NUMBER 13-15-00521-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE NATIONAL LLOYDS INSURANCE COMPANY

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Perkes
Memorandum Opinion by Justice Perkes

Relator, National Lloyds Insurance Company ("National Lloyds"), filed a petition for writ of mandamus in the above cause on November 4, 2015. Through this original proceeding, National Lloyds seeks to compel the trial court to disqualify Lauren Chapman and the Mostyn Law Firm from representing the real parties in interest, Alfredo Ortiz Rodriguez and Alicia M. Rodriguez. In the underlying lawsuit, the real parties have brought suit against National Lloyds for insurance coverage claims arising from hail storm damages. Chapman served as an associate attorney at the law firm of Andrews Kurth, which represented National Lloyds in hail storm litigation. The parties to this proceeding

have stipulated that Chapman "did not work on any matter of National Lloyds Insurance Company, did not personally represent National Lloyds Insurance Company, and did not personally receive any confidential information of National Lloyds Insurance Company." Chapman was then hired by the Mostyn Law Firm, which represents the real parties in interest and hundreds of other litigants in hail storm litigation against National Lloyds and other insurance companies. National Lloyds moved to disqualify Chapman and the Mostyn Law Firm from representing the real parties in interest on grounds that Chapman's prior firm, Andrews and Kurth, represented National Lloyds in the same and similar cases. The trial court denied the motion for disqualification, and this original proceeding ensued.

I. BACKGROUND

National Lloyds is represented by Andrews Kurth in various matters, including multidistrict hail storm litigation ("MDL"), cases that have been remanded to the trial court from the MDL, and other substantially related matters. Chapman was an associate attorney at Andrews Kurth from September 24, 2008 until February 27, 2015. In February, Chapman informed Andrews Kurth she was leaving the firm and joining the Mostyn Law Firm. On March 2, 2015, Chapman began working at the Mostyn Law Firm, which represents hundreds of plaintiffs in the hailstorm litigation. Beginning that month, Chapman began appearing on behalf of plaintiffs in the cases filed against National Lloyds. An attorney at the Mostyn Law Firm, Molly Bowen, testified that Chapman worked on the firm's cases against National Lloyds and that on March 17, 2015, Bowen introduced Chapman to counsel for National Lloyds and informed counsel that Chapman used to work for Andrews Kurth. On March 19, 2015, Chapman appeared at a hearing

before the discovery master and appeared at a series of depositions beginning that same date.

On July 15, 2015, National Lloyds filed a motion seeking to disqualify Chapman and the Mostyn Law Firm based on Chapman's prior employment with Andrews Kurth. According to the motion:

> Lauren Chapman ("Chapman") was employed as an associate attorney for Andrews Kurth, LLP ("Andrews Kurth") until approximately February, 2015. Since 2012, Andrews Kurth has been intimately involved in the defense of first party bad faith insurance lawsuits filed against National Lloyds Insurance Company ("National Lloyds"). As an associate of Andrews Kurth, Chapman has taken as her own the confidences placed upon her through her employment with Andrews Kurth.
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> Chapman now represents National Lloyds's opponents in a substantially related matter. Namely, in or around March 2015 Chapman was hired by the Mostyn Law Firm ("Mostyn") to represent individual plaintiffs against National Lloyds in first-party bad faith insurance lawsuits. In fact, Mostyn touts her ". . . prior experience as a defense attorney" as providing a "significant benefit to her clients in each phase of a case."
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> Because there is a conflict of interest pursuant to Texas Disciplinary Rule of Professional Conduct 1.09, Chapman is undeniably disqualified. Because she is disqualified, the entire Mostyn Law Firm must also be disqualified.

(Internal footnotes omitted).

On August 25, 2015, the trial court held an evidentiary hearing on National Lloyds' motion for disqualification. At the hearing, the trial court received testimony and other evidence from the parties. The parties stipulated that: "While Lauren Chapman worked at Andrews Kurth, LLP, she did not work on any matter of National Lloyds Insurance Company, did not personally represent National Lloyds Insurance Company, and did not personally receive any confidential information of National Lloyds Insurance Company." On August 28, 2015, the trial court issued an order denying National Lloyd's motion to

disqualify the Mostyn Law Firm and Chapman from representing the plaintiffs in this case and all others against National Lloyds.

