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3 RONALD A. SCHOLU, JR., CLERK  
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6 IN THE FAMILY DIVISION  
7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE  
9

10 Andrew Furer,  
11 Plaintiff,  
12 vs.

Case No. DV04-01626  
Dept. No. 11

13 Eloisa Furer,  
14 Defendant.

15 ORDER

16 The Court has reviewed Eloisa Furer's (hereinafter "Mrs. Furer") Motion to  
17 Disqualify Attorney Shawn Meador and Woodburn and Wedge as Attorneys for Plaintiff  
18 Andrew E. Furer, filed May 6, 2005; the Disclosure by the Court, filed May 9, 2005;  
19 Andrew Furer's (hereinafter "Mr. Furer) Opposition to Motion to Disqualify Counsel, filed  
20 May 20, 2005; Mrs. Furer's Reply to Opposition RE: Motion to Disqualify, filed May 27,  
21 2005; Mrs. Furer's Erratta RE: Exhibits to Eloisa Furer's Reply to Opposition RE: Motion  
22 to Disqualify, filed June 1, 2005; the Court's Recusal Order, filed June 3, 2005; Mrs. Furer's  
23 Ex Parte Motion Requesting an Expedited Ruling on her Motion to Disqualify Attorney  
24 Shawn Meador, filed June 27, 2005; Mr. Furer's Response to Eloisa Furer's Ex Parte Motion  
25 Requesting an Expedited Ruling on her Motion to Disqualify Attorney Shawn Meador,  
26 filed June 28, 2005; Mr. Furer's Motion for Leave to File Supplemental Points and  
27 Authorities, filed June 28, 2005; Mrs. Furer's Reply to the Response to Eloisa Furer's Ex  
28 Parte Motion Requesting an Expedited Ruling on her Motion to Disqualify Attorney

1 Shawn Meador, filed June 29, 2005; Mrs. Furer's Opposition to Andrew Furer's Motion for  
2 Leave to File Supplemental Points and Authorities, filed July 4, 2005; Mr. Furer's Reply to  
3 Eloisa Furer's Opposition to Motion to File Supplemental Points and Authorities, filed July  
4 8, 2005; Mrs. Furer's Pre-Trial Statement, filed January 4, 2006; Mr. Furer's Brief Regarding  
5 Depositions, filed February 2, 2006; Mrs. Furer's Opposition to Plaintiff's Brief Regarding  
6 Depositions, filed February 8, 2006; and other relevant pleadings.

7 In addition, the Court has considered the testimony, argument and admitted  
8 evidence presented at the January 6, 2006 hearing in this matter. The portions of Mrs.  
9 Furer's deposition that are attached to Mr. Furer's Brief Regarding Depositions, filed  
10 February 2, 2006, are admitted.

### 11 FINDINGS OF FACT

12 The Furers were married on June 28, 1981. There are no minor children born the  
13 issue of this marriage. Mr. Furer is an attorney. Mrs. Furer is not an attorney.

14 Neither party has advanced any claim of separate property based upon ownership  
15 of property prior to marriage.

16 During marriage, the parties accumulated property that had an approximate value  
17 of \$80 million.

18 The single most valuable asset acquired during marriage, that had an approximate  
19 value of \$50 million, is a block of Washington Mutual stock. This stock was acquired  
20 solely in Mr. Furer's name as a result of stock options granted to him in compensation for  
21 his employment during marriage while the parties were living in the State of New Jersey.

22 In 2002, at a time when the parties were living in the State of Nevada, the parties  
23 engaged in estate planning with attorney Don Ross of Woodburn and Wedge. The parties  
24 met with Mr. Ross for about 2 hours on May 20, 2005. The community vs. separate  
25 property nature of the parties' property was discussed. The use of a post-nuptial  
26 agreement to conclusively establish the community vs. separate property nature of the  
27 parties' property was considered. As a result of the May 20, 2005 meeting, attorney Ross  
28 drafted an intervivos trust that identified both Mr. and Mrs. Furer as Trustors and that

1 was to be funded with all of the assets of the parties, including the Washington Mutual  
2 stock.

