

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

2:19-CV-11661-DPH-DRG

v.

Hon. Denise Page Hood

Hon. David R. Grand

MICHIGAN DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; ROBERT GORDON, in
his official capacity as Director
of the Michigan Department of
Health and Human Services;
MICHIGAN CHILDREN'S
SERVICES AGENCY; JENNIFER
WRAYNO, in her official capacity as
Acting Executive Director of
Michigan Children's Services Agency;
DANA NESSEL, in her official
capacity as Attorney General of
Michigan.

**PLAINTIFF CATHOLIC
CHARITIES WEST
MICHIGAN'S RESPONSE IN
OPPOSITION TO MOTION
TO DISQUALIFY**

Defendants.

_____ /

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**PLAINTIFF CATHOLIC CHARITIES WEST MICHIGAN'S
RESPONSE IN OPPOSITION TO MOTION TO DISQUALIFY**

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CONCISE STATEMENT OF ISSUES PRESENTED

Whether Catholic Charities West Michigan should be denied its choice of legal counsel.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Mich. R. Prof'l Conduct 1.11

Manning v. Waring, Cox, James, Sklar, & Allen,
849 F.2d 222 (6th Cir. 1988)

Smith v. City of Inkster,
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676 F. Supp. 2d 584 (E.D. Mich. 2009)

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261 N.W.2d 713 (Mich. 1978)

INTRODUCTION

In April 2019, Defendants implemented a new policy demanding that faith-based foster care and adoption providers such as Catholic Charities West Michigan start recommending child placements with same-sex couples or lose the ability to serve Michigan's foster children. Forced to choose between violating its religious beliefs about marriage and shutting down a 70-plus-year-old religious ministry to foster children, Catholic Charities turned to Alliance Defending Freedom for help. ADF ultimately agreed to represent Catholic Charities, and filed a state court lawsuit in Grand Rapids, Michigan, seeking to vindicate Catholic Charities' statutory and constitutional right to operate consistently with its conscience and faith. ADF and local counsel in this case are representing Catholic Charities *pro bono*.

After improperly removing Catholic Charities' lawsuit to this Court (*see* Motion to Change Venue, ECF No. 9.), Defendants now seek a court order disqualifying Catholic Charities' choice of legal counsel. But denying an opponent its choice of counsel is a "drastic measure" that must be "viewed with disfavor" and imposed only when "absolutely necessary." *Valley-Vulcan Mold Co. v. Ampco-Pittsburgh Corp.*, 237 B.R. 322, 337 (B.A.P. 6th Cir. 1999), *aff'd*, 5 F. App'x 396 (6th Cir. 2001). Disqualification is neither necessary nor proper here.

Relying on the *wrong* ethical rule, Defendants contend that ADF and local counsel should be disqualified because the State previously

retained Bursch Law PLLC and its sole member, former Michigan Solicitor General John Bursch, to defend its prior practice of accommodating faith-based providers, and because Bursch now serves in a part-time role with ADF. But the applicable rule establishes that ADF's immediate and effective screening of Bursch from its representation of Catholic Charities precludes the imputation of any potential conflict of interest. Indeed, disqualification would be improper because ADF has complied with its ethical obligations under Michigan Rule of Professional Conduct 1.11, and Bursch has been diligent to ensure that confidential client information obtained by his law firm, Bursch Law PLLC, is not shared with any third party, including ADF.

Because Defendants have utterly failed to carry the "heavy burden" and satisfy the "high standard of proof" required for the extreme sanction of disqualification, *McCool v. Operative Plasterers' & Cement Masons' Int'l Ass'n of the U.S. & Canada, AFL-CIO*, No. 13-13614, 2014 WL 635797, at *3 (E.D. Mich. Feb. 18, 2014), their motion should be denied.

BACKGROUND

A. The State retains Bursch Law PLLC to defend it against the ACLU's lawsuit in *Dumont*.

In September 2017, the ACLU, on behalf of two same-sex couples, filed a lawsuit against the Michigan Department of Health and Human Services (DHHS), alleging that DHHS's practice of contracting with

faith-based foster care and adoption providers violated the Establishment and Equal Protection Clauses of the U.S. Constitution. *See Dumont v. Lyon*, No. 2:17-cv-13080 (E.D. Mich.).

In November 2017, the Michigan Department of Attorney General retained former Michigan Solicitor General John Bursch to defend DHHS in *Dumont*. (Bursch Decl. ¶ 2, attached as Ex. 1.) Bursch was specially retained to defend the State’s longstanding practice of working with faith-based agencies that provide adoption and foster care services to children in Michigan’s child welfare system. (*Id.*) Bursch signed the legal-services contract solely in his capacity as owner of Bursch Law PLLC. (*Id.* ¶ 5.) Bursch Law PLLC has no other employees or members. (*Id.* ¶ 6.) Bursch later signed an amendment to that contract in August 2018, extending the term of the contract from December 31, 2018, to December 31, 2019. (ECF No. 7-3 at 2.) That too was executed solely in Bursch’s capacity as owner of Bursch Law PLLC. (*Id.*; *accord* Bursch Decl. ¶ 19.)

By agreeing to represent DHHS, Bursch Law PLLC committed to “keep[ing] confidential all services and information” and promised that it would “not divulge any information to any person other than to authorized representatives of the Department.” (ECF No. 7-2 at 5.) Bursch has complied, and continues to comply, with these confidentiality provisions. (Bursch Decl. ¶¶ 36–37.)

B. Bursch takes a part-time position at ADF to work on unrelated matters.

On July 30, 2018, Bursch took a part-time position at ADF to work on matters separate from his Bursch Law PLLC matters. (Bursch Decl. ¶ 8.) Since that date, Bursch has generally spent about two thirds of his time on ADF matters and one third on Bursch Law PLLC matters. (*Id.*)

Bursch Law PLLC and ADF remain completely separate and distinct entities. (*Id.* ¶ 9.) To ensure the confidentiality of Bursch Law PLLC matters, Bursch maintains separate laptops, emails, files, credit cards, expenses, and matter-management software, among other things, for his work on Bursch PLLC and ADF matters. (*Id.* ¶¶ 10–15.) Bursch also maintains a website for Bursch Law PLLC that is separate from the ADF website; ADF does not have access to or control over the Bursch Law PLLC website. (*Id.* ¶ 12.) Further, there are no other ADF employees, full-time or part-time, in the geographic vicinity of Bursch Law PLLC, or even in the State of Michigan. (*Id.* ¶ 16.)

C. Attorney General Nessel is elected, terminates Bursch Law PLLC’s contract, and instructs DHHS to settle with the ACLU.

In September 2018, Michigan Attorney General candidate Dana Nessel publicly announced that she likely would not defend Mich. Comp. Laws §§ 722.124e, 722.124f, 710.23g, and 400.5a, laws that were at issue in the *Dumont* litigation and that expressly guarantee the religious liberty rights of faith-based foster care and adoption

providers.¹ During her campaign, Nessel asserted that there is “no viable defense” to those laws and that their purpose is “to discriminate against people.”² Although the Michigan Attorney General’s office was actively defending the validity of those laws in *Dumont*, Nessel indicated that, if she were elected, she “would probably be telling the Legislature they would have to defend that with private counsel” because she would not “defend[] a law whose only purpose is discriminatory animus.”³

Nessel was elected in November 2018, and took her oath of office in January 2019. Shortly thereafter, on January 8, 2019, the Attorney General’s office notified Bursch that the Bursch Law PLLC legal-services contract for the *Dumont* litigation had been terminated. (Bursch Decl. ¶ 26.) The Attorney General’s office did not consult with Bursch before terminating the contract. (*Id.* ¶ 28.)

Then, instead of recusing herself or giving the Legislature the chance to hire private counsel in *Dumont*, Attorney General Nessel entered into settlement discussions with the ACLU in late January 2019. The resulting settlement agreement—in which DHHS committed to violate Michigan law by excluding faith-based providers from serving

¹ Ed White, *Dem AG candidate: Adoption law discriminates against gays*, Associated Press (Sept. 27, 2018), <https://bit.ly/2Fq3YgU>.

² *Id.*

³ *Id.*

Michigan’s foster children unless they agreed to recommend same-sex couples as foster and adoptive parents—was finalized in March 2019. (See ECF No. 1-2 at 180–89.)

D. Defendants implement a new policy that targets faith-based providers like Catholic Charities.

In April 2019, Defendants sent a directive to Michigan’s child placing agencies, including Catholic Charities, purporting to implement the *Dumont* settlement agreement. (ECF No. 1-2 at 191–92.) The directive says that Catholic Charities can no longer refer a same-sex couple to another agency, nor may it decline to recruit, train, evaluate, or recommend same-sex couples as prospective foster or adoptive parents. (*Id.*) The directive further states that Defendants will terminate Catholic Charities’ contracts with the State, and thereby prohibit it from serving foster children through foster and adoption placements, if it “refuses to comply” with this new directive. (*Id.* at 192.)

