FREELAND MARTZ

J. Hale Freeland
Admitted in MO, MS, & TN
hale@freelandmartz.com

Our File No. 02587

June 21, 2023

Via Hand Delivery

Hon. Sherry J. Wall, Clerk
Lafayette County Chancery Court
300 N. Lamar Blvd.
Oxford, MS 38655

RE: *Sullivant v. Sullivant*
Cause No. 2021-cv-612W

Dear Sherry:

Enclosed please find a *Rebuttal in Response to Objection to Motion to Quash* related to the above-referenced cause, along with an enclosure of a referenced opinion by Judge Michael Malski. Please file these in the Court's records; we will receive our copy via MEC.

Thank you for your assistance with this matter.

Sincerely,

FREELAND MARTZ, PLLC

J. Hale Freeland

Enclosure

cc: Hon. Robert Whitwell *via email*
Dr. Frank Perkins *via email*
Swayze Alford Esq. *via email*
Robert Sullivant Jr. *via email*

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT SR.	**PLAINTIFF**
v.	
ROBERT SULLIVANT JR.	**DEFENDANT**
	CAUSE NO. 2021-CV-612 (W)
ROBERT SULLIVANT JR.	**THIRD PARTY PLAINTIFF**
v.	
ROBERT SULLIVANT SR. and EVELYN STEVENS	**THIRD PARTY CO-DEFENDANTS**

REBUTTAL IN RESPONSE TO OBJECTION TO MOTION TO QUASH

COMES NOW, Frank Perkins M.D., by and through the undersigned counsel, and files this rebuttal in response to Robert Sullivant Jr.'s objection to the motion to quash. In support thereof, Frank Perkins would show:

1. This Court entered a final order denying the Petition to appoint Robert Sullivant Jr. as Conservator. A motion to reconsider that order of June 16, 2023, was not filed within 10 days of that order pursuant to Miss. R. Civ. P. 59, and no notice of appeal has been filed pursuant to Miss. R. App. 4, within thirty days of the Court's ruling of May 16, 2023. Accordingly, this Court lacks jurisdiction over this matter. Accordingly, any further proceeding including discovery cannot be entertained by this Court.

2. The subpoena noticed the deposition to be taken at the Lafayette County Courthouse, not in the county where the deponent Dr. Frank Perkins was physically present, as requested by Miss. R. Civ. P. 30b(7). Dr. Perkins' office is at 3531 Lakeland Drive, Suite 1060, Flowood, Rankin County, Mississippi.

3. Robert Sullivant Jr. never retained Freeland Martz PLLC. On June 10, 2023, he identified himself as a retired engineer who had a power of attorney over his father, that his father was upset with him, and that he was going to see Dr. McIntosh about his father. This information is hardly confidential in that it states that nature in which the firm might be engaged, and in his petition Robert Sullivant Jr. stated he had had a power of attorney over his father until his father revoked the POA (petition for conservatorship, paragraphs 4 and 7).

4. Robert Sullivant Jr. did not thereafter engage the law firm, and the firm never represented Robert Sullivant Jr. in this or any other proceeding. In order to object or disqualify the Freeland Martz PLLC law firm from representing Dr. Perkins, Robert Sullivant Jr. "must prove the existence of both (1) an actual attorney client relationship" *H/S Florence LLC v. Carroll L. Little Jr.* 18 ¶ (Enclosure 1, Alcorn County Chancery 21-CV 00622-MM, Doc 17). In *H/S Florence* Judge Malski held that an attorney's discussion of "broad vague allegations of disclosure of strategy" would not disqualify a law firm which was not ultimately engaged by the client in the matter and would not have constituted the disclosure of confidential information. ¶ 22.

5. The idea that a party can disqualify an attorney by a call that the firm might be hired in a matter has no legal basis, and Robert Sullivant Jr. provided none. Robert Sullivant Jr. only mentioned his father was upset over the son's use of a power of attorney and he might have engaged the law firm. Robert Sullivant Jr. never engaged the law firm nor disclosed confidential information. Asserting one might hire a law firm regarding the subject matter does not establish an attorney-client relationship, and merely identifying the potential scope of representation that never occurred does not constitute privileged confidential attorney-client communications. Accordingly, Robert Sullivant Jr.'s objection to J. Hale Freeland's representation of Dr. Perkins herein should be overruled.

