

6. Plaintiff Carowest Land Ltd. is a limited partnership that owns property in Comal County, Texas.

7. Plaintiff Graham Weston is trustee of Countyline Land Trust.

8. Plaintiff Kuehler Road, LLC, formerly known as Kuehler Road, Ltd., is a limited liability company that owns property in Comal and Guadalupe County, Texas.

9. Defendant Jason Davis is a resident of Bexar County Texas.

10. Defendant Davis & Santos, P.C. is a professional corporation with its principal office in Bexar County, Texas.

E. FACTUAL SUMMARY

11. This is a case about an attorney who violated the solemn tenets of his professional creed in the name of personal financial gain. After accepting more than \$2.9 million in legal fees and representing Plaintiff Graham Weston (“Mr. Weston”) and entities he manages in no less than *nine* formal and informal matters between 2009 and today, Defendant Jason Davis (“Davis”) and his law firm Defendant *Davis & Santos, P.C.* secretly accepted employment by Mr. Weston’s wife to investigate, develop, and pursue, criminal, tort, and family law claims against Mr. Weston, without revealing this fact to Mr. Weston, and ultimately appeared as an attorney of record for Mr. Weston’s wife in their contested divorce.

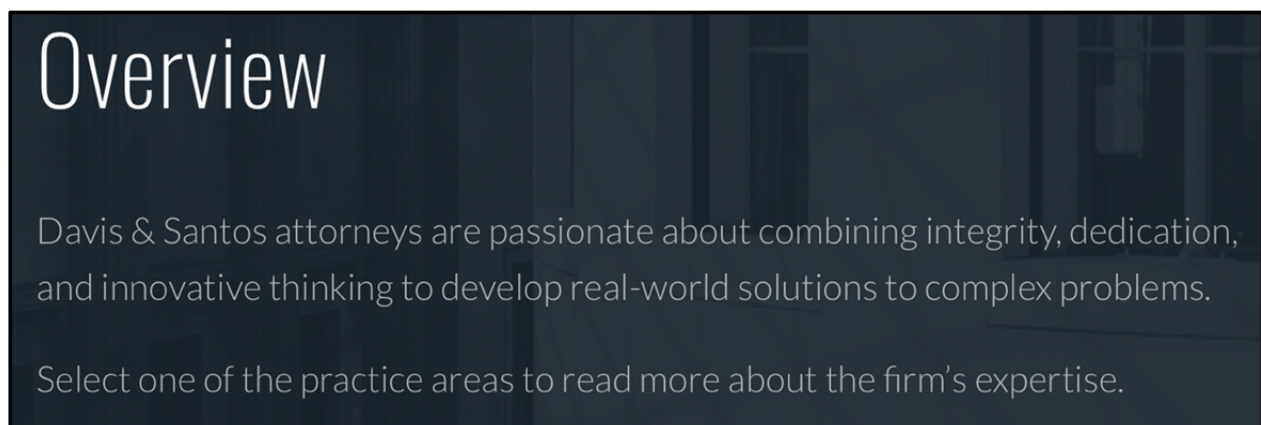
12. Indeed, until recently, the attorneys of *Davis & Santos, P.C.* represented Mr. Weston and entities managed by Mr. Weston in three matters actively pending when the Defendants started their secret investigation and development of civil, criminal, and family law claims against Mr. Weston: *Kuehler Road, Ltd., et al. v. SEDCOR, Ltd., et al., Carowest Land, Ltd. v. City of New Braunfels*, and *Countyline Land Trust v. “Tony” Eugenio*.

13. Mr. Weston had every reason to place his absolute trust in Davis and generously share confidential/attorney-client information with him. Like all Texas attorneys, Davis

solemnly swore to “*honestly demean [himself] in the practice of law*” and has the independent duty to uphold the tenets of the Texas Disciplinary Rules of Professional Conduct and the Texas Lawyer’s Creed. Having practiced law for over 25 years, Davis represented to the world that he understood importance of the ethical standards required of Texas attorneys. Davis and his firm *Davis & Santos, P.C.* proudly boasted of the commitment and dedication they allegedly offered their clients as seen on their website, <https://dslawpc.com/>:

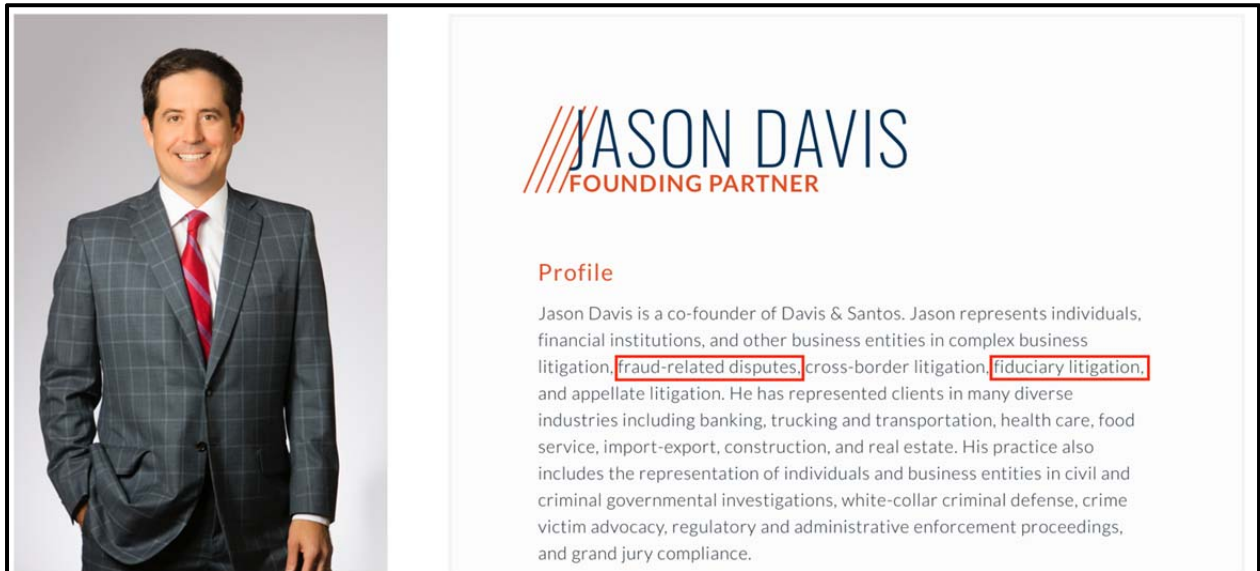


-<https://dslawpc.com/about/>



-https://dslawpc.com/practice_area/overview/

14. Davis and *Davis & Santos, P.C.* continue to represent their specialized knowledge of fiduciary duties through their practice of litigation involving fraud and breach of fiduciary duty:



JASON DAVIS
FOUNDING PARTNER

Profile

Jason Davis is a co-founder of Davis & Santos. Jason represents individuals, financial institutions, and other business entities in complex business litigation, **fraud-related disputes**, cross-border litigation, **fiduciary litigation**, and appellate litigation. He has represented clients in many diverse industries including banking, trucking and transportation, health care, food service, import-export, construction, and real estate. His practice also includes the representation of individuals and business entities in civil and criminal governmental investigations, white-collar criminal defense, crime victim advocacy, regulatory and administrative enforcement proceedings, and grand jury compliance.

