



## Newsletters

### The Lawyers' Lawyer Newsletter - Recent Developments in Risk Management - May 2016

May 3, 2016

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- Conflicts of Interest — Subject Matter Conflicts — Can IP Attorneys Simultaneously Represent Two Clients That Are Prosecuting Patents for Similar Inventions?
- Disqualification — Obtaining Privileged Materials Outside of Discovery — Consultation With Former Employee of Opposing Party
- Disqualification — Overly Broad Scope of Engagement Creates Concurrent Representation Conflicts
- Existence of Attorney-Client Relationship — Negotiations Affecting Client and Indemnifying Party

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#### Conflicts of Interest — Subject Matter Conflicts — Can IP Attorneys Simultaneously Represent Two Clients That Are Prosecuting Patents for Similar Inventions?

*Maling v. Finnegan, Henderson, Farabow, Garrett & Dunner, LLP*, 473 Mass. 336, 42 N.E.3d 199 (2015)

**Risk Management Issue:** What constitutes an adequate conflicts check where two clients may be pursuing intellectual property in similar inventions (sometimes referred to as a "subject matter conflict")?

#### Disqualification — Obtaining Privileged Materials Outside of Discovery — Consultation With Former Employee of Opposing Party

*In re RSR Corp.*, No. 13-0499, 2015 WL 7792871, at \*3 (Tex. Dec. 4, 2015)

**Risk Management Issue:** What can law firms do to manage the risk of disqualification when they seek to consult with or engage a former employee of an opposing party?

#### Disqualification — Overly Broad Scope of Engagement Creates Concurrent Representation Conflicts

*M'Guinness v. Johnson et al.*, 243 Cal. App. 4th 602 (2015)

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**Risk Management Issue:** What can counsel for a closely held corporation do to avoid disqualification in the event of shareholder disputes?

**Existence of Attorney-Client Relationship — Negotiations Affecting Client and Indemnifying Party**

*George Makhoul, etc. v. Watt, Tieder, Hoffar & Fitzgerald, LLP, et al.*, 11-CV-5108 (PKC) (E.D.N.Y. 2015)

**Risk Management Issue:** What must law firms do to avoid establishing attorney-client relationships when communicating during the course of an engagement with persons or entities that may be allied in interest to their actual clients?

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