3 On May 23, 2002, attorney Ross had an extended telephone conversation with Mr.  
4 Furer. Mrs. Furer did not participate in that conversation. As a result of that telephone  
5 call, attorney Ross modified the estate planning documents to exclude the Washington  
6 Mutual stock from the intervivos trust that identified both Mr. and Mrs. Furer as Trustors.  
7 As a further result of that telephone call, attorney Ross drafted a separate trust for the  
8 Washington Mutual stock that identified Mr. Furer as the sole Trustor and Trustee.

9 On May 24, 2002, the Furers again met with attorney Ross. The purpose of the  
10 meeting was to review and sign final estate planning documents. Both Mr. and Mrs.  
11 Furer's joint trust and Mr. Furer's separate trust were signed at this meeting. A waiver of  
12 conflict of interest was presented to the parties and signed by them at this meeting.

13 Attorney Ross did not, at any time, advise Mrs. Furer that she did, or did not, have  
14 an ownership interest in the Washington Mutual stock.

15 The Furers discussed the possibility of divorce on a few occasions during their  
16 marriage, including during January 2004.

17 During January 2004, Mr. Furer approached attorney Shawn Meador of the law  
18 firm of Woodburn and Wedge seeking representation in relation to the possibility of  
19 divorce or legal separation or the preparation of a post-nuptial agreement.

20 Attorney Meador recognized that providing such representation to Mr. Furer might  
21 create a conflict of interest based upon his firm's prior representation of Mrs. Furer in the  
22 above-described estate planning.

23 During January 2004, attorney Meador prepared a Waiver of Conflict document for  
24 signature by Mr. And Mrs. Furer.

25 The Waiver and Conflict document does not contain any description of the material  
26 advantages and disadvantages to Mrs. Furer of the proposed waiver. Nor does it discuss  
27 Mrs. Furer's options or alternatives.

28

1 Attorney Meador gave that Waiver of Conflict document to Mr. Furer during  
2 January 2005.

3 Mr. Furer gave the Waiver of Conflict document to Mrs. Furer during January 2005.

4 Attorney Meador personally gave no advice to Mrs. Furer regarding the proposed  
5 Waiver of Conflict.

6 Mrs. Furer sought legal advice concerning the Waiver of Conflict. She discussed the  
7 proposed waiver with at least two lawyers before April 2, 2005: Sharon McDonald and  
8 Sandra Unsworth. Attorney Unsworth advised Mrs. Furer that if she refused to sign the  
9 waiver then attorney Meador would be unable to represent Mr. Furer. Attorney Unsworth  
10 advised Mrs. Furer not to sign the waiver.

11 On April 2, 2004, Eloisa Furer signed the Waiver of Conflict prepared by attorney  
12 Meador. Thereafter, and in reliance upon the waiver, Shawn Meador has represented Mr.  
13 Furer.

14 Mrs. Furer signed the Waiver without showing it to her attorney, Sandra Unsworth.

15 At the time Mrs. Furer signed the Waiver, Mr. Furer's attorney, Shawn Meador, in  
16 an unrelated matter, represented Mrs. Furer's attorney, Sandra Unsworth. Mrs. Furer did  
17 not know about this representation at that time.

18 On July 2, 2004, Mr. Furer filed a Complaint for Divorce with this Court. The case  
19 was assigned to Department 5, before Judge Schumacher.

20 On April 19, 2005, Mrs. Furer filed a Motion asking Judge Schumacher to recuse  
21 herself.

22 On May 6, 2005, Mrs. Furer filed the Motion to Disqualify attorney Shawn Meador  
23 and Woodburn and Wedge, which is now before the Court.

24 On May 9, 2005, Judge Schumacher filed a Disclosure By the Court that disclosed  
25 that, at the time of the acts alleged, the Judge's spouse was a shareholder in the firm of  
26 Woodburn and Wedge.