6. The purpose of this deposition of Dr. Perkins is that Robert Sullivant Jr. was unprepared to examine Dr. Perkins at trial on his petition to have his father subject to a conservatorship, which

was denied. (Robert Sullivant, Jr's .Response to the petition, ¶ 3) Not being prepared for trial is not a good reason to reopen discovery in a matter that has been decided. The only basis that the court's decision could be revisited would be pursuant to Miss R. Civ P 60, and being unprepared to examine a witness a party was aware is not a basis to challenge the court's prior decision or reopen discovery.

7. Robert Sullivant Jr. was certainly aware that Dr. Frank Perkins had examined Robert Sullivant Sr. and declared Dr. Perkins' opinions in paragraphs 22-26 of his petition for a conservatorship. Notwithstanding, Robert Sullivant Jr. did not interpose discovery or take the deposition of Dr. Perkins prior to the hearing on Robert Sullivant Jr.'s petition for a conservatorship over his father.

8. Robert Sullivant Jr. set the emergency hearing on the petition to be appointed as his father's Conservator. He should not have set the hearing if he were unprepared to examine Dr. Perkins at trial. He could have deposed him before the hearing or propounded discovery. There is no reason to have him deposed now, when there are no pending motions before the Court related to the order denying Robert Sullivant Jr.'s petition.

9. Miss. R. Civ. P. 26 E required Robert Sullivant Jr. to pay an expert reasonable fees to take his deposition unless a "manifest injustice would result." Failing to take undertake discovery prior to trial or take a pretrial deposition to be prepared to cross examine a witness does not constitute a manifest injustice.

10. Robert Sullivant Jr. asserts that Dr. Perkins was Court-appointed, though there is no order indicating his appointment by the Court, and points to Miss. R. Evidence 706, which also provides: "The expert is entitled to a reasonable compensations, as set by the court."

11. In response to the motion to quash, Robert Sullivant Jr. has demanded Dr. Frank Perkins appear pursuant to a subpoena and stated, "I will depose Dr. Perkins on June 22 in courtroom #1, else I will have him cited for contempt" (Exhibit A, Sullivant June 8, 2023, email).

12. In his objection Robert Sullivant Jr. acknowledged that Dr. Frank Perkins may be paid a reasonable fee for his service. However, he has failed to tender a fee.

13. Robert Sullivant Jr. unilaterally set the date and time for deposing without regard to Dr. Perkins' schedule or medical duties and attempted to utilize a subpoena to have Dr. Perkins appear two-and-a-half hours from his office without having to compensate Dr. Perkins.

14. The subpoena can only be seen as harassment and a response to Dr. Perkins' testimony. It should be denied, and Robert Sullivant Jr. should be assessed the attorney's fees in defending against it and should be denied any access to this proceeding or any other proceeding against his father until these fees are paid into the Court.

15. Except as indicated heretofore, the allegations contained in the objection to the motion are denied.

WHEREFORE, premises considered, the motion to quash should be denied, and this Court should impose sanctions upon Robert Sullivant Jr. with a restriction enjoining Robert Sullivant Jr. from filing any proceeding in this Court before satisfying and paying those sanctions.

RESPECTFULLY SUBMITTED, this the 21st day of June, 2023.

J. HALE FREELAND, MS BAR NO. 5525

FREELAND MARTZ PLLC
302 Enterprise Dr., Suite A
Oxford, Mississippi 38655
(662) 234-1711
hale@freelandmartz.com

CERTIFICATE OF SERVICE

I, J. Hale Freeland, hereby certify that I have this day forwarded by electronic mail a true and complete copy of the above and foregoing *Notice of Hearing* to the following:

Swayze Alford, MSB No. 8642
1221 Madison Avenue
Oxford, MS 38655
(662) 234-2025
salford@swayzealfordlaw.com

Robert Sullivant Jr., *pro se*
rsullivantjr@gmail.com
robert@steelandbarn.com

This, the 21st day of June, 2023.

