IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff/Counterclaim Defendant, v. **FATHI YUSUF** and **UNITED CORPORATION**, Defendants/Counterclaimants, v. **WALEED HAMED**, **WAHEED HAMED**, **MUFEED HAMED**, **HISHAM HAMED**, and **PLESSEN ENTERPRISES, INC.**, Additional Counterclaim Defendants.	**CIVIL NO. SX-12-CV-370** **ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING**
	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. **UNITED CORPORATION**, Defendant.	**CIVIL NO. SX-14-CV-287** **ACTION FOR DAMAGES AND DECLARATORY JUDGMENT**
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. **FATHI YUSUF**, Defendant.	**CIVIL NO. SX-14-CV-278** **ACTION FOR DEBT AND CONVERSION**

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MOTION TO DISQUALIFY COUNSEL FOR THE HAMEDS AND FOR DISCOVERY RELATED TO ADDITIONAL POTENTIAL BASIS FOR DISQUALIFICATION

Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation (collectively, the "Defendants"), through their undersigned counsel, hereby move to disqualify Joel H. Holt,

Esq. from representing Waleed Hamed, individually and as Executor of the Estate of Mohammad Hamed, and Waheed Hamed, Mufeed Hamed, and Hisham Hamed (collectively, the "Hameds"), in this matter based on the imputed conflict of the Court's former law clerk, Robin P. Seila, Esq., which conflict cannot be rebutted by screening in a two-person law firm, and for discovery concerning Attorney Seila's involvement with the instant case, and other cases before the Court involving these or related parties, after employment discussions were initiated.

I. INTRODUCTION AND BACKGROUND FACTS

It is undisputable that a law clerk, who as a part of her clerkship does substantive work on a case, acquires information that is valuable to the parties to that case. Upon information and belief, Attorney Robin P. Seila, the Court's former law clerk, substantively participated in the above-captioned matter as part of her clerkship. During her clerkship, in early June of 2017, Attorney Holt, who represents the Hameds in this case, began employment negotiations with Attorney Seila and, before she completed her clerkship, he offered her employment with his firm. *See* email from J. Holt to G. Hodges, dated July 26, 2017, in the email chain attached as **Exhibit A**.[1] Attorney Seila began working for Attorney Holt on October 30, 2017, after her clerkship

[1] Attorney Holt contacted the undersigned in early June of 2017 and expressed his intent to contact Attorney Seila regarding post-clerkship employment with his firm. Attorney Holt and the undersigned spoke about Attorney Holt's potential employment of Attorney Seila, and the undersigned expressed that he would not be pleased should Attorney Holt employ her. However, the undersigned believed—and still believes—he could not demand that Attorney Holt not enter into employment discussions with Attorney Seila, or not hire her, without verging into tortious interference with a third party's business relationship/contract. The undersigned further believed—and still believes—it is Attorney Holt's prerogative to hire whomever he wants. Although the undersigned advised Attorney Holt he would be unhappy if Attorney Holt hired Attorney Seila, Attorney Holt never inquired if the undersigned would oppose his continued representation of the Hameds on matters that Attorney Seila worked as a clerk. Moreover, the undersigned believes Attorney Holt is well aware of: 1) the ethical rules and case law regarding the imputed conflict of interests that would, and did, arise as a result of hiring Attorney Seila; and

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concluded. *See* letter from J. Holt to G. Hodges, *et al.* dated October 27, 2017, attached as **Exhibit B.**[2] Notably, Attorney Seila's employment by Attorney Holt increased the size of Attorney Holt's firm from one—Attorney Holt—to two, Attorneys Holt and Seila. Accordingly, an attorney with information indisputably valuable to the Hameds is now working for the Hameds' counsel in this matter in a two-attorney office.

Of course, the Virgin Islands Supreme Court Rules directly prohibit Attorney Seila from representing the Hameds and impute that conflict to Attorney Holt unless: 1) effective screening measures are put into place; and 2) written notice is promptly given to the parties and the Court so that they may ascertain compliance with the provisions of the rule. In this case, there simply is no screen that can be effective given the small size of the firm, and no written notice was provided to the parties and Court so they could ascertain compliance with the rule.[3] Moreover, the principles underlying disqualification of counsel, including avoiding the appearance of impropriety, safeguarding the integrity of court proceedings, and eliminating the threat that litigation could be tainted also militate in favor of disqualifying Attorney Holt in this consolidated case.

Further, if Attorney Seila performed any substantive work on this case after employment discussions were initiated, it would provide an additional and independent basis on which to

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2) the potential effect on his ability to continue to represent the Hameds in this case and any other case on which Attorney Seila substantively worked while she was a law clerk.

