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LORAIN COUNTY

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**LORAIN COUNTY COURT OF COMMON PLEAS**

**LORAIN COUNTY, OHIO**

**JOURNAL ENTRY**

**Hon. D. Chris Cook, Judge**

NOTED FOR COMMON PLEAS.  
TOM ORLANDO

Date May 28, 2025

Case No. 24CR111313

STATE OF OHIO

Plaintiff

Chris Pierre & Paul Griffin

Counsel

VS

JAMES STEWART

Defendant

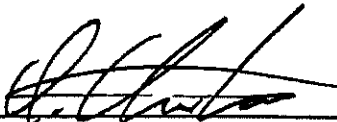
Michael Stepanik

Counsel

This matter is before the Court on the State's Motion to Disqualify Counsel, filed April 21, 2025; the Defendant's Response, filed April 25, 2025; and the State's Supplement, filed May 13, 2025.

The motion to disqualify is not well-taken and hereby DENIED.

IT IS SO ORDERED. See Journal Entry. No Record.

  
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JUDGE D. Chris Cook

cc: Pierre, Asst. Pros. Atty  
Griffin, Asst. Pros. Atty  
Stepanik, Esq.



**LORAIN COUNTY COURT OF COMMON PLEAS  
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JUDGMENT ENTRY  
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**I. INTRODUCTION**

This matter is before the Court on the State's Motion to Disqualify Counsel, filed April 21, 2025; the Defendant's Response, filed April 25, 2025; and the State's Supplement, filed May 13, 2025.

**II. ABBREVIATED STATEMENT OF ALLEGED FACTS<sup>1</sup>**

According to the State of Ohio, the Defendant, James Stewart ("James") shot and killed Jason Kleinman ("Jason") at a bar in Columbia Station, Ohio.

Allegedly, some type of conflict arose between James and a bar patron, Lewis Wade ("Lewis"), that escalated when James' brother, Mark Steward ("Mark"), got involved. At some point during the interaction between James, Mark, and Lewis, Jason, a friend of Lewis, was shot and killed by James.

James claims that he shot Jason in self-defense and in defense of Mark.

**III. STANDARD OF REVIEW**

**THE TRIAL COURT**

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<sup>1</sup> This Court emphasizes that the abbreviated statement of facts herein are *alleged* by the State and relied upon by the Court for the sole purpose of determining this motion. In his response brief, the Defendant does not discuss the facts, but states that he has, "... filed a notice of defense of others ..."



The Ninth District Court of Appeals has, on numerous occasions, addressed the issue of disqualification of counsel. In a 2017 case, Judge Teodosio discusses the fundamental right to counsel of one's choice and the ramifications for the improper removal of counsel.

We first note that a pretrial ruling removing a criminal defendant's retained counsel of choice is a final appealable order. \* \* \* The Sixth Amendment to the United States Constitution and Article I, Section 10, of the Ohio Constitution guarantee a criminal defendant the right to counsel for his defense. \* \* \* "[A]n element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him." \* \* \* **"A court commits structural error when it wrongfully denies a defendant his counsel of choice, so a defendant need not demonstrate further prejudice."** \* \* \* "[T]he erroneous deprivation of a defendant's choice of counsel entitles him to an automatic reversal of his conviction."

*State v. Rivera*, 2017-Ohio-8514, ¶ 6 (9<sup>th</sup> Dist.), emphasis added.

Judge Teodosio also discusses the limitations on this right.

A defendant's constitutional right to the counsel of his choice, however, is not unqualified, but is "circumscribed in several important respects." \* \* \* "A defendant does not have the right to be represented by (1) an attorney he cannot afford; (2) an attorney who is not willing to represent the defendant; (3) an attorney with a conflict of interest; or (4) an advocate (other than himself) who is not a member of the bar." \* \* \* Therefore, the constitutional right to counsel of choice is "only a presumptive right to employ \* \* \* chosen counsel." \* \* \* "That presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict." \* \* \*

*Id.* at ¶ 7.

In a very recent Ninth District Court of Appeals decision, Judge Stevenson discussed the standard of review for trial courts to apply when deciding a motion to disqualify counsel and emphasized the balancing tests courts must employ when making this determination.

As this Court has recognized, "[b]oth an actual conflict and 'a showing of a serious potential for conflict' justify a trial court's removal of a defendant's counsel of choice." *Ross* at ¶ 6, quoting *Wheat* at 164. This is because trial courts have an "independent interest in ensuring that criminal trials are



conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.”

*State v. Green*, 2024-Ohio-997, ¶ 19 (9<sup>th</sup> Dist.) emphasis added.

## THE COURT OF APPEALS

Judge Teodosio also reiterated the deference given to trial courts when reviewing disqualification decisions on appeal.