J. HALE FREELAND

Gmail

Hale Freeland <hale@freelandmartz.com>

Re: Conservatorship of Sullivan (Laf Chicanery No 21-512) (our file 02587)

1 message

Robert Sullivant <robert@steelandbarn.com> Thu, Jun 8, 2023 at 6:34 PM
To: Errol Castens <errol@freelandmartz.com>, hale@freelandmartz.com

Hale,

Please state your authority to be involved in this matter? Once I did consult with you taking on this case on my behalf.

Miss R Civ P 16(b)(1) does not exist, and Rule 16 does not pertain to discovery.

I did not receive the motion you referred to in your email.

I will not be available the morning of the 22nd as you incorrectly assumed. At 2 o'clock in courtroom #1 I will be deposing Dr. Frank Perkins. I have every right to depose him.

I just received the affidavit from the process server today, and immediately sent to Swayze. I will file it and the subpoena tomorrow. Swayze has been noticed and in appropriate time. Dr. Perkins and Swayze have been evasive in my right and request to depose Dr. Perkins. It should not have come to this, but my actions are the result of Dr. Perkins' and Swayze's inappropriate conduct.

You have not made a reasonable argument to quash the subpoena to depose Dr. Perkins. I am not sure that you have the authority to speak in this matter on behalf of anyone.

In conclusion I will depose Dr. Perkin's on June 22 in courtroom #1, else I will have him cited for contempt. Also, I will not be available for a motion that I have not seen, or agreed to be set. Furthermore, I consider your communication out of order, incoherent, baseless, and not pursuant to any MIssissippi Rule of Civil Procedure. I have followed the Mississippi Rules of Civil Procedure and have the right to depose Dr. Perkin's.

Regards,
Robert Sullivant (for future reference and communication, please note the spelling of Robert)
512-739-9915

On Thu, Jun 8, 2023 at 5:06 PM Errol Castens <errol@freelandmartz.com> wrote:

Errol Castens
Paralegal for J. Hale Freeland
Freeland Martz, PLLC
302 Enterprise Dr., Ste. A
Oxford, MS 38655
(662) 234-1711, ext. 4
www.freelandmartz.com

---------- Forwarded message ---------
From: **Hale Freeland** <hale@freelandmartz.com>
Date: Thu, Jun 8, 2023 at 4:34 PM
Subject: Re: Conservatorship of Sullivan (Laf Chicanery No 21-512) (our file 02587)
To: Swayze Alford <salford@swayzealfordlaw.com>, <roabter@steelandbarn.com>, Errol Castens <errol@freelandmartz.com>

Conservatorship of Sullivant (Laf 2021-612 (W)) Our file 02587

Gentlemen,

Since Mr Alford was not provided notice of the deposition as required by Miss R Civ P 16(b)(1);
neither I nor Mr Alford available could appear for a hearing prior to June 22nd due to conflicts in our schedules when on the attached motion to quash may be heard;
Dr Perkins fees have not been paid for taking the deposition;
and no determination was made regarding Dr. Perkins schedule before the subpoena was issued to provide reasonable notice to Dr. Perkins regarding his his schedule was and patient care;
we will set the hearing on our motion to quash (attached) on June 22, 2023 when Judge Whitwell can hear the motion, Mr Alford will be already be before the Court on other matters..
Mr Sullivant noticed the deposition on that date, he does not have a conflict either.

Hale

On Thu, Jun 8, 2023 at 4:02 PM Swayze Alford <salford@swayzealfordlaw.com> wrote:
Got it. Thanks

Sent from my iPhone

> On Jun 8, 2023, at 2:22 PM, Hale Freeland <hale@freelandmartz.com> wrote:
>
> Swazey,
>
> Please find the subpoena to depose Dr Perkins on June 22, 2023. We
> are filing a motion to quash it
>
> Hale
> <Subpoena Dr. Perkins.pdf>

--

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IN THE CHANCERY COURT OF ALCORN COUNTY, MISSISSIPPI

H/S FLORENCE, LLC,

Plaintiff,

V. **CAUSE NO. CV2021-0622-02-MM**

CARROLL K. LITTLE, JR., Defendant; CKL DEVELOPMENT, LLC, Garnishee; CKL PROPERTIES, LLC, Garnishee; THE CLUB AT SHILOH RIDGE, LLC, Garnishee; AND LITTLE'S JEWELERS, INC., Garnishee

Defendants.

