In the Matter of the Application of

UNCONVENTIONAL CONCEPTS, Inc., and MICHAEL HOPMEIER

RULING ON MOTION TO DISQUALIFY

APA Project No. 2021-0276

I. Introduction and Proceedings

This ruling arises from the November 14, 2025 Adirondack Park Agency (APA or the Agency) Project Order No. 2021-0276 (Project Order) wherein the Agency ordered this matter to public hearing pursuant to Executive Law Section 809 and State regulations at 9 NYCRR 580.2. In November 2021 Unconventional Concepts, Inc. and Michael Hopmeier (the Applicant or Project Sponsor) submitted an application to undertake a Class B Regional Project in the Town of Lewis, Essex County, New York to the APA, which proposes to develop a weapons range for testing the internal ballistics of 155 mm howitzer cannon barrels over a 5-year period (the proposed "howitzer testing range") (Project Application or Proposed Project).

Four organizations submitted petitions for intervention and party status in December 2025 and I granted each granted party status in a ruling dated January 12, 2026. The four organizations are Sierra Club Atlantic Chapter, Adirondack Wild: Friends of the Forest Preserve, Adirondack Council, Inc. (Adirondack Council), and Protect the Adirondacks. The Project Sponsor has appealed the ruling granting of party status for Adirondack Wild to the Agency's Executive Director and that appeal is pending at the time of this ruling.

This ruling addresses a motion brought by one of the intervening parties, Adirondack Council, dated January 20, 2026, to disqualify the law firm of Norfolk Beier PLLC (Norfolk Beier) from continued representation of the Project Sponsor in this matter (*see* Appendix).

By its motion, Adirondack Council asserts that the law firm of Norfolk Beier PLLC has not demonstrated compliance with "22 NYCRR Section 1200.1.11 of the Rules of Professional Conduct for New York attorneys pertaining to conflicts" and requests an order disqualifying Norfolk Beier from continued representation of the Project Sponsor. The motion is supported by the Affirmation of Paul Van Cott, counsel to the law firm of Whiteman, Osterman & Hanna LLP, attorneys representing Adirondack Council (Affirmation of Paul Van Cott dated January 20, 2026 [Van Cott Aff.]).

The Project Sponsor responded by an attorney affirmation of Matthew D. Norfolk in opposition to the motion to disqualify dated February 3, 2026 (Affirmation of Matthew D. Norfolk dated February 3, 2026 [Norfolk Aff.]).

None of the other parties to this matter submitted papers in support or opposition to the motion, including the Agency itself.

For the reasons discussed below, the motion is denied.

II. Positions of the Parties

In the motion and supporting affirmation, Adirondack Council argues that a conflict barring Norfolk Beier from representing the Project Sponsor in this matter exists because a former APA attorney, Sarah Reynolds (Attorney Reynolds) was personally involved in the APA's review of the Project Application before joining Norfolk Beier as a Senior Counsel (Van Cott Aff. ¶¶ 3-7). Adirondack Council contends that Public Officer Law 73(8)(a) and Rule 1.11(a) of New York's Rules of Professional Conduct for attorneys (*see* 22 NYCRR 1200) prohibit Attorney Reynolds from being involved in Norfolk Beier's representation of the Project Sponsor due to her prior role as an APA attorney and that pursuant to Rule 1.11(b) the prohibition extends to the law firm's representation of the Project Sponsor unless Norfolk Beier gives notice of the conflict to the APA and receives a waiver of the conflict from the APA (Van Cott Aff. ¶¶ 11-26). Adirondack Council maintains that a risk of harm to its interests and the "integrity of the hearing" exists in that attorneys at Norfolk Beier may have gained access to information from Attorney Reynolds regarding the Proposed Project and the Agency's internal deliberations about the Proposed Project, information which other parties to the hearing would not have access to (Van Cott Aff. ¶¶ 27-32). Adirondack Council seeks disqualification of Norfolk Beier from continued representation of the Project Sponsor "unless [Norfolk Beier] can demonstrate full compliance with the requirements of Rule 1.11 and obtain a waiver from APA as required by Rule 1.11(b)" (Van Cott Aff. ¶ 33).

