[Cite as *Youngstown v. Joenub, Inc.*, 2001-Ohio-3401.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

CITY OF YOUNGSTOWN	)	CASE NO. 01 CA 01
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	O P I N I O N
	)	
JOENUB, INC., ET AL.	)	
	)	
DEFENDANTS-APPELLANTS	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 00CV3071

JUDGMENT: Reversed and Remanded.

APPEARANCES:

For Plaintiff-Appellee: Atty. Robert E. Bush
Law Director
Atty. Dana C. Guarnieri
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Youngstown, Ohio 44503

For Defendants-Appellants: Atty. John B. Juhasz
7330 Market Street
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JUDGES:

Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: September 28, 2001

WAITE, J.

{¶1} This appeal arises from a decision of the Mahoning County Court of Common Pleas granting the motion of the City of Youngstown ("Appellee") to disqualify Appellants' attorney due to a conflict of interest. Because Appellee had no standing to assert a conflict of interest on behalf of Appellants, the decision of the trial court disqualifying the attorney is reversed.

{¶2} On November 22, 2000, Appellee filed a nuisance action against Joenub, Inc., d/b/a Smokey Joe's Bar located at 2722 Market Street, Youngstown. Appellee's complaint named the president of the corporation and the owner of the property as defendants. The nuisance action arose after Appellants' former security officer, Frank Jorge ("Jorge"), was indicted on four counts of trafficking in cocaine at the bar. (11/22/00 Complaint, Exh. A, C). Also on November 22, 2000, Appellee filed an application for a preliminary injunction and a motion for an *ex parte* temporary restraining order. The temporary restraining order was granted the same day. The court found that Appellants' business constituted a nuisance under R.C. §3719.10 and ordered the building to be closed and padlocked. (11/22/00 Temporary Restraining Order). A hearing on the preliminary injunction began on November 30, 2000, and continued through December 11, 2000.

{¶3} During the hearing on the preliminary injunction, counsel

for Appellee raised an oral motion to disqualify Appellants' Attorney Stephen R. Garea ("Garea") due to a conflict of interest. (11/30/00 Tr. p. 87). Appellee's counsel alleged that Garea had gained an unfair advantage in the instant case because he had also represented Jorge in the concurrent criminal proceedings and had access to Appellee's files through the criminal discovery process. (Tr. pp. 186, 190). Garea had briefly represented Jorge in his criminal case prior to Jorge having a permanent court-appointed lawyer. (Tr. p. 187). Appellee was primarily concerned that Garea would use the civil proceedings as an opportunity to uncover the identity of a confidential informant used in the drug transactions in the criminal case. (Tr. p. 148).

{¶4} The person primarily interested in preserving the identity of the informant was Mahoning County Assistant Prosecutor Jennifer Kirr ("Kirr"). Kirr first appears in the record on December 5, 2000, during the ongoing preliminary injunction hearing. Kirr did not represent any of the parties at the time she first appears in the record. (Tr. p. 158). She was permitted to extensively address the trial judge in chambers about protecting the identity of the informant. (Tr. pp. 146-151). She examined the evidence from the nuisance case while in chambers. (Tr. p. 152). She also had a conversation with one of Appellee's scheduled witnesses about evidentiary issues in the instant civil case. (Tr. pp. 178-179). She remained in the trial judge's

chambers while various witnesses were questioned by the trial judge. (Tr. pp. 172, 178). Kirr also argued objections on behalf of Appellee during the hearing, and directly examined witnesses. (Tr. pp. 313, 355, 390). The record does not reveal in what capacity Kirr took any of the above actions during the hearing.

{¶5} The hearing was further continued to December 11, 2000. Jorge's current attorney, appointed subsequent to Garea's brief period of appointment, testified that Jorge did not find any conflict of interest in anything Garea had done in either the civil or criminal cases which were pending. (Tr. p. 384). Jorge himself was called as a witness and testified that he did not find a conflict in Garea's representation. (Tr. p. 392).

{¶6} Garea stated to the court that only his own clients had standing to raise a conflict of interest issue. (Tr. p. 189). Nevertheless, at the conclusion of the hearing on December 11, 2000, the trial court held:

{¶7} "After reviewing the matters that are before the Court with the benefit of the cases cited, the Court is still going to find that Attorney Garea has a conflict of some nature." (Tr. p. 392).