ORDER DENYING
MOTION TO DISQUALIFY

THIS CAUSE came on for hearing on the Motion to Disqualify filed by H/S Florence, LLC ("Florence") and the Response in Opposition filed by Carroll K. Little, Jr. ("Little"). The Court, after being fully advised in the premises, finds that it has jurisdiction over the parties and the subject matter and does **FIND, ORDER, AND ADJUDGE** as follows:

¶1. On November 8, 2021, Florence filed a Motion for Charging Order against Little and those entities listed above as Garnishees, seeking payment on a judgment entered in the Lauderdale County, Alabama Circuit Court matter of H/S Florence, LLC v. Carroll Little, Cause Number CV 2015-900044.00 ("the Alabama judgment"). According to Florence's Motion, the Alabama judgment consists of an award against Little for $662,997.76 in breach of contract damages and $420.98 for Florence's court costs.

¶2. Little filed his Response to Motion for Charging Order on or about December 14, 2021. According to this Response, Little's counselors of record are Albert G. Delgadillo and Robert E. Quimby both attorneys with the Mitchell McNutt and Sams, P.A. law firm ("Mitchell McNutt").

Enclosure 1

¶3. Through a Motion to Disqualify filed on April 5, 2022, Florence seeks to disqualify Mitchell McNutt and its attorneys from continuing to serve as counsel for Little and the following entities: CKL Development, LLC; CKL Properties, LLC; The Club at Shiloh Ridge, LLC; and Little's Jewelers, Inc.

¶4. Florence owns a shopping mall located in Florence, Alabama, which is managed by Hull Property Group, LLC ("Hull"), a corporation providing management services to individuals or entities owning shopping malls and shopping centers in multiple states. Hull also manages the Leigh MS Mall, LLC ("Leigh") property located in Columbus, Mississippi.

¶5. Douglas Ford ("Ford") and Mitchell McNutt formerly represented Leigh in the matter of *Dollar Tree Stores, Inc. v. Leigh MS Mall, LLC*, an action filed in the United States District Court for the Northern District of Mississippi ("the Leigh Mall matter").

¶6. Sometime on or around April 18, 2021, shortly after Mitchell McNutt was engaged to represent Leigh, John Markwalter ("Markwalter"), in-house counsel for Hull, contacted Ford via telephone and inquired if Mitchell McNutt could represent Florence in a collections case against Little wherein Florence sought to collect its Alabama judgment. According to Ford, there were no discussions during this telephone call about Florence or its relationship with Leigh through Hull.

¶7. On April 19, 2021, Markwalter emailed Ford at Mitchell McNutt as a follow-up to the prior phone call and the two exchanged correspondence regarding a potential conflict due to Little's prior representation by a Donald Downs, another attorney Markwalter believed to be affiliated with Mitchell McNutt. Markwalter requested that Ford identify alternative counsel to represent Florence. In his reply, Ford informed Markwalter that he did not recall Donald Downs to be a member of Mitchell McNutt, and requested further information to "run a conflicts." In a subsequent email on that date, after running a conflicts check, Ford identified the existence of a

potential conflict to Markwalter and suggested that Markwalter contact another attorney to assist in this matter, providing contact information for William "Bill" Davis, a former Mitchell McNutt lawyer located in Corinth.

¶8. According to Markwalter, during a follow-up telephone call on April 20, 2021, he requested that Ford tell him the nature of the conflict, to the extent he would be able. Ford testified that he indicated to Markwalter that Mitchell McNutt attorney Albert Delgadillo had prepared wills for Little or his family members, and he would need to follow up to determine the extent of Delgadillo's work in order to determine if a conflict actually existed. Markwalter testified that Ford indicated to him that he did not believe this to be a conflict for the firm in representing Florence against Little, but more, a reticence to become adversarial with a former client. Markwalter further testified that he and Ford discussed seeking charging orders as to certain LLCs either associated with or controlled by Little, and alternatively, seeking garnishments.

