



## Alerts

### Conflict Imputed from Client's "Outside In-house Counsel" to Client's Separate Litigation Defense Counsel

April 3, 2013

*Lawyers for the Profession® Alert*

*j2 Global Communications Inc. v. Captaris Inc.*, 2012 WL 6618272, (C.D. Cal. 2012)

#### Brief Summary

The U.S. District Court for the Central District of California disqualified a law firm because of its contact with another attorney from a different law firm who served the same underlying client as “outside in-house counsel.” The firm was unaware that the lawyer had previously represented the opposing party on a related matter, and the attorney’s own firm failed to properly identify and seek waiver of the conflict.

#### Complete Summary

Plaintiff in patent infringement cases moved to disqualify defense counsel. In addition to defense counsel, defendant employed as temporary “outside in-house counsel” an attorney from a second firm. Unbeknownst to defense counsel, that attorney had previously, at a third firm, represented plaintiff in matters involving three of the patents at issue in the infringement cases.

Before learning of the conflict, defense counsel met with the attorney on a number of occasions, and he provided supervision and commentary as an intermediary between defense counsel and defendant. Plaintiff eventually learned of the attorney’s involvement and notified defense counsel that the attorney had formerly represented plaintiff on related matters. Defense counsel promptly ended communication with the attorney.

The court initially determined that the attorney had worked on substantially related matters for plaintiff and therefore presumed that he had obtained relevant confidential information about plaintiff. The court then tackled what was apparently an issue of first impression by holding that this same presumption should be extended to defense counsel. In reaching its conclusion, the court looked to the analogous issue of whether a conflict can be imputed between co-counsel. Although California cases are split on this issue, the court noted that the cases finding no imputation had failed to consider pertinent contradictory authority and had not been widely cited.

#### Service Areas

Counselors for the Profession

Lawyers for the Profession®

Litigators for the Profession®



The court then held that the presumption that defense counsel had obtained relevant confidential information was not rebuttable. Once again turning to California law, the court noted that California courts have occasionally opined in decisions that the presumption may be rebutted if an ethical wall has been erected to screen the conflicted lawyer. But given that defense counsel had already collaborated with the attorney before screening itself from the attorney, the court held that the screen had been implemented too late.

### **Significance of Opinion**

This case serves as a reminder that conflicts and/or imputation considerations, while often rooted in disciplinary rules, may take on different parameters in the disqualification context. In this case, a wholly innocent firm, which had little if any realistic ability to detect the conflict until it was too late, was disqualified. As the court noted, disqualification orders are concerned with preserving public trust in the administration of justice and integrity of the bar rather than punishing guilty lawyers.

### [Download PDF](#)

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*