[2] To the extent Attorney Holt claims that he "cleared all of this" with the undersigned in his July 26, 2017 email, he is incorrect. *See* Declaration of Gregory H. Hodges, Esq. at ¶ 6-8, attached as **Exhibit C.**

[3] To the extent Attorney Holt claims that the October 27, 2017 letter is the requisite prompt notice, Defendants note that the notice was neither prompt, since Attorney Seila executed her "final contract" on July 9, 2017, nor was it provided to this Court as required. The Friday, October 27 letter was emailed at 3:18 p.m. and Attorney Seila started her employment with Attorney Holt the following Monday. Per the "carbon copy" on the letter, it was only provided to the Master, who is entirely focused on overseeing the winding up of the partnership and would be completely removed from any decision regarding counsel's conflicts of interest.

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disqualify Attorney Holt from representing the Hameds in this matter.[4] Therefore, discovery is needed concerning the timeline of the employment discussions and Attorney Seila's involvement with this case and other related cases before the Court.

II. MEMORANDUM OF LAW

A. Joel H. Holt, Esq. Must Be Disqualified from Representing the Hameds Given that Attorney Holt's Associate Attorney, Robin P. Seila, Esq., Could Not Represent Those Parties, Effective Screening Cannot Be Implemented in a Two Person Firm, and the Required Written Notice Was Not Provided.

1. *Screening Cannot be Effective in a Two Person Firm, the Appearance of Impropriety is Too Great, and There is an Actual Threat that the Litigation Will be Tainted by Inadvertent Disclosure.*

It is axiomatic that the underlying principle in considering motions to disqualify counsel is safeguarding the integrity of the court proceedings; the purpose of granting such motions is to eliminate the threat that the litigation will be tainted. *See United States Football League v. National Football League*, 605 F.Supp. 1448, 1464 (S.D.N.Y.1985).

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[4] It would also potentially provide a basis to disqualify the Court. *See, e.g., Miller Inds., Inc. v. Caterpillar Tractor Co.*, 516 F.Supp. 84, 89 (S.D. Al. 1980) (disqualifying judge when law clerk substantively participated in case after accepting employment offer with defense counsel explaining: "Here the law clerk's continuing participation with the judge in the case in which his future employers were counsel presented a situation in which disqualification was mandated."); *P.M. v. N.P.*, 116 A.3d 1078, 1088 (Super. Ct. NJ, 2015) (remanding the matter for specific factual findings concerning law clerk's involvement with the case during her clerkship concluding, "If the judge concludes the law clerk 'substantially participated' in any of the decisions he reached in this case after defense counsel revealed to him her interest in hiring his law clerk or after defense counsel revealed to the law clerk her interest in hiring her, the judge is required to vacate any orders entered during this time period and recuse himself from further involvement in this case."); *Amicus Inc. v. PPT Inc.*, Case Nos. 87-2664, 88-0179 and 88-1590, 1989 WL 418785, at *1 (W.D.La. May 11, 1989) (disqualifying judge where an attorney who was a clerk for the court during the pendency of a related matter moved to appear in the case explaining, "[O]nce it appears that a party might have an unfair advantage because that party's counsel includes a lawyer who has been exposed to the trial judge's innermost thoughts about a case, the judge has no alternative but to disqualify himself.").

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A law clerk, by virtue of her position, is obviously privy to the judge's thoughts in a way that the parties cannot be. *Fredonia Broadcasting Corp., Inc. v. RCA Corp.*, 569 F.2d 251, 256 (5th Cir. 1978). Therefore, because a law clerk would have a significant tactical advantage litigating a case that she substantively worked on during her clerkship, after a clerkship is over law clerks may not represent anyone in connection with such a matter. *See* Virgin Islands Supreme Court Rule 211.1.12 "a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as . . . a law clerk." V.I.S.CT.R. 211.1.12(a). Thus, plainly, Attorney Seila may not represent the Hameds in this matter. With respect to Attorney Holt's continued representation of the Hameds, the Rule continues, "[i]f a lawyer [Attorney Seila] is disqualified by paragraph (a) no lawyer in a firm with which that lawyer is associated may knowingly . . . continue in representation in the matter unless: (1) the disqualified lawyer is timely screened from any participation in the matter . . . (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule." VISCR 211.1.12(c)(1)-(2).

