

Fifth Circuit Court of Appeal State of Louisiana

No. 26-K-110

STATE OF LOUISIANA

versus

DARIUS EMILIEN

IN RE DARIUS EMILIEN
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
ELLEN SHIRER KOVACH, DIVISION "K", No. 25-4467

TRUE COPY

August 25, 2026

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Stephen J. Windhorst



LINDA TRAN
DEPUTY CLERK

WRIT DENIED

Relator, Darius Emilien, has filed the instant writ application seeking review of the February 26, 2026 ruling of the 24th Judicial District Court granting the Motion to Disqualify Attorney, filed by the State of Louisiana. For the reasons stated below, the writ is denied.

FACTS AND PROCEDURAL HISTORY

Relator was charged by Bill of Information filed on November 21, 2025, with one count of domestic abuse battery by strangulation of Brittany Jackson, in violation of La. R.S. 14:35.31 (Count 1) and with domestic abuse battery of Brittany Jackson, third offense, in violation of La. R.S. 14:35.3(E) (Count 2). Relator retained counsel, Bruce Netterville, to represent him in conjunction with these charges. Relator's writ application states that Mr. Netterville enrolled as his counsel on November 7, 2025.

On February 3, 2026, the State filed a Motion to Disqualify Mr. Netterville from representing Relator in this matter (the “Motion”).¹ The Motion alleged that Mr. Netterville should be disqualified due to his representation of Relator and the alleged victim, Ms. Jackson. The State asserted that Mr. Netterville formerly represented the alleged victim, Ms. Jackson, in conjunction with a rule to revoke probation in 24th Judicial District Court Docket No. 23-3692 and currently represents her in a separate criminal proceeding, bearing 24th Judicial District Court Docket No. 25-1716, in which she is charged with cruelty to juveniles, false imprisonment, and simple battery. The State claimed that Mr. Netterville’s former and current representation of Ms. Jackson created an actual conflict of interest pursuant to Louisiana Rules of Professional Conduct, Rules 1.7 (conflict of interest: current clients)² and 1.9 (duties to former clients).³

¹ A prosecutor’s duty to disclose potential conflicts of interest to the trial court was recognized in *Wheat v. United States*, 486 U.S. 153, 108 S.Ct. 1692, 140 L.Ed.2d 140. In *State v. Whitlock*, 50,757 (La. App. 2 Cir. 9/28/16), 207 So.3d 538, 546-47, writ not considered, 16-1954 (La. 9/15/17), 225 So.3d 476, the Court observed that:

A prosecutor, whose role is sometimes described as ‘quasi-judicial,’ must seek to ensure the fairness and reliability of both the criminal justice process and the outcomes of that process. . . This includes a duty to disclose potential conflicts of interest to the trial judge. (Citations omitted).

² Rule 1.7 states:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

³ Rule 1.9 states, in pertinent part:

Attached to the State’s Motion were: Exhibit 1: Mr. Netterville’s Motion to Enroll as Counsel of Record for Relator in this case, filed on November 7, 2025; Exhibit 2: Mr. Netterville’s Motion to Enroll as Counsel of Record for Ms. Jackson, in Docket No. 23-3692, filed on April 21, 2025; *in globo* Exhibit 3: Motion for a Preliminary Hearing filed on April 22, 2025, by Mr. Netterville as the attorney for Ms. Jackson in Docket No. 25-1716, Motion, Affidavit and Order to Waive Defendant’s Presence at Arraignment, filed on May 9, 2025, by Mr. Netterville as the attorney for Ms. Jackson, and Motion for Bond Reduction filed on April 22, 2025, by Mr. Netterville as the attorney for Ms. Jackson. No written opposition to the State’s Motion was attached to Relator’s writ application.