On November 4, 2015, National Lloyds filed this petition for writ of mandamus. By one issue, National Lloyds asserts that the trial court abused its discretion in denying its motion to disqualify Chapman and the Mostyn Law Firm from representing the plaintiffs in the same case that Chapman's prior law firm handled on behalf of National Lloyds. This Court requested a response to the petition for writ of mandamus to be filed by the real parties in interest or any others whose interest would be directly affected by the relief sought. On November 16, 2015, the real parties in interest filed their response and a supplemental record. The real parties contend that: (1) the trial court did not err in refusing to disqualify Chapman and the Mostyn Law Firm because Chapman never personally represented National Lloyds or acquired its confidential information, thus disqualification is not required under Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct; and (2) National Lloyds waived any alleged right to disqualification because it delayed more than four months to seek disqualification in the trial court, and delayed more than two additional months after the trial court denied the motion before filing this petition for writ of mandamus. On December 14, 2015, National Lloyds filed a reply to the real parties' response.

II. STANDARD OF REVIEW

"Mandamus relief is proper to correct a clear abuse of discretion when there is no adequate remedy by appeal." *In re Frank Motor Co*., 361 S.W.3d 628, 630 (Tex. 2012) (orig. proceeding); *see In re Olshan Found. Repair Co*., 328 S.W.3d 883, 887 (Tex. 2010) (orig. proceeding); *In re Prudential Ins. Co. of Am*., 148 S.W.3d 124, 135–36 (Tex. 2004)

(orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable that it amounts to a clear and prejudicial error of law or if it clearly fails to correctly analyze or apply the law. *In re Olshan Found. Repair Co*., 328 S.W.3d at 888; *Walke*r, 827 S.W.2d at 840. In determining whether appeal is an adequate remedy, we consider whether the benefits outweigh the detriments of mandamus review*. In re BP Prods. N. Am., Inc*., 244 S.W.3d 840, 845 (Tex. 2008) (orig. proceeding); *In re Prudential Ins. Co*., 148 S.W.3d at 135–36.

Appeal is an inadequate remedy when a trial court abuses its discretion in the disqualification of counsel. *In re Guar. Ins. Servs., Inc.*, 343 S.W.3d 130, 132 (Tex. 2011) (orig. proceeding); *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 383 (Tex. 2005) (orig. proceeding); *In re Sanders*, 153 S.W.3d 54, 56 (Tex. 2004) (orig. proceeding) (per curiam); *NCNB Tex. Nat'l Bank v. Coker*, 765 S.W.2d 398, 400 (Tex. 1989) (orig. proceeding). Consequently, the only issue we must consider is whether the respondent abused his discretion by refusing to disqualify Chapman and the Mostyn Law Firm. *See In re Nitla S.A. de C.V.*, 92 S.W.3d 419, 423 (Tex. 2002) (orig. proceeding).

III. APPLICABLE LAW

Disqualification of a party's counsel is a severe remedy. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d at 382; *In re Nitla S.A. de C.V*., 92 S.W.3d at 422; *In re Tex. Windstorm Ins. Ass'n*, 417 S.W.3d 119, 128–29 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding). "It can result in immediate and palpable harm, disrupt trial court proceedings, and deprive a party of the right to have counsel of choice." *In re Nitla S.A. de C.V.*, 92 S.W.3d at 422. "Disqualification can delay proceedings in the trial court,

require the client to engage a successor attorney, and, in appropriate cases, deprive the client of work product done on his behalf by the disqualified attorney." *In re Tex. Windstorm Ins. Ass'n*, 417 S.W.3d at 129. "Because of the serious consequences of disqualification of opposing counsel, such motions can be misused for delay or to exert inappropriate leverage to force a settlement." *Id.* "The law strongly discourages the use of motions to disqualify as tactical weapons in litigation." *Id.*

The movant bears the burden of proof on a disqualification motion. *In re EPIC Holdings, Inc.*, 985 S.W.2d 41, 60 (Tex. 1998) (orig. proceeding). "To prevent the abusive filing of such a motion for tactical reasons, the court must carefully evaluate the motion and record to determine if disqualification is warranted." *In re Nitla S.A. de C.V.,* 92 S.W.3d at 422. The trial court "must strictly adhere to an exacting standard" in ruling on disqualification motions. *NCNB Tex. Nat'l Bank*, 765 S.W.2d at 399; *see Spears v. Fourth Ct. of Apps.*, 797 S.W.2d 654, 656 (Tex. 1990). We review the trial court's ruling for abuse of discretion. *See In re Sanders*, 153 S.W.3d 54, 57 (Tex. 2004) (orig. proceeding) (per curiam); *BP Am. Prod. Co. v. Zaffirini*, 419 S.W.3d 485, 514 (Tex. App.—San Antonio 2013, pet. denied); *In re Tex. Windstorm Ins. Ass'n*, 417 S.W.3d at 129.

