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### Summary of Waid v. Eighth Judicial Dist. Court

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*Waid v. Eighth Judicial Dist. Court*, 119 P.3d 1219 (Nev. 2005)<sup>1</sup>

**LEGAL ETHICS—CONFLICT OF INTERESTS**

**Summary**

Vestin Funds sought compensation on a loan from the guarantors of the loan Frederick Waid and M. Nafees. Waid and Nafees retained Noel Gage as their attorney. Gage, however, had previously represented the CEO of Vestin in previous litigation. Nevada prohibits a lawyer from representing a party that is adverse to the interests the lawyer’s current client if the matters are substantially related. To determine “substantially related” the court adopted a three-part test from the Seventh Circuit and applied it to Gage. The court upheld the decision of the lower court.

**Disposition/Outcome**

The Nevada Supreme Court affirmed the district court’s decision to disqualify an attorney who had previously represented a client who was directly adverse to the attorney’s current client because the matters were substantially related.

**Factual and Procedural History**

Vestin Funds sought compensation on a loan from the guarantors of the loan Frederick Waid and M. Nafees. Waid and Nafees retained Noel Gage as their attorney. Gage, however, had previously represented the CEO of Vestin and some affiliates of Vestin in previous litigation. The district court disqualified Gage and his firm because “a substantial relationship existed between the issues before the court and Gage’s prior representation of “the [Vestin Funds’] Affiliates.”<sup>2</sup>

**Discussion**

Supreme Court Rule 159 prohibits “A lawyer who has formerly represented a client in a matter . . . to represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client consents in writing, after consultation . . . .”<sup>3</sup> To determine “substantially related” the court adopted a three-part test from the Seventh Circuit.<sup>4</sup> The three-part requires a court to:

- (1) make a factual determination concerning the scope of the former representation, (2) evaluate whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client in those matters, and (3) determine whether that information is relevant to the issues raised in present litigation.<sup>5</sup>

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<sup>1</sup> Chris Orme

<sup>2</sup> *Waid v. Eighth Judicial Dist. Court*, 119 P.3d 1219, 1222 (2005).

<sup>3</sup> SCR 159.

<sup>4</sup> *Westinghouse Elec. Corp. v. Gulf Oil Corp.*, 588 F.2d 221 (7th Cir. 1978).

<sup>5</sup> *Waid*, 119 P.3d at 1223.

The Nevada Supreme Court affirmed the district court's decision to disqualify Gage because it was reasonable to assume that Gage learned confidential information that could affect the adverse party. Further, since the district court has broad power, Gage failed to show that the district court manifestly abused its power.

### **Conclusion**

The Nevada Supreme Court affirmed the district court's decision to disqualify Gage by applying the three-part test from the Seventh Circuit.