<https://dslawpc.com/attorney/jason-davis/>

Fiduciary Litigation

Davis & Santos handles high-stakes trust, estate, and guardianship disputes and represents fiduciaries, trustees, executors, beneficiaries, heirs, guardians, partners, powers of attorney, and interested third parties. Davis & Santos's fiduciary litigation practice includes:

- Will and trust disputes, including claims of lack of testamentary capacity and undue influence
- **Breach of fiduciary duty claims** and removal actions, and defense of fiduciaries against such claims and actions
- Guardianship and incapacity issues
- Shareholder actions and defense of shareholder actions

https://dslawpc.com/practice_area/fiduciary-litigation/

15. While Davis advertised having specialized knowledge in several areas of the law, he maintained one attribute in the mind of Mr. Weston that no other attorney could match – Mr. Weston's trust. Whether Mr. Weston needed help with litigation, property transactions, estate

matters, employment law, securities laws, general business advice, or family matters, Mr. Weston believed that Davis was always working to further Mr. Weston's best interests, the interests of the entities that Mr. Weston managed, or the best interests of his family. For years Mr. Weston and the entities he managed paid handsomely for Defendants services *without question*.

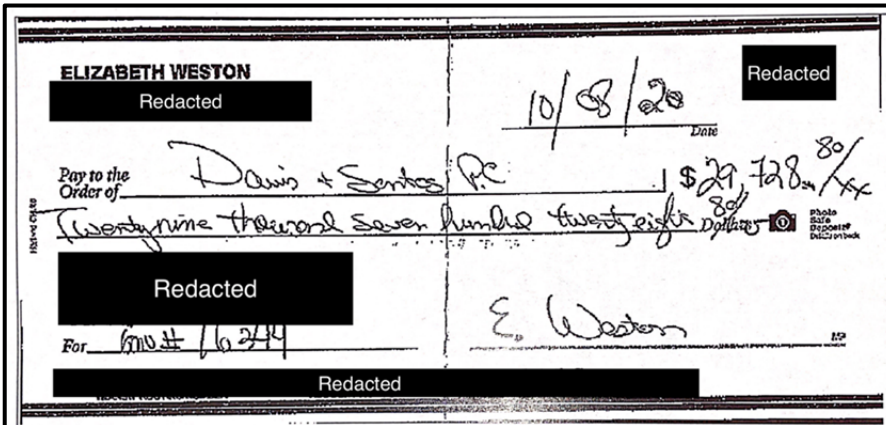
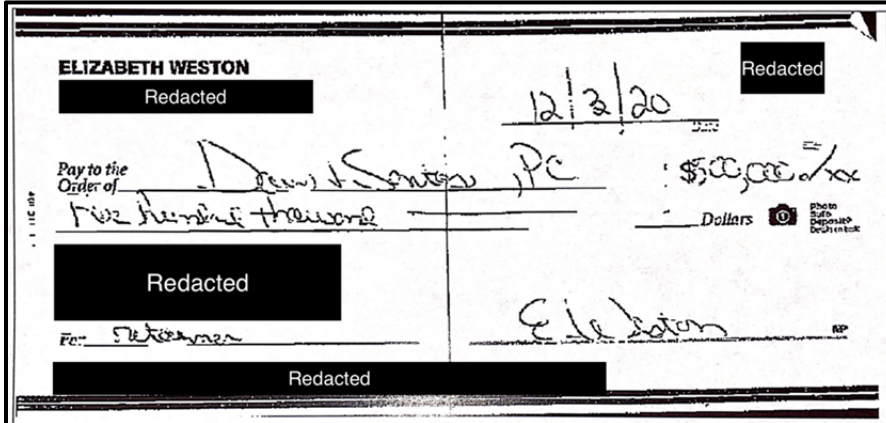
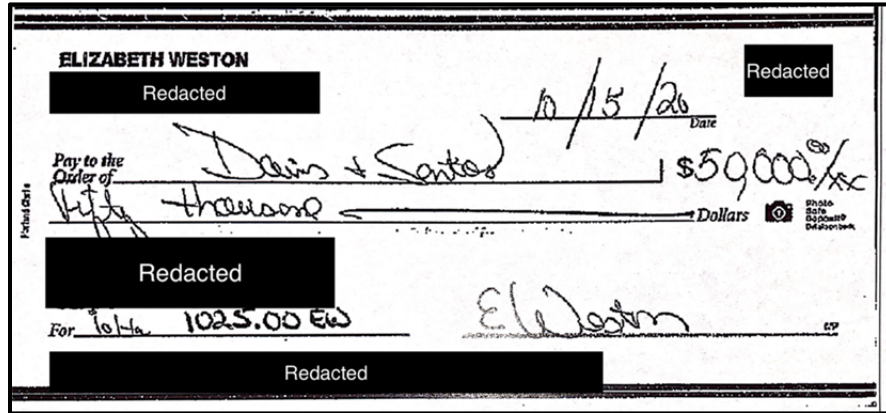
16. Mr. Weston's trust in Davis was further compounded by the trust Mr. Weston's wife and family also placed in Davis as Davis grew to become a close friend of the family. Davis would be invited to Weston private events and Weston family gatherings. Davis was on a first-name-basis with the Weston children and they looked up to him. When Davis first started his own firm, Mr. Weston provided office space at a Weston property at a significant discount and favorable terms as a result of their relationship. Davis had a confidential relationship with Mr. Weston, based on prior dealing that gave rise to an informal fiduciary duty, including without limitation the duty of disclosure.

17. Mr. Weston viewed Davis as a counsellor of good judgment and turned to him for advice and guidance during times of family crisis. Mr. Weston placed so much faith in Davis and *Davis & Santos, P.C.* that he even changed his will to appoint Davis as the guardian of his children's estate upon his passing.

18. As the record in this matter continues to develop, it is certain that Davis as well as *Davis & Santos, P.C.* have actively and willfully worked against the interests of Mr. Weston for well over a year, while at the same time purporting to act as counsel and trusted advisor to Mr. Weston and the entities he manages.

19. All the while, Davis and *Davis & Santos, P.C.* reaped the financial benefits that have come from serving as trusted counsel in numerous matters on Mr. Weston's behalf or on

behalf of entities managed by Mr. Weston – services that Mr. Weston would have terminated immediately had he known about Davis’s secret efforts to use the trust and confidence Mr. Weston placed in Defendants as a means to develop criminal, tort, and family law claims against him. To date, Defendants have been paid at least \$589,728.80 for representing Elizabeth Weston in relation to the divorce:



20. Defendants' blatant betrayal of their clients, Mr. Weston, and the companies he manages, and the duties owed to them under both the common law and the Texas Disciplinary Rules of Professional Conduct are egregious. Mr. Weston filed a motion to disqualify soon after he learned that his trusted attorney had been secretly working against him and was now representing the adverse party—his wife—in their divorce. After a hearing on the motion to disqualify, Honorable Judge Dib Waldrip issued a scathing 24-page order disqualifying Davis and *Davis & Santos, P.C.* which included the following findings:

- As to the relationship that Mr. Davis developed with Mr. Weston and his family, the Court recognized that: "...the longstanding intimate relation of trust developed between Graham [Weston] and Davis is likely a catalyst prompting Elizabeth to hire and engage Davis for this inherently and increasingly lucrative litigation; thus, possessing information gained by reason of the prior relationship unethically benefits Davis..."¹
- "Elizabeth's testimony that she would feel emotionally devastated if Davis is disqualified, while not determinative of the decision to disqualify, can be weighed against Graham's emotional reaction to finding out that Davis, who has been Graham's lawyer for a number of years and who is still representing him in various capacities, has been secretly building a case to sue Graham for claims within this divorce, including engaging the parties' joint IT professional as a "consulting expert," since June 2019."²
- "From the evidence adduced at that hearing, the Court determines that Davis had both a fiduciary relationship and a relationship of trust (loyalty) and confidence or had an informal fiduciary relationship with Graham arising before the current divorce proceeding could reasonably have been anticipated..."³
- "Davis's failure to inform Graham that Elizabeth retained Davis to build a case against Graham for divorce, tort damages, and family violence constitutes a failure by Davis to provide Graham (a willing and able client) with sufficient information to intelligently make decisions regarding the objectives of the matters in which Davis was currently representing Graham or entities closely-held by and managed by him as well as the means by which they were to be pursued. Further, this constitutes a violation of the general duty of trust and loyalty Davis owed Graham."⁴

¹ Exhibit "A"—*Supplemental Order Granting Motion to Disqualify*, at p. 16.