¶9. Ford testified that, prior to identifying the potential conflict, he and Markwalter had not discussed substantive information about the case. Markwalter conceded on cross-examination that he was probably the one who brought up the substantive issues in his discussions with Ford during their discussions.

¶10. Also on April 20, 2021, Markwalter obtained copies of deeds for properties in which Little held either ownership interest or control. These deeds were prepared by Wendall Trapp, an attorney with Mitchell McNutt. Upon learning this fact, Markwalter believed there to be a conflict which would prohibit Mitchell McNutt from representing Florence or Little, because, in Markwalter's opinion, he had discussed Florence's strategy with Ford, while Ford's firm, Mitchell McNutt, had prepared the deeds for Little's properties which could become involved in Florence's efforts to collect the Alabama judgment.

¶11. Markwalter stated that, on the afternoon of April 20, 2021, he voiced his concerns about Mitchell McNutt participating in the debt collection case based upon the deed preparation by the firm, upon which he learned Mitchell McNutt was actively representing Little in the debt collection matter and therefore could not represent Florence.

¶12. Markwalter took the position that Ford gave him legal advice during their discussions of the charging orders, garnishments, and Florence's possibility of success on those methods of collection. Ford argued that Florence was not a client during these discussions, and that he and Markwalter did not discuss Florence's strategy, but standard practices in collecting a judgment. Florence asserts that the discussions between Mitchell McNutt and Markwalter on behalf of Florence requires a disqualification of Mitchell McNutt.

¶13. Further according to Markwalter, Florence and Leigh, Mitchell McNutt's client in the unrelated Federal Court litigation, share common elements of ownership. Markwalter asserted that Hull owns Florence and also owns fifty percent (50%) of Leigh. However, Markwalter admitted that he could not recall as to whether he told Ford that he represented Leigh, or whether he discussed the common ownership interests Leigh and Florence had through Hull. Nonetheless, because of the Mitchell McNutt/Leigh attorney-client relationship and because of the asserted affiliation between Florence, Leigh, and Hull, Florence asserts that Mitchell McNutt and its attorneys are disqualified to represent Little and the Garnishees in this action.

¶14. "The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law." *Hewes v. Langston*, 853 So. 2d 1237, 1244 (Miss. 2003) (citing *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). This privilege is defined as follows:

> **(b) General Rule of Privilege.** A client has a privilege to refuse to disclose--and to prevent others from disclosing--any confidential communication made to facilitate professional legal services to the client:
>
> > (1) between the client or the client's representative and the client's lawyer or the lawyer's representative;
> >
> > (2) between the client's lawyer and the lawyer's representative;
> >
> > (3) by the client, the client's representative, the client's lawyer, or the lawyer's representative to another lawyer or that lawyer's representative, if:
> >
> > > (A) the other lawyer represents another party in a pending case; and
> > >
> > > (B) the communication concerns a matter of common interest;
> >
> > (4) between the client's representatives or between the client and a client representative; or
> >
> > (5) among lawyers and their representatives representing the same client.

Miss. R. Evid. 502(b). A "confidential communication" is defined by the Rule in part as a communication "not intended to be disclosed to third persons other than those to whom disclosure is made to further rendition of professional legal services to the client. . . ." Miss. R. Evid. 502(a)(5)(A).

¶15. "[I]f a communication between a lawyer and client would facilitate the rendition of legal services or advice, the communication is privileged." *Freesenius Medical Care Holdings, Inc. v. Hood*, 269 So. 3d 36, 63 (Miss. 2018). The Mississippi Supreme Court has interpreted the scope of the attorney-client privilege under Mississippi law broadly:

> the privilege relates to and covers all information regarding the client received by the attorney in his professional capacity and in the course of his representation of

> the client. Included are communications made by the client to the attorney and by the attorney to the client. In that sense it is a two-way street.