Because Attorney Holt's firm consists of only two lawyers, there cannot be an effective screen. Thus, there is both the appearance of impropriety and danger of the litigation actually being tainted by inadvertent disclosure. As the court explained in *Chase Home Finance, LLC v. Ysabel*, no. CV095029461, 2010 WL 3960775, at * 11 (Sup. Ct. Conn. Sept. 3, 2010) (unpublished):

> The size of Attorney Rivera's firm is a significant and fatal impediment to the existence of a viable Chinese wall. As set forth above, there is authority that a Chinese wall cannot exist in a small law firm, which has been defined to include even a 35 person firm (see *Cheng v. GAF Corp.*, 631 F.2d 1052 (2d Cir.1980). **Those cases note that in a small firm the day-to-day contact between lawyers is necessarily such that the possibility of inadvertent disclosure of confidential information is too great.** Attorney Rivera's firm consists of two attorneys, himself

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> and Attorney Sastre. While Attorney Sastre has his office in a location separate from the Hunt Leibert files, Attorneys Sastre and Rivera clearly have contact with each other.

Id. (emphasis supplied). In *Cheng v. GAF Corp.,* 631 F.2d 1052 (2d Cir.1980), *vacated on other grounds,* 450 U.S. 903 (1981), the Second Circuit reversed the District Court's failure to disqualify a law firm. The disqualified attorney was a member of a firm of thirty-five attorneys, approximately twenty-one of whom worked in his office. *Id.* at 1054. The attorney worked in the health law division of the firm and the representation at issue was being handled by the firm's labor division. *Id.* The firm submitted affidavits stating that the attorney had not worked on the case, that he had not disclosed any confidences or discussed the merits of the case, and that he would not be allowed to have any substantive involvement in it. *Id.* Nevertheless, the Court of Appeals concluded that there was "a continuing danger that [the conflicted attorney] may unintentionally transmit information he gained through his prior association [] during his day-to-day contact with defense counsel." *Id.* at 1058. "Although we do not question [the disqualified lawyer's] integrity or his sincere efforts to disassociate himself from the *Cheng* case, we are not satisfied that under the facts of this case the screening will be effective, thus . . . order the district court to disqualify [his] firm." *Id.* (citations omitted).

Further, in *Baird v. Hilton Hotel Corp.*, 771 F.Supp. 24, 27 (E.D.N.Y. 1991), the court disqualified counsel and explained that due to the size of the firm, nine attorneys, a "Chinese Wall" could not be effective and, additionally, the small size of the firm created an obvious appearance of impropriety and a real risk that the proceedings would be tainted. *Id.* ("[I]n terms of the potential effectiveness of any "Chinese Wall," Ms. Pluchino's firm is smaller [nine attorneys] than the firm in the *Cheng* case [thirty five attorneys] and the measures taken to insulate her are no more stringent. Moreover, as in *Cheng*, this case is ongoing and accordingly the danger of

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disclosure continues. Although I do not doubt the veracity of Ms. Pluchino's statements that she has not disclosed confidential information to her new colleagues, **I find that in her daily contacts with plaintiffs' counsel there remains a danger of inadvertent disclosure of information she gained while representing the defendants. The obvious appearance of impropriety coupled with a real danger that the forthcoming trial will be tainted require disqualification.**") (emphasis supplied); *see also Crudele v. N .Y. City Police Dep't,* Nos. 97 Civ. 6687, 2001 WL 1033539, at *4 (S.D.N.Y. Sept. 7, 2001) (disqualifying law firm stating, "In such situations, courts are concerned that the disqualified attorney, in his day-to-day contact with his new associates, may unintentionally transmit information learned in the course of the prior representation. . . . **This Court likewise concludes that the danger of inadvertent disclosure and the appearance of impropriety is sufficiently present here so as to require disqualification.** Leeds, Morelli & Brown is comprised of only 15 lawyers.") (emphasis supplied); *Marshall v. New York Div. of State Police,* 952 F.Supp. 103, 112 (N.D.N.Y. 1997) (disqualifying law firm explaining, "Moreover, while screening devices may be used in some circumstances to prevent the disclosure of confidences and secrets from a prior representation, thus allowing a law firm to avoid disqualification, they cannot be used where the circumstances are such that a court cannot determine that they will effectively prevent disclosure. . . .[T]he relatively small size of the Ruberti Firm (approximately 15 lawyers) raises doubts that even the most stringent screening mechanisms could have been effective in this case."); *Filippi v. Elmont Union Free School Dist. B'd of Ed.*, 722 F. Supp. 2d 295, 313 (E.D.N.Y. 2010) ("Moreover, as discussed extensively, *supra*, because of the small size of the Morelli Firm [six lawyers], the Court does not believe, under the circumstances here, **that any screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the Firm would be**