27 On June 3, 2005, Judge Schumacher recused herself from the case in order to avoid  
28 the appearance of impropriety.



1 Court on February 6, 2006, citing paragraph 20 of the Preamble to the ABA Model Rules of  
2 Professional Conduct.

3 To prevail on a motion to disqualify opposing counsel for an alleged ethical  
4 violation, the moving party must first establish "at least a reasonable possibility that some  
5 specifically identifiable impropriety did in fact occur." *Cronin v. District Court*, 105 Nev.  
6 635, 641, 781 P.2d 1150, 1153, quoting *Shelton v. Hess*, 599 F.Supp. 905 (S.D. Tex. 1984).  
7 Moving counsel must also establish that "the likelihood of public suspicion or obloquy  
8 outweighs the social interests which will be served by the lawyer's continued participation  
9 in a particular case." *Id.*

10 Disqualification under SCR 159 is warranted only if a prior representation and the  
11 current representation are substantially related. The burden of proving that two matters  
12 are substantially related falls on the party seeking disqualification. *Waid v. District Court*,  
13 119 P.3d 1219, 1222 (2005).

14 In proving that a prior representation is substantially related to present litigation,  
15 the moving party is not required to divulge the confidences actually communicated, nor  
16 should the Court inquire into whether an attorney actually acquired confidential  
17 information in the prior representation which is related to the current representation. The  
18 Court should instead undertake a realistic appraisal of whether confidences might have  
19 been disclosed in the prior matter that will be harmful to the client in the latter matter. *Id.*  
20 at 1222-1223.

21 A superficial similarity between the two matters is not sufficient to warrant  
22 disqualification; rather, the focus is properly on the precise relationship between the  
23 present and former representation. *Id.* at 1223.

24 On September 8, 2005 this court issued an order in which it ruled it would assume  
25 the existence of a conflict of interest necessitating a waiver under SCR 159. Thereafter, on  
26 September 22, 2005, the Nevada Supreme Court issued the decision in *Waid v. District*  
27 *Court, supra*, which adopted a three-part test for determining when former and present  
28

1 matters are substantially related within the meaning of SCR 159(1). The trial court must  
2 do the following:

- 3 (1) Make a factual determination concerning the scope of the former  
4 representation;
- 5 (2) Evaluate whether it is reasonable to infer that the confidential  
6 information allegedly given would have been given to a lawyer  
7 representing a client in those matters; and
- 8 (3) Determine whether that information is relevant to the issues raised  
9 in the present litigation. Id. at 1223.

10 There is no need to speculate about the scope of the estate planning representations  
11 provided by Woodburn and Wedge. During 1999 Mr. And Mrs. Furer considered using  
12 the services of Woodburn and Wedge for estate planning services. On September 9, 1999,  
13 attorney Don Ross of Woodburn and Wedge mailed to the Furers an engagement letter  
14 which described the possible scope of representation to include:

- 15 1. Review and analyze the property now owned by either or both of  
16 you, including consideration if its nature (e.g., community vs.  
17 separate property), the manner in which title is held, and the tax  
18 bases;
- 19 2. Consult with you regarding the manner in which each of you  
20 wishes to dispose of property over which you have any power of  
21 disposition;
- 22 3. Advise you regarding various planning options that may be  
23 available to you and which are consistent with your planning  
24 objectives, together with the potential estate, gift and income tax  
25 consequences associated with each.

26 Other documentary and testimonial evidence support that this description properly  
27 describes the scope of representation that Attorney Ross provided to the Furer's during  
28 2002. It is reasonable to infer that the Furer's were completely candid with Attorney Ross  
concerning all of their assets.

The primary focus of the present divorce action is a review and analysis of the  
property now owned by either or both of the parties, including consideration of its nature  
(e.g., community vs. separate), the manner in which title is held, and the tax and other  
consequences of various options of distribution. The information shared with counsel

1 during 2002 estate planning is relevant to issues raised in this litigation. Accordingly,  
2 following an analysis under Waid, the Court concludes that the 2002 representation and  
3 the current matter are substantially related and that a conflict of interest exists as described  
4 in NRS 159(1).