{¶8} On December 13, 2000, the trial court filed an entry finding that Garea had a conflict in representing Jorge at a meeting with the Mahoning County Drug Task Force and then later in representing Appellants in the instant action. On January 2, 2000, Appellants filed this timely appeal of the December 13, 2000, Judgment Entry.

{¶9} The decision to grant a motion to disqualify an attorney from representing a client in a civil case is a final appealable order pursuant to R.C. 2505.02(B)(4). *Westfall v. Cross* (June 13, 2001), Belmont App. No. 00-BA-5, unreported; *Swearingen v. Waste Techs. Indus.* (1999), 134 Ohio App.3d 702, 713-714.

{¶10} Ohio courts continue to maintain the distinction between civil and criminal disqualification orders in reference to whether the order is final and appealable. *State v. Saadey* (June 30, 2000), Columbiana App. No. 99 CO-49, unreported. An order granting a motion to disqualify an attorney in a criminal case is not final and appealable. *Id.* see *Russell v. Mercy Hosp.* (1984), 15 Ohio St.3d 37.

{¶11} In keeping with the aforementioned authority, we hold that the disqualification order in this civil case, which completely and unequivocally removes Attorney Garea from representing Appellants, is a final and appealable order.

{¶12} Appellants' sole assignment of error asserts:

{¶13} "The Trial Court Abused Its Discretion in Disqualifying Appellant's Counsel as there was Neither a Conflict of Interest Nor did the Appellee have Standing to Assert Conflict of Interest."

{¶14} The standard of review of a trial court decision disqualifying an attorney is that the decision will be reversed only upon a showing of an abuse of discretion. *Sarbey v. Natl. City Bank* (1990), 66 Ohio App.3d 18, 23; *Cleveland v. Cleveland*

Elec. Illum. Co. (N.D. Ohio 1976), 440 F.Supp. 193, 196. Abuse of discretion is defined as, "an attitude that is unreasonable, arbitrary or unconscionable. * * * A decision is unreasonable if there is no sound reasoning process that would support that decision." *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161.

{¶15} Disqualification of an attorney is a drastic measure which should not be imposed unless it is absolutely necessary. *Spivey v. Bender* (1991), 77 Ohio App.3d 17, 22. Ohio has adopted the three-part test for disqualification of counsel due to a conflict of interest set forth in *Dana Corp. v. Blue Cross & Blue Shield Mut. Of N. Ohio* (C.A. 6, 1990), 900 F.2d 882. See *Morgan, supra,* at 162; *Hollis v. Hollis* (1997), 124 Ohio App.3d 481, 485; *Kitts v. U.S. Health Corp. of S. Ohio* (1994), 97 Ohio App.3d 271, 275. The test is as follows: 1) a past attorney-client relationship must have existed between the party seeking disqualification and the attorney he or she wishes to disqualify; 2) the subject matter of the past relationship must have been substantially related to the present case; and 3) the attorney must have acquired confidential information from the party seeking disqualification. *Dana* at 889; *Morgan* at 162, n.1. If a party moving to disqualify an attorney cannot meet the first prong of the *Dana* test, that party lacks standing to seek the disqualification. *Morgan* at syllabus.

{¶16} "*[A] motion to disqualify an attorney gives rise to two areas of examination: (1) the nature of the relationship between the litigants; and (2) the nature of the relationship between the attorney's past and present duties*, as those duties relate to the litigants. The court must first scrutinize the relationship that existed between the moving party and the attorney that the moving party seeks to disqualify. *If there is no current or past attorney-client relationship, then the motion should be denied.* On the other hand, if the court determines that there is, or has been, an attorney-client relationship, then the court must inquire into the relationship between the current representation and the representation giving rise to the attorney-client relationship between the lawyer and the litigant." (Emphasis added.) *Henry Filters, Inc. v. Peabody Barnes, Inc.* (1992), 82 Ohio App.3d 255, 260.