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fully effective. . . . [E]ven assuming there were not an actual conflict in this case, this particular conflict presents such an appearance of impropriety that disqualification is warranted.") (emphasis supplied); *Stratton v. Wallace*, Case No. 11-CV-0074A, 2012 WL 3201666, at *5 (W.D.N.Y. Aug. 2, 2012) (disqualifying law firm explaining, "The lead defense attorney in the matter, Mr. D'Aquino, is co-chair of the general litigation practice group in which Ms. Martin practices, a group which includes less than forty attorneys across the firm's multiple offices. Moreover, Ms. Martin and Mr. D'Aquino are both in the Buffalo office. **While the court has no doubt as to the integrity of all of the lawyers involved in this matter, the appearance of impropriety which arises from the facts presented cannot be overcome.")** (emphasis supplied); *In re Asbestos Cases*, 514 F.Supp. 914, 923 (E.D.Va. 1981) (disqualifying law firm, explaining, "Peterson's employment with Greitzer and Locks constitutes a threat to the integrity of the Norfolk litigation despite the attempts of the firm to screen him from any participation in the litigation. . . . Greitzer and Locks is a six-man law firm. These cases will take a considerable amount of time to litigate and, despite the protestations of Peterson and the firm, it is unclear how disclosures, even inadvertent, can be prevented given the size of the firm and the prolonged nature of the litigation. Because of the magnitude of the litigation, there is the **continuing risk that the agreement not to talk with Peterson about the cases or speak near Peterson about the cases will not be effective given the close, informal relationship which exists among law partners and associates, especially in a firm the size of Greitzer and Locks** and the financial incentives which exist to discuss current employment."); *Puerto Rico Fuels, Inc. v. Empire Gas Co., Inc.*, Case No. CE-90-796, 1993 WL 840220 (Supreme Ct. PR, April 14, 1993) (disqualifying law firm stating, "The fact that shortly after[wards] she [the disqualified attorney] moved to Estrella Law Firm—a small [four person] firm—makes it difficult, if not impossible, the real possibility of

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implementing an adequate screening device that would meet the professional ethics rule in question.") (emphasis supplied); *Mitchell v. Metropolitan Life Ins. Co.*, Case No. 01 CIV. 2112, 2002 WL 441194, at *10 (S.D.N.Y. March 21, 2002) (disqualifying law firm, explaining "In this case, the screening measures put in place by [the law firm of] Lieff Cabraser do not suffice to avoid disqualification. . . . Although Fleishman personally is not involved in prosecuting this action, she works in the 12–lawyer New York office of a relatively small firm. Two of the attorneys in the New York office are assigned to this case, and Fleishman is working directly with one of them on another significant class action suit. **Given that Fleishman works in close proximity to attorneys responsible for this action, and regularly interacts with at least one of them, there exists a continuing danger that Fleishman may inadvertently transmit information**[.]") (emphasis supplied); *Energy Intelligence Group, Inc. v. Cowen and Co., LLC*, Case No. 14 Civ. 3789, 2016 WL 3929355, at *6 (S.D.N.Y. July 15, 2016) (disqualifying law firm stating, "EIG is a very small firm consisting of four partners and about ten other attorneys in a single office, which by its nature imperils an ethical screen."); *US v. Pelle*, Crim. No. 05-407JBS, 2007 WL 674723, at n. 4 (D.N.J. Feb. 28, 2007) (disqualifying law firm on other grounds as New Jersey rejects screening as a method to rebut imputation of conflict, but noting, "UDG is a small firm of no more than ten attorneys of which Angelyn Gates is the managing partner. In that situation, the prospect of accidental exposure to the Pelle matter is real, despite any efforts to screen her or Lorilee Gates, a Senior Attorney at this small firm, from the case.")

Moreover, in *Yaretsky v. Blum*, 525 F.Supp. 24 (S.D.N.Y. 1981), the screening methods employed by the law firm included isolating the attorney with the direct conflict from conversations and communications involving the matter and locking up all files generated by the case. *Id.* at 30. However, the *Yaretsky* court found that despite the lawyer's "unimpeached good

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character" and the "screening efforts undertaken" by the firm, the firm must be disqualified. *Id.*

The court explained its rationale:

> In the instant case, the law firm involved has less than thirty lawyers in its New York office. Moreover, Mr. Gassel is employed in the firm's health law section, which is also the section of the firm charged with handling this case. In other words, the relatively small group of professional colleagues with whom Mr. Gassel interacts on a daily basis are also the group of people who must screen their activities from Mr. Gassel, and who must, in turn, be screened from Mr. Gassel's disclosure, however inadvertent, of confidential information[.] This court is very skeptical about the efficacy of any screening procedures given this situation.