IV. DISQUALIFICATION

National Lloyds' motion for disqualification alleges a former-client conflict under Texas Disciplinary Rule of Professional Conduct 1.09. *See* TEX. DISCIPLINARY R. PROF'L CONDUCT R. 1.09, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A, Art. 10, § 9 (West, Westlaw through 2015 R.S.). The Texas Disciplinary Rules of Professional Conduct, although promulgated as disciplinary standards rather than rules of procedural disqualification, provide guidelines relevant to a disqualification determination. *In re*

Cerberus Capital Mgmt., L.P., 164 S.W.3d at 382; *In re Tex. Windstorm Ins. Ass'n*, 417 S.W.3d at 129. Rule 1.09, entitled "Conflict of Interest: Former Client," provides:

> (a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:
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> (1) in which such other person questions the validity of the lawyer's services or work product for the former client;
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> (2) if the representation in reasonable probability will involve a violation of Rule 1.05; or
>
> (3) if it is the same or a substantially related matter.
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> (b) Except to the extent authorized by Rule 1.10, when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if any one of them practicing alone would be prohibited from doing so by paragraph (a).
>
> (c) When the association of a lawyer with a firm has terminated, the lawyers who were then associated with that lawyer shall not knowingly represent a client if the lawyer whose association with that firm has terminated would be prohibited from doing so by paragraph (a)(1) or if the representation in reasonable probability will involve a violation of Rule 1.05.

TEX. DISCIPLINARY R. PROF'L CONDUCT R. 1.09. Under Texas Rule 1.09(b), the personal conflicts of one attorney are imputed to all other members of a firm. *Id.* Comment 7 to Rule 1.09 provides that this imputation can be removed when an attorney leaves a firm, stating that "should . . . other lawyers cease to be members of the same firm as the lawyer affected by paragraph (a) *without personally coming within its restrictions*, they thereafter may undertake the representation against the lawyer's former client unless prevented from doing so by some other of these Rules." *See id*. 1.09 cmt. 7 (emphasis added).

The Texas Supreme Court has held that a lawyer who has previously represented a client may not represent another person on a matter adverse to the client if the matters

are the same or substantially related. *In re Guar. Ins. Servs., Inc*., 343 S.W.3d at 133–34; *In re Columbia Valley Healthcare Sys. L.P.*, 320 S.W.3d 819, 824 (Tex. 2010) (orig. proceeding). If the lawyer works on a matter, there is an irrebuttable presumption that the lawyer obtained confidential information during the representation. *In re Guar. Ins. Servs., Inc.*, 343 S.W.3d at 134; *Phoenix Founders, Inc. v. Marshall*, 887 S.W.2d 831, 833 (Tex. 1994) (orig. proceeding). That attorney's "knowledge is imputed by law to every other attorney in the firm," and "[t]here is, in effect, an irrebuttable presumption that an attorney in a law firm has access to the confidences of the clients and former clients of other attorneys in the firm." *Nat'l Med. Enters., Inc. v. Godbey*, 924 S.W.2d 123, 131 (Tex. 1996) (orig. proceeding). In *National Medical Enterprises*, the Texas Supreme Court opined that the court's conclusions regarding an irrebuttable presumption were based on "[t]he difficulty in proving a misuse of confidences" and the "doubt cast upon the integrity of the legal profession." *Id.* at 132. The court further explained:

> One reason for this presumption is that it would always be virtually impossible for a former client to prove that attorneys in the same firm had not shared confidences. Another reason for the presumption is that it helps clients feel more secure. Also, the presumption helps guard the integrity of the legal practice by removing undue suspicion that clients' interests are not being fully protected.

Id. at 131 (citations omitted).

