

# Part I

## GENERAL MOTIONS

### Chapter 1

#### Sample Motion for Order Disqualifying Counsel

- § 1:1 Sample motion for order disqualifying counsel—Notice of motion and motion
- § 1:2 —Memorandum
- § 1:3 —Declaration
- § 1:4 —*[Proposed]* order

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◆ **NOTE:** For expanded recent case citations regarding this motion, see California Law & Motion Authorities, Chapter 2.

**§ 1:1 Sample motion for order disqualifying  
counsel—Notice of motion and motion**

*[Attorney name, address]*

State Bar Number [ \_\_\_\_\_ ]

Telephone [ \_\_\_\_\_ ]

Facsimile [ \_\_\_\_\_ ] (if available—C.R.C. 2.111(1))

E-Mail [ \_\_\_\_\_ ] (if available—C.R.C. 2.111(1))

Attorneys for Plaintiff/Defendant, [ \_\_\_\_\_ ]

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF [ \_\_\_\_\_ ]

*[plaintiff's name]*            )    CASE NO.: [ \_\_\_\_\_ ]

)

Plaintiff,                    )    NOTICE OF MOTION AND



This motion is further based upon Code of Civil Procedure, Section 128(a)(5) which grants the court authority to disqualify counsel; and upon this notice, the attached Memorandum of Points and Authorities, the Declaration of [ \_\_\_\_\_ ] filed herewith, upon the records and files of the Court in this matter; and upon such further evidence and argument as may be presented prior to or at the time of hearing on the motion.

Dated:

Respectfully submitted,  
[FIRM NAME]

By: \_\_\_\_\_  
[ \_\_\_\_\_ ]

Attorneys for [plaintiff/defendant],  
[name of plaintiff/defendant]

**§ 1:2 Sample motion for order disqualifying  
counsel—Memorandum**

**MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR ORDER DISQUALIFYING  
COUNSEL<sup>1</sup>**

I.

**INTRODUCTION**

*[INSERT nature of action and procedural history.]*  
*[INSERT factual background showing that a conflict of interest exists on the part of an attorney in the case.]*  
*[References should be made to appropriate declaration(s) regarding the factual background and conflict.]*

II.

**THE COURT IS AUTHORIZED TO DISQUALIFY  
COUNSEL**

“Every court shall have the power. . .to control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.”  
Code Civ. Proc. § 128(a)(5)

The authority to disqualify an attorney stems from the trial court’s inherent power “[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other

**[Section 1:2]**

<sup>1</sup>For expanded case citations and other authorities related to this motion, see California Law & Motion Authorities (Thomson Reuters/The Rutter Group).

persons in any manner connected with a judicial proceeding before it. . . (Code Civ. Proc., § 128).” *Zador Corp. v. Kwan*, 31 Cal. App. 4th 1285, 1292, 37 Cal. Rptr. 2d 754 (6th Dist. 1995).

### III.

#### DISQUALIFICATION IS PROPER WHERE THERE IS A CONFLICT OF INTEREST

“A member *[of the Bar]* shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.” Rules of Professional Conduct, Rule 3-310(E).

The primary purpose of rule 3-310[(E)] is to protect the confidential relationship which exists between attorney and client, a relationship which continues to exist after the formal relationship ends. *David Welch Co. v. Erskine & Tulley*, 203 Cal. App. 3d 884, 891, 250 Cal. Rptr. 339 (1st Dist. 1988).

A client may seek to disqualify a former attorney from representing an adverse party by showing that the former attorney possesses confidential information adverse to the former client, or by showing that there is a “substantial relationship” between the former and current representation. *Henriksen v. Great American Savings & Loan*, 11 Cal. App. 4th 109, 113-114, 14 Cal. Rptr. 2d 184 (1st Dist. 1992).

In order to seek disqualification, the former client need not establish that the attorney actually possesses confidential information. It is enough to show that there was a “substantial relationship” between the former and the current representation. If the former client establishes the existence of a substantial relationship between the two representations the court will conclusively presume that the attorney possesses confidential information adverse to the former client and order disqualification. *Henriksen v. Great American Savings & Loan*, 11 Cal. App. 4th 109, 114, 14 Cal. Rptr. 2d 184 (1st Dist. 1992).