Id. The *Yaretsky* court also persuasively addressed the issue of the appearance of impropriety as it relates to the public's confidence in the legal profession.

> As this court reads the applicable law of the Second Circuit, the appearance of impropriety . . . standing alone, [would not] be sufficient to require disqualification. Clearly this position is motivated by solicitude for a party's right to choose his own counsel, and an appreciation of the dislocation caused by disqualifying counsel once an action has begun. **However, these considerations must be balanced with "the need to maintain the highest standards of the profession." These standards take on practical importance in preserving the public's confidence in the legal profession.** This court would be hard pressed to explain to a lay person how it was in fact proper for a lawyer who was substantially involved with the prosecution of a lawsuit to switch sides in the middle of the action. The appearance of impropriety is incontrovertible on the instant facts, and serves as an important additional reason for disqualification of [the law firm of] EBB&G.

Id. (emphasis supplied) (internal citations omitted). Indeed, like the *Yaretsky* court, this Court would be "hard pressed" to explain to a lay person how it was in fact proper for Attorney Holt to continue to represent the Hameds after hiring a law clerk who obtained valuable information concerning the case during her clerkship, given the unmistakable appearance of a disadvantage to the Defendants—and advantage to the Hameds—created thereby. Like in *Yaretsky*, among numerous other cases cited above, the appearance of impropriety is incontrovertible on the instant facts and serves as an important additional reason for disqualification of Attorney Holt's firm. *See also Van Jackson v. Check 'N Go of IL, Inc.*, 114 F. Supp. 2d 731, 734 (N.D. Il 2000) (disqualifying

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small law firm, stating, "The small size of the firm also weighs heavily against an effective screen. . . . In such a small firm [four attorneys], it is questionable whether a screen can ever work. . . . . In addition to the danger of tainting the underlying trial, [the law firm of] K&D's continuing representation of the defendants creates the type of unacceptable appearance of professional impropriety condemned in . . . the Code of Professional Responsibility. [W]here public confidence in the Bar would be undermined even an appearance of impropriety requires prompt remedial action by the court.") (internal cite and quotation marks omitted). Accordingly, Attorney Holt's firm is properly disqualified from representing the Hameds in this matter, due to the lack of efficacy of an ethics screen in a two-person law firm, the appearance of impropriety created by the continued representation, and the risk of tainting the litigation through inadvertent disclosure(s).

2. *Attorney Holt Did Not Provide the Required Written Notice to the Parties and the Court.*

In order for Attorney Holt to continue representing the Hameds in this matter after he hired Attorney Seila, in addition to effectively screening Attorney Seila from the case—which as discussed above cannot be done in a two-person law firm—he needed to "promptly" provide written notice to "the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule." VISCR 211.1.12(c)(2). To the extent that the October 27, 2017 letter (Exhibit B) could be deemed notice to the parties, it was neither promptly provided, given that Attorney Seila executed her "final" employment contract on July 9, 2017, *see* Exhibit A at p.2, nor was it provided to this Court, only to the Master who has no jurisdiction over the issue of counsel's conflicts of interest. Clearly, this is a substantive requirement designed to allow the other parties and the Court a meaningful opportunity to evaluate whether counsel can successfully rebut the imputed conflict of interest so he or she may ethically continue to represent a party to the

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litigation. Of course, since the conflict in the instant matter arises as a result of Attorney Seila's clerkship with the Court, it follows that the Court would have a special interest in making sure that the valuable information she gained about this case, and related cases, does not cast a shadow on the Court's ultimate disposition of the case. Given that the required written notice was not promptly provided to the parties, or ever provided to this Court, Attorney Holt is properly disqualified from representing the Hameds on this separate and independent basis as well. *Cf. Monument Builders of PA, Inc. v. Catholic Cemeteries Ass'n, Inc.*, 190 F.R.D. 164 (E.D. Pa. 1999) (disqualifying the conflicted ex-law clerk, but not the entire firm, where a substantially similar requirement for written notice is found in the applicable ethics rules, since law clerk worked from home and an effective screen could be implemented and the required notice was promptly given, stating: "We also find that MBPA's notice to the Court was sufficiently prompt to satisfy Rule 1.12(c)(2). . . . [We were] notified of the potential conflict at the first Rule 16 conference in this matter. We therefore will not disqualify the entire Mitchell A. Kramer law firm.").

B. Discovery Is Needed on the Timeline of Employment Discussions and Attorney Seila's Involvement with This Case and Other Related Cases.