{¶17} We must note at this point that upon Appellee's request (and over Appellants' objection) this matter was expedited by the Court. Appellants timely filed their brief in the matter. Despite its desire for an expeditious process, Appellee did not file timely. While ordinarily we would strike the brief filed months beyond the deadline, as this matter raises serious issues, we will address Appellee's arguments as well.

{¶18} Appellants' assignment of error consists of two distinct sub-issues.

Appellee lacks standing to raise the conflict of interest.

{¶19} Appellants first sub-issue asserts that Appellee lacks standing to assert the conflict of interest that was argued throughout the preliminary injunction hearing. Appellants argue that:

{¶20} "As a general rule, a stranger to an attorney-client relationship lacks standing to complain of a

conflict of interest in that relationship."

{¶21} *Morgan v. North Coast Cable Co.* (1992), 63 Ohio St.3d 156, syllabus. Appellee's argument in response is that Garea himself raised the issue, although Appellee at no time specifically identifies the nature of the potential or actual conflict.

{¶22} Appellants have cited, *infra*, a variety of cases very similar to the case *sub judice* which have refused to find that a stranger to the attorney-client relationship had standing to assert a conflict of interest.

{¶23} *Jones v. Am. Emp. Ins. Co.* (1995), 106 Ohio App.3d 636, held that a defendant insurance company did not have standing to raise an attorney's conflict of interest in representing two insurance companies which were plaintiffs in the case. *Id.* at 641.

{¶24} *Phelps v. Fowler* (1995), 107 Ohio App.3d 263, involved a child support action against the father in which the county prosecutor's office represented the mother, the Department of Human Services, and the child. The court held that the father did not have standing to raise the conflict of interest issue between the common representation of the three plaintiffs. *Id.* at 271.

{¶25} In *Kitts, supra,* two defendants in a medical malpractice case attempted to raise a conflict of interest regarding plaintiff's law firm because a member of that firm had formerly

worked for the law firm representing another defendant. *Kitts* held that the mere fact of being common defendants in a lawsuit did not give one defendant standing to assert a conflict of interest on behalf of another defendant. *Id.* at 276-277.

{¶26} It should be noted that *Morgan, supra*, which extensively discusses this issue, left open the possibility that a relationship other than a typical attorney-client relationship might give rise to standing to assert a conflict of interest:

> **{¶27}** "We believe that an attorney's obligations and responsibilities to a party, including the attorney's financial, business or personal interests can, in appropriate circumstances, be a basis for disqualification. However, such is not the case here.
>
> **{¶28}** "* * *
>
> **{¶29}** "Furthermore, a common thread that runs through the cases relied upon by appellants is that the attorney or firm the complaining party sought to disqualify was privy to information, confidential or otherwise that, if revealed, would have been adverse or detrimental to the complaining party's cause. However, such a fact pattern does not exist in this situation." *Morgan* at 160.

{¶30} In the case before us there is no hint that Garea ever represented Appellee, or that he had a common interest with Appellee that would give Appellee standing to raise a conflict of interest. In fact, it was not even Appellee, City of Youngstown, that was primarily concerned with Garea's alleged conflict of interest, but rather, the State of Ohio in its prosecution of a completely separate criminal matter. As part of the reason seeking disqualification, Kirr mentioned to the court that she had

"suffered through one informant being killed as a result of a court ordering the identity to be given up." (Tr. p. 149). Although it is laudable for the State of Ohio to vigorously protect the identity of its confidential informants, this interest alone cannot give the State of Ohio standing to interject itself in a separate civil lawsuit between completely different parties and to assert that an attorney should be disqualified.

{¶31} Appellee does not directly address its standing to raise Garea's alleged conflict of interest. Instead, Appellee presents two vague arguments to justify the decision of the trial court.

{¶32} Appellee's first argument is that Garea appeared as a witness in the case when he questioned officer Robert Patton, and in becoming a witness, raised the conflict of interest issue. Appellee then directs this Court to a section of the transcript in which officer Patton is not testifying. (Tr. pp. 186-189). Earlier in the transcript the trial court was engaged in a voir dire of officer Patton in chambers to determine if Patton himself should be dismissed as a witness due to improper conversations he had with officer Jeff Allen and with Kirr. (Tr. pp. 178-185). At no point was Garea called as a witness, nor did he request permission to act as a witness. Furthermore, it was officer Patton, not Garea, who first discussed a possible conflict of interest. (Tr. p. 180).