When the lawyer moves to another firm and the second firm represents an opposing party to the lawyer's former client, a second irrebuttable presumption arises—that the lawyer has shared the client's confidences with members of the second firm. *In re Guar. Ins. Servs., Inc*., 343 S.W.3d at 134; *Phoenix Founders Inc.*, 887 S.W.2d at 834. The effect of this second presumption is the mandatory disqualification of the second firm.

In re Guar. Ins. Servs., Inc., 343 S.W.3d at 134; *Phoenix Founders, Inc*., 887 S.W.2d at 833–34.

National Lloyds argues that the foregoing law compels the disqualification of both Chapman and the Mostyn Law Firm. National Lloyds urges us to conclude that: (1) Andrews Kurth represented National Lloyds; (2) there is an irrebuttable presumption that Andrews Kurth obtained confidential information during the representation; (3) Andrews Kurth's knowledge of National Lloyds's confidential information was imputed to Chapman as an associate at that firm, thereby disqualifying her from representing real parties; and (4) Chapman's imputed knowledge of National Lloyds' confidential information was imputed to the Mostyn Law Firm when Chapman joined that firm, thereby disqualifying it from representing real parties. We disagree with this analysis.

The Texas Supreme Court has not addressed the instant factual situation regarding whether a departing lawyer must have actually acquired confidential information about the former firm's client or personally represented the former client to remain under imputed disqualification after leaving the firm. However, in a thorough and well-reasoned decision directly on point, the Fifth Circuit has held that Texas Rule 1.09 allows migrating lawyers to remove imputation in the absence of a personal representation or acquisition of confidential information. *In re ProEducation Int'l, Inc*., 587 F.3d 296, 302 (5th Cir. 2009) (citing and discussing Amon Burton, *Migratory Lawyers and Imputed Conflicts of Interest*, 16 REV. LITIG. 665, 677, 684–85 (1997) and TEX. COMM. ON PROF'L ETHICS, Formal Op. 501 (1994)).

In *ProEducation,* Kirk Kennedy worked as an associate attorney in the law firm of Jackson Walker L.L.P. from February 2003 to November 2004. *Id.* at 297. Another

attorney at Jackson Walker, Lionel Schooler, had been representing MindPrint, Inc., a creditor in the bankruptcy proceeding of ProEducation International, Inc., since 1999. *Id.* Kennedy "had no knowledge of or involvement with MindPrint" while he worked for Jackson Walker. *Id.* In September 2006, Kennedy entered an appearance in ProEducation's bankruptcy proceeding on behalf of a creditor. *Id.* MindPrint moved to disqualify Kennedy from representing the creditor based on an imputed conflict of interest. *Id.* The bankruptcy court held that Kennedy was disqualified based on "two irrebuttable presumptions: first, 'confidential information has been given to the attorney actually doing work for the client,' and second, 'confidences obtained by an individual lawyer will be shared with the other members of his firm.'" *Id.* at 298.

After examining both the Texas Disciplinary Rules of Professional Conduct and the ABA Model Rules of Professional Conduct, the Fifth Circuit stated that "both require that a departing lawyer must have actually acquired confidential information about the former firm's client or personally represented the former client to remain under imputed disqualification." *Id.* at 301. After further analysis, the court concluded that under Texas Rule 1.09(b), Kennedy was conclusively disqualified by imputation from representing the creditor only while he remained at Jackson Walker. *See id.* When Kennedy ended his affiliation with Jackson Walker without personally acquiring confidential information about MindPrint, his imputed disqualification also ended. *Id.* at 303 (citing TEX. DISCIPLINARY R. PROF'L CONDUCT R. 1.09 cmt. 7); Burton, 16 REV. LITIG. at 684–85 ("If the transferring lawyer did not represent the former client while at his former firm and possesses no confidential information material to the matter, the transferring lawyer is no longer deemed to have imputed knowledge about his former firm's client. Accordingly, the transferring

lawyer . . . [is] entitled to accept the representation adverse to his former firm's client.")). The court thus stated that the bankruptcy court should have considered Kennedy's evidence of his lack of involvement with MindPrint while at Jackson Walker. *Id.*

Applying the Fifth Circuit's analysis to this case, under Rule 1.09(b), Chapman was disqualified from representing the real parties while she remained at Andrews Kurth. When she ended her affiliation with Andrews Kurth, without having actually acquired confidential information about National Lloyds or having personally been involved in representing National Lloyds, her imputed disqualification also ended. *See* TEX. DISCIPLINARY R. PROF'L CONDUCT R. 1.09 cmt. 7*; In re ProEducation Int'l, Inc*., 587 F.3d at 303; *see also* Burton, 16 REV. LITIG. at 684–85. Accordingly, we examine the evidence pertaining to actual disqualification rather than presuming imputed disqualification. We review Chapman's involvement with National Lloyds and any confidential information that she might have obtained regarding National Lloyds.