In his writ application, Relator admits that, at the time Mr. Netterville enrolled as his counsel, he already represented, and continues to represent the alleged victim, Ms. Jackson, in two criminal matters, Nos. 23-3692 and 25-1716. Relator also admitted that the State intends to call Ms. Jackson as a witness against him at trial. Relator represents, however, that Mr. Netterville obtained and filed into the record of the proceeding, conflict waivers from each of Relator and Ms. Jackson (collectively, the “Waivers”), waiving any conflict of interest and agreeing to be represented by Mr. Netterville. Attached to Relator’s writ application is Evidence Receipt No. 94498, entered by Kelley E. Landry, Deputy Clerk for the 24th Judicial District Court, indicating that on March 3, 2026, D-1 Waiver of Multiple Representation (Darrius Emilien) (1 PG) and D-2 Waiver of Multiple Representation (Brittany Jackson) (1 PG) were received and filed into the record of Case 2025-4467 “K.”

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

The hearing on the State's Motion was conducted on February 26, 2026.

Ms. Jackson was the only witness who testified at the hearing. The hearing did not begin with a presentation by the State, although the State filed the Motion and therefore bore the burden of proving a disqualifying conflict of interest. Instead, Mr. Netterville took the lead and called Ms. Jackson to the stand. Ms. Jackson testified on direct examination as follows:

Q. Ms. Jackson, I'm Bruce Netterville. And do I represent – do you know that I represent Mr. Emilien?

A. Yes.

Q. And did you allow me to represent you in some other cases?

A. Yes.

Q. Do they have anything to do with this case?

A. No.

Q. Let me show you what's been previously marked as Defense Exhibit 2. Will you look at this form? Do you know what that form is?

A. Yes.

Q. What is it?

A. For you to represent me.

Q. Okay. And does the form say that you're going to allow me to represent you?

A. Yes.

Q. And does it say that, at any time, you can say, No, I don't want you to be my lawyer? Is that correct?

A. Mm-hum. Yes, sir.

Q. Did you sign of your own free will?

A. Yes.

The State's cross-examination of Ms. Jackson was equally brief. Ms. Jackson testified on cross-examination as follows:

Q. [By Assistant District Attorney Erich Cathay]: Ms. Jackson, your attorney turned over to me, a couple of weeks ago, an affidavit where it was purported that you signed – which we won't authenticate it – but you signed this stating that what you told the police was not true. He provided that document to me. If he were to put you on the stand and ask you if what you told the police was not true and your answer is yes, you understand that you are admitting to having committed a felony that could be punishable by time in prison?

Mr. Netterville: I'm objecting to this. You're just going in threatening the witness –

The Court: Overruled. That's not threatening the witness.

Mr. Cathay: I don't believe that she may understand the nature of this waiver.

Q. If Mr. Netterville asked you if you were being truthful about what you said to the police and your answer is no, that he would have asked you to admit to committing a felony? Were you aware of that when you signed this waiver?

A. Yes.

Q. And knowing that, it's still your desire to have Mr. Netterville represent you and, also, represent Mr. Emilien?

A. Yes.

Ms. Jackson's signed waiver was not introduced into evidence by Relator's counsel. Relator did not testify, therefore he was not questioned about his waiver; nor was any waiver signed by Relator introduced into evidence at the hearing. Beyond the quoted testimony, Relator introduced no other evidence. The State likewise introduced no evidence beyond its cross-examination of Ms. Jackson. While the State attached documents to its motion to disqualify, it failed to introduce those documents during the hearing. Nor did the trial court question Relator to ascertain whether he knowingly waived his right to conflict-free counsel.

In announcing its ruling, the trial court observed that Ms. Jackson's demeanor "[did not] give [the court] a comfort level that her waiver [was] knowing and voluntary." The court observed that Ms. Jackson appeared to the court to be "very uncomfortable and reluctant." The court found "a clear conflict" to be present, granted the State's Motion, and disqualified Mr. Netterville from representing Relator in this case. Relator objected to the ruling and stated his intent to take a writ.

Mr. Netterville requested clarification from the trial court as to whether the disqualification applied only to Relator's case or additionally to Ms. Jackson's cases. In response, the trial court stated: "Currently, you're representing both. So

in this – yeah, I’m going to disqualify you here because I think there’s a clear conflict.” Mr. Netterville protested that Ms. Jackson’s cases were not before the court and the assistant district attorney remarked that there was no conflict in the other cases. The trial court agreed that Ms. Jackson’s cases were not before the court and that the ruling applied only to Relator’s case. The trial court further stated that it believed that disqualification in Relator’s case was warranted under Rule 1.7 because the dual representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

The minute entry of the hearing lists Ms. Jackson’s waiver and Relator’s waiver as defense exhibits; however, as stated above, the transcript demonstrates that neither of the Waivers was formally introduced or admitted into evidence at the hearing. Relator apparently attempted to cure his failure to introduce the Waivers into evidence at the hearing by filing them into the record of the proceeding on March 3, 2026, some five days *after* the hearing.