E. Catholic Charities selects ADF to defend it *pro bono*, and ADF screens Bursch from the representation.

Catholic Charities first spoke to ADF about possible legal representation in February 2019. (Galus Decl. ¶ 4, attached as Ex. 2.) Aware that Attorney General Nessel had publicly expressed her intention *not* to defend Michigan’s statutory protections for faith-based foster care and adoption providers, and in fact was planning to settle

the ACLU's lawsuit in *Dumont*,⁴ Catholic Charities was rightfully concerned about whether the State would soon punish it for operating its over 70-year-old foster care and adoption ministry consistently with its faith. (*Id.*)

The ADF attorney involved in that initial phone call with Catholic Charities knew that Bursch Law PLLC had previously represented DHHS in *Dumont*. (*Id.* ¶ 5.) He therefore immediately consulted with firm leadership about screening Bursch from any representation of Catholic Charities. (*Id.*) Leadership agreed that Bursch should be screened and promptly erected a conflict wall. (Cortman Decl. ¶ 5, attached as Ex. 3.)⁵

ARGUMENT

I. Defendants' motion to disqualify should be denied because ADF has complied with its ethical obligations.

The drastic measure of disqualification is allowed only “when there is a reasonable possibility that some specifically identifiable impropriety actually occurred.” *Smith v. City of Inkster*, No. 12-cv-15440, 2013 WL 1703898, at *1 (E.D. Mich. Apr. 19, 2013) (quoting *Moses v. Sterling Commerce (Am.), Inc.*, 122 F. App'x 177, 183–84 (6th

⁴ The settlement discussions were widely reported by the media. *E.g.*, Beth LeBlanc, *Nessel plans settlement talks in lawsuit targeting same-sex adoption refusals*, The Detroit News (Jan. 24, 2019, 1:11 PM), <https://bit.ly/2x9SucX>.

⁵ Additional details about the ethical screen are contained in the relevant argument sections below.

Cir. 2005)). In making that determination, Michigan’s “ethics rules” may serve as “appropriate standards.” *McCool*, 2014 WL 635797, at *4. Here, ADF complied with its ethical obligations when it immediately screened Bursch from its representation of Catholic Charities. Because no “specifically identifiable impropriety actually occurred,” Defendants’ motion should be denied. *City of Inkster*, 2013 WL 1703898, at *1.

A. ADF immediately screened Bursch from its representation of Catholic Charities, complying with ethical rule 1.11.

Defendants contend that any conflict arising from Bursch’s prior representation of the government in *Dumont* should be automatically “imputed to all attorneys at ADF,” regardless of whether Bursch has been screened or disclosed confidential information. (ECF No. 7 at 27.) But Michigan’s ethical rules teach otherwise; ADF’s immediate screening of Bursch precludes the imputation of any conflict.

Under Michigan Rule of Professional Conduct 1.11, any potential conflict arising from an attorney’s representation of the government will not be imputed to an associated firm if the disqualified attorney is “screened from any participation in the matter” and “apportioned no part of the fee therefrom.” Mich. R. Prof’l Conduct 1.11(a) & (b). This provision applies not just to conflict situations involving former in-house government attorneys, but also to situations involving outside

attorneys, like Bursch, who were “specially retained by the government.” Mich. R. Prof’l Conduct 1.11, cmt.

ADF undeniably complied with Rule 1.11’s screening provision. As detailed above, ADF immediately took steps to ensure that Bursch was screened when Catholic Charities first presented itself as a potential client in February 2019. (Galus Decl. ¶ 5; Cortman Decl. ¶ 5.) Specifically, ADF attorneys and staff were told, and continue to be reminded, that Bursch is screened from ADF’s representation of Catholic Charities and that they are forbidden from communicating with him about it. (Cortman Decl. ¶¶ 6–7; Galus Decl. ¶¶ 6–7.) The three ADF attorneys assigned to the case were likewise notified at the outset of their involvement about the potential conflict and that Bursch is screened. (Cortman Decl. ¶ 5; Galus Decl. ¶ 5; Brooks Decl. ¶ 4, attached as Ex. 4.) All three of these attorneys aver that they have not communicated with Bursch about their representation of Catholic Charities. (Cortman Decl. ¶ 8; Brooks Decl. ¶ 5; Galus Decl. ¶ 6.) Nor have they asked for or received any confidential information from Bursch related to Bursch Law PLLC’s prior representation of the State in *Dumont*. (Cortman Decl. ¶ 9; Brooks Decl. ¶ 7; Galus Decl. ¶ 9.) In fact, they do not work in the same *state* as Bursch, so they do not even see him on a regular basis. (Bursch ¶ 16; Cortman Decl. ¶ 8; Brooks Decl. ¶ 6; Galus Decl. ¶ 6.) Additionally, to ensure that Bursch cannot inadvertently access confidential information and work product related

to ADF's representation of Catholic Charities, the attorney primarily responsible for handling that information and work product keeps it all on a private drive that he alone can access. (Galus Decl. ¶ 8.)

Given these facts, it is no surprise that Defendants do not dispute that ADF has screened Bursch. They instead argue that ADF violated its ethical obligations under Rule 1.11 by allowing Bursch to participate in ADF's filing of a September 2018 amicus brief in *Fulton v. City of Philadelphia*—an entirely separate Third Circuit case in which Defendants did not participate. (ECF No. 7 at 30–31.) This argument fails for three independent reasons.

First, Defendants are seeking to disqualify ADF from *this case*, not *Fulton*.

Second, the *Fulton* litigation was not the “same” as or “nearly identical” to *Dumont*, as Defendants remarkably claim. (*Id.*) Those two cases involved different parties, different facts, and different laws. The *Fulton* amicus brief thus says nothing about DHHS or how it administers its adoption and foster care systems.

Third, the position advocated by the *Fulton* amicus brief—that faith-based agencies play an important role in providing critical foster care and adoption services to needy children—was wholly consistent with, and not adverse to, DHHS's position in *Dumont* at the time. Because Bursch himself was not even arguably conflicted from filing a consistent brief in the unrelated case of *Fulton*, no conflict could be

imputed to ADF in that case, let alone this one. *See* Mich. R. Prof'l Conduct 1.11(b) (adversity of interests a condition to disqualification).

Perhaps realizing the futility of their argument under Rule 1.11, Defendants primarily cite to Rule 1.10. But as explained above, Rule 1.11 expressly applies to situations involving potential conflicts arising from an attorney's representation of the government. Indeed, the comment to Rule 1.10 itself plainly states that, "[w]here a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b)," not Rule 1.10. Likewise, ABA Model Rule of Professional Conduct 1.10(d) states that "[t]he disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11." Simply put, Rule 1.10 has no applicability here.

That there is a separate rule for situations like this one makes good sense. "[T]he rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government." Mich. R. Prof'l Conduct 1.11, cmt. Recognizing that "[t]he government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards," Michigan's rules allow for screening "to prevent the disqualification rule from imposing too severe a deterrent against entering public service." *Id.*

But even under Rule 1.10, any potential conflict arising from Bursch Law PLLC's representation of the government in *Dumont* cannot be imputed to ADF. That is because Rule 1.10(b), like Rule 1.11, allows firms to avoid the imputation of a conflict by screening the disqualified attorney. Mich. R. Prof'l Conduct 1.10(b); *accord* Mich. R. Prof'l Conduct 1.9, cmt. ("Under Rule 1.10(b), screening may be employed to preserve the confidences of a client when a lawyer has moved from one firm to another."). Notably, "Rule 1.10(b) applies not just to cases in which a lawyer's present and former firms are involved on the date the lawyer moves," but also to situations like the one presented here "where the lawyer's present firm [ADF] *later* wishes to enter a case from which the lawyer is barred because of information acquired while associated with the prior firm [the Michigan Attorney General's office]." Mich. R. Prof'l Conduct 1.9, cmt. (emphasis added).

Because ADF complied with its ethical obligations when it immediately screened Bursch from its representation of Catholic Charities, the request for disqualification should be flatly denied.

B. ADF's screen of Bursch was, and continues to be, effective.

In addition to complying with the ethical rules, ADF's conflict wall rebuts any presumption that confidential information has been or will be shared. *See Manning v. Waring, Cox, James, Sklar, & Allen*, 849 F.2d 222, 225 (6th Cir. 1988) (presumption of shared confidences is

rebutted by effective screen). Determining the effectiveness of an attorney screen is a fact-specific inquiry. The Sixth Circuit looks at “the size and structural divisions of the law firm involved, the likelihood of contact between the ‘infected’ attorney and the specific attorneys responsible for the present representation, the existence of rules which prevent the ‘infected’ attorney from access to relevant files or other information pertaining to the present litigation, or which prevent him from sharing in the fees derived from such litigation.” *Id.* at 225–26. (quoting *Schiessle v. Stephens*, 717 F.2d 417, 421 (7th Cir. 1983)).

That Bursch has been effectively screened is beyond dispute. For one thing, Bursch is located in an entirely separate state from *all* ADF employees, including the three ADF attorneys assigned to this case. (Bursch Decl. ¶ 16.) And whenever he does have ADF meetings or even casual conversations with ADF colleagues, if the subject of this litigation comes up, he has been diligent to remind everyone that he is screened from the case and does not discuss the case. (*Id.* ¶ 35.) In fact, Bursch has been so careful and diligent “not to communicate any confidential information or share a single document with anyone at ADF” that he avers he has “not even shared publicly-available pleadings from the *Dumont* litigation.” (*Id.* ¶ 36.) Indeed, Bursch is no novice when it comes to conflict screens, having complied with them numerous times during his time as Michigan Solicitor General and while working at Warner Norcross & Judd LLP. (*Id.* ¶¶ 25, 36.)

