

The Professional Liability Law Blog

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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



[Implied Standing Requirement Proves Fatal to Attorney Disqualification Motion](#)

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May a party successfully move to disqualify an opponent's attorney if the moving party does not have, and has never had, an attorney-client relationship with that attorney? Not according to the Court of Appeal in *Charles Virzi Construction, Inc. v. Studer*, an [unpublished decision](#) (Fourth Appellate District, Division Three) dated December 23, 2010.

This was a construction-related action brought by a homeowner against a contractor and the construction lender. One attorney represented both the contractor and the lender. The homeowner moved to disqualify that attorney on the ground that he was subject to "multiple irreconcilable conflicts of interests." The Court of Appeal upheld the trial court's denial of the motion to disqualify. The court explained,

A 'standing' requirement is implicit in disqualification motions. Generally, before the disqualification of an attorney is proper, the complaining party must have or must have had an attorney-client relationship with that attorney" "absent an attorney-client relationship, the moving party must have an expectation of confidentiality.

Here, there was no prior attorney-client relationship and no expectation of confidentiality. Any alleged breach of duty of loyalty by the defendants' attorney to his clients was of no concern to the plaintiff homeowner. Further, the homeowners' lofty goal of safeguarding the integrity of the judicial system did not implicate any personal right which gave him standing to bring the motion.