In the Affirmation in Opposition (Opposition), Matthew D. Norfolk, a member of the law firm Norfolk Beier PLLC, asserts that Adirondack Council's motion should be denied in its entirety (Norfolk Aff.). The Opposition raises seven points of fact and law as reasons to deny the motion (Norfolk Aff. ¶¶ 4-21). First, the Opposition asserts that this hearing officer lacks authority to disqualify attorneys, as that authority rests in the "discretion of the courts" (*id.* ¶¶ 4-6). Second, Adirondack Council has no standing to challenge Norfolk Beier's involvement in the hearing because the Adirondack Council is not a former or current client of Norfolk Beier, rather only the APA would have standing (*id.* ¶¶ 7-9). Third, any potential conflict the APA may have raised has been waived by the Agency through its failure to object (*id.* ¶¶ 10-11). Fourth, the issue of disqualification is moot because Attorney Reynolds left the employ of Norfolk Beier in December 2025, prior to the commencement of "the hearing proceedings" (*id.* ¶¶ 12-14). Fifth, there is no conflict or prejudice to Adirondack Council because any information held by Attorney Reynolds was also known to the Agency and the Agency is responsible for rendering a decision on the Project Application after evidence is gathered at the public hearing (*id.* ¶¶ 15-18). Sixth, any conflict of interest held by Attorney Reynolds is not imputed to Norfolk Beier because while Attorney Reynolds was a member of Norfolk Beier she did not engage in the present matter in any way and did not "provide any advice or direction or information she may have obtained from her tenure at APA" to anyone else at Norfolk Beier (*id.* ¶¶ 19-20). Seventh, disqualification of Norfolk Beier would unfairly prejudice the Project Sponsor because Norfolk Beier has represented the Project Sponsor for "over six years" during the application process as well as the public hearing and depriving the Project Sponsor of "their right to chosen counsel" at

this time would be inappropriate (*id.* ¶¶ 21-22).

III. Discussion

As an initial matter, the Opposition asserts that a hearing officer lacks authority to disqualify attorneys, as that authority rests in the "discretion of the courts." I disagree. There are numerous examples of administrative tribunals considering motions for disqualification of counsel due to alleged conflict violations arising from the Rules of Professional Conduct for Attorneys and the former Code of Professional Responsibility (*see e.g.*, *Matter of Call-A-Head Portable Toilets, Inc.*, 2016 WL 6080856 [ALJ Ruling October 11, 2016] [denying a motion brought by a respondent to disqualify a DEC attorney and the DEC Office of General Counsel under the witness-advocate rule]; *Mt. Hope Asphalt Corp.*, 1994 WL 1735262 at *3 [ALJ Ruling September 29, 1994] [denying a motion to disqualify a DEC Regional Attorney and Regional legal staff after finding that the Regional Attorney was not a necessary witness and that disqualification would occasion great disruption to DEC staff's pursuit of the action and impede a parties' right to choose its own counsel]). These examples include disqualification of individual attorneys as well as associated law firms (*see e.g.*, *Matter of the Complaints of Bernard Cassidy et. al*, 1995 WL 945532 at *4 [ALJ Decision April 13, 1995] [disqualifying a law firm and one of its attorneys from representing any party in the action after finding that when an attorney associated with a firm possesses a personal, business, or financial interest that is at odds with that of a client, the firm's representation of that client is prohibited]).