ADF has been equally diligent. As described above, ADF attorneys and staff have been told—on numerous occasions, verbally and in writing—that Bursch is screened from ADF’s representation of Catholic Charities and that they may not communicate with him about it. (Cortman Decl. ¶¶ 6–7; Galus Decl. ¶ 7.) The three ADF attorneys assigned to this case have also been careful not to communicate with Bursch about the representation and have received no confidential information from him. (Cortman Decl. ¶¶ 8–9; Brooks Decl. ¶¶ 5, 7; Galus Decl. ¶¶ 6, 9.) Local counsel attests to the same. (Wierenga Decl. ¶¶ 4–6, attached as Ex. 5.) The State points to absolutely nothing that suggests the contrary.

In sum, ADF’s conflict wall is, and will continue to be, effective. ADF and Bursch have both been so diligent about the screen that Bursch has declared that, until he received Defendants’ motion to disqualify, he was “not even aware the case was pending in this Court,” “had no idea Mr. Wierenga was involved in this case,” and had not even reviewed “publicly available documents in this case.” (Bursch Decl. ¶¶ 40–41.) In other words, a member of the general public following the case knows more about it than Bursch does.

C. ADF notified Defendants of the screen even though it was not required to do so under the rules.

Having no meaningful challenge to the effectiveness of the conflict wall, Defendants try to argue that ADF's *notice* of it was "ineffective and untimely." (ECF No. 7 at 15.) This argument fares no better.

All that is required for notice under Rule 1.11 is that it "be given as soon as practicable" so that the government agency has "reasonable opportunity to ascertain" whether the rule is being complied with and "to take appropriate action if it believes the lawyer is not complying." Mich. R. Prof'l Conduct 1.11, cmt. The May 6, 2019 letter to the State easily satisfies this requirement. Indeed, ADF sent that letter to the State *before* the complaint was even served. (*See* ECF No. 1 at 3) (noting May 9 and May 15 service dates).⁶ And as plainly demonstrated by Defendants' motion to disqualify here—which was filed more than a month after the State was notified and before any court rulings in this case—Defendants had "reasonable opportunity to ascertain" compliance with the rule and "to take appropriate action."⁷

⁶ Notice is not required "at a time when premature disclosure would injure the client." Mich. R. Prof'l Conduct 1.11, cmt. Notifying the State sooner would have injured Catholic Charities by prematurely alerting DHHS of the organization's plans to challenge the new policy.

⁷ Defendants complain that ADF's notice did not provide any "emails or other records" to support the fact that ADF immediately screened Bursch. But no such records are required, and Defendants at no point asked for any. Moreover, although they were invited to "discuss this issue further" and to let Plaintiff's counsel "know if there is anything more we can do to answer any lingering questions or concerns you

Finally, Defendants' argument fails to appreciate that Rule 1.11 requires notice only if ADF were representing Catholic Charities in the *same* matter in which Bursch "participated personally and substantially as a public officer or employee." Mich. R. Prof'l Conduct 1.11(a). Bursch never participated in this case in *any* capacity. Rule 1.11 does not require that notice be given to the government agency where, like here, the potential conflict arises from the disqualified attorney having possible "confidential government information" that "could be used to the material disadvantage" of the agency. *Id.*, 1.11(b).

ADF thus not only met its ethical obligations when it screened Bursch and notified DHHS of that screen, it exceeded them.

Defendants' motion should be denied.

II. The motion should also be denied because Bursch never shared confidential information obtained through his private law firm, Bursch Law PLLC, with ADF.

Defendants next argue that disqualification is warranted because ADF did not screen Bursch the moment he started part-time work at ADF in late July 2018. (ECF No. 7 at 30.) But screened him from what? There was no potential conflict until Catholic Charities became an ADF client in 2019. And there, the record is clear that ADF immediately screened Bursch from that representation.

might have," Defendants' counsel declared an "impasse" and filed this motion. (Galus Decl., Ex. A)

Defendants thus seem to be suggesting that this Court should presume Bursch violated his ethical duties and disclosed confidential information to ADF attorneys *before* ADF began representing Catholic Charities—indeed, even before the very election of the Attorney General that precipitated the need for this action in the first place. The Court should presume no such thing, if for no other reason than that it is clearly contradicted by the record.

The truth is that Bursch has never shared confidential information with ADF, either before or after ADF undertook representation of Catholic Charities. (*See* Bursch Decl. ¶ 36; Cortman Decl. ¶ 9; Brooks Decl. ¶ 7; Galus Decl. ¶ 9.) And, as explained in Bursch’s declaration, it is not even possible for ADF employees to accidentally access Bursch Law PLLC’s client information, including information related to the *Dumont* litigation. (Bursch Decl. ¶ 17.) No ADF employees share an office with Bursch, and Bursch maintains separate laptops, emails, credit cards, expenses, matter-management software, and files for his work on Bursch Law PLLC and ADF matters. (*Id.* ¶¶ 10–15.) In other words, Bursch Law PLLC and ADF are completely separate and distinct entities. (*Id.* ¶ 9.) ADF lawyers are not lawyers of Bursch Law PLLC; ADF lawyers are not bound by Bursch Law PLLC contracts; Bursch Law PLLC clients are not ADF clients; and ADF lawyers are not privy to information that Bursch Law PLLC possesses. (*Id.* ¶ 39.)

Because Bursch has complied with his ethical obligations and has ensured that no confidential information obtained through his private law firm, Bursch Law PLLC, is or has been intentionally or inadvertently disclosed to third parties (including ADF), Defendants' motion should be denied.

III. The motion should also be denied because disqualification cannot be justified in view of all the relevant interests.

The Sixth Circuit has cautioned that a motion to vicariously disqualify a law firm is a “potent weapon” because of its “ability to deny one’s opponent the services of capable counsel.” *Manning*, 849 F.2d at 224. Thus, when confronted with disqualification motions, “courts must be sensitive to the competing public policy interests of preserving client confidences and of permitting a party to retain counsel of his choice.” *Manning*, 849 F.2d at 224. Because of the great prejudice often associated with an enforced change of counsel, disqualification is appropriate only when there is no other solution less burdensome to the client. So even when an ethical violation has occurred—a situation that is not present here—courts strive to avoid the extreme sanction of disqualification “[w]henever possible.” *Research Corp. Techs., Inc. v. Hewlett-Packard Co.*, 936 F. Supp. 697, 701 (D. Ariz. 1996); *see also City of Inkster*, 2013 WL 1703898, at *2 (“[E]ven if the Court finds that there is a ‘reasonable possibility’ that an ‘identifiable impropriety’ occurred, the Court may decline to disqualify counsel.”).

Given the facts here, disqualification would be wholly inappropriate. Indeed, even setting aside ADF's and Bursch's compliance with the ethical rules, this Court should deny Defendants' motion because disqualification would substantially prejudice Catholic Charities without providing any tangible benefit to Defendants.

As Defendants are well aware, Catholic Charities is a nonprofit religious organization that spends all of its time and energy helping children and families in need. Despite having a successful decades-long partnership with DHHS, Defendants are now demanding that Catholic Charities begin recommending foster care and adoption placements with same-sex couples or lose the ability to serve Michigan's foster children. Faced with the impossible choice of violating its Catholic beliefs and convictions or shuttering its 70-plus-year-old ministry to foster children, Catholic Charities was forced to file this lawsuit.

Catholic Charities chose ADF to help defend its statutory and constitutional right to operate consistently with its faith. As a nonprofit legal organization focusing on constitutional litigation and religious liberty matters, ADF is uniquely situated to help Catholic Charities with this important case. Perhaps most important, though, is that both ADF and local counsel are providing their legal services to Catholic Charities *pro bono*. Needless to say, if Defendants succeed in having ADF and David, Wierenga & Lauka, PC, disqualified, then it will

become immensely more difficult and costly for Catholic Charities to vindicate its statutory and constitutional rights.

But perhaps making this litigation more expensive and challenging for Catholic Charities is the whole point of this motion. *See Manning*, 849 F.2d at 224 (disqualification motions are “an increasingly popular litigation technique” as “the ability to deny one’s opponent the services of capable counsel[] is a potent weapon”); Mich. R. Prof’l Conduct 1.7, cmt. (disqualification motions “should be viewed with caution ... for [they] can be misused as a technique of harassment”).

