

and the overriding societal interests in the integrity of the judicial process.”)

The standard for professional conduct of lawyers practicing before this court incorporates the Tennessee Rules of Professional Conduct. Local Rule 83.01(e)(4). Rule 3.7 of the Tennessee Rules of Professional Conduct provides as follows:

- (a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:
 - (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.

Tennessee Supreme Court Rule 8, Rule of Professional Conduct 3.7. “For a lawyer to be a necessary witness, his testimony must be relevant, material, and unobtainable elsewhere.”

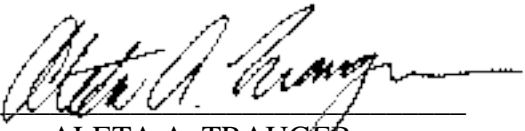
Rothberg v. Cincinnati Ins. Co., No. 1:06-cv-111, 2008 WL 2401190, at *2 (E.D. Tenn. June 11, 2008); *see also Nat’l Res. Def. Council v. Cnty. of Dickson, Tenn.*, No. 3:08-cv-0229, 2010 WL 5300871, at *3 (M.D. Tenn. Dec. 20, 2010). Accordingly, an attorney is a “necessary witness” for purposes of Rule 3.7(a) “only if ‘there are things to which he will be the only one available to testify.’”

In bringing a motion to disqualify, the movant bears “the burden of proving that opposing counsel should be disqualified.” *McKinney v. McMeans*, 147 F.Supp.2d 898, 900 (W.D. Tenn. 2001) (citing *Bartech Indus. v. Int’l Baking Co.*, 910 F.Supp. 388, 392 (E.D. Tenn. 1996)). The defendants have failed to carry the burden of establishing that Mr. Jiles is likely to be a necessary witness to a contested issue. For these reasons, the Joint Motion to Disqualify is **DENIED WITHOUT PREJUDICE.**

The plaintiff is **FOREWARNED** that, should it become apparent at a later time that Mr. Jiles is, in fact, a necessary witness in this case, the court will not hesitate to disqualify him and his firm at that time, which has the potential to create more prejudice to the plaintiff, should the court so rule.

It is so **ORDERED**.

ENTER this 11th day of October 2012.



ALETA A. TRAUGER
U.S. District Judge