² Exhibit "A"—*Supplemental Order Granting Motion to Disqualify*, at p. 22.

³ Exhibit "A"—*Supplemental Order Granting Motion to Disqualify*, at p. 12.

⁴ Exhibit "A"—*Supplemental Order Granting Motion to Disqualify*, at p. 14.

21. Defendants attempted to overturn Judge Waldrip’s disqualification order through a Petition for Writ of Mandamus filed March 15, 2021, but July 16, 2021 the Third Court of Appeals (before Chief Justice Byrne, Justice Baker, and Justice Smith) denied the mandamus petition.⁵

22. For more than 10 years Mr. Weston trusted Davis and *Davis & Santos, P.C.* He shared privileged information freely, believing Defendants would uphold their fiduciary and professional obligations. Mr. Weston has suffered immense harm from the breach of this sacred professional bond and now seeks immediate resolve through this lawsuit.

F. CAUSES OF ACTION
Breach of Fiduciary Duty, Fraud, and Constructive Fraud

23. Plaintiffs incorporate the allegations contained in the preceding paragraphs here.

24. The relationship existing between Defendants and Plaintiffs is properly characterized as highly fiduciary. Defendants owed to Plaintiffs both a formal and informal fiduciary duty that requires, among other things, proof of perfect fairness on the part of Defendants in all representations that Defendants made to Plaintiffs, and disclosures that Defendants should have made but failed to make to Plaintiffs.

25. The relationship between Defendants and Plaintiffs is rife with the potential for overreaching. For this reason, where self-dealing by the Defendants is alleged, a presumption of unfairness automatically arises and the burden is placed on the Defendants to prove (a) that the questioned transaction was made in good faith, (b) for consideration, and (c) after full and complete disclosure of all material information to the Plaintiffs.

26. Jason Davis at all times acted as a lawyer for Plaintiffs and as a Founding Partner of *Davis & Santos, P.C.* By the actions described above, Defendants breached their fiduciary

⁵ **Exhibit “B”**—*In Re Elizabeth Weston*, 03-21-00121-CV (Tex. App—Austin Jul. 16, 2021) (mem. op.).

duties owed to Plaintiffs by self-dealing, misrepresentation, and failure to disclose. Defendants also traded on and exploited their informal fiduciary relationship with Mr. Weston for their own gain.

27. Defendants breached the fiduciary duties they owed to Plaintiffs by misrepresenting and failing to disclose the adverse relationship they created with Plaintiffs by agreeing to secretly represent Ms. Weston on adverse claims while simultaneously representing Mr. Weston and the entities he manages. Defendants further breached their fiduciary duties by agreeing to represent Ms. Weston to pursue criminal, tort, and family law claims against Mr. Weston for financial gain without disclosure to Plaintiffs.

28. Because of the formal and informal fiduciary duty that Jason Davis and *Davis & Santos, P.C.* owed to Plaintiffs, Plaintiffs do not have to prove reliance on the false and misleading statements. Instead, Jason Davis and *Davis & Santos, P.C.* have the affirmative duty to prove the complete fairness and accuracy of their representations. In any case, Plaintiffs relied on all statements made by Defendants to their detriment.

29. Similarly, Defendants acts of concealing the nature of their relationship with an adverse party and actively working against Plaintiffs while simultaneously representing them in legal matters constitutes fraud and constructive fraud. This fraud and constructive fraud were a breach not only of the special trust relationship that existed between Plaintiffs and their attorneys and Plaintiffs' reliance on their attorneys for accurate information about each respective case, but also was a breach of the fiduciary duties arising from the informal fiduciary and confidential relationship between Plaintiffs and Defendants as a result of prior dealings. Defendants' failure to disclose material facts, and decision to willfully and secretly engage with

an adverse party and promote her interests contrary to Plaintiffs interests, caused Plaintiffs actual damages.

30. Defendants' breaches of fiduciary duty and fraudulent and constructively fraudulent acts described above, and incorporated here by reference, were each a proximate cause, producing cause, and cause-in-fact of the actual damages that Plaintiffs sustained. Plaintiffs seek to recover all of these actual damages from Defendants, as determined by the jury and this Court.

31. The wrongs by the Defendants constitute fraud and malice and allow the recovery of exemplary damages under §41.003 of the Texas Civil Practice & Remedies Code.

32. In addition to their actual damages, and as a result of Defendants' fraud, constructive fraud, and breaches of fiduciary duty described above and incorporated here by reference, Plaintiffs seek disgorgement of attorneys' fees paid by Plaintiffs to Defendants. As a result of Defendants' breaches of fiduciary duty, the fees paid to them by Plaintiffs are forfeited. Defendants were paid more than \$2.9 million in attorneys' fees through the course of their engagement with Plaintiffs. After the jury's finding of breach of fiduciary duty or constructive fraud by Defendants against Plaintiffs, Plaintiffs pray that the Court determine that Defendants should forfeit all of the attorneys' fees that Defendants received from Plaintiffs. Plaintiffs pray that the Court order that Defendants must forfeit the attorneys' fees that Defendants received from Plaintiffs and Clients.

G. JURY DEMAND

33. Plaintiffs demand trial by jury and a jury fee is being tendered with the filing of this petition.


H. CONCLUSION

34. Plaintiffs pray that Defendants be cited to appear and answer, that after trial the Plaintiffs each recover all relief sought herein including actual and exemplary damages, pre-judgment interest, post-judgment interest, costs of court, disgorgement of attorney's fees, and such other and further relief as to which they may show themselves justly entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

–

Supplemental Order
Granting Motion to
Disqualify



DIB WALDRIP
PRESIDING JUDGE

433RD DISTRICT COURT
COMAL COUNTY, TEXAS

March 22, 2021

No. C2020-1814A

IN THE MATTER OF	§	IN THE DISTRICT COURT
THE MARRIAGE OF	§	
	§	
E.W.	§	22 nd JUDICIAL DISTRICT
AND	§	
G. M. W.	§	COMAL COUNTY, TEXAS

SUPPLEMENTAL ORDER GRANTING MOTION TO DISQUALIFY

Early within this proceeding for divorce, came on to be heard Respondent Graham Weston's (Graham) Motion to Disqualify Jason Davis and Davis & Santos. P.C. from representing of Petitioner Elizabeth Weston (Elizabeth) in this proceeding and Petitioner Elizabeth Weston's Motion for Clarification. At the hearings, both Petitioner Elizabeth and Respondent Graham were ably represented by multiple attorneys, presented testimony and evidence, and persuasively argued their respective positions. After an initial and general ruling, the Court has endeavored, as was requested and thus required in such matters, to be more precise in this supplemental order.

In the family law arena, very little four-squared authority was located and submitted by the parties that would control the disqualification of counsel issue

dictating a black or white result. The Court, too, has researched the matter without locating conclusive authority giving due consideration to all the facts and circumstances in play to ascertain whether justice demands disqualification. *See In re Murrin Bros. 1885, Ltd.*, 603 S.W.3d 53, 57 (Tex. 2019) *citing In re Meador*, 968 S.W.2d 346, 350 (Tex. 1998) (*orig. proceeding*). Accordingly, one must begin and, ultimately, end with the basics.

Marriage and the perceived need to dissolve it sets the table before us. Generally, marriage is an agreed-upon union between two able and consenting adults that is acknowledged publicly. As for Petitioner Elizabeth and Respondent Graham, the parties were married December 31, 1994. This cause of action for divorce was filed in October 2020. The Court takes judicial notice of a time-tested adage paraphrased from an old Hebrew text (whether appreciated historically, adopted spiritually, and/or otherwise acknowledged merely as a literary reference) which states “for this purpose a man and a woman shall leave their respective and individual families so that they may each cleave to each other becoming one.” Genesis 2:24. However, the imperfect nature of humans requires courts and counsel to apply (and be bound by) civil authority ordained and promulgated by the Texas legislature when cloture, if you will, regarding that cleaving process is sought.

