

STATE OF NEW YORK
ADIRONDACK PARK AGENCY

In the Matter of the Application of

APA Project No. 2021-0276

UNCONVENTIONAL CONCEPTS, INC. and MICHAEL
HOPMEIER,

APA Hearing Officer
David N. Greenwood

**Attorney Affirmation of
Matthew D. Norfolk, Esq.
in Opposition to Motion to
Disqualify**

1. I, Matthew D. Norfolk, Esq., am a member of Norfolk Beier PLLC (hereinafter referred to as “Norfolk Beier”), attorneys for Unconventional Concepts, Inc. and Michael Hopmeier (hereinafter collectively referred to as the “Applicants”).

2. I affirm this 3rd day of February, 2026, under the penalties of perjury under the laws of the State of New York, which may include a fine or imprisonment, that the following herein is true, and I understand that this document may be filed in an action or proceeding in a court of law and, of course, in the above-captioned administrative proceeding.

3. I make this affirmation in opposition to the motion of Adirondack Council, Inc. (hereinafter referred to as “Adirondack Council”), a newcomer to the six-year old permit application proceeding, seeking to disqualify Norfolk Beier as attorneys for the Applicants. Adirondack Council’s motion is based upon an alleged conflict of interest arising from Norfolk Beier’s since-ended employment of Sarah Reynolds, a former attorney of the Adirondack Park Agency (hereinafter referred to as the “APA”). Except where stated to be upon information and belief, the following allegations are based upon my personal knowledge, review of the application record, and correspondence and documents exchanged in this matter.

POINT I. The Motion Must Be Denied Because the Hearing Officer Lacks Authority to Disqualify Attorneys.

4. According to State Administrative Procedure Act (hereinafter referred to as “SAPA”) §501:

[a]ny person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before an agency, every party or person shall be accorded the right to appear in person or by or with counsel.

Whether or not to disqualify an attorney or law firm is a matter which rests in the sound discretion of the courts. *Gulino v. Gulino*, 35 A.D.3d 812, 812 (2d Dept. 2006) (emphasis added). A party’s entitlement to be represented in ongoing litigation by counsel of his own choosing is a valued right which should not be abridged absent a clear showing that disqualification is warranted. *Feeley v. Midas Props.*, 199 A.D.2d 238, 238 (2d Dept. 1993). The court’s authority to disqualify an attorney or craft appropriate relief to punish or deter attorney misconduct derives from a court’s equitable powers. *Matter of Milbauer*, 2015 NY Slip Op 31300(U), 10 (Sur. Ct. Nassau Cnty.). “An individual’s right to select an attorney who he believes is most capable of providing competent representation implicates both the First Amendment guarantees of freedom of association (*N.A.A.C.P. v Button*, 371 U.S. 415; NY Const, art I, § 9) and the Sixth Amendment right to counsel (*cf. Faretta v California*, 422 U.S. 806; NY Const, art I, § 6) and will not yield unless confronted with some overriding competing public interest.” *In re Abrams*, 62 N.Y.2d 183, 196 (1984).

5. Here, Administrative Law Judge David N. Greenwood (hereinafter referred to as “Hearing Officer”) does not have any statutory, constitutional, or common-law-based authority upon which to deprive the Applicants of their right to chosen counsel. This explains why Adirondack Council does not cite any such authority. To the extent Adirondack Council seeks to

have the Hearing Officer declare that Norfolk Beier has breached an ethical duty under 22 NYCRR Part 1200 or violated Public Officers Law §73(8)(a)(ii), such declarations by the Hearing Officer would be without any effect. There is no provision of SAPA, the Adirondack Park Agency Act, or 9 NYCRR Part 580 imbuing a hearing officer the authority to disqualify a party's counsel in a public hearing before the APA. Only courts of record have the power to disqualify an attorney. Furthermore, the Hearing Officer is not an ethics committee empowered to hear grievances arising from the Rules of Professional Conduct. The attorneys for Adirondack Council surely know this, and have engaged in motion practice for tactical reasons - to cause the Applicants to needlessly expend resources and to delay conclusion of the hearing. *See McDade v. McDade*, 240 A.D.2d 1010, 1011 (3d Dept. 1997) ("to allow disqualification at this advanced stage of litigation would severely prejudice defendant in both a tactical and financial sense").¹

6. For the reasons stated above, the instant motion must be denied without further deliberation, as the scope of the relief requested exceeds that of the Hearing Officer's quasi-judicial powers.