After all, Defendants do not meaningfully contest that ADF has screened Bursch from its representation of Catholic Charities. Nor do they base their motion on any *actual* impropriety, choosing instead to ask this Court to impose the extreme sanction of disqualification merely to avoid “*appearance of impropriety.*” (ECF No. 7 at 15, 22) (emphasis added). But there is no appearance of impropriety here. ADF has thoroughly screened Bursch from its representation of Catholic Charities, and Bursch has kept all Bursch Law PLLC matters (old and new) separate from ADF. Moreover, the Michigan rules are clear that “the problem of imputed disqualification cannot readily be resolved ... by the very general concept of appearance of impropriety.” Mich. R. Prof’l Conduct 1.9, cmt. As the Michigan Supreme Court long ago recognized, it is a “dangerous doctrine” to “put[] in the hands of an adversary the ability to force an opponent to change counsel if the

adversary can advance any arguable grounds in support of disqualification.” *Smith v. Arc-Mation, Inc.*, 261 N.W.2d 713, 716 (Mich. 1978). Yet the State advances that vague and “dangerous doctrine” with its motion here. This Court should once again reject it. *E.g.*, *MJK Family LLC v. Corp. Eagle Mgmt. Servs., Inc.*, 676 F. Supp. 2d 584, 593–94 (E.D. Mich. 2009) (declining to adopt “appearance of impropriety” standard for disqualification); *Grain v. Trinity Health*, No. 03-72486, 2009 WL 3398737, at *26 (E.D. Mich. Apr. 15, 2009) (“[T]he Michigan Supreme Court eliminated the ‘appearance of impropriety’ standard for imputing a conflict of interest or misdeed of an attorney onto his law firm.”).

IV. Being “allied” with ADF and working with Bursch on a separate case are no reasons to disqualify local counsel.

Defendants contend that local counsel in this case, David, Wierenga & Lauka, PC, should also be disqualified because one of its attorneys, James Wierenga, is “allied” with ADF and because he serves as co-counsel with Bursch in an unrelated separate case. (ECF No. 7 at 29.) The argument is without substance.

As an initial matter, any potential conflict arising from Bursch’s representation in *Dumont* cannot be imputed to ADF, so such a conflict cannot be imputed to David, Wierenga & Lauka, PC, for the same reasons.

Moreover, the ethical rules allow for imputation of conflicts when the attorneys are working for or have worked at the *same* firm.

Wierenga works at *his own firm*. (Wierenga Decl. ¶¶ 2, 3.) He doesn't work at ADF, and he doesn't work at Bursch Law PLLC.

Finally, Defendants cite no support (because there is none) for the proposition that a court may assume shared confidences between two attorneys at separate firms simply because they work on an unrelated case together. Not surprisingly, courts do not just *assume*, without any evidence, that attorneys are violating their duties of loyalty and confidentiality to former clients. There is absolutely no reason to do so here, where Bursch has averred that he did not even know Wierenga was serving as local counsel until Defendants filed this motion. (Bursch Decl. ¶ 41.)

CONCLUSION

For the foregoing reasons, Plaintiff Catholic Charities West Michigan respectfully requests that this Court deny Defendants' motion and allow ADF and David, Wierenga & Lauka, PC, to continue their *pro bono* representation of Catholic Charities in this case.

Dated: June 26, 2019

Respectfully submitted,

James R. Wierenga (P48946)
David, Wierenga & Lauka, PC
99 Monroe Ave., NW, Ste. 1210
Grand Rapids, MI 49503

/s/ David A. Cortman
David A. Cortman (GA Bar 188810)
Alliance Defending Freedom

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jgalus@ADFlegal.org

**Admission pending*

*Attorneys for Plaintiff Catholic
Charities West Michigan*

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2019, I caused the foregoing to be filed with the Clerk of the Court using the ECF system, which will provide electronic copies to counsel of record.

/s/ David A. Cortman
David A. Cortman (GA Bar 188810)
Alliance Defending Freedom
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(770) 339-0774
dcortman@ADFlegal.org

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

2:19-CV-11661-DPH-DRG

v.

Hon. Denise Page Hood

Hon. David R. Grand

MICHIGAN DEPARTMENT
OF HEALTH AND HUMAN
SERVICES, *et al.*,

**PLAINTIFF CATHOLIC
CHARITIES WEST
MICHIGAN'S BRIEF IN
OPPOSITION TO MOTION
TO DISQUALIFY**

Defendants.

_____ /

INDEX OF EXHIBITS

Exhibit 1	Declaration of John J. Bursch
Exhibit 2	Declaration of Jeremiah Galus
Exhibit 3	Declaration of David Cortman
Exhibit 4	Declaration of Roger Brooks
Exhibit 5	Declaration of James R. Wierenga

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES WEST
MICHIGAN,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
ROBERT GORDON, in his official
capacity as Director of the Michigan
Department of Health and Human
Services; MICHIGAN CHILDREN'S
SERVICES AGENCY; JENNIFER
WRAYNO, in her official capacity as
acting Executive Director of Michigan
Children's Services Agency; DANA
NESSEL, in her official capacity as
Attorney General of Michigan.

Defendants.

HON. DENISE PAGE HOOD

HON. DAVID R. GRAND

**DECLARATION OF JOHN J.
BURSCH**

I, John J. Bursch, hereby declare as follows:

1. I am competent to testify and make this declaration based on my personal knowledge.
2. On November 20, 2017, I signed a contract with the Michigan Department of Attorney General to provide legal services to the Michigan Department of Health and Human Services (MDHHS) in *Dumont v. Lyon*, Case No. 2:17-cv-13080 (E.D. Mich. 2017). The purpose of these legal services was to defend MDHHS' ability to continue its longtime practice of contracting with faith-based agencies who

provide adoption and foster care services to the State of Michigan's most vulnerable children, those who have been declared dependent due to maltreatment or abuse.

3. In my capacity as an outside attorney for MDHHS, I worked closely with assistant attorneys general Raymond Howd, Toni Harris, Joshua Smith, and Jonathan Ludwig, among others. I had previously worked with some of these same attorneys when I served as Michigan Solicitor General from 2011-2013. I consider these assistant attorneys general my friends and would not do anything to undermine them or their work. I have the highest possible respect for them.

4. In my capacity as an outside attorney for MDHHS, I also worked closely with the then-director of MDHHS, Dr. Herman McCall, and many other members of the MDHHS senior staff. This work was not only on the *Dumont* litigation, but on a separate matter involving a consent decree that governs the agency's administration of its child-welfare system, particularly pertaining to adoption and foster care services. I consider these MDHHS staff members my friends and would not do anything to undermine them or their work. I have the highest possible respect for them.

5. As is clear from the face of the contract, which is attached as Exhibit A to MDHHS' motion, I executed the contract solely in my capacity as owner of Bursch Law PLLC. I accurately represented in Paragraph 5.2 of the contract that neither I nor Bursch Law PLLC had a conflict with the proposed legal services, and I represented that neither I nor Bursch Law PLLC would undertake representation against the State of Michigan if the representation was related to the subject

matter of the contract absent prior written approval from MDHHS. I also represented that other lawyers in my firm, Bursch Law PLLC, would be advised of these restrictions. I take all these representations and restrictions very seriously.

6. Bursch Law PLLC has no other employees or members. I was in November 2017, and remain today, the only Bursch Law PLLC lawyer, and the firm has no support staff.

7. On January 30, 2018, Alliance Defending Freedom (ADF) submitted an amicus brief on behalf of 53 Michigan state legislators in support of a motion to dismiss the *Dumont* lawsuit that I and colleagues in the Attorney General's office had prepared and filed on behalf of MDHHS. ADF notified me that they would be filing the amicus brief, but we did not have any conversations about its substance. I communicated no confidential MDHHS information to ADF. As is apparent from the brief itself, attached as Exhibit D to MDHHS' motion, the brief contains no information that was confidential to MDHHS, and the brief echoed the exact same legal arguments that MDHHS was advancing in its own motion, namely, that the complaint should be dismissed for lack of standing, and that the complaint should alternatively be dismissed for failure to state an Establishment Clause or Equal Protection claim.

8. On July 30, 2018, I began working as a part-time employee for ADF. Since that date, I have generally spent my time approximately 2/3rds on ADF matters and 1/3rd on Bursch Law PLLC matters.

9. Bursch Law PLLC and ADF remain completely separate and distinct entities.

10. I maintain separate laptops for my work on Bursch Law PLLC and ADF matters. ADF does not have access to my Bursch Law PLLC laptop.

11. I maintain separate emails for my work on Bursch Law PLLC and ADF matters. ADF does not have access to my Bursch Law PLLC email.

12. I maintain a website for Bursch Law PLLC that is separate from the ADF website. ADF does not have access to or control over my Bursch Law PLLC website.

13. I maintain separate files for my work on Bursch Law PLLC and ADF matters. ADF does not have access to my Bursch Law PLLC files.

14. I maintain separate credit cards for expenses incurred while performing work on Bursch Law PLLC and ADF matters.

15. I use separate matter-management software for my work on Bursch Law PLLC and ADF matters. ADF does not have access to Bursch Law PLLC's matter-management software (or any software, for that matter).

16. There are no other ADF employees in the geographic vicinity of Bursch Law PLLC. There are no other ADF employees in the State of Michigan, for that matter.

17. In sum, it is not possible for ADF to access any of the client information that Bursch Law PLLC acquires unless I personally disclose it.

18. On August 16, 2018, I signed a First Amendment to my contract with the Attorney General's office.

19. As is clear from the face of that document, attached as Exhibit B to MDHHS' motion, I signed the First Amendment solely in my capacity as owner of Bursch Law PLLC. All the representations I made in my original contract were true at the time, and following the time, I signed the First Amendment.