{¶33} Even if it appeared to the trial court that Garea would

be needed as a witness, the trial court did not follow the proper procedure to determine whether he should be disqualified. Ohio's Code of Professional Responsibility DR-5-102(A), provides:

> **{¶34}** "If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B)(1) through (4)."

{¶35} An attorney may continue to represent a client even if called as a witness if one of the following exceptions, found in DR 5-101(B)(1)-(4), applies:

{¶36} "(B) A lawyer shall not accept employment in contemplated or pending litigation if the lawyer knows or it is obvious that the lawyer or a lawyer in the firm ought to be called as a witness, except that the lawyer may undertake the employment and the lawyer or a lawyer in the firm may testify:

{¶37} "(1) If the testimony will relate solely to an uncontested matter.

{¶38} "(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

{¶39} "(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or the firm to the client.

{¶40} "(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or the firm as counsel in the particular case."

{¶41} In *Mentor Lagoons, Inc. v. Rubin* (1987), 31 Ohio St.3d 256, the Ohio Supreme Court established a procedure that a trial

court must use in determining whether to disqualify an attorney who will be called as a witness:

> **{¶42}** "*When an attorney representing a litigant in a pending case requests permission or is called to testify in that case, the court shall first determine the admissibility of the attorney's testimony* without reference to DR 5-102(A). If the court finds that the testimony is admissible, then that attorney, opposing counsel, or the court sua sponte, may make a motion requesting the attorney to withdraw voluntarily or be disqualified by the court from further representation in the case. *The court must then consider whether any of the exceptions to DR 5-102 are applicable* and, thus, whether the attorney may testify and continue to provide representation. In making these determinations, the court is not deciding whether a Disciplinary Rule will be violated, but rather preventing a potential violation of the Code of Professional Responsibility." (Emphasis added). *Id.* at paragraph two of syllabus; see also *155 North High, Ltd. v. Cincinnati Ins. Co.* (1995), 72 Ohio St.3d 423, 427-428.

{¶43} The record reflects that Garea was not called as a witness. The record further demonstrates that the trial court, even if it had assumed that Garea might need to appear as a witness, did not examine Garea's proposed testimony to decide whether it would be admissible apart from any consideration of DR-5-102(A). Finally, it is apparent from the record that the trial court did not consider whether any exceptions to disqualification found in DR-5-101(B) would apply. Therefore, Garea's disqualification cannot be based on Appellee's allegation that he would appear as a witness in the case.

{¶44} Appellee's second argument is that Garea breached his duty to protect confidential communications between himself and Jorge during Garea's brief representation of Jorge. This duty is found in DR 4-101(B):

> **{¶45}** "(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

{¶46} "(1) Reveal a confidence of his client."

{¶47} A "confidence" is defined as, "information protected by the attorney-client privilege * * *." DR 4-104(A). The attorney-client privilege protects communications *between an attorney and his or her client* made for the purpose of obtaining legal advice. *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 550. "The only material protected by the attorney-client privilege are those involving communications between attorney and client." *State v. Hoop* (1999), 134 Ohio App.3d 627, 639. Conversations between the attorney and a third party are not protected. *Id.* at 640; *Upjohn Co. v. United States* (1981), 449 U.S. 383, 395-396; *Hickman v. Taylor* (1947), 329 U.S. 495, 508.

{¶48} Appellee alleges that Garea divulged or was likely to divulge confidential information he gathered during discussions with officers of the Mahoning Valley Drug Task Force. Any conversations Garea had with these officers would not be confidential with respect to Jorge because these conversations involved third parties. *Hoop, supra,* at 639. If the officers revealed confidential information with respect to their own pending cases, the information was no longer confidential once it was revealed to Garea. *Id.* at 640. If Appellee, or the State of Ohio in its criminal proceedings, possessed truly confidential information, they should have taken steps to protect that information before revealing it to Garea.

