S. at 694. At the same time, an individual defendant is entitled to qualified immunity unless he violated clearly established law while performing a discretionary function. *Filarsky*, 566 U.S. at 389–90.

These defenses are not mutually exclusive. Defendants may simultaneously argue that no constitutional violation occurred, that any alleged violation was not attributable to official policy, and that individual defendants are entitled to qualified immunity. Courts routinely consider these defenses together at the motion-to-dismiss stage.

Plaintiff’s effort to manufacture a zero-sum conflict between these doctrines misstates both. Qualified immunity does not require an individual defendant to attribute liability to the governmental entity, and *Monell* liability does not require an entity to disavow every action of an individual defendant.

Sovereign immunity defenses further align—not divide—the interests of TTUHSC and Gibson. Both seek dismissal at the threshold based on jurisdictional and legal deficiencies in

Plaintiff's claims. The governing doctrines are compatible, and Plaintiff's attempt to recast them as mutually exclusive does not establish a conflict and cannot support disqualification.

3. Plaintiff's Reliance on Out-of-Circuit Authority is Misplaced

Plaintiff relies heavily on *Dunton v. County of Suffolk*, 729 F.2d 903 (2d Cir. 1984), to argue that joint representation of a governmental entity and an individual defendant is inherently conflicted. That reliance is misplaced.

Likewise, *Dunton* involved a materially different situation. The municipality avoided liability by arguing that the officer acted outside the scope of his employment, while counsel simultaneously represented both parties. *Id.* at 907. That is an actual, developed conflict—one in which the legal defenses were directly adverse and affirmatively asserted. In *Dunton*, the conflict arose because counsel affirmatively advanced a defense that undermined one client to benefit the other. *Id.* at 907.

No comparable circumstances exist here. TTUHSC has not argued that Gibson acted outside the scope of any engagement, nor has it advanced any defense that would impose liability on Gibson to avoid institutional exposure. Plaintiff's reliance on *Dunton* therefore rests on a factual predicate that is absent from this case.

Plaintiff's reliance on *Filarsky* is equally misplaced. That case held that a private individual temporarily retained by the government to carry out its work is entitled to seek qualified immunity under Section 1983. 566 U.S. at 389–90. It did not involve disqualification, joint representation, or conflicts of interest. It provides no support for Plaintiff's theory, but rather supports the Attorney General's representation of Gibson, who was acting as a state actor on behalf of TTUHSC, similar to the other individual defendants. Authorities addressing concrete, developed conflicts do not apply where no such conflict exists.

4. Hypothetical Future Divergence Does Not Justify Disqualification

Plaintiff's argument reduces to the assertion that TTUHSC and Gibson might pursue different litigation strategies at some point in the future. That showing is insufficient as a matter of law.

The Fifth Circuit has rejected disqualification based on "speculative or potential conflicts," emphasizing that courts must avoid disrupting representation based on contingencies that may never arise. *Dresser*, 972 F.2d at 543; *Wheat*, 486 U.S. at 164.

If an actual conflict were to develop, the Court retains discretion to address potential conflicts when they present a real risk of developing into an actual conflict. *Wheat*, 486 U.S. at 163–64. Disqualification, however, is not a prophylactic remedy for hypothetical scenarios. It is reserved for conflicts that exist now and threaten the integrity of the proceeding. Speculation about future divergence does not satisfy the standard for disqualification and cannot support Plaintiff's Motion. Plaintiff identifies no such specifically identifiable conflict here.

C. Plaintiff's Remaining Authorities Do Not Support Disqualification

Plaintiff's Motion relies heavily on a collection of Attorney General Opinions, ethics materials, and administrative definitions to suggest that the Attorney General's representation of Defendant Gibson is improper. (*See* Doc. 46 at 4–5; *see also* Doc. 46-1). Those authorities do not support disqualification.

Attorney General Opinions are advisory interpretations of state law. They are not binding precedent and do not establish rules governing attorney disqualification in federal court. *See* Tex. Att'y Gen. Op. DM-0409 (1996). The opinions cited by Plaintiff address whether certain categories of individuals—such as independent contractors—fall within statutory indemnification

frameworks. *Id.* They do not address the Attorney General’s authority to represent parties in litigation, nor do they purport to restrict that authority.

That distinction is dispositive. The issue before this Court is whether joint representation creates a disqualifying conflict under Rule 1.06—not whether Gibson falls within Chapter 104’s indemnification provisions. *See* Tex. Civ. Prac. & Rem. Code §§ 104.001–.004. Plaintiff cites no authority bridging that gap, and none exists.