LEGAL CONSTRUCT & GENERAL FINDINGS

In that process of divorce, other legislative, judicial, executive and/or administrative authorities, including but not exclusive of, the Texas Family Code, Texas Business Organizations Code, caselaw, rules of evidence, and rules of professional conduct often come into play as they have here. For the purpose of

this Order, the Court adheres to the recent Texas Supreme Court reaffirmation that disqualification of a lawyer is such a severe remedy that courts examining a motion to do so “must strictly adhere to an exacting standard.” *In re Thetford*, 574 S.W.3d 362, 373 (Tex. 2019) citing *Spears v. Fourth Court of Appeals*, 797 S.W.2d 654, 656 (Tex. 1990) (*orig. proceeding*) and *NCNB Tex. Nat’l Bank v. Coker*, 765 S.W.2d 398, 400 (Tex. 1989).

To the degree one relies upon the Texas Disciplinary Rules of Professional Conduct, it is the burden of a moving party alleging a violation of one or more of such rules to “establish with specificity” violation of the rule. *Spears, supra* at 656. Nonetheless, those rules are not strictly determinative whether counsel is to be disqualified in certain current litigation. *Murrin Bros., supra* at 57 (noting that the rules “provide helpful guidance” and “suggest the relevant considerations”) quoting *Nat’l Med. Enters. v. Godbey*, 924 S.W.2d 123, 132 (Tex. 1996) (*orig. proceeding*). Upon careful and thorough consideration of all the evidence and circumstances, trial courts are afforded great deference and discretion in its determination of a disqualification motion. *Thetford, supra*.

At the foundational level, the Preamble to the Texas Disciplinary Rules of Professional Conduct, ¶ 2, says that it is an “obligation of lawyers is to maintain the highest standards of ethical conduct.” The Texas Disciplinary Rules of Professional Conduct are created for a specific purpose which the Court recognizes, pursuant to the same Preamble, *supra* at ¶ 15, which provides that the rules “are not designed to be standards for procedural decisions ...”. The Court also recognizes, pursuant to Section 10 of the Preamble, that the comments to the Texas Disciplinary Rules of Professional Conduct do not add obligations to

an attorney's ethical requirements; rather, the comments "explain applications of the rules, in order to provide guidance for interpreting the rules ...". Preamble, *supra at* ¶ 10. Thus, in and of themselves, the Texas Disciplinary Rules of Professional Conduct are neither controlling nor the sole standards upon which motions to disqualify counsel are to be adjudged.

Thankfully for our jurisprudence, the issue is infrequent. However, one perplexing result of infrequency is that the "exacting standard" is, at times, less than exact. Compare *Thetford, supra* at n. 16 (Chief Hecht notes lack of clarity regarding attachment of presumption—affirming broader rule that eschews the "condition" of a "substantial relationship," yet the opinion analyzes circumstances therein to determine degree of the relationship between prior and current matters involved) with *Thetford, supra* at 384-86 (Brown, J. *dissenting*) (questioning need and manner of proper application of substantial relationship). Clarity remains evasive and, somewhat, less than exacting.

Under Texas law, the degree or extent of a "relationship" concerns both the duty of *confidentiality* regarding legal issues as well as the duty of personal *loyalty* between counsellor and client. See *In re American Airlines*, 972 F.2d 605 (5th Cir. 1992) (wherein mere giving of advice and counseling triggered disqualification whether or not confidences were gained by the lawyer). In one of the few disqualification cases delving in divorce, the opinion in *Golias v. King*, 1995WL517222, slip op. at 5 (Tex.App.—Beaumont 1995, *no writ*) (*orig. proceeding*) (*mem. op.*) discusses the significance of the previous "substantial relationship" between lawyers and the client, *i.e.*, *duty of loyalty*, regarding the "subject matter," *i.e.*, *transaction to acquire property in prior representation*,

that formed an evidentiary basis in a current fraud dispute leading ultimately to an issue of the character and nature of property in a simultaneous divorce proceeding. Chief Justice Walker notes that certain rules of professional conduct were “primarily designed to protect clients, not attorneys . . . [thus], we must strive to afford the former client every protective indulgence.” *Id.*

At the initial disqualification hearing—both on and off the record, substantial debate ensued as to the quandary about how Graham might prove an impending violation of the duty of confidentiality without unnecessarily divulging the very same matters he seeks to protect that, later, may (or may not) be necessary to prove up or defend against one apparent key issue within the divorce—that regarding the nature and character of property owned by one or more of the parties. *See generally, Troutman v. Ramsay*, 960 S.W.2d 176, 178-79 (Tex.App.—Austin 1997, *no writ*) (*orig. proceeding*) (delicate “catch—22” situation of potential need to reveal universe of confidences to demonstrate “exactness” of standard required at hearing on disqualification motion). *Compare also generally, Coker, supra* at 400 (requiring proof of threat that prior confidences would be *revealed to the present adversary*) with *In re Bivins*, 162 S.W.3d 415, 420 (Tex.App.—Waco, *no writ*) (OR that prior confidences *may be used* in the instant litigation “to the disadvantage of the former client without the

client's consent"). Hereto—in this divorce litigation, the Court decided to advance similar “protective indulgences” to preserve the universe of the confidences within the prior relationship until such time as it became clear that doing so would be absolutely necessary in order that movant, Graham, might attempt to meet his burden of proof.

The Court asked if any caselaw was available to provide direction on that point. Counsel for both Graham and Elizabeth informed the Court, correctly, of the dearth of authority available squarely on point involving divorce proceedings wherein husbands and wives (naturally and expectedly, having previously developed a certain degree of oneness and confidence between each other) are now litigating issues on property (and increases thereto) allegedly acquired before and during the marriage. The Court too researched the issue without locating any firmly controlling authority; thus, the Court remains in the lurch of the catch-22 specifically relating to the duty of confidence issue. As for the duty of loyalty, *Golias, supra*, most closely attempts to address the issue.

In both the husband-wife and attorney-client relationship, reciprocal duties of loyalty are principles that promote and preserve trust. Due to the expected growth of both oneness and openness between spouses, a disclosure of a “confidence” (privileged or not), in and of itself, should not jeopardize or waive a duty of confidence or loyalty as it relates to counsel and either spouse. Ergo, a likely explanation for the lack of disqualification cases in a divorce context is that attorneys shun and run from the problem to avoid it altogether. Accordingly, certain of the oft-relied upon standards become wholly inadequate and impracticable to apply in a disqualification of counsel—divorce case.

Moreover, whether the entire universe of confidences discussed among spouses equates—both quantitatively and qualitatively to those also revealed to counsel, then and now—respectively, is quite impossible to prove and discern; thus, this standard—utilized alone becomes quite unworkable and largely immaterial. In the instant case, almost assuredly (and the record so reflects) in an estate with the wealth amassed here that able counsel, Jason Davis, previously advised Graham (and Elizabeth) on matters with evidentiary significance to this litigation—as to when, how, from whom and where possessory or ownership interests in property arose could be legally utilized as well as protected and/or exposed to liability during prior transactions, litigation and general legal consultation or representation. Accordingly, Graham’s prior “confidences,” in fact—whether or not known by Elizabeth, might easily be capitalized upon, artfully and legally, by counsel—Davis to the disadvantage of Graham—if he is *either* a current and/or former client. *See Bivins, supra.*

Public policies—judicial or otherwise should and do encourage both spouses, throughout a marriage, to communicate openly and honestly both with each other and with a trusted attorney rather than be discouraged by a policy or standard to the contrary. *See generally, Texas Rules of Evidence 503-504 (evidentiary privileges with limitations).* Therefore, knowledge of the “confidence” (whether privileged or not) by a litigant spouse cannot and should not be a sole measure under which a divorce-oriented disqualification motion might be automatically denied. If it were, such a standard would irreconcilably pit the purpose of marriage against the the purpose of the attorney-client relationship. No case or opinion, considering such circumstances, of which the

Court is aware applies such a standard. The absence of any such opinion within our jurisprudence inferentially supports the Court's legal conclusion in this regard.