Next, the Opposition contends that Adirondack Council lacks standing to seek disqualification of Norfolk Beier because a party seeking disqualification for an alleged conflict of interest bears the burden of establishing "(1) the existence of a prior attorney-client relationship, and (2) that the former and current representations are both adversely and substantially related" (Norfolk Aff. ¶ 7 *citing McDade v. McDade*, 240 A.D.2d 1010 [3d Dept. 1997]). The Opposition also correctly points to *Rowley v. Waterfront Airways, Inc.* (113 A.D.2d 926 [2d Dept. 1985]) for the proposition that 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" (*Waterfront Airways, Inc.*, 113 A.D.2d at 927). Here, Adirondack Council does not contend that it and Norfolk Beier (or Attorney Reynolds) have ever been in an attorney-client relationship, rather Adirondack Council contends that there is a need for relief to address the alleged Norfolk Beier conflict because there is a "risk of harm to Adirondack Council's interests and the integrity of the hearing" (Van Cott Aff. ¶ 28). Although some jurisdictions have considered standing for "third-party" or "non-client litigants" on the basis that an ethical breach "obstructs the orderly administration of justice," I have not found cases citing this proposition in New York (*c.f. Colyer v. Smith*, 50 F.Supp.2d 966, 971-72 [C.D.Cal. 1999]). Although Adirondack Council's standing to move to disqualify Norfolk Beier is in doubt, it is clear that the Agency would have standing to challenge an appearance by Attorney Reynolds, a former employee.

Moving on, Adirondack Council's motion identifies the relevant law and establishes a conflict (Van Cott Aff. ¶¶ 11-26). Public Officers Law Section 73(8)(a)(ii) contains post-employment restrictions for State officers and reads, in pertinent part:

> No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice,

> communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.

(NY Pub. Off. Law 73[8][a][ii]).

Rule 1.11(a) of the Rules of Professional Conduct contains a similar ethical obligation for attorneys who have formerly served as a public officer or employee for the government that states that they "shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation" (22 NYCRR 1200 [Rule 1.11(a)(2)]).

The motion contains undisputed facts that establish Attorney Reynolds was a public officer and an attorney for the APA who participated personally and substantially on the Agency's consideration of the Project Application (*see* Van Cott Aff. ¶¶ 5-6, 16, Exs. B, C). Accordingly, upon leaving State service, Attorney Reynolds is disqualified by Public Officer Law Section 73(8)(a)(ii) and Rule 1.11 from any representation of the Project Sponsor in this matter.

Contrary to argument in the Opposition, the conflict is imputed to Norfolk Beier (*see Oklahoma Firefighters Pension & Ret. Sys. v. Musk*, 786 F. Supp. 3d 635, 643 [S.D.N.Y. 2025] [applying Rule 1.11 and stating "[i]n other words, while an attorney's conflicts are ordinarily imputed to his firm based on the presumption that associated attorneys share client confidences, this presumption may be rebutted by the construction of a screen that effectively protects against any sharing of confidential information." (*quotations omitted*)]; *see also* Norfolk Aff. ¶ 19). Rule 1.11(b) of the Rules of Professional Conduct contains the following ethical obligation with respect to a firm that is associated with a disqualified attorney:

> When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless the firm acts promptly and reasonably to:
> (1) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;
> (2) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;
> (3) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and

> (4) give written notice to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(22 NYCRR 1200 [Rule 1.11(b)]).

The motion contains undisputed facts that establish Attorney Reynolds joined Norfolk Beier in May 2025, after she participated personally and substantially as an attorney for the Agency on the Agency's consideration of the Project Application (*see* Van Cott Aff. ¶¶ 5-6, 20-21; *see also* Norfolk Aff. ¶¶ 13, 19). Thereafter, the Norfolk Beier firm was obligated to conform with Rule 1.11(b)'s provision that "no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter" unless the firm "acts promptly and reasonably" to undertake the four listed actions. It is also undisputed that Norfolk Beier continued representation of the Project Sponsor on the Permit Application and within this proceeding after Attorney Reynolds joined the firm (*see* Van Cott Aff. ¶¶ 7, 16, 18-21, Ex. G).

Notably, there is nothing in the motion papers or the Opposition that speaks to whether Attorney Reynolds or Norfolk Beier gave "written notice to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule" or whether the Agency granted a "waiver" or "its informed consent, confirmed in writing, to the representation" (*see* 22 NYCRR 1200 [Rule 1.11(a)(2), (b)]).