Barnes v. State, 460 So. 2d 126, 131 (Miss. 1984). The attorney-client privilege "does not require the communication to contain purely legal analysis or advice to be privileged. *Dunn v. Sate Farm Fire & Cas. Co.*, 927 F.2d 869, 875 (5th Cir. 1991).

¶16. Excepting certain limited circumstances, an attorney "shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is [otherwise expressly] permitted. Miss. R. Prof'l Conduct 1.6(a). Rule 1.7 of the Mississippi Rules of Professional Conduct generally prohibits an attorney from representing a client "if the representation of that client will be directly adverse to another client . . ." or if such representation may be "materially limited by the lawyer's responsibilities to another client or to a third person. . . . The Mississippi Rules of Professional Conduct further provide:

> A lawyer who has formerly represented a client in a matter shall not thereafter:
>
> > (a) represent another in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or
> >
> > (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

Miss. R. Prof'l Conduct 1.9.

¶17. With that framework in mind, the Mississippi Supreme Court has applied a "two-part test developed by the United States Court of Appeals for the Fifth Circuit for attorney disqualification. . . . The two elements which must be found are: (1) an actual attorney-client relationship between the moving party and the attorney he seeks to disqualify; and (2) a substantial relationship exists

between the subject matter of the former and the present representations." *Hartford Cas. Ins. Co. v. Halliburton Co.*, 826 So.2d 1206, 1221 (internal citations omitted) (Miss. 2001); see also *Newsome v. Shoemake*, 234 So. 3d 1215, 1229 (Miss. 2017) (same).

¶18. In terms of the instant matter, then, Florence must prove the existence of both (1) an actual attorney-client relationship between Florence and Mitchell McNutt or its attorney(s), and (2) a substantial relationship between the subject matter of Mitchell McNutt's present representation of Little and some former representation.

(1) Did an actual attorney-client relationship exist between Florence and Mitchell McNutt and/or its attorneys?

¶19. Florence takes the position that it's in-house counsel, Markwalter, engaged in substantive discussions with Ford, a Mitchell McNutt attorney, regarding Florence's legal strategy to collect on the Alabama judgment against Little and asserts that these communications, along with Mitchell McNutt's representation of Leigh in the Leigh Mall matter, established an attorney-client relationship as contemplated by the first prong of the *Hartford* test.

¶20. First, the Court cannot find that an attorney-client relationship ever existed between Florence and Mitchell McNutt or Ford.

¶21. On April 19, 2021, during the initial consultation between Markwalter and Ford, Ford identified a potential conflict with Mitchell McNutt representing Florence against Little in this matter. Ford confirmed that conflict to Markwalter on April 20, 2021. When questioned by this Court, Markwalter conceded that Ford gave him no indication during these initial discussions that Mitchell McNutt was going to represent Florence. Indeed, a reticence was voiced by Ford to Markwalter regarding Mitchell McNutt's representation of Florence against Little, and Ford, in essence, said he would check for existing conflicts. Nonetheless, after this reticence was conveyed

and the conflict issue raised, Markwalter discussed with Ford his thoughts on Florence's efforts to collect against Little and the use of charging orders and garnishments.

¶22. According to Markwalter, the discussion with Ford of these two collection strategies should disqualify Mitchell McNutt from representation of Little. However, Markwalter identified no other statements made to Ford or Mitchell McNutt which would constitute the disclosure of confidential information to be employed by Florence against Little. Rather, Markwalter has only presented broad, vague allegations of disclosure of strategy through the use of charging orders and garnishments. This Court cannot conceive that any capable attorney would **not** seek to employ charging orders and garnishments to collect an outstanding judgment. Ford's testimony indicated that he learned nothing of Florence's position beyond that which a reasonable attorney would employ as standard practice in a collection suit. Further, Markwalter conceded through his Affidavit and testimony that the discussion of strategy came subsequent to the disclosure to him by Ford of the potential issue with representing Florence against Little, with knowledge of the conflicts check being in progress.