Trial courts “**enjoy broad discretion** when considering motions to disqualify counsel and, therefore, “[w]e review a trial court’s determination regarding a motion to disqualify counsel for an abuse of discretion.”

*Rivera, supra.*, at ¶ 20, emphasis added.

## ANALYSIS

In the matter at bar, the State grounds its motion to disqualify defense counsel, Attorney Michael Stepanik (“Attorney Stepanik”), on two issues, to wit: prior representation of an anticipated State’s witness, Lewis, and discussion of this case between Lewis and Attorney Stepanik.

Viewed in a cursory manner, the State’s concerns have merit. After all, there does not appear to be any dispute that Attorney Stepanik did in fact represent Lewis in some other matter, that Lewis will be an important witness in this case, and that Attorney Stepanik and Lewis engaged in some discussions about this case. The State’s unopposed Supplemental Brief establishes these facts.

Given this information alone, the presumption of a conflict is justified. The *Green* case discussed above addresses this very situation.

A court may find a showing of a serious potential for conflict when defense counsel previously represented a current state witness.

*Green*, ¶ 22.

Nevertheless, given the fundamental constitutional right to counsel of one’s choice, the standard for disqualification is understandably high and requires more than a “possible” or “potential” conflict, but a showing of an “actual conflict” or a “serious potential” for conflict.



Again, Judge Stevenson's analysis in *Green* is instructive.

"The [c]ourt need not wait for the conflict to actually present itself at trial." *United States v. Puryear*, 719 F.Supp.2d 571, 574 (W.D.Pa.2010). Hence, **provided there is a showing of an actual conflict or a serious potential for conflict**, the trial court does not have to take a wait and see approach and risk trial disruption.

*Green*, ¶ 23, emphasis added.

So, given what we know about Attorney Stepanik's and Lewis' interaction, has the State demonstrated the presence of an actual conflict? How about the likelihood of a serious potential for conflict?

I say no.

#### THE PRIOR REPRESENTATION

Attorney Stepanik represented Lewis in a completely unrelated matter, over 12 years ago. In that case, Lewis reportedly assaulted a police officer by siccing his dogs on him. The officer defended himself by shooting one of the dogs then arrested Lewis. Ultimately, Attorney Stepanik negotiated a favorable resolution for Lewis wherein he plead to three misdemeanors.

Despite the State's noted similarities with some of the circumstances of Lewis' case and the case at bar, there is simply nothing in the record to suggest that Attorney Stepanik's representation of Lewis in that prior matter has any bearing, or potential bearing, on this case that would raise to the level of an actionable conflict.

The cases are too attenuated factually and temporally distant to give rise to an actual conflict of interest or the likelihood of a serious potential for conflict.

#### THE RECENT MEETING

The second issue raised by the State involves Attorney Stepanik's and Lewis' interaction wherein this case was discussed.

A review of that interaction leads the Court to conclude that it was perfunctory at best. According to the State, again uncontroverted by Attorney Stepanik, the two ran into each other by chance at the Elyria Municipal Court while Lewis was there for a traffic matter.



Apparently, they spoke briefly about this case, then went their separate way. There is nothing to indicate that the conversation came close to establishing an attorney-client relationship, that any secrets or confidences were disclosed, that any legal advice was dispensed to Lewis by Attorney Stepanik, or that he was retained for any purpose related to this case.

Again, given this brief, chance meeting, this Court cannot conclude that a conflict exists or that there is the likelihood of a serious potential for conflict.

In considering this matter, the Court views the potential conflict not only from Lewis' perspective as a former client and the duties Attorney Stepanik owes to him, but also from James' perspective, as the current client. That is to say, if Attorney Stepanik's prior representation of Lewis compromises Attorney Stepanik's ability to zealously represent James, then that conflict could also justify removal of Attorney Stepanik from this case.

Once again (and for the last time), Judge Stevenson in the *Green* decision give guidance.

"Courts have recognized the 'obvious' potential for conflict where defense counsel 'is under a duty to represent zealously the defendant, while on the other hand, he has a duty of confidentiality to his former client, the government witness.'" \* \* \* "The potential for conflict arises especially in the context of cross-examination, as defense counsel's 'most important function' during a criminal trial is to 'vigorously cross-examine the government's witness.'"

*Green*, ¶ 24.

Given the above, in deference to the high standard requisite to the removal of counsel of one's choice, the significant amount of time that has passed since Attorney Stepanik represented Lewis in an unrelated matter, and the chance, brief, casual nature of their encounter and discussion of this case, the Court cannot conclude that Attorney Stepanik should be removed from this case as counsel for James.

#### IV. CONCLUSION

As a result of the foregoing, the motion to disqualify is denied.

  
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JUDGE D. CHRIS COOK