*[INSERT facts showing that confidential information was obtained, or that there is substantial relationship between the former and current representation where the acquisition of confidential information may be presumed.]*

*[References should be made to appropriate declaration(s) regarding these facts.]*

### IV.

#### COUNSEL’S ENTIRE LAW FIRM SHOULD ALSO BE DISQUALIFIED

As a general rule in California, where an attorney is dis-

qualified from representation, the entire law firm is vicariously disqualified as well. This is especially true where the attorney's disqualification is due to his prior representation of the opposing side during the same lawsuit. *Henriksen v. Great American Savings & Loan*, 11 Cal. App. 4th 109, 114-115, 14 Cal. Rptr. 2d 184 (1st Dist. 1992); *Klein v. Superior Court*, 198 Cal. App. 3d 894, 909, 244 Cal. Rptr. 226 (6th Dist. 1988).

*[INSERT facts showing connection between attorney and law firm.]*

V.

#### CONCLUSION

In view of the foregoing authorities and the facts as demonstrated in the attached Declaration(s), \_\_\_\_\_ respectfully requests that the Court issue an order disqualifying attorney \_\_\_\_\_, and the law firm of \_\_\_\_\_ from representing \_\_\_\_\_ in this action.

Dated:

Respectfully submitted,

*[FIRM NAME]*

By: \_\_\_\_\_

*[ \_\_\_\_\_ ]*

Attorneys for *[plaintiff/defendant]*,

*[name of plaintiff/defendant]*

#### § 1:3 Sample motion for order disqualifying counsel—Declaration

*[Attorney name, address]*

State Bar Number *[ \_\_\_\_\_ ]*

Telephone *[ \_\_\_\_\_ ]*

Facsimile *[ \_\_\_\_\_ ]* (if available—C.R.C. 2.111(1))

E-Mail *[ \_\_\_\_\_ ]* (if available—C.R.C. 2.111(1))

Attorneys for Plaintiff/Defendant, *[ \_\_\_\_\_ ]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF *[ \_\_\_\_\_ ]*

<i>[plaintiff's name]</i>	)	CASE NO.: <i>[ _____ ]</i>
	)	
Plaintiff,	)	DECLARATION OF _____
	)	IN SUPPORT OF MOTION TO
	)	DISQUALIFY COUNSEL



§ 1:4 Sample motion for order disqualifying counsel—[Proposed] order

[Attorney name, address]

State Bar Number [ \_\_\_\_\_ ]

Telephone [ \_\_\_\_\_ ]

Facsimile [ \_\_\_\_\_ ] (if available—C.R.C. 2.111(1))

E-Mail [ \_\_\_\_\_ ] (if available—C.R.C. 2.111(1))

Attorneys for Plaintiff/Defendant, [ \_\_\_\_\_ ]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF [ \_\_\_\_\_ ]

[plaintiff's name] ) CASE NO.: [ \_\_\_\_\_ ]
)
Plaintiff, ) [PROPOSED] ORDER
)
vs. )
)
[defendant's name], )
)
Defendant. )
)
)
)
)
)

This matter came on regularly before the Court for hearing on \_\_\_\_\_.
\_\_\_\_\_ appeared for [plaintiff/defendant], \_\_\_\_\_.
\_\_\_\_\_
appeared for \_\_\_\_\_.

The Court, having reviewed the moving and opposing papers on \_\_\_\_\_'s Motion To Disqualify Attorney \_\_\_\_\_ and the law firm of \_\_\_\_\_ from this matter due to conflict of interest; and oral argument of counsel having been received by the Court.

The Court finds, adjudges and orders as follows:

1. \_\_\_\_\_
and the law firm of \_\_\_\_\_
are hereby disqualified from representing \_\_\_\_\_
in this action due to conflict of interest.

2. \_\_\_\_\_.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

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Judge of the Superior Court