

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-200

AUBREY JAMES PETIT

versus

KARMEN DURAN

IN RE AUBREY JAMES PETIT
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT
COURT, PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
ROCHELLE C. FAHRIG, DIVISION "D", No. 76563

TRUE COPY

July 20, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, John J. Molaison, Jr., Scott U. Schlegel, and Timothy S. Marcel

WRIT GRANTED

In this case arising from divorced parents' custody dispute over minor children, relator Aubrey James Petit seeks supervisory review of a May 1, 2026 judgment of the trial court granting a Motion to Disqualify Counsel filed by respondent, Karmen Duran. For the following reasons, we grant relator's writ application and reverse the judgment of the trial court.

BACKGROUND

Parties Mr. Petit and Ms. Duran, previously married, were divorced by a judgment of the 29th Judicial District Court for the Parish of St. Charles on June 20, 2014. There were two minor children born of the marriage: T.P. and K.P. Subsequent to the divorce proceedings, there were several rules for custody, changes of custody, and other rules related to custody and support. From October 2024, through May 27, 2025, juvenile criminal proceedings were open and pending against the eldest child, T.P., who was represented in those proceedings by Mr. Mark A. Marino, counsel hired by relator Mr. Petit.¹ At the time of the juvenile prosecution, respondent Ms. Duran was T.P.'s legal custodian and designated

¹ According to the writ application, Mr. Marino continues to represent T.P. in delinquency proceedings.

domiciliary parent, and in that capacity met with Mr. Petit both outside the courtroom and in Mr. Marino's office for discussions and preparations for their child's court proceedings.

Mr. Petit also engaged Mr. Marino as counsel to represent him in custody proceedings against Ms. Duran, both in April 9, 2025 filings and at a September 2, 2025 trial which resulted in custody of the other minor child, K.P., being awarded to relator Petit. On March 25, 2026, Mr. Petit filed a Motion to Change Custody of the minor T.P. On March 31, 2026, Ms. Duran filed a Motion to Disqualify Counsel in response.

In the Motion to Disqualify, Ms. Duran alleges that Mr. Marino has used "confidential" information obtained through the juvenile proceedings against her in the custody proceedings.² Ms. Duran asserts that she subjectively believed herself to be a client of Mr. Marino in connection with the defense of her juvenile son, and/or that there is a clear conflict of interest that has not been waived that requires removal of Mr. Marino from the custody matter.

A hearing on the motion was conducted on April 29, 2026, at which time the court heard testimony from both Ms. Duran and Mr. Petit. Documentary evidence in the form of text messages and emails were also introduced and admitted. At the conclusion of the hearing, the trial court made an oral ruling in favor of Ms. Duran, which was reduced to a written judgment rendered on May 1, 2026.³ Mr. Petit's timely writ application followed.

In his writ application, relator argues that the trial court erred in granting the motion to disqualify. We consider this error in our discussion below.

DISCUSSION

The custom remedy for an alleged conflict of interest is disqualification of the attorney or firm with the conflict. *Jones v. ABC Ins. Co.*, 13-167, p. 4 (La. App. 5 Cir. 9/24/13), 122 So.3d 608, 610. A motion to disqualify counsel requires the court to balance several important factors, including the right of a party to retain the counsel of his choice and the substantial hardship which might result from disqualification as against the public perception of and public trust in the judicial system. *Keith v. Keith*, 48,919, p. 10 (La. App. 2 Cir. 5/15/14), 140 So.3d 1202, 1209. The burden of proving disqualification of an attorney or other officer of the court rests on the party making the challenge. *Gregoire v. Wriborg*, 24-1290, p. 14 (La. App. 1 Cir. 7/11/25), 417 So.3d 68; *Walker v. State, Dep't of Transp. & Dev.*, 01-2078, p. 3 (La. 5/14/02), 817 So.2d 57.

In determining whether a conflict of interest exists, we look to the Rules of Professional Conduct, which have the force and effect of substantive law. *Walker, supra*.

² Specifically, the alleged confidential information was acquired by Mr. Marino, "a) from Duran during meetings in Court and at his office regarding the case, b) from the child himself, and/or from the investigative reports in the child's case that are otherwise sealed to the public for the protection of the child."

³ The judgment only disqualifies Mr. Marino from representing Mr. Petit in the Rule to Change Custody pertaining to the minor child, T.P., filed on March 26, 2026.

Rule 1.7 (a) states that a lawyer shall not represent a client if the representation involves a conflict of interest, which may exist if the representation of one client will be directly adverse to another client or if there is significant risk that the representation of a client will be materially limited by the lawyers' responsibilities to another client or former client.

Rule 1.8 (b) states that a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as otherwise permitted or required by the Rules.

Rule 1.9 (a) states that a lawyer who has previously represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives consent in writing. Part (b) of the rule states that a lawyer shall not knowingly represent a person in the same or substantially related matter in which the lawyer formerly was associated had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired protected information that is material to the matter unless the former client gives consent in writing.