POINT II. The Motion Must Be Denied Because Adirondack Council Has No Standing to Challenge Norfolk Beier's Involvement in This Public Hearing as It Is Not a Former or Current Client of Norfolk Beier.

7. The party seeking disqualification bears the burden of establishing (1) the existence of a prior attorney-client relationship, and (2) that the former and current representations are both adverse and substantially related. *McDade*, 240 A.D.2d at 1010. "The basis of a disqualification motion is an allegation of a breach of fiduciary duty owed by an attorney to a current or former client." *Rowley v. Waterfront Airways, Inc.*, 113 A.D.2d 926, 926 (2d Dept. 1985); *A.F.C. Enters.*,

¹ It should be noted that the strategy of filing unwarranted motions and causing delay was implemented by the environmental groups in the APA hearing proceedings involving the Adirondack Club and Resort project in Tupper Lake. The groups caused the applicant there to become insolvent and abandon the project.

Inc. v. N.Y.C. Sch. Constr. Auth., 33 A.D.3d 736, 736 (2d Dept. 2006). Here, Norfolk Beier has never represented Adirondack Council. Indeed, no attorney-client relationship between Adirondack Council and Norfolk Beier has ever existed. Norfolk Beier owes no fiduciary duty to Adirondack Council and, thus, Adirondack Council has no basis for seeking disqualification.

8. Furthermore, Adirondack Council has no standing to raise issues pursuant to 22 NYCRR §1200.1.11 or Public Officers Law §73. These provisions relate to the professional responsibilities of a former employee of a state agency when practicing before that state agency after leaving employment. Adirondack Council is not a state agency, and, although it purports to seek redress for its own harms suffered, it is essentially attempting to step into the shoes of the APA. Yet, Adirondack Council cannot properly seek relief on behalf of the APA.

9. Based upon the foregoing, Adirondack Council's motion to disqualify Norfolk Beier must be denied for lack of standing.

POINT III. The Motion Must Be Denied Because Any Potential Conflict Has Been Waived by the APA Through Its Failure to Object.

10. Attorney Reynolds began working for Norfolk Beier in May of 2025. The Applicants' application was deemed complete in October of 2025 and sent to a public hearing in November of 2025. To date, the APA has not raised issue with regard to Attorney Reynolds' employment at Norfolk Beier. To date, no objection from the APA has been received on any alleged effect of Attorney Reynolds' employment at Norfolk Beier on the public hearing - even in response to the present motion. Any objection of the APA to Norfolk Beier's continued representation of the Applicants has been waived through its failure to timely object. *See Develop Don't Destroy Brooklyn v. Empire State Dev. Corp.*, 31 A.D.3d 144 (1st Dept. 2006); *Ike & Sam's Grp., LLC v. Brach*, 138 A.D.3d 690, 692 (2d Dept. 2016). Consent is now implied as a matter of law.

11. Based upon the foregoing, Adirondack Council’s motion to disqualify Norfolk Beier must be denied.

POINT IV. The Motion Should Be Denied Because the Issue of Disqualification Is Moot.

12. Adirondack Council’s motion argues, “Ms. Reynolds is disqualified by Public Officer’s Law § 73(8)(a)(ii) and Rule 1.11(a)(ii) from any representation of the Project Sponsor in this matter.” *See Affirmation of Paul Van Cott, Esq.*, affirmed January 20, 2026 (hereinafter referred to as the “Van Cott Affm.”), ¶14. Attorney Reynolds is no longer employed by Norfolk Beier and will not have any participation in this matter.

13. Attorney Reynolds ended her employment with Norfolk Beier in December of 2025. Her leaving was for personal reasons, unrelated to this matter. Since the commencement of the hearing proceedings, Attorney Reynolds was no longer an attorney with Norfolk Beier. There is no case or controversy, no possible threat of prejudice to any party in the hearing, and nothing to be resolved by disqualification.

14. Based upon the foregoing, the issue is moot and Adirondack Council’s motion to disqualify Norfolk Beier must be denied.

POINT V. The Motion Must Be Denied Because No Conflict or Prejudice to Adirondack Council Exists.