#### 5 WAIVER

6 A conflict of interests as described in NRS 159(1) does not preclude representation if  
7 the former client consents, preferably in writing, after consultation. In this case, Mrs. Furer  
8 signed a Waiver of Conflict on April 2, 2004 that purports to waive any conflict of interest  
9 based upon the former representation. Mrs. Furer now alleges that the waiver is  
10 ineffective.

11 The nature of the consent required under SCR 159(1) is described as "informed  
12 consent" by Rule 1.0(e) of the Model Rules of Professional Conduct and is defined as "the  
13 agreement by a person to a proposed course of conduct after the lawyer has  
14 communicated adequate information and explanation about the material risks of and  
15 reasonably available alternatives to the proposed course of conduct."

16 Comment (6) to Rule 1.0 further explains:

17 The lawyer must make reasonable efforts to ensure that the client or other  
18 person possesses information reasonably adequate to make an informed  
19 decision. Ordinarily, this will require communication that includes a  
20 disclosure of the facts and circumstances giving rise to the situation, any  
21 explanation reasonably necessary to inform the client or other person of the  
22 material advantages and disadvantages of the proposed course of conduct  
23 and a discussion of the client's or other person's options and alternatives. In  
24 some circumstances it may be appropriate for a lawyer to advise a client or  
25 other person to seek the advice of other counsel. A lawyer need not inform a  
26 client or other person of facts or implications already known to the client or  
27 other person; nevertheless, a lawyer who does not personally inform the  
28 client or other person assumes the risk that the client or other person is  
inadequately informed and the consent is invalid. In determining whether the  
information and explanation provided are reasonably adequate, relevant  
factors include whether the client or other person is experienced in legal  
matters generally and in making decisions of the type involved, and whether  
the client or other person is independently represented by other counsel in  
giving the consent. Normally, such persons need less information and  
explanation than others, and generally a client or other person who is

1 independently represented by other counsel in giving the consent should be  
2 assumed to have given informed consent.” (Emphasis added).

3 In accordance with this Comment, when attorney Meador did not personally  
4 inform Mrs. Furer he assumed the risk that Mrs. Furer was inadequately informed and  
5 that the April 2, 2004 waiver is invalid.

6 There is no evidence before the Court that Mrs. Furer is experienced in legal matters  
7 generally. There is evidence that she has some experience with waivers of conflicts of  
8 interest based upon her execution of such a waiver during 2002.

9 Mrs. Furer received the proposed Waiver of Conflict document during January  
10 2004. She sought legal advice about the proposed waiver. She discussed the proposed  
11 waiver with attorney Sharon McDonald. She retained attorney Sandra Unsworth and,  
12 although she did not show the proposed waiver document to attorney Unsworth, she did  
13 discuss the proposed waiver with attorney Unsworth. Attorney Unsworth advised Mrs.  
14 Furer that without a waiver, Shawn Meador would be unable to represent Mr. Furer.  
15 Attorney Unsworth advised Mrs. Furer not to sign the waiver. Despite this advice, Mrs.  
16 Furer signed the waiver on April 2, 2004.

17 Mrs. Furer argues that the waiver is ineffective because at the time she signed it she  
18 did not believe that it might be used for a divorce. The parties discussed the possibility of  
19 divorce many times prior to the execution of the waiver. The waiver document consists of  
20 only two short paragraphs on a single page and specifically refers to “divorce” three times.  
21 Mrs. Furer’s assertion that she did not know that the waiver was presented to her in  
22 contemplation of a possible divorce is not credible.

23 The court finds that Mrs. Furer was represented by independent counsel in relation  
24 to the April 2, 2004 consent; that she gave informed consent; and, that Shawn Meador and  
25 Woodburn and Wedge are not precluded because of the waived conflict of interest from  
26 representing Mr. Furer in this divorce action.



1 The only issue currently before the court relating to this representation is the impact  
2 of the representation on the waiver of April 2, 2004. The court finds that such  
3 representation did not affect attorney Unsworth's independence as Mrs. Furer's counsel in  
4 relation to the waiver and does not in any other manner require the court to determine  
5 that the waiver is invalid.