However, the Opposition affirms that various steps were taken by Norfolk Beier and Attorney Reynolds to comply with the first three provision of the rule. To wit:

> 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.

(Norfolk Aff. ¶ 19).

In light of that, I find that "personnel within the firm" were notified that "the personally disqualified lawyer is prohibited from participating in the representation of the current client" (*see* 22 NYCRR 1200 [Rule 1.11(b)(1)]). I find that Norfolk Beier implemented "screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm" (*see* 22 NYCRR 1200 [Rule 1.11(b)(2)]). And, I

find that Norfolk Beier ensured that "the disqualified lawyer is apportioned no part of the fee therefrom" (*see* 22 NYCRR 1200 [Rule 1.11(b)(3)]).

In addition to the fact that Attorney Reynolds did not participate in the representation of the Project Sponsor in this matter and that Norfolk Beier engaged in screening activities I note that the conflict has been mitigated to an extent by the affirmed fact that Attorney Reynolds no longer is a member of Norfolk Beier, having left the firm in December 2025 (Norfolk Aff. ¶¶ 12-14; *see* Van Cott Aff. ¶ 26). Adirondack Council has shown the potential for harm, but has not asserted that any particular knowledge or information was gained by Norfolk Beier from Attorney Reynolds as a result of the conflict. A not insignificant portion of the personal knowledge of Attorney Reynolds' understanding of the Project Application she acquired while engaged as an APA attorney is in the hands of Adirondack Council in the form of the 20-page May 2024 memorandum from Attorney Reynolds to the Agency's Regulatory Programs Committee attached as an exhibit to their motion (*see* Van Cott Aff. ¶ 6, Ex. C).

At the latest, the APA became aware of the conflict arising from Attorney Reynolds' employment at Norfolk Beier and Norfolk Beier's representation of the Project Sponsor when the Agency's Executive Director was copied on a letter from Paul Van Cott to Matthew D. Norfolk, Esq. dated January 2, 2026 (*see* Van Cott Aff. ¶ 3, Ex. A). APA hearing staff were copied on Adirondack Council's motion to disqualify and given an opportunity to respond to the motion. The APA has had the opportunity to assert its own basis for disqualifying Attorney Reynolds from appearing or practicing before the Agency on this matter but has declined to do so. On the other hand, the Agency also had the opportunity to give its informed consent to the representation of the Project Sponsor by Norfolk Beier and waive the conflict as contemplated by Rule 1.11(a)(2), but it has not done that either. I do not find that this constitutes a "waiver [of the conflict] by the APA through its failure to object" as pressed in the Opposition, but one could infer that the Agency does not feel that the conflict requires disqualification (*see* Norfolk Aff. ¶¶ 10-11).

A final factor to be considered in weighing the motion to disqualify is a party's right to the counsel of its choice, and the potential prejudice to a party from the disruption caused by the removal of its counsel (*see Dev. Don't Destroy Brooklyn v. Empire State Dev. Corp.*, 31 A.D.3d 144, 153 [2006] ["the appearance of impropriety must be balanced against a party's right to the counsel of its choice as well as the possibility that the motion for disqualification may be motivated purely by tactical considerations"]; *see also Calamar Enters., Inc. v. Blue Forest Land Grp., LLC*, 222 F. Supp. 3d 257, 263 [W.D.N.Y. 2016] ["[a] party moving for disqualification carries a heavy burden and must satisfy a high standard of proof. Indeed, a court faced with a disqualification motion must recognize that disqualification has an immediate adverse effect on the client by separating him from counsel of his choice, and that disqualification motions are often interposed for tactical reasons" (*internal quotations and citations omitted*)]; *Aerojet Props., Inc. v. State*, 138 A.D.2d 39, 42 [1988] [affirming a denial of a motion for disqualification, finding that "[m]oreover, to disqualify [the law firm] after extensive involvement in this lawsuit for more than four years would prove patently unfair to both the law firm and its client"]). This factor weighs against disqualifying Norfolk Beier, as the firm has represented the Project Sponsor in the Project Application process and continuing into the proceeding beginning January 2022 and requiring the Project Sponsor to obtain new counsel after so much time and on the eve

of the public hearing commencement would be a substantial burden (*see* Norfolk Aff. ¶ 21).