Under these rules, the party seeking to disqualify opposing counsel on the ground of a former representation must establish (1) an actual attorney-client relationship between the moving party and the attorney he seeks to disqualify; and (2) a substantial relationship between the subject matter of the former and present representations. *Keith, supra*. Two matters are "substantially related" when they are so interrelated both in fact and substance that a reasonable person would not be able to disassociate the two. *Jones*, 122 So.3d at 611.

With this applicable law in mind, we now turn to the crucial question of whether an attorney-client relationship existed between respondent and Mr. Marino.

The Supreme Court has stated the following concerning how a court should determine whether there exists an attorney-client relationship in circumstances where the attorney has multiple roles:

...[W]e recognize there can be potential for confusion when an attorney wears a multitude of hats. To protect the client, this court has given great deference to the client's subjective belief whether an attorney-client relationship exists. *See [In re: LeBlanc*, 04-0681 (La.10/14/04), 884 So.2d 552; *Louisiana State Bar Ass'n v. Bosworth*, 481 So.2d 567 (La.1986).] Nevertheless, the overarching question is whether there is a reasonable, objective basis to determine that an attorney-client relationship has formed. *See Sheinkopf v. Stone*, 927 F.2d 1259 (1st Cir.1991) ...

(Underlining emphasis added)

In re Austin, 06-0630, p. 11 (La. 11/29/06), 943 So.2d 341, 348. The Court in *Austin* went on to apply the test articulated in the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 14 (2000) which states in pertinent part:

A relationship of client and lawyer arises when:

- (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either
 - (a) the lawyer manifests to the person consent to do so; or
 - (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services....

Respondent Duran's primary argument on the Motion to Disqualify was that there was a previously formed attorney-client relationship with Ms. Duran, Mr. Petit, and Mr. Marino in conjunction with the juvenile criminal proceedings involving their minor son, T.P. We now examine the evidence presented at the hearing to determine whether a reasonable, objective basis exists that an attorney-client relationship was formed between Mr. Marino and Ms. Duran.

Ms. Duran testified that she met with Mr. Marino and Mr. Petit outside the courtroom and at Mr. Marino's office in connection with her son's juvenile proceedings, at which time they discussed those proceedings. Ms. Duran also received emails from Mr. Marino's office informing her of court proceedings (these were introduced at trial). She testified that her understanding that Mr. Marino represented her came from a hearing in the juvenile court proceedings in which the presiding judge asked her consent to approve the appointment of Mr. Marino, who was hired by Mr. Petit, as counsel for her son rather than a court-appointed public defender. She testified that her son asked her to approve of Mr. Marino's representation of him. Ms. Duran testified that she was not represented during the prior custody proceedings during which Mr. Marino represented Mr. Petit because she was "over" hiring attorneys; she further testified that she called multiple law firms seeking representation for her custody case, but was rejected multiple times. Ms. Duran acknowledged that she had participated in proceedings involving the Department of Child and Family Services in which different attorneys represented the interests of each parent and the minor child. Ms. Duran stated that she never signed a contract with Mr. Marino and had no emails of other documentation stating that he represented her. She testified that it was her belief that an attorney who asks for information in a criminal case establishes an attorney-client relationship with the person being questioned, and that she had an attorney-client relationship with Mr. Marino because he asked her questions about the circumstances of her son's juvenile case. Ms. Duran went on to state that she believed Mr. Marino made her believe he represented her in order to get "confidential" knowledge for later use in custody proceedings against her. She also acknowledged that the information she gave to the sheriff's office was the same information she currently claims is "confidential." Ms. Duran testified that she was asked by Mr. Petit to provide money to pay Mr. Marino's services in conjunction with the juvenile proceedings, but that she never paid any money because, in her opinion, Mr. Marino never did anything for her child. Ms. Duran acknowledges telling Mr. Marino "go f* yourself" multiple times.

Mr. Petit testified that he was present for all of the meetings in Mr. Marino's office when Ms. Duran was present, and that at no time did Mr. Marino suggest that he represented Ms. Duran. Mr. Petit requested money from Ms. Duran for payment for the child's representation. He stated that he witnessed multiple incidents of Ms. Duran verbally attacking Mr. Marino.

Upon examining the evidence presented in its entirety, we conclude that there is no objective, reasonable basis to determine that an attorney-client relationship was ever formed between Mr. Marino and Ms. Duran. There is no evidence that Ms. Duran ever manifested an intent that Mr. Marino provide her personally (not her son) with legal services; on the contrary, the evidence presented suggests that she strongly disapproved of the services Mr. Marino was providing for her son and refused to pay for them. There's no indication that she ever contemplated paying Mr. Marino for legal services. Furthermore, there is no evidence that Mr. Marino ever manifested an intent, either verbally or in writing, to represent Ms. Duran, and had no reason to believe that Ms. Duran was reasonably relying on him for personal legal services. Ms. Duran's subjective belief that an attorney-client relationship arose between her and Mr. Marino is not reasonable and objective and is contradicted by her own self-serving testimony. *In re Austin, supra*.