6 This finding does not extend to the representation Mrs. Furer received in relation to  
7 the post nuptial and marital settlement agreements. Mrs. Furer alleges in her motion that  
8 Mr. Furer acted as her attorney and advised her concerning how the marital estate would  
9 be divided if litigated. She alleges he presented her with a published decision that  
10 described the division of a \$100 million estate in a divorce with the husband receiving \$80  
11 million and the wife receiving \$20 million. Mrs. Furer argues that she agreed to the  
12 unequal division because her husband convinced her that it was appropriate as a matter of  
13 law. She argues that she ignored the advice of her own lawyers, choosing to believe,  
14 instead, the legal advice of her husband. Issues concerning Mr. Furer's advice to Mrs.  
15 Furer and the effect of attorney Meador's representation of attorney Unsworth in relation  
16 to the post-nuptial and marital settlement agreements are not presently before the court.

17  
18 **LAWYER AS WITNESS**

19 SCR 178 (1) provides that a lawyer shall not act as advocate at a trial in which the  
20 lawyer is likely to be a necessary witness except where: (a) the testimony relates to an  
21 uncontested issue; (b) the testimony relates to the nature and value of legal services  
22 rendered in the case; or (c) disqualification of the lawyer would work substantial hardship  
23 on the client.

24 Mrs. Furer asks the court to disqualify attorney Meador from representation in this  
25 case based upon this Rule. By order filed September 8, 2005 the court ruled that attorney  
26 Meador's alleged status as a necessary witness does not preclude him from representing  
27 his client in the pretrial stage. The question of disqualification as a trial advocate was  
28 deferred as premature.

1 SCR 178 is derived from, and virtually identical to, ABA Model Rules of  
2 Professional Conduct 3. 7. The ABA Commission on Ethics and Professional  
3 Responsibility has interpreted the Model Rule to allow a lawyer who is expected to testify  
4 at trial to represent his client in pretrial proceedings, with consent, although the lawyer  
5 may not appear in any situation requiring the lawyer to argue his own veracity to a court,  
6 whether in a hearing on a preliminary motion or other proceeding. This interpretation  
7 preserves the right to counsel of one's own choice while protecting the integrity of the  
8 judicial proceeding. *Dimartino v. District Court*, 119 Nev. 119, 121; 66 P.3d 945, 947  
9 (2003).

10 Attorney Meador negotiated and participated in drafting a post nuptial and a  
11 marital settlement agreement, the validity of which are challenged by Mrs. Furer in this  
12 litigation.

13 There is dicta in *Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825 (2000) which suggests  
14 that the attorney involved in the drafting and execution of a document is always a witness  
15 when, as in this case, the validity of the agreement is at issue. The opinion states,

16 Since Gary's attorneys were involved in the drafting and execution of the  
17 premarital agreement, they would have become key witnesses at the divorce  
18 trial had Janet been allowed to challenge the validity of the premarital  
19 agreement. Therefore, Janet's amendment of her Amended Answer would  
20 probably have resulted in the disqualification of Gary's attorneys under SCR  
21 178, which generally prohibits a lawyer from trying a case if the lawyer is a  
22 necessary witness in the case. At 892.

21 The course of the negotiation of the documents at issue in this case is likely to be a  
22 subject at trial. Attorney Meador, as an attorney who was involved in this transaction, is  
23 likely to be a witness.

24 The pleadings in this case make allegations regarding matters in which Attorney  
25 Meador was a participant. Paragraph 13 of the Mr. Furer's Contested Complaint For  
26 Divorce, filed August 5, 2004, alleges the content of communication between Attorney  
27 Meador and counsel for Mrs. Furer. The paragraph alleges that Mrs. Furer's conduct, as  
28 described in that communication, constitutes abuse of process. By Answer, filed August

1 20, 2004, Mrs. Furer denies the allegations of Paragraph 13 of Mr. Furer's complaint.  
2 These allegations are at issue and Mr. Meador appears to be a necessary witness to their  
3 resolution.