Plaintiff’s reliance on Texas Ethics Opinion 579 is similarly misplaced. That opinion recognizes that government lawyers may be treated as a single “firm” for purposes of conflict analysis. Tex. Ethics Op. 579 (2007). But that principle does not establish a conflict; it defines the analytical framework. Even when lawyers are considered part of the same firm, disqualification still requires a showing that representation “reasonably appears to be or become adversely limited” by duties to another client. Tex. Disciplinary R. Prof’l Conduct 1.06(b)(2). As explained above, no such limitation exists here.

Plaintiff also cites administrative definitions of “outside counsel” to emphasize that Gibson is an independent contractor. (Doc. 46 at 4). Those definitions merely distinguish between retained counsel and full-time government employees for administrative purposes. *See, e.g.*, 1 Tex. Admin. Code § 57.1(12). They do not address litigation authority, conflicts of interest, or the propriety of joint representation in federal court.

Taken together, Plaintiff’s authorities establish only that Gibson may be classified as an independent contractor for certain statutory or administrative purposes. They do not demonstrate that the Attorney General is prohibited from representing him, and they do not establish any conflict of interest—much less one warranting disqualification.

Authorities that address indemnification, administrative classifications, or internal government structure do not supply a basis for disqualification. Plaintiff's reliance on those materials fails to satisfy the governing standard, and this independent ground for relief must be rejected.

D. Disqualification is Unwarranted and Would Cause Substantial Prejudice

Even apart from the absence of any actual conflict, the Court must consider the practical consequences of disqualification. The Fifth Circuit has emphasized that courts should guard against the use of disqualification motions as procedural weapons, particularly where such motions would disrupt the proceedings without advancing any legitimate ethical concern. *American Airlines*, 972 F.2d at 611. Further, courts in this District have expressly cautioned against this risk, recognizing that disqualification motions present a “palpable risk of unfairly denying a party the counsel of his choosing.” *Galderma*, 927 F. Supp. 2d at 394.

This case is already in a critical procedural posture. Defendants have appeared, responded to the Complaint, and fully briefed a Motion to Dismiss raising threshold jurisdictional and immunity defenses. (Doc. 46 at 2 (acknowledging pending motion); *see also* Defs.’ Mot. to Dismiss, Doc. 27). Disqualifying counsel at this stage would require new counsel to duplicate substantial work, become familiar with a complex record, and delay resolution of dispositive issues that are intended to be addressed at the outset of the case.

Plaintiff identifies no countervailing harm that would justify that disruption. His asserted concern—that joint representation may limit adversarial tension between co-defendants—is speculative at best and legally insufficient at worst. (Doc. 46 at 6). There is no indication that counsel’s representation has impaired the development of the record or the presentation of legal arguments.

Courts routinely deny disqualification where the alleged conflict is attenuated and the resulting prejudice would be substantial. *Horaist*, 255 F.3d at 266 (emphasizing balancing of interests and disfavoring disqualification absent clear necessity). That principle applies with full force here.

Disqualification would impose immediate and concrete costs while addressing only a hypothetical concern. The governing standard does not permit that tradeoff. The balance of interests weighs decisively against disqualification, and this independent basis for Plaintiff's Motion fails as a matter of law.

IV. CONCLUSION AND PRAYER

Plaintiff's Motion to Disqualify rests on a series of legal and factual errors that independently—and collectively—foreclose the relief he seeks. He attempts to convert a dispute over statutory indemnification into a basis for disqualification, relies on advisory materials that do not govern attorney conduct in federal court, and conjures up a conflict-of-interest theory that depends entirely on speculation rather than any actual adversity between Defendants.

Controlling Fifth Circuit law requires far more. Disqualification is an extraordinary remedy reserved for circumstances in which a real, present conflict threatens the integrity of the proceeding. Hypothetical divergence of interests, strategic disagreement, and generalized appeals to “appearance” do not satisfy that standard. Nor may a non-client litigant invoke disciplinary rules or state-law authorities to interfere with an opposing party's choice of counsel absent a concrete showing of prejudice.

No such showing exists here. The record reflects aligned defenses, coordinated representation, and no impairment of counsel's ability to advocate on behalf of any Defendant.

The authorities Plaintiff cites do not address the issue presented, and the theories advanced in the Motion do not satisfy the governing standard for disqualification.

Plaintiff's Motion is a tactical effort to disrupt the defense and alter the course of the litigation. It does not implicate any recognized basis for disqualification. Fifth Circuit precedent cautions against precisely this use of disqualification motions, and those concerns are fully implicated here. Each of Plaintiff's asserted "independent" grounds fails on its own terms; together, they underscore the absence of any legally cognizable basis for disqualification.

The Motion fails at every level—standing, substance, and remedy—and should be denied in its entirety.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court deny Plaintiff's Motion to Disqualify Counsel for Defendant Darren G. Gibson or, in the Alternative, to Require Separate Representation, and grant Defendants all further relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on April 28, 2026, via the Court's ECF system to:

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