In this case, the parties have stipulated that Chapman "did not work on any matter" regarding National Lloyds and that she "did not personally represent National Lloyds Insurance Company, and did not personally receive any confidential information of National Lloyds Insurance Company." This evidence is sufficient to demonstrate that Chapman did not have a conflict of interest in representing the plaintiffs when she joined the Mostyn Law Firm. In light of this evidence, Chapman successfully showed that her imputed disqualification ended when she left Andrews Kurth; therefore, her representation of the plaintiffs did not present a conflict of interest requiring her disqualification.

V. WAIVER

As a final matter, we address the real parties' contention that National Lloyds waived its motion to disqualify by delay. Real parties assert that National Lloyds waited over four months to file its disqualification motion in the trial court, and then waited an additional two months before filing this original proceeding. Real parties further assert that the motion to disqualify is retaliatory in nature because it was filed one week after the Mostyn Law Firm filed a class action lawsuit against National Lloyds alleging misconduct involving National Lloyds and its counsel. Real parties also contend that National Lloyds' delay in filing the motion for disqualification would cause severe harm insofar as the Mostyn Law Firm has approximately 400 active lawsuits against National Lloyds.

As stated previously, National Lloyds filed its motion seeking disqualification on July 15, 2015, the trial court denied the motion on August 28, 2015, and National Lloyds filed this proceeding on November 4, 2015. National Lloyds concedes that it learned of Chapman's representation of plaintiffs and others in March 2015. According to National Lloyds, it "immediately sought advice from outside counsel, conducted a thorough investigation, finalized its motion to disqualify, and considered the impact of its motion across the state of Texas." National Lloyds asserts that "[t]hese precautions took relator a mere four months before its investigation was complete and it was comfortable filing its motion." National Lloyds argues that its motion for disqualification was not an attempt to delay the trial of this matter because there is no trial date, and that the motion for disqualification was not used as a "tactical weapon." It supports these assertions with a citation to its motion for disqualification, but does not support this assertion with other argument or citations to evidence in the record. Further, National Lloyds does not address

the more than two-month delay in filing this original proceeding after the trial court denied its disqualification motion.

A party who fails to file its motion to disqualify opposing counsel in a timely manner generally waives the complaint. *In re George*, 28 S.W.3d 511, 513 (Tex. 2000) (orig. proceeding); *Vaughan v. Walther*, 875 S.W.2d 690 (Tex. 1994). In determining waiver, we consider the length of time between when the conflict became apparent to the aggrieved party and when the aggrieved party filed a motion for disqualification. *Grant v. Thirteenth Court of Appeals*, 888 S.W.2d 466, 468 (Tex. 1994); *Spears*, 797 S.W.2d at 656; *In re La. Tex. Healthcare Mgmt., L.L.C*., 349 S.W.3d 688, 689 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding). We also consider any evidence that indicates the motion is being filed as a dilatory trial tactic rather than a concern that confidences related in an attorney-client relationship may be divulged. *In re La. Tex. Healthcare Mgmt., L.L.C.*, 349 S.W.3d at 690. We further look to whether the moving party has a satisfactory explanation for the delay. *In re EPIC Holdings, Inc*., 985 S.W.2d 41, 52 (Tex. 1998) (orig. proceeding). Finally, we also consider whether significant discovery has occurred and the delay has prejudiced the other party. *See id.* at 53.

Courts have found waiver where a party waited as little as four to eight months to file the motion to disqualify. *See e.g., Buck v. Palmer*, 381 S.W.3d 525, 528 (Tex. 2012) (concluding that an unexplained delay of seven months amounted to waiver); *Vaughan*, 875 S.W.2d at 691 (finding that a delay of six and one-half months constituted waiver); *Enstar Petroleum Co. v. Mancias*, 773 S.W.2d 662, 664 (Tex. App.—San Antonio 1989, orig. proceeding) (finding waiver where the movant waited four months to file the motion to disqualify). In contrast, smaller delays have generally not constituted a waiver of

disqualification. *See In re Amer. Home Prods. Corp*., 985 S.W.2d at 73 (concluding that a delay of less than two months in filing a motion to disqualify did not constitute waiver); *Rio Hondo Implement Co. v. Euresti*, 903 S.W.2d 128, 131 (Tex. App.—Corpus Christi 1995, orig. proceeding) (holding that a two and one-half month delay did not constitute waiver of the right to disqualify).