20. On September 4, 2019, in my capacity as an attorney for ADF, I joined other ADF attorneys in filing an amicus brief in *Fulton v. City of Philadelphia*, 922 F.3d 140 (3d Cir. 2019). In connection with writing that brief, I disclosed no information about MDHHS to other ADF attorneys. And as is apparent from the face of that brief, attached as Exhibit E to MDHHS' motion, the brief contains nothing even remotely related to MDHHS or how it administers its adoption and foster care systems.

21. The position advocated by the *Fulton* amicus brief was that governments face a monumental task in finding loving families to care for the many children determined to be dependent due to maltreatment, and that maximizing the number and diversity of agencies who provide foster care and/or adoption services increases connections to communities and options for child placement. Moreover, faith-based agencies could play an important role in providing these services.

22. In the fall of 2018, Michigan Attorney General candidate Dana Nessel publicly announced that she probably would not defend 2015 PA 53, Michigan's law that guarantees the religious liberty rights of faith-based providers of adoption and

foster care services. Although I and my colleagues at the Attorney General's office were advancing numerous arguments regarding the validity of both 2015 PA 53 and MDHHS' practice of using faith-based adoption and foster care providers to care for Michigan's dependent children, candidate Dana Nessel announced that in her personal opinion, there was no viable defense to the law.

23. Candidate Dana Nessel won the election for Michigan Attorney General in November 2018 and took her oath of office on January 1, 2019.

24. From my time serving as Michigan Solicitor General, my understanding is that the Michigan Attorney General has a duty to defend Michigan law whenever it is challenged.

25. Sometimes, the Michigan Attorney General may have a personal view that differs from existing Michigan law. During my time as Michigan Solicitor General, the office of Attorney General resolved that problem by erecting a conflict wall—similar to the conflict wall ADF erected here—so that assistant attorneys general could actively defend Michigan law while the Michigan Attorney General participated on the opposite side of the case, in the same litigation.

26. On January 8, 2019, the Attorney General's office notified me that the Bursch Law PLLC legal-services contract for the *Dumont* litigation had been terminated. The office also notified me that the Bursch Law PLLC legal-services contract had been terminated for the MDHHS consent decree work.

27. I am unaware that the Attorney General's office terminated any other outside lawyers who were working on MDHHS matters other than me.

28. The Attorney General's office did not consult with me before terminating these contracts. I am also unaware that the Attorney General's office consulted with MDHHS officials before terminating these contracts.

29. I have nothing but the highest regard for my colleagues at the Attorney General's office and at MDHHS.

30. Based on public reports, it is my understanding that the Attorney General's office settled the *Dumont* litigation in March 2019 by capitulating to the plaintiffs' demands and entering into a settlement agreement. This settlement would appear to be in violation of 2015 PA 53, the Michigan law that guaranteed faith-based agencies that they would not be punished for providing adoption and foster care services in accord with their religious beliefs.

31. I am unaware that the Michigan Attorney General's office set up a conflict wall before entering into this settlement agreement. There are no public indications that any member of the Michigan Attorney General's office continued to defend 2015 PA 53 or MDHHS in the *Dumont* litigation after the Attorney General ordered that my contract be terminated. The settlement agreement is contrary to the position that MDHHS took in the *Dumont* litigation, namely, that if faith-based agencies are not allowed to operate according to their religious principles, they will shut down, which can have the effect of reducing the number of available families and will do nothing to help a single child find a home.

32. MDHHS' motion notes that the document the federal court entered to resolve the *Dumont* litigation was titled a "Settlement Agreement." But the motion

then inadvertently characterizes that document as a “Consent Decree.” Based on the public media reports I have seen describing the Settlement Agreement, it bears none of the hallmarks of a consent decree, such as the ongoing monitoring and court reporting included in the actual consent decree that governs MDHHS’s child-welfare system, referenced above.

33. In the spring of 2019, I became aware that ADF planned to file a lawsuit on behalf of Catholic Charities of West Michigan to challenge MDHHS’ new policy regarding faith-based agencies providing adoption and foster care services to the State of Michigan. I promptly informed ADF that because I had previously represented MDHHS in the *Dumont* litigation, I was unable to discuss either case, and that I should be screened from the case.

34. My understanding is that ADF took immediate steps to ensure that I was not privy to any information pertaining to the new case.

35. In ADF meetings or even casual conversations with ADF colleagues where the subject of this litigation arises, I have consistently reminded everyone that I am conflicted out of participating in the case. I have not allowed any substantive discussions regarding the litigation to take place in my presence or hearing.

36. Having dealt numerous times with conflict walls while working in the Michigan Attorney General’s office and while working at Warner Norcross & Judd LLP, I have been diligent not to communicate any confidential information or share a single document with anyone at ADF arising out of my MDHHS representation in

the *Dumont* litigation. I have not even shared publicly-available pleadings from the *Dumont* litigation. I would not violate my duties of professional responsibility nor would I harm my friends and former clients by doing so. Any suggestion that I have ever shared confidential MDHHS information with anyone at ADF is categorically false.

37. At all times, I strive to follow the Rules of Professional Conduct applicable to members of the Michigan Bar Association. I also strive to follow the no-conflict provisions of any contracts I enter with my Bursch Law PLLC clients. That includes my Bursch Law PLLC contract for services in the *Dumont* litigation.

38. It is not accurate to suggest that I have undertaken representation against the State of Michigan in a matter related to the work I performed in the *Dumont* litigation, nor that I have taken a position adverse to the State regarding that matter. Neither I nor Bursch Law PLLC represent any party in the present litigation.

39. This situation is not like one where a Michigan lawyer leaves one firm and joins another firm by taking clients from the first firm to the second firm. ADF lawyers are not lawyers of Bursch Law PLLC. ADF lawyers are not bound by Bursch Law PLLC contracts. Bursch Law PLLC clients are not ADF clients. And ADF lawyers are not privy to information that Bursch Law PLLC possesses. Thus, this situation is not akin to one where ADF has “changed sides.” ADF did not have a side in the *Dumont* litigation other than its submission of an amici brief on behalf

of 53 Michigan state legislators. And neither I nor Bursch Law PLLC has any role in the present litigation.

40. I have not reviewed or been consulted by ADF with respect to any of the pleadings filed in this case. Out of an abundance of caution, I have not reviewed publicly available documents in this case, either. I was not even aware the case was pending in this Court (as opposed to the United States District Court for the Western District of Michigan, or the Michigan Court of Claims) until being notified of MDHHS' motion to disqualify.

41. I have worked with ADF allied attorney James Wierenga in the unrelated case of *Country Mill Farms, LLC v. City of East Lansing*, pending in the United States District Court for the Western District of Michigan. Mr. Wierenga is not an employee of ADF nor is he an ADF attorney. He does serve as co-counsel with ADF from time to time on Michigan matters. At no point have Mr. Wierenga and I ever discussed this case or the *Dumont* case. Until receiving MDHHS' motion to disqualify, I had no idea Mr. Wierenga was involved in this case.

Dated: June 2, 2019

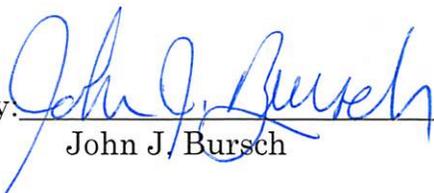
By: 
John J. Bursch

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

2:19-CV-11661-DPH-DRG

v.

Hon. Denise Page Hood

Hon. David R. Grand

MICHIGAN DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; ROBERT GORDON, in
his official capacity as Director
of the Michigan Department of
Health and Human Services;
MICHIGAN CHILDREN'S
SERVICES AGENCY; JENNIFER
WRAYNO, in her official capacity as
Acting Executive Director of
Michigan Children's Services Agency;
DANA NESSEL, in her official
capacity as Attorney General of
Michigan.

**DECLARATION OF
JEREMIAH GALUS**

Defendants.

DECLARATION OF JEREMIAH GALUS

I, Jeremiah Galus, hereby declare and state as follows:

1. I am competent to testify and make this declaration based on my personal knowledge.

2. I serve as Legal Counsel at Alliance Defending Freedom, and I am one of three ADF attorneys currently involved in representing Catholic Charities West Michigan.

3. As a nonprofit organization, ADF represents its clients on a *pro bono* basis. I have been providing, and will continue to provide, *pro bono* legal representation to Catholic Charities.

4. I first spoke with Catholic Charities about possible legal representation in February 2019. Catholic Charities was aware that Michigan Attorney General Dana Nessel had publicly stated that she probably was not going to defend existing state laws protecting the religious liberty rights of faith-based foster care and adoption providers. It also was aware that the Attorney General's office had recently entered into settlement negotiations in *Dumont v. Lyon*. Catholic Charities was concerned that the State was going to take adverse action against it and other faith-based providers.

5. After speaking with Catholic Charities, I immediately consulted with attorneys in ADF leadership, including Senior Counsel and Vice President of U.S. Litigation David Cortman, about screening John Bursch from any representation of Catholic Charities. I knew at the time that Bursch Law PLLC had previously represented the State in *Dumont v. Lyon*, so I wanted to make sure a conflict wall was put in place to screen Bursch from any representation of Catholic Charities.