In order to well-adhere to the standard of delineating, if at all, more than mere overlap between the former and current representation, certain specifics are to be discussed below reflective of the *duty of loyalty* owed by Davis to Graham. *See In re Fenenbock*, 2020WL1486851, slip op. at 7 (Tex.App.—El Paso 2020, *mandamus denied*) (To the degree necessary, a “substantial relationship may be found only after the moving party delineates with specificity the subject matter, issues and causes of action common to prior and current representations [sic] and the court engages in a painstaking analysis of the facts and precise application of precedent.”—*quoting In re Murphy*, No. 14-08—1017-CV, at *5 (Tex.App.—Houston [14th Dist.] Mar. 5, 2009, *orig. proceeding*) (*mem. op.*)). With this construct in mind, due consideration to more specific facts and circumstances, as delineated below, shall now be provided to ascertain whether justice demands disqualification. *See In re Murrin Bros. 1885, Ltd., supra.*

CONCLUSION & DETAILED FINDINGS

The Court concludes that Mr. Jason Davis and Davis & Santos, P.C. (collectively, “Davis”) are disqualified, and it is ORDERED that “Davis” shall cease to represent or assist Petitioner Elizabeth Weston (“Elizabeth”) in any way in connection with the above-styled case. The Court also ORDERS that “Davis” shall not share confidential information, as defined in Texas Disciplinary Rules of Professional Conduct Rule 1.05(a), relating to Respondent Graham Weston

("Graham"), the entities closely-held by and managed by him, or trusts held for his benefit, with any member of "Elizabeth's" team of lawyers or their staff, or any fact witnesses, or any expert witnesses that "Elizabeth" may hire or may have hired.

In support thereof, the Court finds from the record of the evidentiary hearing:

1. Graham's Motion to Disqualify was filed and heard as soon practical, and it is not being used merely as a dilatory tactic.
2. During the marriage, various changes to the ownership of interests in multiple Weston entities, of which Davis—as an attorney was aware, have been executed resulting currently with Graham, as the sole member and manager, holding a 99.9 % interest in Chupacabra Ranch, LLC. During the marriage, the general partner of Carowest Land, LTD. has also changed and currently is Chupacabra Ranch, LLC. Graham is the registered agent of Chupacabra Ranch, LLC. Other trusts within the marital estate hold "the substantial wealth ... made by the Westons during the course of their marriage."
3. It is not alleged that there are any children under the age of 18 born to the marriage. However, in a number of months just prior to and during the early pendency of this litigation, it was apparent and agreed by the parties that one now-adult child born to the marriage is suffering from the recent onset of certain (yet not fully known or understood) psychological and/or behavioral health issues. This occurrence led to joint conversations in various combinations between Davis, Elizabeth, Graham and son to which Davis might claim a privilege in furtherance of representation of the son and/or a joint representation of the family which, in and of itself, acknowledges the existence of a duty of loyalty. Beginning in August of 2020, this representation covered criminal issues as well as for the son's custody and care. At different times, Davis knew of differing opinions regarding the son's care; Davis received information from Graham (and Elizabeth) regarding adequate care; and Davis encouraged discussion between Graham and Elizabeth during joint advice to both parents. For their son, Davis advised, recommended and referred

Graham and Elizabeth to an acceptable psychiatrist—Davis' brother-in-law.

4. Disputes among the parties regarding the appropriate care (in the broadest sense of the term) for that adult child are significant issues, among others, which gave rise to the filing of this cause for divorce as well as a prior (but dismissed) cause for divorce.

5. Whether a guardianship regarding the adult child, if at all, will or may be an issue in a divorce proceeding between the parties is, although yet to be determined, an issue with potential significant and substantial magnitude touching upon the estates of the parties and is, thus, a matter to be embraced factually, if not legally, within the pending suit. Agreement upon terms for any legal vehicle and the management thereof, if at all, regarding the son's proper care and his estate is an important aspect that can likely assist resolve and/or mediate other liability and property issues in this cause.

6. Whether or not issues of that adult child are addressed legally within the realm of this proceeding—ultimately, significant and substantial factual, psychological, emotional, and spiritual effects of all such decisions will, in all likelihood, define and impact family relationships between parents, parent and child, within that of parent and siblings, and among the siblings for years.

7. Prior to representing and advising Graham (and Elizabeth) regarding their son, Elizabeth consulted Davis about legal issues alleged or reasonably expected to be alleged in this divorce proceeding (and possibly other civil litigation between spouses), including both no fault and fault grounds such as infidelity, cruelty, and assault. Discussions between Davis and Elizabeth began in June 2019. So much so that a claim of privilege arose, during the hearing on this motion, to questions that followed about witness statements to and investigations by Davis of Graham and the degree to which the statements or investigations were prompted by Graham's client information acquired by reason of representations to Graham, his closely held entities and trusts held on his behalf. At no time prior to the filing of this cause, did Davis inform Graham of the anticipated litigation.

8. Otherwise, the issue which will garner a significant focus of legal attention in this proceeding is the character and nature of the estates of the parties and the just and right division of the marital estate. Ongoing and prior litigation (and results thereof) regarding the Weston family entities will likely inform the Court, in part, regarding the proper establishment and division of the estates of the parties.

In April 2018 during litigation involving Equis Equine, LLC of which Elizabeth is the sole member and manager, Davis consulted with Graham, Elizabeth and others (“family” accountant and attorney) regarding the value of her net worth due to the intertwined character and nature of property owned or estates held by the family of which Elizabeth had no firsthand knowledge. Discovery sought information from the accountant and Graham on the family’s financial and estate planning—the complexity of which is a can of worms that, reportedly, need not be opened. Davis reasonably could become a witness regarding positions asserted and statements made at that time by either Graham or Elizabeth about those characterizations and valuations of personal net worth. Limitations and exceptions to lawyer-client privileges pursuant to Texas Rules of Evidence 503 (d)(5) could be asserted and might require Davis, if called as a witness, to testify on these matters directly or, if necessary, for impeachment purposes.

In 2014-15, Davis researched legal issues and advised Graham, as CEO of the company, regarding liability as to his hold-out vote against selling Rackspace. In 2012, Davis personally represented Graham and obtained a summary judgment to get Graham out of some prior Rackspace litigation.

In the spring of 2009 during the Carowest litigation, Davis explained (advised) Graham (and Elizabeth) regarding the jury charge. Legal fees to Davis were paid by the Carowest entity owned by Chupacabra Ranch, Whittington America and other entities in which Graham held the controlling interest. Court records, of which judicial notice is taken, reflect that Davis continues to represent Carowest in pending litigation.

Davis prepped Graham (and Elizabeth) for and presented them for depositions in the Countyline litigation. Due to a trespass on “their” property, Graham asked Davis “do we need to take legal action?” Davis responded to Graham by email advising him about reasons for the litigation.

Just as Davis testified that other accountants and attorneys represented the family on an ongoing basis, he, too, qualifies as a “family”

attorney for the Westons to which the duties of confidentiality and loyalty continue to apply. This is true in “substance,” even if not in strict “form,” evidenced by the above ongoing involvement in the Westons’ financial and business affairs, both personally and for the entities Graham manages or that are held in trust for his benefit for which Graham, directly or indirectly, paid Davis in excess of three million dollars in legal fees for these ongoing representations.