One of the comments to Rule 1.11 explains that:

> This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the 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. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. A former government lawyer is therefore disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent to entering public service. The limitation on disqualification in paragraphs (a)(2) and (d) to matters involving a specific party or specific parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

(N.Y. Rules of Pro. Conduct, Rule 1.11 cmt. 4).

In considering the balancing of interests here, the factors weighing in favor of granting Adirondack Council's motion to disqualify Norfolk Beier from representing the Project Sponsor in this matter include the nature, duration, and severity of the conflict of interest established by the motion, the conflict's potential for harm to both the interests of the Adirondack Council and the integrity of the hearing, and the avoidance of the appearance of impropriety moving forward.

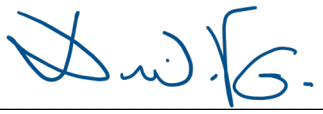
The factors weighing against granting Adirondack Council's motion to disqualify Norfolk Beier from representing the Project Sponsor in this matter include the Adirondack Council's apparent lack of standing to seek disqualification for an alleged conflict of interest when it is not a current or prior client, the APA's lack of action to protect its own interest in removing the conflict of interest with its former employee, the screening activity—although imperfect—undertaken by Attorney Reynolds and Norfolk Beier to mitigate the risk of harm caused by the conflict, the fact that the term of the conflict has ended with the departure of Attorney Reynolds from the Norfolk Beier firm, and the potential prejudice to the Project Sponsor that would occur if the Project Sponsor was required to obtain new counsel after so much time has elapsed and on

the eve of the commencement of the public hearing.

Balancing these factors, I find that it would be improper to disqualify Norfolk Beier from representing the Project Sponsor at this time on the merits, especially considering the burden disqualifying Norfolk Beier would impose on the Project Sponsor. Additionally, I find that Adirondack Council lacks standing to challenge Norfolk Beier's representation of the Project Sponsor in this matter.

IV. Ruling

For the reasons discussed above, Adirondack Council's motion to disqualify Norfolk Beier is DENIED.



David N. Greenwood
APA Hearing Officer

Dated: February 20, 2026
Albany, New York

To: Attached Service List
Appendix: Ruling on Motion to Disqualify Record

APPENDIX

APA Project No. 2021-0276 Public Hearing
Ruling on Motion to Disqualify

1. Adirondack Council, Inc. Notice of Motion dated January 20, 2026.

2. Affirmation of Paul Van Cott dated January 20, 2026.
   Exhibit A: Letter from Paul Van Cott to Matthew D. Norfolk dated January 2, 2026.
   Exhibit B: LAKE PLACID [no author] *Norfolk Beier announces new senior counsel*, Adirondack Daily Enterprise, undated.
   Exhibit C: Memorandum from Sarah Reynolds, Associate Counsel to APA Regulatory Programs Committee, dated May 8, 2024.
   Exhibit D: Letter from Matthew D. Norfolk, Esq. to John Burth, Dan Wilt, David Plante and Christopher E. Cooper dated February 29, 2024 with enclosure "Appeal of Fifth Notice of Incomplete Application".
   Exhibit E: Adirondack Park Agency Draft May Meeting Minutes dated May 16,2024.
   Exhibit F: Reply Memorandum in Support of Project Sponsor's Appeal fo Fifth Notice of Incomplete Application dated May 15, 2024.
   Exhibit G: Fifth Notice of Incomplete Permit Application APA Project No. 2021-0276 with responses from applicant dated June 9, 2025, and attachment: Sound Study Unconventional Concepts, Inc. dated November 2024.
   Exhibit H: Email from Matthew D. Norfolk to Paul Van Cott dated January 2, 2026.

3. Attorney Affirmation of Matthew D. Norfolk, Esq. in Opposition to Motion to Disqualify dated February 3, 2026.

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APA 2021-0276 Public Hearing
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