Mr. Cortman and the other attorneys agreed, and Bursch was immediately screened from the representation.

6. I work out of ADF's office in Scottsdale, Arizona. Because Bursch is located in Michigan, I very rarely see him or speak to him in person. That said, I have never discussed ADF's representation of Catholic Charities with Bursch. Nor have I provided him with any confidential information or documents related to ADF's representation of Catholic Charities.

7. Moreover, as the attorney primarily responsible for handling this case, I have been diligent to remind other ADF attorneys and staff connected to the representation that Bursch has been screened and that they are not to communicate with him about the representation. I have issued these reminders both verbally and in writing. I have heard other ADF attorneys, including David Cortman, issue similar reminders to attorneys and staff members who are not even connected to the case.

8. To ensure that Bursch cannot even inadvertently access ADF's protected work product in this case, I have kept all of my draft pleadings and motions, memos, legal research, and the like, on a private drive that only I can access.

9. In addition, Bursch has never shared any confidential information or documents with me related to his law firm's prior representation of the State in *Dumont*. He and I have never even discussed that case, let alone exchanged confidential information.

10. Before Defendants filed their motion to disqualify, I corresponded with Defendants' counsel explaining that ADF had immediately screened Bursch from its representation of Catholic Charities, and that Bursch screened and continues to screen ADF and all other third parties from Bursch Law PLLC matters, including the *Dumont* matter. A true and correct copy of that correspondence is attached to this declaration as Exhibit A.

I declare under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct to the best of my knowledge.

Dated: June 26, 2019

/s/Jeremiah Galus
Jeremiah Galus

EXHIBIT A

From: Smith, Joshua (AG)
To: [Jeremiah Galus](#); [Harris, Toni \(AG\)](#)
Cc: [Roger Brooks](#); [David Cortman](#); [jim@dwlawpc.com](#); [Boone, Precious \(AG\)](#); [Briggs, Elizabeth \(AG\)](#); [Mertins, Paula \(AG\)](#); [Pung, Laura \(AG\)](#); [Heyse, Kristin \(AG\)](#)
Subject: RE: Catholic Charities of West Michigan v DHHS et al
Date: Tuesday, June 11, 2019 10:23:26 AM

Jeremiah:

Eastern District Local Rule 7.1(a) requires us to explain the basis for our motion, inquire whether you would like to confer and seek your concurrence. As Toni stated below, we intend on filing a motion to disqualify ADF and David, Wierenga & Lauka, PC pursuant to Michigan Rules of Professional Conduct 1.9, 1.10 and 1.11. If you do not concur, please let us know by COB today. Although I believe our e-mail exchanges satisfies any requirement to confer under the letter and spirit of the Local Rule 7.1. Nonetheless, if you would like to confer, please provide some times later today or tomorrow morning that would work for you and we can briefly discuss.

Joshua S. Smith (P63349)
Assistant Attorney General
Health, Education & Family Services Division
525 W Ottawa St Fl 3
PO Box 30758
Lansing, MI 48909
Office: 517-335-7603
Fax: 517-335-1152

From: Jeremiah Galus <jgalus@adflegal.org>
Sent: Tuesday, June 11, 2019 12:53 PM
To: Harris, Toni (AG) <HarrisT19@michigan.gov>
Cc: Roger Brooks <rbrooks@adflegal.org>; David Cortman <dcortman@adflegal.org>; jim@dwlawpc.com; Smith, Joshua (AG) <SmithJ46@michigan.gov>; Boone, Precious (AG) <BooneP@michigan.gov>; Briggs, Elizabeth (AG) <BriggsE1@michigan.gov>; Mertins, Paula (AG) <MertinsP@michigan.gov>; Pung, Laura (AG) <PungL@michigan.gov>; Heyse, Kristin (AG) <HeyseK@michigan.gov>
Subject: RE: Catholic Charities of West Michigan v DHHS et al

Toni,

Your email suggests you might be unclear about John Bursch's relationship with ADF. John represented the state agencies in the *Dumont* action through his own private law firm, Bursch Law PLLC. As previously noted, at no point was ADF involved in that representation, and at no point has John shared any information related to that representation with ADF. To be abundantly clear on this point, John keeps all of his Bursch Law matters separate from ADF-related matters. He uses different computers, storage systems, client matter management systems, etc., for all Bursch Law matters, including the *Dumont* matter.

In short, John screens all third parties, including ADF, from the legal work he performs through Bursch Law, and he did so for the *Dumont* matter. Moreover, as explained in our previous letter, ADF affirmatively screened John from the very beginning of its representation of Catholic Charities West Michigan here, further ensuring that no confidential information could be shared. While we believe this should address your concerns, please do not hesitate to let us know if there is anything more we can do to answer any lingering questions or concerns you might have.

Best regards,
Jeremiah

From: Harris, Toni (AG) [<mailto:HarrisT19@michigan.gov>]
Sent: Monday, June 10, 2019 7:27 PM
To: Jeremiah Galus <jgalus@adflegal.org>
Cc: Roger Brooks <rbrooks@adflegal.org>; David Cortman <dcortman@adflegal.org>; jim@dwlawpc.com; Smith, Joshua (AG) <SmithJ46@michigan.gov>; Boone, Precious (AG) <BooneP@michigan.gov>; Briggs, Elizabeth (AG) <BriggsE1@michigan.gov>; Mertins, Paula (AG) <MertinsP@michigan.gov>; Pung, Laura (AG) <PungL@michigan.gov>; Heyse, Kristin (AG) <HeyseK@michigan.gov>
Subject: Re: Catholic Charities of West Michigan v DHHS et al

Jeremiah,

Thank you for your email below on the disqualification issue. We respectfully disagree with ADF's analysis on the matter. John Bursh joined ADF in July 2018 while he was representing DHHS in the Dumont case. He did not notify our office or DHHS that he had joined ADF, including when he signed an amendment in August 2018 to extend his SAAG agreement. And ADF did not erect a screen until early 2019. We contend that, under the Michigan Rules of Professional Conduct, the conflict is imputed to ADF and local counsel, and that John Bursch's obligations under the SAAG contract apply to ADF.

It seems we are at an impasse. Therefore, we plan to file a motion to disqualify by end of the day on Tuesday, June 11, 2019. In compliance with the local rules, we will advise the court that the parties conferred on the issue and CCWM does not concur in the relief requested. If you see any benefit to another discussion on the matter, please let me know.

Kind regards,

Toni

On Jun 2, 2019, at 9:47 PM, Harris, Toni (AG) <HarrisT19@michigan.gov> wrote:

Jeremiah,

We are continuing to review this matter, and I will respond soon.

Thank you.
Toni

From: Jeremiah Galus <jgalus@adflegal.org>
Sent: Friday, May 24, 2019 8:08 PM
To: Harris, Toni (AG) <HarrisT19@michigan.gov>

Cc: Roger Brooks <rbrooks@adflegal.org>; David Cortman <dcortman@adflegal.org>; jim@dwlawpc.com; Smith, Joshua (AG) <SmithJ46@michigan.gov>; Boone, Precious (AG) <BooneP@michigan.gov>; Briggs, Elizabeth (AG) <BriggsE1@michigan.gov>; Mertins, Paula (AG) <MertinsP@michigan.gov>; Pung, Laura (AG) <PungL@michigan.gov>; Heyse, Kristin (AG) <HeyseK@michigan.gov>
Subject: RE: Catholic Charities of West Michigan v DHHS et al

Ms. Harris:

Thank you providing us with a copy of the contract. Although the contract seeks to limit subsequent representations by John Bursch and his law firm, Bursch Law PLLC, it does not (and cannot) preclude other firms, including ADF, from representing any client. For reference, the contract includes the following provision regarding conflicts of interest:

5.2. – Conflict of Interest. The SAAG [John Bursch] represents that he has conducted a conflicts check prior to entering into this Contract and no conflicts exist with the proposed legal services. The SAAG shall not undertake representation against the State of Michigan if the representation is related to the subject matter of this Contract and would require the SAAG to take a position adverse to the State, unless the SAAG obtains prior written approval to do so from the Department. This provision does not prohibit any member of Bursch Law PLLC from representing a client in any matter, including engaging in litigation against the State of Michigan, its agencies, departments, or employees, so long as the matter does not relate to the subject matter of this Contract.

With respect to potential conflicts of interest, other lawyers in the SAAG's firm shall be advised of the SAAG's representation of the Department, and that the firm has agreed not to accept, without prior written approval from the Department, any employment from other interests related to the subject matter of this Contract. Bursch Law PLLC shall carefully monitor any significant change in assignments or clients of the firm in order to avoid any situation which might affect a SAAG's ability to effectively render legal services.

Setting aside whether ADF's representation of Catholic Charities West Michigan is related to the subject matter of the State's contract with Mr. Bursch, the above provision makes clear that the "firm" precluded from accepting "any employment from other interests related to the subject matter of this Contract" is Bursch Law PLLC, not ADF or any other firm. Other contract provisions confirm that Bursch Law is the firm subject to the contract's requirements. *See, e.g.*, Section 1.1 ("The parties to this Contract are ... John Bursch of the firm Bursch Law PLLC."); Amendment to Contract ("First Amendment to the Legal Services Contract Between The Department of Attorney General and Bursch Law, PLLC").