9. At the first hearing of this divorce proceeding in December 2020, a Rule 11 agreement was entered regarding certain temporary orders for possession of and access to real properties of the parties, scheduling of mediation, and limiting attorneys’ fee expenditures through January 2021 at one quarter million dollars per side. The Court finds that finances will not preclude either side from being provided adequate legal counsel in this divorce proceeding.

10. From the evidence adduced at that hearing, the Court determines that Davis had both a fiduciary relationship and a relationship of trust (loyalty) and confidence or had an informal fiduciary relationship with Graham arising before the current divorce proceeding could reasonably have been anticipated, which was, at a minimum, some period of time beyond 12-18 months (if not years) before Elizabeth filed this divorce. Because of the pre-existing fiduciary relationship and relationship of trust and confidence that existed between Davis—as attorney and counselor and Graham, entities Graham managed, or trusts held for his benefit. Davis had a duty to disclose to Graham that Elizabeth engaged Davis to build a case against Graham for alleged torts and claims within this divorce proceeding. Davis’s conflict of interest arose when he began to interact with Elizabeth on the possibility that she would proceed adversely against Graham, which at the earliest was in June of 2019, but also at the latest was just prior to Graham’s legal consult with Davis regarding his son’s care and confinement which preceded her divorce filing. This conflict of interest requires that Davis be disqualified from representing Elizabeth in this proceeding against Graham. The Court further determines that Davis has ongoing fiduciary duties with respect to his ongoing representation of entities managed by Graham as well as trusts held for his benefit.

11. The Court determines that, through his representation of Graham, entities he manages or those held in trust for Graham’s benefit, Davis

acquired knowledge about: (A) Graham's thinking and approaches to litigation; (B) Graham's approach toward testifying as a witness and ability to give a deposition—his strengths and weaknesses; (C) the ownership and management structure of the entities that Graham manages, owns, or in which he has a beneficial interest; (D) the explanations from Graham, Graham's family CPA, and Graham's family estate planning lawyer about the trust structure as well as the character and nature of community and/or separate property versus trust ownership of assets; (E) Graham's views about his son's welfare, care and treatment versus that of Elizabeth; (F) Graham's views regarding the dynamic between Elizabeth and Graham as to potential conservatorship of the son—if necessary; (G) information about Graham's inability to contact his son while living in the home currently occupied by Elizabeth; (H) potential exposure of assets due to liability, if any, regarding the son's condition and behavior if left un- or mistreated; (I) potential exposure of assets due to an alleged affair; and (J) information related to Graham gleaned only through a technician/investigator's access to the family's computer network. While the foregoing list is not exclusive, they are substantially related to those reasonably anticipated to be "embraced," if not actually litigated, within the pending suit for divorce. *See Coker, supra* at 400.

12. Recognizing Comment 1 to the Texas Disciplinary Rules of Professional Conduct 1.03, Davis's failure to inform Graham that Elizabeth retained Davis to build a case against Elizabeth for divorce, tort damages, and family violence constitutes a failure by Davis to provide Graham (a willing and able client) with sufficient information to intelligently make decisions regarding the objectives of the matters in which Davis was currently representing Graham or entities closely-held by and managed by him as well as the means by which they were to be pursued. Further, this constitutes a violation of the general duty of trust and loyalty Davis owed Graham.

13. Recognizing Comment 4 to the Texas Disciplinary Rules of Professional Conduct 1.03, Davis's failure to inform Graham that Elizabeth retained Davis to build a case against Graham for claims within this divorce, tort damages and family violence, insulated Davis' continued representation of entities closely-held and managed solely by Graham—either directly or through a trust held for his beneficial interest. Timely disclosure of the conflict of interest to Graham risked Davis being

terminated by Graham; thus, Davis's non-disclosure of his adverse employment served Davis's own interest or convenience. This, too, constitutes a violation of the general duty of trust and loyalty Davis owed Graham.

14. Recognizing Texas Disciplinary Rules of Professional Conduct Rule 1.05, the Court determines that, in order to prevent the potential adverse use of confidential information of Graham, entities closely-held by and managed by him, or those held in trust for his benefit, the Court must disqualify Davis from representing Elizabeth in this divorce proceeding. The Court determines that Graham has not consented to the use of his confidential information, that of the entities he manages or that of trusts held for his benefit. In addition to failing to abide by the duty of confidentiality in this regard, it is, likewise, a failure to follow the general duty of trust and loyalty owed Graham.

15. Recognizing Comment 1 to Texas Disciplinary Rules of Professional Conduct Rule 1.05, the Court determines that Davis acquired confidential information as defined in therein, in connection with his past and present legal representation of Graham, entities closely-held by and managed by him, and trusts held for his benefit. The circumstances by which these entities and trusts were created and are held will likely play an important role in ascertaining the character and nature of the estates and/or equitable division thereof to be contained in a Final Decree of Divorce. Davis's obligation to prevent the potential adverse use of the confidential information of Graham, the entities, and trusts is incompatible with his duties owed to Elizabeth as her divorce attorney and as her attorney preparing or asserting claims against Graham for money damages or family violence. The Court determines that Davis cannot segregate the confidential information he received about Graham or his property and use thereof from his role as attorney for Elizabeth in this matter; thus, Davis is unable to maintain the required loyalty of a fiduciary to both Graham and Elizabeth. The Court also considered the prospect that Davis's decision not to disclose to Graham that he was representing Elizabeth in connection with claims asserted in this proceeding, may have been motivated by: (A) Davis's self interest in continuing his employment as an attorney for several entities managed by Graham; and/or (B) his interest to secretly build a case on Elizabeth's behalf. In the event Graham or the entities sue Davis for breach of fiduciary duty, that suit could be an

asset divisible upon divorce. In that case, it will be difficult if not impossible for Davis to differentiate his own intentions as a party or as an interested party from Elizabeth's interests. As a result, Davis must be disqualified from representing Elizabeth in this divorce.

16. Comments 2, 4 & 8 to Texas Disciplinary Rules of Professional Conduct Rule 1.05 embody the ethical obligation *not to use* a client's confidential information "to the detriment of the client or for the benefit of the lawyer or a third person." This includes a prohibition of use of information both learned from a client and related to a client—regardless of whether it may be privileged under the Texas Rules of Evidence. With limited exceptions inapplicable here, any information gleaned regarding a client during a prior or current representation is confidential and not to be used against the client or a former client without consultation and consent. In the case of a former client, a lawyer may use client information without consultation and consent only if it is information that "has become generally known."

The Court finds that Davis was hired by Elizabeth to take actions detrimental to Graham. The Court also finds Graham was neither consulted nor consented to the use of his client information to his detriment. Knowledge of the client information merely by one's spouse does not constitute a waiver of confidentiality (separate and apart from any possible waiver of privilege pursuant to the rules of evidence NOT in play for these purposes), and the record does not otherwise substantiate a finding that Graham's client information is generally known. Thus, the Court concludes that Graham's client information remains confidential, including but not limited to: (A) Graham's thinking and approaches to litigation; (B) Graham's approach toward testifying as a witness and ability to give a deposition—his strengths and weaknesses; (C) the ownership and management structure of the entities that Graham manages, owns, or in which he has a beneficial interest; (D) the explanations from Graham, Graham's family CPA, and Graham's family estate planning lawyer about the trust structure as well as the character and nature of community and/or separate property versus trust ownership of assets; (E) Graham's views about his son's welfare, care and treatment versus that of Elizabeth; (F) Graham's views regarding the dynamic between Elizabeth and Graham as to potential conservatorship of the son—if necessary; (G) information about Graham's inability to contact his son while living in the home currently occupied by Elizabeth; (H) potential exposure of assets due to

liability, if any, regarding the son's condition and behavior if left un- or mistreated; (I) potential exposure of assets due to an alleged affair; and (J) information related to Graham gleaned only through a technician/investigator's access to the family's computer network.