¶23. In the *Hartford* case, the party seeking to disqualify an attorney claimed that said attorney "learned confidential information from the expert witness that Hartford plans to use in this case." *Hartford*, 826 So. 2d at 1222. The attorney asserted that he learned nothing confidential and "nothing beyond that which he could have gained in a deposition." *Id.* The Mississippi Supreme Court, considering this broad and vague allegation alone, without Hartford stating exactly what information the attorney allegedly learned that would be harmful to Hartford's case, found that Hartford's motion to disqualify was properly denied. Similarly, here, Markwalter only makes broad allegations of disclosure of strategy through the use of charging orders and garnishments. Florence's use of these methods to attempt to collect a judgment is standard practice which would

be expected of any attorney, and Markwalter's disclosure cannot be said to be harmful to Florence's case.

¶24. Considering the above findings and the rationale employed in *Hartford*, the Court can find nothing in the record to support a finding that Ford or Mitchell McNutt received any confidential communication from Florence or its counsel which would cause an attorney-client relationship to arise warranting disqualification of Mitchell McNutt or its attorneys.

¶25. Second, the Court cannot find that an attorney-client relationship existed by virtue of the common ownership interest between Florence, Leigh, and Hull.

¶26. Florence attempts to rely on Mitchell McNutt's representation of Leigh to claim an attorney-client relationship, based upon Florence's affiliation with Leigh through Hull, their common management group. Little argues in his Response that "representation of a management company does not create an attorney-client relationship with every individual and/or entity that the management company provides management services to." Markwalter conceded during his testimony that, prior to his discussions with Ford, Mitchell McNutt had not represented Florence anywhere in the country. Further, according to Ford, the common ownership interest between these entities was never disclosed to him during his discussions with Markwalter. No assertion was made that any information disclosed to Mitchell McNutt during its representation of Leigh would have any relevance to Florence or Little. Accordingly, the Court finds this assertion to also be without merit.

¶27. Although the Court has found that there existed no attorney-client relationship between Florence and Ford or Mitchell McNutt, out of an abundance of caution the Court will briefly address the second prong of the *Hartford* test.

(2) Is there a substantial relationship between the subject matter of the current litigation and the former litigation in which Mitchell McNutt or its attorneys participated?

¶28. If "it is established that the prior matters are substantially related to the present case, the court will irrebuttably presume that relevant confidential information was disclosed during the former period of representation." *Owens v. First Family Financial Services, Inc.*, 379 F. Supp. 2d 840, 850 (S.D. Miss. 2005) (internal citation omitted).

¶29. In its Motion, Florence claims that the second prong of the *Hartford* test was satisfied because "the underlying facts, legal issues, and parties are the same." This argument is flawed and misapprehends the *Hartford* test. The Court has found that Florence never enjoyed an attorney-client privilege with Mitchell McNutt in the current litigation, and Markwalter conceded on the stand that Mitchell McNutt has not otherwise represented Florence in any matter.

¶30. Florence argues in its Motion that "Douglas Ford and the Firm previously established an attorney client relationship with Leigh, a company that is affiliated with Florence by and through their shared management company, to-wit: Hull." However, Markwalter, Florence's attorney, conceded during his testimony that the subject matter between Leigh and Florence was not substantially the same, and further conceded that Little was not in any way involved in the Leigh Mall matter. Although Markwalter argued the commonality of ownership interests between Florence and Leigh, through Hull, Florence can establish no similarity between the nature of the instant collections case against Little and the Leigh Mall matter involving a co-tenancy dispute.

¶31. Accordingly, even if Florence had established the first prong of the Hartford test for disqualification, it cannot satisfy the second prong requiring the existence of a substantial relationship.

¶32. Based upon the foregoing findings, the Court finds that Mitchell McNutt and its attorneys should not be disqualified pursuant to any Mississippi legal authority.

¶33. It is therefore ordered that Florence's Motion to Disqualify is **OVERRULED** and the relief sought therein **DENIED**.

ALL SO ORDERED AND ADJUDGED, this the 31st day of October, 2022.

Michael Malski

MICHAEL MALSKI
CHANCELLOR