This court has previously observed that disqualification could be used as an obstructive tactic. *Marks v. Marks*, 21-741, p. 8 (La. App. 5 Cir. 9/28/22), 349 So.3d 1071, 1077 (citing *Brasseaux v. Girouard*, 214 So.2d 401 (La. App. 3 Cir. 1968), *writ refused*, 253 La. 60, 216 So.2d 307 (1968)); *see also Keith, supra*. The record before us suggests that the instant motion to disqualify Mr. Marino as counsel is driven more by Ms. Duran's personal animosity towards him rather than a conflict of interest arising from an objective, real previous attorney-client relationship.

On review, we conclude that Ms. Duran has failed to meet her burden of showing that there existed a genuine attorney-client relationship between her and Mr. Marino.⁴ The trial court was manifestly erroneous and clearly wrong in this regard. We therefore grant this writ application and reverse the decision of the trial court granting the motion.

Gretna, Louisiana, this 20th day of July, 2026.

TSM
JGG
JJM
SUS

⁴ Having so found, we pretermitted review and discussion of whether the subject matters in question are "substantially related" to each other.

Fifth Circuit Court of Appeal State of Louisiana

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KARMEN DURAN

JOHNSON, J., DISSENTS WITH REASONS

I, respectfully, dissent from the majority disposition in this matter. After review, I find the trial court properly granted Karmen Duran’s motion to disqualify.

A motion to disqualify counsel requires the court to balance important factors: 1) the right of a party to retain counsel of his choice; and 2) the substantial hardship that may result from disqualification against the public perception of and the public trust in the judicial system. *Transamerica Life Ins. Co. v. Fuselier*, 21-52 (La. App. 5 Cir. 4/21/21), 2021 WL 1567648. The disqualification of counsel must be decided on a case-by-case basis. *Id.* The burden of proving disqualification of an attorney or other officer of the court rests on the party making the challenge. *Id.* The disqualification of an attorney is typically subject to review under the manifest error standard. *Id.*

In her motion to disqualify Mr. Marino regarding the rule to change custody, Ms. Duran alleged that Mark Marino is using confidential information gathered from T.P.’s juvenile proceeding—during which she divulged in-depth information involving the incident—against her in T.P.’s custody proceeding, and will continue to do so. When determining whether a possible attorney-client relationship conflict exists between Mr. Marino and Ms. Duran, the trial judge stated:

The juvenile delinquency matter with [T.P.] and the motion to modify custody specifically involve the same set of facts and circumstances. They relate to each other, and Mr. Marino has, I believe, filed the motion to modify custody based upon the actions of the mother, and some of that information may have been shared between the two of them.

And so I think there's a potential that those conversations could be used against her in that case, and so while the custody of [T.P.] wasn't addressed in the custody trial that we had last fall, the motion to modify is directly intertwined with those facts and circumstances.

Based upon the record before us, I find that the trial court's rationale reasonably supports disqualifying Mr. Marino from T.P.'s custody proceeding. Therefore, I would find that the trial court was not manifestly erroneous in disqualifying Mr. Marino as Aubrey Petit's attorney for the rule to change custody of T.P.

Additionally, I find that Mr. Marino's representation of T.P. in the juvenile proceeding may conflict with T.P.'s interests in the custody matter. Mr. Petit's rule to change custody alleges that circumstances have changed since the issuance of trial court's previous custody order, and the current custody arrangement is so deleterious to T.P.'s welfare that modification is justified. He then sets forth allegations regarding Ms. Duran's actions during T.P.'s juvenile proceeding as bases for the requested custody change.

I acknowledge that no one raised objections on behalf of T.P. for the trial court's consideration, and the court did not base its decision to disqualify Mr. Marino on a possible conflict arising from his representation of T.P. in the custody matter. However, in the interest of justice, T.P.'s possible conflict with Mr. Marino's representation should be considered in this ruling. In this custody proceeding, Mr. Marino would be representing his client, Mr. Petit, and acting in Mr. Petit's best interests. Information provided to Mr. Marino during T.P.'s juvenile proceeding could be used adversely to T.P.'s interests in an effort to change the current custody arrangement. Because the juvenile proceeding and the rule to change custody are

substantially interrelated, if T.P.'s attorney-client relationship with Mr. Marino were considered, Mr. Marino would surely be disqualified from representing Mr. Petit in the rule to change custody.

Accordingly, for the foregoing reasons, I would deny the instant writ application.

MEJ

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAI SON, JR.
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JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **07/20/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-200

E-NOTIFIED

29th Judicial District Court (Clerk)
Honorable Rochelle C. Fahrig (DISTRICT JUDGE)
Deanne R. Williams (Respondent) Mark A. Marino (Relator)

MAILED