Any substantive work Attorney Seila did on this matter after she and Attorney Holt began employment discussions would also be a separate and independent basis on which to disqualify Attorney Holt's firm. *See e.g. Fredonia Broadcasting Corp., Inc. v. RCA Corp.*, 569 F.2d 251 (5th *Cir.* 1978) (explaining when a law clerk has accepted employment with a law firm, it is possible that if the law clerk continues to work on a case in the course of her clerkship in which her future employer is counsel it might present an unfair advantage to the party represented by that law firm and noting a clear appearance of impropriety). Attorney Holt states that "I do not know which of my pending case she has worked on, as we did not discuss any pending cases, but she assured me

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during our first call that she would immediately stop work on any such files . . . ." *See* Exhibit A at p. 2. Accordingly, discovery is needed on the timeline of the employment discussions and the extent of Attorney Seila's involvement with this case after discussions began. *See P.M. v. N.P.*, *supra*, 116 A.3d at 1088-89 (remanding the matter for specific factual findings stating, "[W]e are compelled to remand this matter for the judge to make specific findings describing the law clerk's pre-employment activities with defense counsel. The judge must make specific findings regarding the timing and substance of defense counsel's employment discussions with his law clerk, including whether the law clerk independently notified the judge of her employment negotiations with defense counsel as required by RPC 1.12(c). The judge must also describe what duties the law clerk performed for him in connection with this case after defense counsel revealed her interest in hiring his law clerk. . . . Without this vital information, we are unable to determine whether the trial judge erred in accepting defense counsel's certification as well as her self-serving unsworn representations at oral argument on this critical point.").

III. CONCLUSION

It is undisputable that Attorney Seila gained information during her clerkship that is highly valuable to the parties in this case. It is also undisputable that Attorney Seila may not represent the Hameds in this matter and her conflict is imputed to Attorney Holt unless he can rebut the imputation of the conflict with a successful and timely ethical screen, and he provided the parties and the Court with timely written notice. Because Attorney Holt and Attorney Seila work together in a two-lawyer firm no ethical screen can be effective. Additionally, the required notice was not provided to the parties and the Court. Moreover, the appearance of impropriety is incontrovertible on the instant facts and serves as an important additional reason for disqualification of Attorney Holt's firm. Accordingly, Attorney Holt's firm is properly disqualified from representing the

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Hameds in this matter, due to the lack of efficacy of an ethics screen in a two-person law firm, the appearance of impropriety created by the continued representation, and the risk of tainting the litigation through inadvertent disclosure(s).

Additionally, because any substantive work Attorney Seila did on this or any related case after employment discussions with Attorney Holt began provides another independent ground for disqualifying Attorney Holt's firm, Defendants' motion for discovery on the timeline of employment discussions and what work was performed by Attorney Seila on this case and related cases after those discussions were commenced is properly granted.

WHEREFORE, on the basis of the foregoing, Defendants respectfully request that the Court disqualify Attorney Holt from representing the Hameds in this matter and allow Defendants to serve written discovery and take depositions concerning the timeline of employment discussions and Attorney Seila's involvement with this matter and any other related matters on which she performed substantive work during her clerkship, as well as awarding Defendants such further relief as the Court deems just and proper.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: December 6, 2017 By: _____

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CERTIFICATE OF SERVICE

It is hereby certified that on this 6th day of December, 2017, I served a true and correct copy of the foregoing **Motion To Disqualify Counsel For The Hameds And For Discovery Related To Additional Potential Basis For Disqualification**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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E-Mail: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
E-Mail: edgarrossjudge@hotmail.com

Michele Baker

R:\DOCS\6254\1\DRFTPLDG\17K7546.DOCX

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1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

Gregory Hodges

From: Joel Holt <holtvi@aol.com>
Sent: Wednesday, July 26, 2017 4:15 PM
To: Gregory Hodges
Subject: Re: Law clerk

Ok-if you think of any, let me know

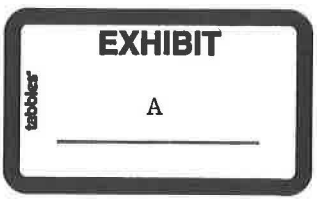
Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

-----Original Message-----
From: Gregory Hodges <Ghodges@dtflaw.com>
To: Joel Holt <holtvi@aol.com>
Sent: Wed, Jul 26, 2017 4:13 pm
Subject: RE: Law clerk

Joel,
Thanks for your response. Since I have no recent personal experience with screening measures, I am in no position to offer suggestions.