Given the above, we understand your argument to be that the contract's terms should

nevertheless be read to bind *any* firm that Mr. Bursch associated with while he was involved in the *Dumont* action—*regardless* of whether the association was for another case and completely unrelated to *Dumont*. But such an argument is not supported by the contract’s plain terms. Nor are we aware of any authority supporting the proposition that ADF is bound to a contract in which it is not named and did not agree to. In fact, Mr. Bursch and Bursch Law entered into the SAAG contract in November 2017, long before Mr. Bursch assumed any role at ADF. As the Supreme Court has recognized, “[i]t goes without saying that a contract cannot bind a nonparty.” *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002).

To the extent you are concerned about the possibility of Mr. Bursch disclosing confidential information potentially learned through his representation in *Dumont*, I take this opportunity to remind you that ADF affirmatively notified your office of the potential conflict and has screened Mr. Bursch from its representation of Catholic Charities West Michigan. In so doing, ADF has complied with ethics Rule 1.11, which specifically governs situations like this one involving potential conflicts of interest arising from a lawyer’s representation of a government agency. Furthermore, the SAAG contract itself contains numerous provisions that guard against Mr. Bursch disclosing confidential information to third parties such as ADF. For instance, the contract states that:

- “No other attorney may engage in the practice of law on behalf of the State of Michigan under this Contract without prior approval, a Contract amendment, and a SAAG appointment from the Attorney General.” (¶1.1)
- “The SAAG shall keep confidential all services and information, including records, reports, and estimates. The SAAG shall not divulge any information to any person other than to authorized representatives of the Department” (¶5.3)
- “All files and documents containing confidential information shall be filed in separate files maintained in the office of Bursch Law PLLC, with access restricted to the SAAG and needed clerical personnel. All documents prepared on the Bursch Law PLLC computer system shall be maintained in a separate library with access permitted only to the SAAG and needed clerical personnel.” (¶5.3)
- “The SAAG shall not assign or subcontract any of the work or services to be performed under this Contract, including work assigned to other members or employees of the SAAG’s firm, without the prior written approval of the Department.” (¶5.4)
- “Upon receipt of a Notice of Termination, and except as otherwise directed by the Attorney General or his designee, the SAAG shall: ... (C) on the date the termination is effective, submit to the Department all records, reports, documents, and pleadings as the Department shall specify and carry out such directives as the Department may issue concerning the safeguarding and disposition of files and property” (¶10.3)

If you have any questions about the above, or would like to discuss this issue further,

please do not hesitate to let us know.

Best regards,

Jeremiah

From: Harris, Toni (AG) [<mailto:HarrisT19@michigan.gov>]
Sent: Tuesday, May 21, 2019 9:48 AM
To: Jeremiah Galus <jgalus@adflegal.org>
Cc: Roger Brooks <rbrooks@adflegal.org>; David Cortman <dcortman@adflegal.org>; jim@dwlawpc.com; Smith, Joshua (AG) <SmithJ46@michigan.gov>; Boone, Precious (AG) <BooneP@michigan.gov>; Briggs, Elizabeth (AG) <BriggsE1@michigan.gov>; Mertins, Paula (AG) <MertinsP@michigan.gov>; Pung, Laura (AG) <PungL@michigan.gov>; Heyse, Kristin (AG) <HeyseK@michigan.gov>
Subject: RE: Catholic Charities of West Michigan v DHHS et al

Mr. Galus,

Thank you for your email.

The contract is attached, as is the amendment signed in August 2018. During our May 14 discussion, you indicated that the conflict screen at ADF was implemented after learning that John's SAAG contract was terminated and that Catholic Charities may become a client. The SAAG contract was terminated in January 2019, and he withdrew as counsel for DHHS that same month.

If you would like to discuss further, please let me know.

Thank you.

Toni

From: Jeremiah Galus <jgalus@adflegal.org>
Sent: Tuesday, May 21, 2019 12:22 PM
To: Harris, Toni (AG) <HarrisT19@michigan.gov>
Cc: Roger Brooks <rbrooks@adflegal.org>; David Cortman <dcortman@adflegal.org>; jim@dwlawpc.com; Smith, Joshua (AG) <SmithJ46@michigan.gov>; Boone, Precious (AG) <BooneP@michigan.gov>; Briggs, Elizabeth (AG) <BriggsE1@michigan.gov>; Mertins, Paula (AG) <MertinsP@michigan.gov>; Pung, Laura (AG) <PungL@michigan.gov>; Heyse, Kristin (AG) <HeyseK@michigan.gov>
Subject: RE: Catholic Charities of West Michigan v DHHS et al

Ms. Harris:

So that we can properly evaluate your request, please provide us with a copy of the SAAG contract referenced in your email below. We will respond after we review the

contract.

Best regards,
Jeremiah

[<image001.png>](#)

Jeremiah Galus
Legal Counsel
+1 480 444 0020 (Office)
480-444-0028 (Fax)
jgalus@ADFlegal.org
ADFlegal.org

From: Harris, Toni (AG) [<mailto:HarrisT19@michigan.gov>]
Sent: Monday, May 20, 2019 12:09 PM
To: Jeremiah Galus <jgalus@adflegal.org>
Cc: Roger Brooks <rbrooks@adflegal.org>; David Cortman <dcortman@adflegal.org>; jim@dwlawpc.com; Smith, Joshua (AG) <SmithJ46@michigan.gov>; Boone, Precious (AG) <BooneP@michigan.gov>; Briggs, Elizabeth (AG) <BriggsE1@michigan.gov>; Mertins, Paula (AG) <MertinsP@michigan.gov>; Pung, Laura (AG) <PungL@michigan.gov>; Heyse, Kristin (AG) <HeyseK@michigan.gov>
Subject: RE: Catholic Charities of West Michigan v DHHS et al

Mr. Galus,

This correspondence is in follow up to my email below and our telephone discussion last Tuesday, May 14, 2019.

During our call last week, you indicated that John Bursch joined Alliance Defending Freedom (ADF) in August 2018. As we discussed, at the time he joined ADF, Mr. Bursch was serving as a Special Assistant Attorney General under contract with the Michigan Department of Attorney General to represent Michigan Department of Health and Human Services Director Nick Lyon and Children's Services Agency Executive Director Herman McCall in a lawsuit styled *Dumont v. Lyon*, Case No. 2:17-cv-13080, pending in the United States District Court for the Eastern District of Michigan. As you know, St. Vincent Catholic Charities, Chad and Melissa Buck, and Shamber Flore intervened as defendants in that case, which was dismissed by the court in March 2019 after the *Dumont* plaintiffs and DHHS officials entered into a settlement agreement.

As we also discussed, Catholic Charities of West Michigan's new lawsuit filed against these DHHS officials in the Court of Claims challenges the settlement agreement in *Dumont* and, thus, is substantially related to the *Dumont* case. Because John Bursch represented these DHHS officials in the *Dumont* case while he was

associated with ADF, Michigan Rules of Professional Conduct 1.9 and 1.10 prohibit ADF and David, Wierenga & Lauka, PC from representing Catholic Charities of West Michigan in this case. Moreover, Mr. Bursch's SAAG contract prohibits ADF and Mr. Wierenga from taking a position adverse to these DHHS officials in the Court of Claims lawsuit without prior written approval from the Michigan Department of Attorney General. Specifically, Section 5.2 of the agreement states, in relevant part:

The SAAG shall not undertake representation against the State of Michigan if the representation is related to the subject matter of this Contract [the *Dumont* case] and would require the SAAG to take a position adverse to the State, unless the SAAG obtains prior written approval to do so from the Department. . . .

With respect to potential conflicts of interest, other lawyers in the SAAG's firm shall be advised of the SAAG's representation of the Department, and that the firm has agreed not to accept, without prior written approval from the Department, any employment from other interests related to the subject matter of this Contract [the *Dumont* case]. Bursch Law PLLC shall carefully monitor any significant change in assignments or clients of the firm in order to avoid any situation which might affect a SAAG's ability to effectively render legal services.

Accordingly, to avoid motion practice, we seek your concurrence in the following relief:

1. ADF and David, Wierenga & Lauka, PC are disqualified from representing Catholic Charities of West Michigan in Court of Claims Case No. 19-000072-MM;
2. An extension of the deadlines to respond to the motion for preliminary injunction and the complaint until 30 days after Catholic Charities' new counsel files an appearance in the case.

Please advise by close of business on Tuesday, May 21, 2019 whether you will stipulate to the relief sought. Absent your concurrence, we will file motions this week.

Sincerely,

Toni Harris
Assistant Attorney General
517.335.7603

From: Harris, Toni (AG) <HarrisT19@michigan.gov>

Sent: Wednesday, May 15, 2019 3:08 PM

To: Jeremiah Galus <jgalus@adflegal.org>
Cc: rbrooks@adflegal.org; dcortman@adflegal.org; jim@dwlawpc.com; Smith, Joshua (AG) <SmithJ46@michigan.gov>; Boone, Precious (AG) <BooneP@michigan.gov>; Briggs, Elizabeth (AG) <BriggsE1@michigan.gov>; Mertins, Paula (AG) <MertinsP@michigan.gov>; Pung, Laura (AG) <PungL@michigan.gov>
Subject: RE: Catholic Charities of West Michigan v DHHS et al

I mistyped Jeremiah's email address in my original message.
Resending with the correct address.