Mr. Netterville filed a written notice of intent to take a writ on the same day as the hearing. On March 7, 2026, a motion to set return date was filed on behalf of Relator and a return date was set for March 27, 2026. This application timely followed. The State has not filed an opposition to the application.

DISCUSSION

In this application, Relator asserts that the trial court erred in disqualifying his defense counsel on the ground that “counsel’s representation of both the criminal defendant and the alleged victim in a separate matter created a conflict of interest even though both individuals knowingly and voluntarily executed waivers consenting to the attorney’s multiple representation.” At the outset, we observe that we are unable to determine whether Relator knowingly and intelligently waived his right to conflict-free counsel because there is no evidence in the record

of *any* waiver by Relator. Exhibits and attachments not properly and officially offered, introduced, and admitted into evidence cannot be considered, even if physically filed into the record. *Kelley v. Progressive Ins. Co.*, 25-414 (La. App. 5 Cir. 3/12/26), 433 So.3d 1045, 1048; *Denoux v. Vessel Mgmt., Servs., Inc.*, 07-2143 (La. 5/21/08), 983 So.2d 84, 88; *Successions of Cotaya*, 24-39 (La. App. 5 Cir. 12/5/24), 409 So.3d 866, 871.

Ms. Jackson's waiver was also not introduced into evidence at the hearing and cannot be considered. In Ms. Jackson's case, she purported to waive her right to conflict-free counsel at the hearing but her "waiver" was not accepted by the trial court. Although, like the trial court, we are concerned with possibility that Ms. Jackson's Fifth Amendment right against self-incrimination could be implicated by her testimony in this case, *her* Sixth Amendment right to effective counsel is not before us here. It is only the *defendant's* Sixth Amendment right to effective counsel that is at issue. *State v. Reeves*, 04-631 (La. App. 3 Cir. 11/10/04), 890 So.2d 590, 597. Even though trial court's decision to disqualify Relator's counsel was based on whether *Ms. Jackson*, the victim/witness, had knowingly and intelligently waived *her* right to conflict-free counsel, the conflict was not hers to waive; only Relator may waive the conflict. *Id.* He did not do so.

Further, even if a waiver by Relator had been introduced at the hearing and found to be knowing and intelligent, that does not necessarily mean that Relator's counsel should not have been disqualified. An actual conflict of interest is present in this case under Rule 1.7(a)(1) because the effective representation of one client (Relator), is directly adverse to another client (Ms. Jackson, the victim/witness).⁴ Obviously, Ms. Jackson, as the alleged victim, will be called as a witness against

⁴ "In determining whether a conflict exists, courts often look to the Louisiana Rules of Professional Conduct. The Ethical rules that regulate attorneys' law practices have the force and effect of substantive law." *State v. Johnson*, 54,028 (La. App. 2 Cir. 9/22/21), 328 So.3d 524, *reh'g denied* (11/10/21), *writ denied*, 21-1850 (La. 2/22/22), 333 So.3d 441, *citing Walker v. State, Dep't of Transp. & Dev.*, 01-2078 (La. 5/14/02), 817 So.2d 57.

Relator at trial and Relator's counsel, Mr. Netterville, will have to cross-examine her. No one at the hearing disputed the assertion by the Assistant District Attorney that Mr. Netterville had presented the State with an affidavit purportedly signed by Ms. Jackson, who is also Mr. Netterville's client, in which she apparently attests that she made false allegations to police about the incident leading to Relator's charges in this case. Mr. Netterville is placed in the untenable position of either vigorously cross-examining one client and subjecting her to potential criminal charges, or not effectively representing his other client, Relator. For the reasons stated below, this conflict is not waivable.