In considering the issue of delay, we also examine the period of time that elapses between the issuance of the adverse ruling and the inception of the original proceeding. Stated otherwise, delaying the filing of a petition for mandamus relief may waive the right to mandamus unless the relator can justify the delay. *In re Int'l Profit Assocs*., 274 S.W.3d 672, 676 (Tex. 2009) (per curiam). This is because mandamus is an extraordinary and discretionary remedy that is not issued as a matter of right. *In re Dorn*, 471 S.W.3d 823, 824 (Tex. 2015) (orig. proceeding); *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993); *Callahan v. Giles*, 155 S.W.2d 793, 795 (Tex. 1941). Even though mandamus is not an equitable remedy, equitable principles govern its issuance. *In re Dorn*, 471 S.W.3d at 824; *Rivercenter*, 858 S.W.2d at 367. "One such principle is that '[e]quity aids the diligent and not those who slumber on their rights.'" *Rivercenter*, 858 S.W.2d at 367 (quoting *Callahan*, 155 S.W.2d at 795). Therefore, "delay alone can provide ample ground to deny mandamus relief." *In re Boehme*, 256 S.W.3d 878, 887 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). In this regard, various periods of delay may justify denying mandamus relief where there is no reasonable justification for the delay. *See, e.g., Rivercenter*, 858 S.W.2d at 367–68 (concluding that a four-month delay was sufficient to deny relief); *In re Little*, 998 S.W.2d at 290 (finding that a six-month delay was sufficient to deny relief); *Furr's Supermarkets, Inc. v. Mulanax*, 897 S.W.2d

442, 443 (Tex. App.—El Paso 1995, orig. proceeding) (finding that a four-month delay was sufficient to deny relief). Delays of less than two months may be reasonable under specific circumstances. *See, e.g., In re Cap Rock Elec. Co-op., Inc*., 35 S.W.3d 222, 227 (Tex. App.—Texarkana 2000, no pet.) (concluding that a two-week delay was reasonable); *In B.F. Goodrich Co. v. McCorkle*, 865 S.W.2d 618, 621 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding) (holding that a delay of a month and two days from the trial court's ruling until the filing for mandamus relief did not waive the relator's right to mandamus).

Our attention in the instant case concerns the four-month delay between the time that National Lloyds became aware of the potential conflict and the time that it filed its motion to disqualify. A period of four months has been held to constitute sufficient delay to waive the issue of disqualification. *See Enstar Petroleum Co.*, 773 S.W.2d at 664. Further, the real parties have alleged that the timing of National Lloyds' motion for disqualification, as temporally proximate to the lawsuit filed against it by the Mostyn Law Firm, shows that National Lloyds utilized the motion to disqualify as a retaliatory trial tactic rather than as an attempt to preserve any arguable imputed confidences. In this regard, the additional two-month delay after the adverse ruling issued by the trial court and the inception of this original proceeding, while not singularly significant in terms of delay itself in defeating mandamus relief, would similarly indicate that National Lloyds was not acting with alacrity to avoid any negative consequences arising from Chapman's employment with the Mostyn Law Firm on these cases. The real parties have alleged that the disqualification would cause severe harm insofar as the Mostyn Law Firm has approximately 400 active lawsuits against National Lloyds, but have not offered specific

allegations or evidence regarding the alleged harm. Finally, National Lloyds argued that the four-month delay was justified because it sought advice from outside counsel, conducted an investigation, drafted the motion to disqualify, and "considered the impact of its motion across the state of Texas." National Lloyds did not support this argument with evidence. These circumstances raise a significant concern regarding whether National Lloyds waived its right to disqualify Chapman and the Mostyn Law Firm. However, we need not further examine this issue because, as discussed above, National Lloyds is not entitled to relief on the merits regarding its quest for disqualification.

VI. CONCLUSION

We deny the petition for writ of mandamus.

JUSTICE GREGORY T. PERKES

Delivered and filed the
10th day of February, 2016.