Davis' or any other similarly-situated lawyer's mere possession of any of Graham's confidential client information (certainly that which is privileged) rationally and greatly heightens the probability of its use against him. The Court determines that the only way to keep Graham's information known to Davis from being used for the benefit of Elizabeth (a third person) and to Graham's detriment, to the detriment of the entities closely-held and managed by him or to the detriment of his beneficial interest in property held in trust, is to disqualify Davis from participating in or assisting Elizabeth in this proceeding. Likewise, the Court finds that the longstanding intimate relation of trust developed between Graham and Davis is likely a catalyst prompting Elizabeth to hire and engage Davis for this inherently and increasingly lucrative litigation; thus, possessing information gained by reason of the prior relationship unethically benefits Davis contrary to the principles encompassed within Comments 2, 4 & 8 to the extent that he might properly be disqualified on that basis too.

17. Recognizing Texas Disciplinary Rules of Professional Conduct 1.06 (b), the Court determines that Davis' representation of Elizabeth in this divorce proceeding involves a matter that is substantially related to and reasonably appears to be or to become adversely limited by Davis' responsibilities to Graham, to entities closely-held by and managed by him, or to trusts in which he has a beneficial interest. Further, representing Elizabeth in this divorce is reasonably likely to be or to become adversely limited by Davis' responsibilities to a third person—at the very least Graham's and Elizabeth's son and/or Davis' own (and his firm's) long term interests in otherwise having had the opportunity to represent Graham, the entities closely-held and managed by him, or the trusts in which he has a beneficial interest as well as third persons with material interest directly adverse to Elizabeth's interest. In this proceeding, Elizabeth's interests are materially and directly adverse to Graham's interests, both of whom have been and continue to be Davis's clients. Under all the conditions and circumstances presented, Davis' belief that the representation of neither of the aforementioned clients will be materially affected is factually incredible and disregarded, and the Court finds Graham has not consented to Davis' representation of

Elizabeth in this proceeding.

18. Recognizing Texas Disciplinary Rules of Professional Conduct 1.06 (d), the Court determines that Davis recently represented Graham, Elizabeth, and their son (all three) in a matter to: (A) navigate the state's mental and behavioral health system complexities; (B) arrange the son's release from detention; (C) advise and facilitate discussions between Elizabeth and Graham; and (D) obtain prompt and appropriate therapeutic care for the son evidenced by the fact that choice of care was negotiated between and approved by the parents through Davis to be his brother-in-law—a medical doctor specializing in the issues at hand. The quick negotiation and approval through Davis establishes the pre-existence of trust and faith in Davis among all three clients. Further, the joint representation from a parent's perspective—Graham's was most reasonable and rational in that similarly-situated parents would not simply allow an emotionally and psychologically challenged child, albeit an adult, to make necessary and appropriate health care decisions of his sole accord.

It is common knowledge that if not properly treated and cared for, the early onset of such behavioral health issues will, in all likelihood, deteriorate. In this current matter, Graham and Elizabeth, through their respective counsel, will likely need to establish parameters for their son's medical and psychological care as well as, to the extent necessary, create a failsafe for his provision and insulation. Thus, the Court finds that the parties' significant disputes over their son's appropriate and necessary medical treatment was a credible basis for Graham's initial divorce filing and will continue to be a significant issue (factually and emotionally, even if not "legally") affecting the ultimate Final Divorce Decree in this matter. As well, the Court determines that other related disputes arising out of that matter (the recent episodes) touch upon: (A) temporary orders addressing their son's residence and access to him; (B) where their son may live more permanently; and/or (C) a myriad of issues related to potential criminal and civil litigation or liability, if any, and, if so, exposure of the family's assets—each of which reasonably could affect the ultimate division of marital and separate property within the estates of the parties in this matter. The Court finds Graham did not consent to Davis representing Elizabeth prior to the filing of this divorce proceeding, and the record does not substantiate the required prior consent by the parties' son. Accordingly, Davis must be disqualified on this basis as well.

19. Recognizing Comment 1 to Texas Disciplinary Rules of Professional Conduct 1.06, the Court determines that, due to Davis' prior knowledge of Graham, the structure of the entities closely-held and managed by him, and trusts in which Graham held a beneficial interest, an impermissible conflict of interest arose when Davis agreed to assist Elizabeth in investigating and developing claims now within this divorce proceeding, including allegations of personal injury and family violence against Graham. The Court determines that Davis is required to take effective action to eliminate the conflict of interest, but the only effective action is for him to withdraw from representing Elizabeth in this proceeding—an action he apparently chooses not or refuses to do. Thus, the Court determines that Davis should be disqualified from representing Elizabeth in this divorce proceeding.

20. Specifically recognizing Comment 2 to the Texas Disciplinary Rules of Professional Conduct 1.06, the Court finds that Elizabeth and Graham are opposing parties in this divorce and related proceeding. The Court also determines that Davis's duty of loyalty, arising from his prior and/or current representation of Graham, the entities closely-held and managed by him, and/or the trusts held for his benefit preclude Davis from representing Elizabeth in asserting claims against Graham.

21. Recognizing Comment 11 to the Texas Disciplinary Rules of Professional Conduct 1.06, the Court finds that it is ill-advised and/or not proper for Davis, in this matter, to act as an advocate against Graham under all of the aforementioned conditions and present circumstances, which involve various and multiple matters that are NOT unrelated. Prompt and proper resolution of ongoing litigations wherein Davis is, to this day—as far as the record in this matter reflects, counsel of record representing Weston family interests by and through entities closely-held and managed by Graham is likely delayed if not potentially jeopardized by his employ as an advocate against Graham in this matter. The Court determines that the appropriate remedy to eliminate this problem is to disqualify Davis from representing or assisting Elizabeth in this divorce or related proceeding.

22. Recognizing Comment 17 to the Texas Disciplinary Rules of Professional Conduct 1.06, the Court finds that, from all the aforementioned circumstances, there is reason to infer that Davis has neglected his responsibility to avoid or eliminate the existing conflicts of interest by: (A) declining to represent Elizabeth; (B) failing to disclose the adverse representation to Graham; (C) investigating Graham; (D) hiring technicians to surreptitiously, at least as to Graham, retrieve information off the parties' home computer network; (E) accepting a new specific assignment, within the ongoing representation of Graham, to assist the family with their son's medical and psychological issues (or in the alternative, accepting new representation of the son on behalf of Graham as father without any disclosure of the existing adverse representation of Elizabeth); (F) asserting claims against Graham; and (G) refusing to withdraw as her attorney in the divorce proceeding. The Court determines that the efficient administration of justice requires that Davis be disqualified. The Court determines that Graham has sought disqualification in good faith and has not sought to disqualify Davis as a technique of harassment. Additionally, the Court determines that Graham is not using the instant motion to disqualify Davis as a procedural weapon.

23. Recognizing Comment 18 to the Texas Disciplinary Rules of Professional Conduct 1.06, the Court determines that this Order disqualifying Mr. Jason Davis applies to all members and staff of his law firm, Davis & Santos, P.C.

24. To the extent that Davis' representation of Graham, entities closely-held and managed by him, or trusts held for his benefit might be determined to be merely in the past—rather than current, the Court recognizes Texas Disciplinary Rules of Professional Conduct 1.09, and the Court determines that there is a high probability, if not a certainty, Davis' representation of Elizabeth in this divorce will involve a violation of Texas Disciplinary Rules of Professional Conduct 1.05, Confidentiality of Information. Further, the Court determines that Davis' representation of Elizabeth in this divorce is substantially related to prior and continuing representation by Davis of Graham, entities closely-held and managed by him, or trusts held for his benefit. The Court determines that Graham does not consent to Davis' representation of Elizabeth in asserting claims against him and otherwise applies the findings in Paragraphs 14-16 as if set out fully herein.