Gregory H. Hodges
Dudley, Topper and Feuerzeig, LLP
Law House, 1000 Frederiksberg Gade
St. Thomas, VI 00802
Direct: (340) 715-4405
Fax: (340) 715-4400
Web: www.DTFLaw.com

From: Joel Holt [mailto:holtvi@aol.com]
Sent: Wednesday, July 26, 2017 2:26 PM
To: Gregory Hodges <Ghodges@dtflaw.com>
Subject: Re: Law clerk



Greg-I cleared all of this with you first, as you know. I then called Judge Brady's chambers, either on the same day we spoke or the day after you confirmed you had no problem with my speaking with his law clerk. His secretary, Ms. Krind, asked why I was calling, which I told her. She put me on hold and then came back and said Judge Brady had no objection to my talking to her. I then asked Ms. Krind to let the clerk know I would be calling, which she did. In short, I have never spoken directly with Judge Brady about her, nor anyone else at the Court other than the brief call with Ms. Krind.

I then spoke with the law clerk several times in June. I do not know which of my pending cases she has worked on, as we did not discuss any pending cases, but she assured me during our first call that she would immediately stop all work on any such files (I do have more than one case before Judge Brady). I told her in late June that I planned on extending an offer to her and sent her a written offer on June 30, which she accepted. The final contract was signed July 9th.

As for the "screening measures" going forward, that process is still being developed, but will include blocking her access to the office files, making sure she has no contact with the clients and having her only use the office gmail account, while I will continue to only use my AOL account for this case, which she will not have access to, so she will have no access to my emails (past or future). I welcome any other suggestions you might have.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

-----Original Message-----
From: Gregory Hodges <Ghodges@dtflaw.com>
To: Joel Holt <holtvi@aol.com>
Sent: Wed, Jul 26, 2017 11:48 am
Subject: RE: Law clerk

Would you please let me know when you offered her a job, when she accepted, whether Judge Brady was advised of these events and, if so, when? Also, please advise what screening measures will be implemented.

Gregory H. Hodges
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Fax: (340) 715-4400
Web: www.DTFLaw.com

-----Original Message-----
From: Joel Holt [mailto:holtvi@aol.com]
Sent: Tuesday, July 25, 2017 8:16 PM
To: Gregory Hodges <Ghodges@dtflaw.com>
Subject: Re: Law clerk

Yes-she starts Oct 4

Joel H. Holt
2132 Company Street
Christiansted, USVI 00820
340-773-8709

> On Jul 25, 2017, at 7:32 PM, Gregory Hodges <Ghodges@dtflaw.com> wrote:
>
> Anything develop from this?
>
>
> Gregory H. Hodges
> Dudley, Topper and Feuerzeig, LLP
> Law House, 1000 Frederiksberg Gade
> St. Thomas, VI 00802
> Direct: (340) 715-4405
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>
>
>
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>
>
>
> -----Original Message-----
> From: Joel Holt [mailto:holtvi@aol.com]
> Sent: Monday, June 05, 2017 3:57 PM
> To: Gregory Hodges <Ghodges@dtflaw.com>
> Subject: Re: Law clerk
>
> Sure-thx
>
> Joel H. Holt
> 2132 Company Street
> Christiansted, USVI 00820
> 340-773-8709
>
>> On Jun 5, 2017, at 3:54 PM, Gregory Hodges <Ghodges@dtflaw.com> wrote:
>>
>> Will do. Instead of today, may I call you tomorrow afternoon?
>>
>>
>> Gregory H. Hodges
>> Dudley, Topper and Feuerzeig, LLP
>> Law House, 1000 Frederiksberg Gade
>> St. Thomas, VI 00802
>> Direct: (340) 715-4405
>> Fax: (340) 715-4400

>> Web: www.DTFLaw.com
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>>
>>
>>
>> -----Original Message-----
>> From: Joel Holt [mailto:holtvi@aol.com]
>> Sent: Monday, June 05, 2017 3:19 PM
>> To: Gregory Hodges <Ghodges@dtflaw.com>
>> Subject: Law clerk
>>
>> I did get the full name of Judge Brady's law clerk-Robin Sealey, although I did not learn anything else about her. Once you have a response to my call last week, let me know. Thx
>>
>> Joel H. Holt
>> 2132 Company Street
>> Christiansted, USVI 00820
>> 340-773-8709
>

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. *(340) 773-8709*
Fax *(340) 773-8677*
E-mail: holtvi@aol.com

October 27, 2017

Gregory H. Hodges
Stefan Herpel
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802

James L. Hymes, III, Esquire
Law Offices of James L. Hymes, III, P.C.
P.O. Box 990
St. Thomas, VI 00804-0990

Sent by mail and email

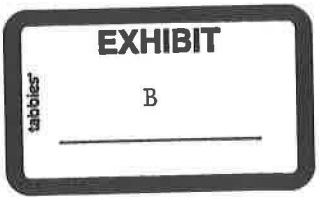
Re: Plaza Extra Matters

Dear Counsel:

As I discussed with Greg last June, I have hired Robin Seila, Judge Brady's former law clerk, who is scheduled to finally start next week.