15. “When considering a motion to disqualify counsel, the court must consider the totality of the circumstances and carefully balance the right of a party to be represented by counsel of [its] choosing against the other party’s right to be free from possible prejudice due to the questioned representation.” *Parnes v. Parnes*, 80 A.D.3d 948, 952 (3d Dept. 2011) (citations omitted). The proponent of such disqualification must show sufficient proof to warrant such a determination, and the burden is a heavy one. *Petrossian v. Grossman*, 219 A.D.2d 587, 588 (2d Dept. 1995); *Mayers v. Stone Castle Partners, LLC*, 126 A.D.3d 1, 6 (1st Dept 2015).

16. Aside from the proverbial pointing of fingers, and complaining that Norfolk Beier did not obtain consent from the APA, Adirondack Council’s motion does not explain how any conflict of interest arising from Attorney Reynolds’ employment at Norfolk Beier is of any consequence to the public hearing, or how it causes Adirondack Council any prejudice. The purpose of the public hearing is to develop an evidentiary record on which the APA Board will render a decision on whether to grant or deny the Applicants’ application. Any information Attorney Reynolds obtained during her time at the APA would also be known to the APA and, therefore, could not have been given to Norfolk Beier for their exclusive use to provide some sort of advantage. Indeed, there is no advantage to be had. Moreover, the APA is not an adversary of the Applicants. Attorney Reynolds’ employment at Norfolk Beier cannot possibly prejudice any party in its efforts to collectively develop a factual record.

17. Adirondack Council, by asserting that Norfolk Beier “may have gained or may gain factual, legal or other information from Ms. Reynolds, either directly or indirectly, based upon her prior involvement in APA staff’s review of this matter during her tenure as an APA attorney” implies the corruption of Attorney Reynolds, the APA and myself. *See Van Cott Affm.* ¶28. Personally, and on behalf of the Applicants, I object to Attorney Paul Van Cott’s implication here. Again, any information Attorney Reynolds obtained during her tenure at the APA is also information available to the APA and to the public at large through a Freedom of Information Law request. To imply that the APA and its attorneys are withholding information from the parties, the public or the rest of the agency is tantamount to asserting corruption within the APA.

18. Based upon the foregoing, Adirondack Council’s motion to disqualify Norfolk Beier must be denied.

POINT VI. Any Conflict of Interest Held by Attorney Reynolds Is Not Imputed to Norfolk Beier.

19. The motion must be denied because, even if Attorney Reynolds' employment at Norfolk Beier created a conflict for her, it is not imputed on the rest of the firm. Attorney Reynolds had no involvement in the matter while employed at Norfolk Beier. She did not participate in any capacity in the representation of the Applicants, either in front of the APA, before or after the Notice of Complete Application, or in the public hearing. Attorney Reynolds did not provide any advice or direction or information that she may have obtained from her tenure at the APA. Attorney Reynolds was not apportioned any fee from Norfolk Beier's work performed on this matter. This was a firm policy I implemented upon hiring Attorney Reynolds. It should be noted that Attorney Reynolds made it clear during the interview process that she could not and would not participate in any way in the present matter. Accordingly, the previous employment of Attorney Reynolds at Norfolk Beier does not disqualify Norfolk Beier from representing the Applicants in the public hearing.

20. Based upon the foregoing, Adirondack Council's motion to disqualify Norfolk Beier must be denied.

POINT VII. The Motion Must Be Denied Because Disqualification Would Unfairly Prejudice the Applicants.

21. Norfolk Beier's disqualification would unfairly prejudice the Applicants. *See McDade*, 240 A.D.2d at 1011. Since January of 2022, Norfolk Beier has represented the Applicants in connection with its application to the APA. That is over six years of participation in this matter as counsel for the Applicants. To deprive the Applicants of their right to chosen counsel and force them to find new representation (weeks before the hearing is to commence) and bring the new attorney(s) up to speed on the six-year application process would severely prejudice the Applicants - at a great expense. *See Aerojet Props., Inc. v. State of New York*, 138 A.D.2d 39, 42

(3d Dept. 1988) (denying motion to disqualify law firm as counsel for the claimant where the firm had extensively involved in the action for more than four years). The Applicants are entitled to continue being represented in this matter by Norfolk Beier.

22. Based upon the foregoing, Adirondack Council's motion to disqualify Norfolk Beier must be denied for lack of standing.

WHEREFORE, it is respectfully requested that Adirondack Council's motion to disqualify Norfolk Beier be denied in its entirety, together with such other and further relief granted to the Applicants.

Dated: February 3, 2026
Lake Placid, New York

By: 
Matthew D. Norfolk, Esq.