{¶49} Appellee asserts that Jorge intended to become a "cooperating source" for the Drug Task Force after he met with officers on September 14, 2000. (Tr. p. 353). Appellee contends that Garea acted as Jorge's attorney on September 20, 2000, in another meeting with the Drug Task Force, and as a result of that meeting, Jorge decided not to cooperate. (Tr. pp. 353-354). Appellee asserts that Jorge was subsequently indicted on September 28, 2000. Appellee does not explain how these facts give Appellee standing to argue a conflict of interest on behalf of the opposing party in a lawsuit when that opposing party did not raise the issue.

{¶50} The case at bar is a good example of why a non-client should not be deemed to have standing to raise a conflict of interest on behalf of an opposing party. The non-client may have purely self-interested motives for moving to disqualify the opposing attorney. If an appellee, such as the one before us, is permitted to initiate conflict of interest proceedings in which it has no direct stake, it would give that appellee a powerful tool with which to control the quality and selection of the opposing party's representation in any case.

{¶51} We are persuaded by Appellants' argument that Appellee lacks standing to raise the alleged conflict of interest of Attorney Garea.

Insufficient evidence to warrant disqualification.

{¶52} Appellants' second sub-issue asserts that, assuming *arguendo* that Appellee had standing to raise a conflict of interest issue, the evidence is insufficient to show that the disqualification was necessary. Although we have already determined that Appellee does not have standing, because Appellee raises serious issues in this regard we must address Appellants' second sub-issue.

{¶53} Appellants argue that a mere allegation of a conflict is insufficient to disqualify an attorney, citing *Centimark v. Brown Sprinkler Serv., Inc.* (1993), 85 Ohio App.3d 485. Appellants' argument is persuasive.

{¶54} As previously stated, a trial court's decision to disqualify an attorney due a conflict of interest should not be overturned on review except upon a finding of an abuse of discretion. *Sarbey, supra*, 66 Ohio App.3d at 23. Nevertheless, the trial court's discretion is limited by other considerations arising out the importance of a party's right to be represented by the attorney of his or her choice:

> **{¶55}** "[A] court should not deny the opposing party its choice of counsel solely upon an allegation of a conflict." *Id.* at 489; see also *Morgan, supra,* at 161.

{¶56} "An attorney should not be disqualified *solely* upon an allegation of a conflict of interest; even where the requested disqualification is based upon ethical considerations, the moving party still must demonstrate that disqualification is necessary."

(Emphasis in original.) *Creggin Group, LTD v. Crown Diversified Industries Corp.* (1996), 113 Ohio App.3d 853, 858.

{¶57} There is nothing in the record indicating any specific or actual conflict between Garea's limited representation of Jorge in his criminal case and his representation of Appellants in the instant case. The only alleged conflicts discussed at the hearing on the preliminary injunction were: 1) that the information Garea gleaned from the criminal case would be detrimental to *Appellee's* case (Tr. pp. 180, 184-185); and 2) that if Jorge were convicted of drug trafficking at Smokey Joe's, Appellants would not be able to justify Jorge's action, but rather, would have to assert that they did not know Jorge was trafficking in drugs.

{¶58} The first alleged conflict mentioned is a conflict inherent in our system of adversarial representation. An attorney may have special qualifications based on his or her particular clients, training, or because of the nature of the attorney's practice. Those qualifications may make an attorney more qualified to represent certain clients, or more effective as an adversary to particular opposing parties. Appellee is attempting to use the disqualification process to circumvent a fundamental aspect of our adversarial legal system.

{¶59} The second alleged conflict is mainly illusory. Appellants' and Jorge's interests actually appear to be aligned with respect to both the instant nuisance action and the separate

drug trafficking case. If Jorge is acquitted or if the criminal case against him is dismissed, the basis for the nuisance action, for the most part, also disappears. Garea's incentive, in both instances, is to seek an acquittal for Jorge or to plea bargain for a lesser offense and lesser penalty.

{¶60} Appellants' and Jorge's interests may diverge in the future if Jorge is convicted of a crime. Appellants may be forced to terminate Jorge's employment, or sue him for damages based on his alleged activities in Smokey Joe's. It is apparent that these conflicts are purely speculative at this point in time.