4 Mrs. Furer argues that Attorney Meador's simultaneous representation of Mr. Furer  
5 and Attorney Unsworth should be considered as one of several factors to negate the  
6 validity of the post nuptial and marital settlement agreements. This argument may or may  
7 not have merit. The above cited ethics opinions demonstrate that the argument is not  
8 frivolous per se. Nor is the argument precluded as a matter of law on the record presently  
9 before the court. Attorney Meador is likely to be a necessary witness in relation to this  
10 issue.

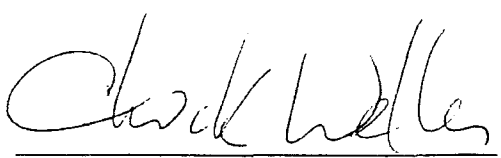
11 The court notes that Kent Robison, Esq. of Robison, Belaustegui, Sharp & Low  
12 appeared in this case as co-counsel for Andrew Furer on October 25, 2004. Mr. Furer has  
13 been aware of the possibility of disqualification at least since the filing of Mrs. Furer's  
14 motion seeking that relief on May 6, 2005. Mr. Furer, through counsel, set the date for the  
15 hearing on the disqualification motion and all subsequent hearing dates. The Court does  
16 not find any of the exceptions stated in SCR 178 (1) to the general rule of disqualification to  
17 be applicable.

18 Allowing a party to wholly disqualify opposing counsel under SCR 178 by simply  
19 listing that counsel as a witness and asserting that doubts should be resolved in favor of  
20 disqualification would invite the rule's misuse as a tactical ploy. Dimartino v. District  
21 Court, 119 Nev. 122-123. Here, the court finds that the request for disqualification is  
22 warranted and that attorney Meador is precluded by SCR 178 as acting as an advocate at  
23 trial for Mr. Furer.

24 All other arguments raised by the parties are denied.

25 IT IS SO ORDERED.

26 Dated: February 14, 2006.



District Court Judge

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2  
3 CERTIFICATE OF MAILING

4  
5 Pursuant to NRCP 5(b), I certify that I am an employee of JUDGE CHUCK  
6 WELLER, and that I deposited for mailing at Reno, Nevada, a true copy of the attached  
7 document, addressed to:

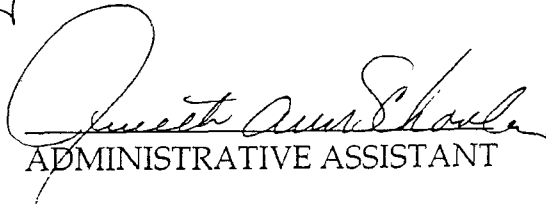
8  
9 Daniel Marks  
10 302 East Carson Avenue, Suite 702  
11 Las Vegas, NV 89101

12 Gloria M. Petroni  
13 417 West Plumb Lane  
14 Reno, NV 89509

15 Shawn Meador  
16 6100 Neil Road, Suite 500  
17 Reno, NV 89505

18 Kent Robinson  
19 71 Washington Street  
20 Reno, NV 89503

21  
22 Dated this 14 Day of February, 2006.

23  
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26 ADMINISTRATIVE ASSISTANT  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of BELDING, HARRIS & PETRONI, LTD., and that I caused a true and correct copy of **NOTICE OF ENTRY OF ORDER** to be served by:

(BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Belding, Harris & Petroni, Ltd., mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.

(BY PERSONAL DELIVERY) by causing a true copy thereof to be hand delivered this date to the addressee(s) at the address(es) set forth below.

(BY FACSIMILE) on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.

Federal Express or other overnight delivery

Reno/Carson Messenger Service

addressed as follows:

Shawn B. Meador, Esq.  
WOODBURN AND WEDGE  
6100 Neil Road, Suite 500  
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**(775) 688-3088**

Kent R. Robison, Esq.  
ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, NV 89503  
**(775) 329-7169**

DATED: this 17<sup>th</sup> day of February, 2006.

*Lisa A Nash*  
LISA A. NASH