25. Recognizing Texas Disciplinary Rules of Professional Conduct 3.08, the Court determines that Davis's long and continuing involvement with Graham and the entities that he manages make Davis a material witness necessary to establish an essential fact in the divorce. One of the most intense issues to be explored in this case will be the nature and character of property presumed to be that belonging to the community pursuant to the Texas Family Code. The Court also determines that Davis' meeting or meetings with Graham, Graham's family CPA, and Graham's family estate planning attorney, apparently in Elizabeth's presence, to discuss her net worth and the character and nature of the parties' community and separate property as well as trust assets make Davis a material witness to those discussions and disclosures. The Court determines that none of the exceptions to Rule 3.08 apply, and that Davis cannot continue as an advocate in this divorce proceeding given the likelihood that he will be compelled to furnish testimony that will be substantially adverse to Elizabeth, and that Graham "may be handicapped in challenging the credibility" of Davis as "a testifying attorney." *Anderson Producing Inc. v. Koch Oil Co.*, 929 S.W.2d 416, 411 (Tex. 1996). The Court also determines that Davis's "testimony concerns a controversial or contested matter," which could "unfairly prejudice the opposing party." See Comment 4 to Texas Disciplinary Rules of Professional Conduct Rule 3.08. The Court also notes that many of the appellate cases on disqualification under Rule 3.08 involve an attorney who previously represented only one party in a transaction that later resulted in litigation. In the current situation, Davis

represented both Graham and Elizabeth before the current divorce, and Graham would be unfairly prejudiced when Davis testifies to conversations he had with Graham or Elizabeth and then later argues as Elizabeth's advocate. The Court determines that, balancing the interests of the two parties, Elizabeth could easily have foreseen that Davis, who had so many involvements with the parties and the companies over a period of years, could be an important witness in the divorce case. *See* Comment 7 to Texas Disciplinary Rules of Professional Conduct Rule 3.08. The Court determines that Graham is not invoking Texas Disciplinary Rules of Professional Conduct 3.08 as a tactical weapon. The evidence that was presented by Graham was not based on speculative or contingent allegations, but rather on evidence of a long and varied involvement of Davis as a lawyer and advisor in the family's business and personal matters, some or all of which will be at issue in the divorce. *See In re Sanders*, 153 S.W.3d 54, 58 (Tex. 2004).

26. Beyond establishing the legitimate and well-founded reasons as set out above requiring the Court to disqualify Davis, Graham will suffer prejudice if Davis is not disqualified in that Davis, through his fiduciary relationship with Graham acquired confidential client information about, including but not limited to: (A) his net worth; (B) his separate property; (C) the structure and interworking of business entities closely-held and managed by him as well as trusts held for his benefits that may likely affect his marital property rights, (D) his status as beneficiary of a trust; (E) his management approaches to the entities closely-held by and managed by him AND that Davis represents; (F) Graham's concerns about Elizabeth's impact on his relationship with his son; and (G) his thoughts on and tolerance for litigation, etc. *See generally, Murrin Bros., supra* at 57 (required prejudice). Accordingly, Davis' representation of Elizabeth puts Graham at an initial loss (and he is thus prejudiced) in that the manner and means by which this divorce proceeding might be prosecuted are unfairly magnified—knowing how to minimize Graham's strengths as well as capitalize on his weaknesses.

27. The Court also duly considered "the extent to which the nonmovant will suffer prejudice from the disqualification of his or her attorney," described in *Meador, supra* at 350, and again in *In re Murrin Bros., supra* at 57. The Court determines that Elizabeth is or has been represented by Randall B. Wilhite, a prominent Board Certified Family Lawyer from

Houston, and Leslie J. Bollier, a prominent Board Certified Family Lawyer from Austin, and Ms. Carter Casteel, a prominent local attorney with many years of experience in handling Family Law matters. The Court determines that Davis is not Board Certified in Family Law, and disavowed taking a lead role in the prosecution of the divorce on Elizabeth's behalf. The Court determines that Elizabeth is amply supported by three highly-capable and highly-experienced family lawyers and that Davis's disqualification will not cause prejudice to Elizabeth in her divorce. Elizabeth's testimony that she would feel emotionally devastated if Davis is disqualified, while not determinative of the decision to disqualify, can be weighed against Graham's emotional reaction to finding out that Davis, who has been Graham's lawyer for a number of years and who is still representing him in various capacities, has been secretly building a case to sue Graham for claims within this divorce, including engaging the parties' joint IT professional as a "consulting expert," since June 2019. The Court determines that the feelings of each party are secondary to the multiple overlapping and conflicting fiduciary obligations that Davis has in this situation, and the high likelihood approaching certainty that the only way to assure the preservation of Graham's confidential information and remove conflicts of interest affecting both Graham and Elizabeth is to remove Davis from the divorce and related proceeding altogether.

CONCLUSION

In ruling on Graham's Motion to Disqualify, the Court considered all the facts and circumstances presented in Court, as well as all pleadings and motions filed with the Court, in deciding whether the interests of justice require disqualification. *See Murrin Bros., supra* at 57. The Court has looked to the for helpful guidance and relevant considerations, but it has also been constrained by controlling case law and authorities. *See Godbey, supra* at 132.

Among those authorities, it has been held that repeated and ongoing representations as well as giving of advice by Davis to Graham as late as August 2020 establishes an existing duty of loyalty that would be breached by Davis'

representation of Elizabeth in this matter. *See generally, American Airlines, supra* (wherein mere giving of advice and counseling triggered disqualification, based upon Texas law, whether or not “confidences” were gained by the lawyer). Additional authority has held that substantial relationships between both the subject matters and all the players, *i.e., multiple attorneys and/or attorney and parties*, involved gives rise to the irrebuttable and conclusive presumption that confidential information was disclosed—not unlike the record reveals in this case as thoroughly discussed above, including but not limited to information regarding the character and nature of property interests her by the parties herein. *See Golias, supra* at *2-5. To, then, prevent the non-consensual, adverse “use” of such client information, “one’s privilege of retaining any attorney of one’s choosing must give way to the protection of confidential information previously shared” when, as here, that information has significant evidentiary value to one or more of the subject matter(s) within the current litigation. *Id.* at *3. *See also Bivins, supra* at 420. In that rules to avoid such conflicts of interest were “primarily designed to protect clients, not attorneys[,] . . . the Court . . . must strive to afford the former client [Graham] every protective indulgence.” *See Golias, supra* at 5. Further, *Thetford, supra* at 373, dictates that when such a conflict of interest is established by the record it is the mere appearance of propriety that demands disqualification.

Suffice it to say, the Court has “engage[d] in a painstaking analysis of the facts and precise application of precedent[,]” *Murphy, supra* at *5, and the agonizing result and ruling culminates a task that the Court, thankfully, has only had to engage in one other time in 14 years. Nonetheless, the Court concludes

that each of the foregoing twenty-seven (27) specified bases for disqualifying Davis is sufficient standing alone to warrant his disqualification, independent from the other bases for disqualification, and having provided due consideration to all the facts and circumstances, justice demands Davis' disqualification along with that of the firm of Davis & Santos, P.C. *See Murrin Bros., supra* at 57.

IT IS SO ORDERED on this the 22 day of March, 2021.

A handwritten signature in black ink, appearing to read "D. Waldrip", written in a cursive style. The signature is positioned above a horizontal line.

Hon. D. Waldrip, Presiding Judge

EXHIBIT B

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In Re Elizabeth Weston, 03-21-
00121-CV (Tex. App—Austin
Jul. 16, 2021) (mem. op.)

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-21-00121-CV

In re Elizabeth Weston

ORIGINAL PROCEEDING FROM COMAL COUNTY

MEMORANDUM OPINION

The petition for writ of mandamus is denied. *See* Tex. R. App. P. 52.8(a). We lift the stay of the proceedings in the underlying case. *See id.* R. 52.10.

Thomas J. Baker, Justice

Before Chief Justice Byrne, Justices Baker and Smith

Filed: July 16, 2021