{¶61} Even assuming that the conflict between Appellants' interests and Jorge's interests legitimately poses the potential of conflict for Garea, the party asserting the conflict must prove that disqualification is necessary. *Creggin Group, supra,* at 858. "Even if an attorney's continued representation would violate one of the Canons of the Code of Professional Responsibility, counsel should not be disqualified unless the attorney's conduct poses a significant risk of tainting the trial." *Id.*; see also *Spivey, supra,* 77 Ohio App.3d at 22; *Kitts, supra,* 97 Ohio App.3d at 275; *Centimark, supra,* 85 Ohio App.3d at 488-489. Nothing in the record even remotely suggests that Garea's disqualification was necessary to protect Appellants' interests or to protect the integrity of the proceedings in the instant case.

{¶62} This case involves, at best, the chance of a future

conflict of interest. "In cases involving potential conflicts of interest, courts typically employ the 'substantial relationship' test. An attorney may not accept employment against a former client where there is a substantial relationship between the existing controversy and the prior representation." *Morford v. Morford* (1993), 85 Ohio App.3d 50, 57, quoting *White Motor Corp. v. White Industries* (1978), 60 Ohio App.2d 82, 87. The "substantial relationship" test is applied only where the representation of a former client has been terminated and the parameters of the relationship have been fixed. *Morford* at 57. This test requires disqualification whenever there is a substantial relationship between the subject matter of the former representation and that of subsequent representation. *Sarbey v. Natl. City Bank, Akron* (1990), 66 Ohio App.3d 18, 23. The primary purpose of disqualification is to protect the confidentiality of information, even if the information is only potentially involved in the current action. *Morford* at 57.

{¶63} The facts of the instant case do not satisfy the "substantial relationship" test. Appellants and Jorge are not involved in litigation against each other. Garea has not accepted employment against a former client, and thus, fails to satisfy one of the elements of the "substantial relationship" test. *Morford, supra,* at 87. Jorge is not on trial in the instant action, nor is he a party to the action. Although there is a significant

relationship between the criminal case against Jorge and the instant case, the cases are not "substantially related" as that term of art is defined in *Morford, supra.*

{¶64} It is true that a trial court may disqualify an attorney for reasons other than a conflict of interest:

> **{¶65}** "The most common basis for trial court disqualification of an attorney is the risk of a tainted trial due to an actual or potential conflict of interest. * * * However, this is not the only ground for disqualification. The trial court's power to protect its pending proceedings includes the authority to dismiss an attorney who cannot, or will not, take part in them with a reasonable degree of propriety. * * * Similarly, attorney disqualification can be warranted in cases of truly egregious misconduct which is likely to infect future proceedings." (Citations omitted.)

{¶66} *Royal Indem. Co. v. J.C. Penney Co., Inc.* (1986), 27 Ohio St.3d 31, 34. The record is quite clear, though, that the only basis argued or considered for Garea's disqualification was a supposed conflict of interest.

{¶67} The trial court's determination that there was a conflict of interest requiring disqualification is not supported by the record because: 1) it was based on a mere allegation of a potential conflict of interest; 2) there was no finding that disqualification was necessary to preserve the integrity of the trial; and 3) there was no "substantial relationship," as defined by *Morford*, between the criminal case against Jorge and the instant civil case. Without some factual basis for the disqualification, the trial court's action is arbitrary, and

constitutes an abuse of discretion. Appellants' second sub-issue is also persuasive.

CONCLUSION

{¶68} Appellee did not have standing to raise a conflict of interest between two of Attorney Garea's clients. Even if Appellee did have standing, the record does not contain sufficient facts to support Garea's disqualification arising from a conflict of interest. Without a factual basis for disqualifying Garea, the trial court acted arbitrarily in making its decision, which constitutes an abuse of discretion. We agree with both of Appellants' arguments in support of their assignment of error.

{¶69} For the foregoing reasons, we sustain Appellants' sole assignment of error. The December 13, 2000, Judgment Entry is reversed, and this cause is remanded to the trial court for further proceedings according to law and consistent with this Court's opinion.

Vukovich, P.J., concurs.

DeGenaro, J., concurs.