“[A] trial court ruling on potential conflicts when raised pretrial is entitled to broad discretion, regardless of whether the court permits or refuses enrollment of potentially conflicted counsel after a valid waiver. *State v. Cisco*, 01-2732 (La. 12/3/03), 861 So.2d 119, 133, *citing Wheat, supra*, 486 U.S. at 164. Relator contends that *Cisco* is controlling in this matter, as did the State in its Motion.

In *Cisco*, Evelyn M. Oubre, was appointed to represent the criminal defendant, Mr. Cisco. Ms. Oubre also represented Deputy Lucky DeLouche, the State's primary witness against the defendant, and his wife, in unrelated family law matters. Ms. Oubre informed the court in the criminal matter that she had explained the dual representation to Mr. Cisco in a letter informing him that she did not believe that she had a conflict because of her representation of Deputy DeLouche but left it up to Mr. Cisco to determine whether he believed that there was a conflict and whether he wanted her to continue to represent him. Upon questioning by the court, Mr. Cisco indicated that he understood the letter and agreed to waive any potential conflict. The court voiced concerns relative to a potential conflict because counsel would be required to cross-examine Deputy DeLouche at trial but did not disqualify Ms. Oubre from representing Mr. Cisco. 861 So.2d at 120-21, 126.

The case came before a different judge for arraignment. The new judge indicated that, based on the prior inquiry, she did not believe there was a conflict with Ms. Oubre's representation of Mr. Cisco and Deputy DeLouche, but indicated that she would conduct a hearing to determine the defendant's understanding of any potential conflicts arising out of the attorney's dual representation. No such hearing was ever conducted. *Id.* at 127.

As the matter progressed, Ms. Oubre informed the court that Mr. Cisco had made written allegations of collusion between her and Deputy DeLouche. When questioned by the court regarding these allegations, in the presence of Ms. Oubre and Deputy DeLouche, Mr. Cisco stated that he wanted Ms. Oubre to continue to represent him. He was not asked, however, about his allegations of collusion. *Id.* at 129.

After a trial, Mr. Cisco was convicted of killing three people while in the process of committing an armed robbery and was sentenced to death. On appeal, Mr. Cisco asserted that Ms. Oubre was laboring under a conflict of interest because of the dual representation and, as a result, was ineffective. *Id.*

The Louisiana Supreme Court observed in *Cisco* that "[t]he right of a criminal defendant to the assistance of counsel during the proceedings against him is a cornerstone of our legal system." *Id.*, citing *State v. Franklin*, 400 So.2d 615, 620 (La. 1981); see also Sixth Amendment to the U.S. Constitution; La. Const. of 1974, Art. 1, § 13. "To be more than a hollow right, [Louisiana] law requires that assistance of counsel be effective." *Id.* Additionally, the right of a defendant to counsel of his choice is codified at La. C.Cr.P. art. 515.

In *Wheat*, the Supreme Court found that:

[W]hile the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.

487 U.S. at 159, 108 S.Ct. at 1697. (Citations omitted).

The defendant in *Wheat*, like Relator here, contended that “the provision of waivers by all affected defendants cures any problems created by the multiple representation.” *Id.* at 160, 108 S.Ct. at 1697. The Supreme Court disagreed, stating:

[N]o such flat rule can be deduced from the Sixth Amendment presumption in favor of counsel of choice. Federal courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them. . . . Not only the interest of a criminal defendant but the institutional interest in the rendition of just verdicts in criminal cases may be jeopardized by unregulated multiple representation.

Id., 108 S.Ct. at 1697-98. *See also, Whitlock*, 207 So.3d at 546 (“The question of disqualification of counsel therefore implicates not only Sixth Amendment rights of the accused, but also the interests of the courts in preserving the integrity of the process and the government’s interest in ensuring a just verdict and a fair trial.” (citations omitted).)