Also, I should have mentioned in my original email that, as we discussed yesterday, I will accept service of the Summons and Complaint on behalf of Jennifer Wrayno and Children's Services Agency.

Thank you.
Toni

From: Harris, Toni (AG) <HarrisT19@michigan.gov>
Sent: Wednesday, May 15, 2019 2:33 PM
To: jgalua@adflegal.org
Cc: rbrooks@adflegal.org; dcortman@adflegal.org; jim@dwlawpc.com; Smith, Joshua (AG) <SmithJ46@michigan.gov>; Boone, Precious (AG) <BooneP@michigan.gov>; Briggs, Elizabeth (AG) <BriggsE1@michigan.gov>; Mertins, Paula (AG) <MertinsP@michigan.gov>; Pung, Laura (AG) <PungL@michigan.gov>
Subject: Catholic Charities of West Michigan v DHHS et al

Mr. Galus,

Following up on our discussion yesterday, below is my contact information:

Toni Harris
First Assistant Attorney General
Health, Education & Family Services Division
Michigan Department of Attorney General
517.335.7603

As I mentioned, we will be filing appearances today. I understand you will be filing a motion for preliminary injunction this week. I would appreciate a courtesy copy of the filing. We will follow up thereafter on extensions to respond to both the Complaint and the PI Motion.

In addition, I will follow up on the issue of the conflict screen for John

Bursch shortly.

Thank you.

Toni

This e-mail message from Alliance Defending Freedom and any accompanying documents or embedded messages is intended for the named recipients only. Because Alliance Defending Freedom is a legal entity engaged in the practice of law, this communication contains information, which may include metadata, that is confidential, privileged, attorney work product, or otherwise protected from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. If you have received this message in error, please immediately notify the sender and permanently delete the message. PRIVILEGED AND CONFIDENTIAL - ATTORNEY-CLIENT COMMUNICATION/ATTORNEY WORK PRODUCT.

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

2:19-CV-11661-DPH-DRG

v.

Hon. Denise Page Hood

Hon. David R. Grand

MICHIGAN DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; ROBERT GORDON, in
his official capacity as Director
of the Michigan Department of
Health and Human Services;
MICHIGAN CHILDREN'S
SERVICES AGENCY; JENNIFER
WRAYNO, in her official capacity as
Acting Executive Director of
Michigan Children's Services Agency;
DANA NESSEL, in her official
capacity as Attorney General of
Michigan.

**DECLARATION OF DAVID
CORTMAN**

Defendants.

DECLARATION OF DAVID CORTMAN

I, David Cortman, hereby declare and state as follows:

1. I am competent to testify and make this declaration based on my personal knowledge.

2. I am Senior Counsel and Vice President of U.S. Litigation at Alliance Defending Freedom. In this capacity, I oversee a team of nearly 50 attorneys and legal staff.

3. I am one of three ADF attorneys currently involved in representing Catholic Charities West Michigan. I am the supervising attorney on this case.

4. As a nonprofit organization, ADF represents its clients on a *pro bono* basis. Our clients do not pay for our services. Accordingly, I have been providing, and will continue to provide, *pro bono* legal representation to Catholic Charities.

5. After ADF attorney Jeremiah Galus first spoke with Catholic Charities about possible legal representation in February 2019, he immediately consulted with me and other attorneys in ADF leadership about screening part-time ADF attorney John Bursch from any representation of Catholic Charities. We were aware that Bursch had previously represented the State in *Dumont v. Lyon* through his private law firm, Bursch Law PLLC, so we immediately took steps to erect a conflict wall to ensure that Bursch was screened from any representation.

6. Specifically, all ADF attorneys and staff connected to the representation were notified about the conflict and the decision ADF had made to screen Bursch. Those attorneys and staff were instructed not to communicate with Bursch about the representation or to share

any related information or documents with him. Bursch also knew of the conflict wall and his obligation not to communicate with ADF attorneys and staff about the Catholic Charities representation.

7. During my more than 22 years of practicing law, I have had the opportunity to deal with conflict walls on other occasions. Here, I have been diligent to consistently remind attorneys and staff about the conflict wall, reminding them that they are not allowed to have any substantive discussions about ADF's representation of Catholic Charities in Bursch's presence. I have on numerous times heard other attorneys issue similar reminders.

8. Because Bursch is located in Michigan, and I am based in Atlanta, I see him at most once a month and sometimes less. Nevertheless, I have been careful not to speak about the case in his presence, and at no point have I communicated with him about the substance of ADF's representation of Catholic Charities. I also have been diligent not to share any confidential information with him about the case or representation.

9. Moreover, I have never communicated with Bursch about Bursch Law PLLC's prior representation of the State in *Dumont*. Bursch has never—either before or after starting a part-time position at ADF—shared confidential information or documents with me related to *any* Bursch Law PLLC matters, including the *Dumont* litigation.

I declare under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct to the best of my knowledge.

Dated: June 24, 2019

/s/David Cortman

David Cortman

EXHIBIT 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

2:19-CV-11661-DPH-DRG

v.

Hon. Denise Page Hood

Hon. David R. Grand

MICHIGAN DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; ROBERT GORDON, in
his official capacity as Director
of the Michigan Department of
Health and Human Services;
MICHIGAN CHILDREN'S
SERVICES AGENCY; JENNIFER
WRAYNO, in her official capacity as
Acting Executive Director of
Michigan Children's Services Agency;
DANA NESSEL, in her official
capacity as Attorney General of
Michigan.

**DECLARATION OF ROGER
BROOKS**

Defendants.

DECLARATION OF ROGER BROOKS

I, Roger Brooks, hereby declare and state as follows:

1. I am competent to testify and make this declaration based on my personal knowledge.

2. I am Senior Counsel at Alliance Defending Freedom, and I am one of three ADF attorneys currently representing Catholic Charities West Michigan in this case. I am primarily involved in a supervisory capacity.

3. As a nonprofit organization, ADF represents its clients on a *pro bono* basis. I have been providing, and will continue to provide, *pro bono* legal representation to Catholic Charities.

4. From the very beginning of my involvement in this matter, I was made aware that ADF had screened John Bursch from its representation of Catholic Charities.

5. I was instructed not to communicate with Bursch about the representation or to share any related information or documents with him. I have at all times followed that instruction. Bursch and I have never discussed the substance of ADF's representation of Catholic Charities. Nor have I shared any confidential information with him about the case or representation.

6. Although I do not see Bursch on a regular basis because he works in Michigan and I am located in North Carolina, I am careful not to speak about the case in his presence.

7. In addition, Bursch and I have never discussed any Bursch Law PLLC matters, including that law firm's prior representation of the State in *Dumont v. Lyon*. Thus, I have not received any confidential information or documents related to the *Dumont* matter.

I declare under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct to the best of my knowledge.

Dated: June 25, 2019

Handwritten signature of Roger Brooks in black ink.

Roger Brooks

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

2:19-CV-11661-DPH-DRG

v.

Hon. Denise Page Hood

Hon. David R. Grand

MICHIGAN DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; ROBERT GORDON, in
his official capacity as Director
of the Michigan Department of
Health and Human Services;
MICHIGAN CHILDREN'S
SERVICES AGENCY; JENNIFER
WRAYNO, in her official capacity as
Acting Executive Director of
Michigan Children's Services Agency;
DANA NESSEL, in her official
capacity as Attorney General of
Michigan.

**DECLARATION OF
JAMES R. WIERENGA**

Defendants.

DECLARATION OF JAMES R. WIERENGA

I, James R. Wierenga, hereby declare and state as follows:

1. I am competent to testify and make this declaration based on my personal knowledge.

2. I am a named partner at the law firm of David, Wierenga & Lauka, PC, which has its office in Grand Rapids, Michigan.

3. My law firm, David, Wierenga & Lauka, PC, serves as local counsel to Catholic Charities West Michigan in this case. I am the attorney primarily responsible for handling the case on behalf of my firm. I am providing my legal services to Catholic Charities *pro bono*.

4. In March 2019, ADF attorney Jeremiah Galus contacted me about serving as local counsel for this matter. The very first time I spoke with Mr. Galus, he informed me that John Bursch was conflicted from the case and had been screened from ADF's representation of Catholic Charities. I understood that I was not to speak to or communicate with Bursch about the representation, and at no point have I done so.

5. Although I have worked with Bursch on the unrelated case of *Country Mill Farms, LLC v. City of East Lansing* (W.D. Mich.), I have not communicated with him about my representation of Catholic Charities or shared any confidential information with him about it. In fact, I have not even told Bursch that I am serving as local counsel in this case.

6. Likewise, Bursch and I have never discussed Bursch Law PLLC's representation of the State in *Dumont v. Lyon*. Accordingly, he has not shared any related confidential information or documents with me. Nor have I asked him to.

I declare under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct to the best of my knowledge.

Dated: June 24, 2019

/s/James R. Wierenga
James R. Wierenga