I am setting up a "Chinese Wall" between her and every Hamed/Yusuf case, no matter what the designation may be (Plessen, Sixteen Plus, Manal Yousef, etc.). In this regard, my plan is as follows:

- Before she starts work, I will educate my office on what this entails to ensure full compliance;
- We have already taken steps to secure the current files in locked cabinets so that Robin cannot access them;
- I am setting up a separate email for those cases (holtvi.plaza@gmail.com) that I will start using on Monday, October 30th, which she will not have access to. In that case, we need to communicate through that email on the Hamed/Yusuf cases going forward, which I will inform other counsel as well as the Court to use;
- I have also taken steps to block off and password protect the portion of the office server regarding all of these cases so she cannot access anything on it.



- To the extent we still exchange paper documents, my staff will be instructed to put all such correspondence and pleadings directly on my desk so I can then make sure they are securely filed;
- Once Robin starts, she will be instructed not to discuss these cases with anyone in my office, including me, or with anyone outside of the office, including other counsel in that case as well as anyone at the Court.

Please let me know if you have any other suggestions for me to implement, as I am glad to consider any input you want to provide to me. Thanks.

Cordially,

Joel H. Holt
JHH/jf

cc: Hon. Edgar Ross

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff/Counterclaim Defendant, v. **FATHI YUSUF** and **UNITED CORPORATION**, Defendants/Counterclaimants, v. **WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED**, and **PLESSEN ENTERPRISES, INC.**, Additional Counterclaim Defendants.	**CIVIL NO. SX-12-CV-370** **ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING**
Consolidated With	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. **UNITED CORPORATION**, Defendant.	**CIVIL NO. SX-14-CV-287** **ACTION FOR DAMAGES AND DECLARATORY JUDGMENT**
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. **FATHI YUSUF**, Defendant.	**CIVIL NO. SX-14-CV-278** **ACTION FOR DEBT AND CONVERSION**

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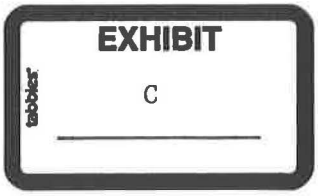
(340) 774-4422

DECLARATION OF GREGORY H. HODGES

Pursuant to V.I.R. Civ. P. 84(a), Gregory H. Hodges declares under penalty of perjury that the following is true and correct:



1. I am over eighteen years old, of sound mind, and make this declaration from my personal knowledge.

2. I am a partner in the law firm of Dudley, Topper and Feuerzeig, LLP, and represent defendants/counterclaimants Fathi Yusuf and United Corporation in this consolidated case, among others.

3. In early June of 2017, I had a teleconference with Joel H. Holt, Esq., counsel for Waleed Hamed, individually and as Executor of the Estate of Mohammad Hamed, concerning Attorney Holt's intent to speak with Judge Douglas A. Brady's then law clerk, Robin Seila, Esq., about potential employment when her clerkship ended.

4. I told Attorney Holt that the prospect of him contacting Attorney Seila about employment or employing her was very troubling to me, but that I was in no position to prevent or veto his employment actions or decisions.

5. In Attorney Holt's July 26, 2017 email, discussing his conversations with Attorney Seila and her eventual employment, which is part of the email chain attached as Exhibit A to Defendants' Motion to Disqualify Counsel, he gratuitously states "Greg - I cleared all of this with you first, as you know."

6. The statement that he "cleared all of this" with me suggests that I consented to and waived any objection to his proposed course of action. This suggestion is incorrect.

7. As stated above, when Attorney Holt and I spoke, I expressed my deep concern regarding the prospect of his approaching Attorney Seila about future employment or hiring her, while acknowledging that there was very little or nothing I could do to prevent it, particularly if he was determined to pursue that course of action and he scrupulously followed the applicable

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ethical rules promulgated by the Virgin Islands Supreme Court. Attorney Holt "cleared" his proposed course of action with me only to the extent he gave me advance notice of his intent to contact Attorney Seila concerning her prospective employment.

8. Additionally, I was also concerned any demand that he not speak to or hire Attorney Seila would potentially constitute tortious interference with a third party's prospective business relationship/contract.

DATED: December 6, 2017

GREGORY H. HODGES

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