In *Cisco*, the Court observed that, as a general rule, “Louisiana courts have held that an attorney laboring under an actual conflict of interest cannot render effective legal assistance to the defendant she is representing.” 861 So.2d at 129. An actual conflict exists where “a defense attorney owes duties to a party whose interests are adverse to those of the defendant.” 861 So.2d at 130, *citing State v. Kahey*, 436 So.2d 475, 485 (La. 1983), *citing Zuck v. Alabama*, 588 F.2d 436 (5th Cir. 1979), *cert denied*, 444 U.S. 833, 100 S.Ct. 63, 62 L.Ed.2d 41 (1979). “The interest of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to the other client.” *Id.* Such is unquestionably the case here.

Louisiana courts have consistently held that an actual conflict exists where an attorney is required to cross-examine a witness who is testifying against the

defendant and who was or is a client of the attorney. *Id.*, citing *State v. Tart*, 94-25 (La. 2/9/96), 672 So.2d 116, 125. See also *State v. Carmouche*, 508 So.2d 792, 804; *Franklin*, 400 So.2d at 620; *State v. Olivieri*, 10-1064 (La. App. 5 Cir. 9/13/11), 74 So.3d 1191, 1194, writ denied, 11-2227 (2/17/12), 82 So.3d 283; *Whitlock*, 207 So.3d at 545. The *Cisco* court instructed that:

In a pretrial context, regardless of how the conflict of interest issue arises, the trial court has two options to avoid a conflict of interest: appoint separate counsel or take adequate steps to ascertain whether the risk of a conflict of interest is too remote to warrant separate counsel.

Id. at 130, citing *Tart*, 672 So.2d at 125 (relying on *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978); *State v. Edwards*, 430 So.2d 60, 62 (La. 1983); *State v. Marshall*, 414 So.2d 684, 687-88 (La. 1982).

Multiple representation is not per se impermissible and does not violate the Sixth Amendment or La. Const. Article 1, Section 13 unless it gives rise to a conflict of interest. *Franklin*, 400 So.2d at 620; *Cuyler v. Sullivan*, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980); *Holloway*, *supra*. If an actual conflict exists, there is no need for a defendant to prove that he was also prejudiced thereby. *Cisco*, 861 So.2d at 130.⁵ “An attorney laboring under an actual conflict of interest cannot render effective legal assistance to the defendant whom he is representing.” *State v. Reeves*, 06-2419 (La. 5/5/09), 11 So.3d 1031, 1081, cert. denied, 558 U.S. 1031, 130 S.Ct. 637, 175 L.Ed.2d 490 (2009).

An actual conflict of interest was found to exist in *Cisco*. The Court found that Mr. Cisco’s waiver of the conflict was not knowing and voluntary. As a result, his conviction and sentence were reversed.

⁵ If an objection to the conflict is lodged only after the trial, the defendant must show that he was actually prejudiced thereby. *Tart*, 672 So.2d at 125 (relying on *Cuyler*, *supra*).

Here, as correctly found by the trial court, an actual conflict of interest under Rule 1.7(a) is presented by the fact that Relator’s counsel will be required to cross-examine his client, the primary witness against the defendant, whom he also represents. Once informed that an actual conflict of interest exists, “the judge must take the proper steps to assure that the defendant’s Sixth Amendment right to effective assistance of counsel is not violated.” *Id.* at 132, *citing Carmouche*, 508 So.2d at 804. Those steps require that:

[T]he judge, while being mindful of the restrictions inherent in the attorney/client privilege, should first require the attorney to disclose the basis of the conflict. Then, if the judge determines that the conflict is not too remote, he should explain the conflict to the defendant . . . and inform the defendant of his right to representation that is free of conflict. Thereafter, if the defendant chooses to proceed with conflicted counsel, a statement should be prepared in narrative form, which indicates that the defendant is fully aware of his right [to conflict free counsel] but has chosen to make a knowing and intelligent waiver thereof.

Id. at 132. (Internal citations and quotation marks omitted; citations omitted).

Here, the conflict is not remote. An actual conflict is presented. If this case goes to trial, the State will have to call Ms. Jackson as a witness in order to establish the essential elements of the charged crimes.

Before a defendant may make a knowing and intelligent waiver of his right to conflict free representation, he must be told (1) that a conflict exists; (2) the consequences to his defense from continuing with conflict-laden counsel; and (3) that he has a right to obtain other counsel. *Id.* at 133 (Citations omitted).

However, the *Cisco* court observed, that “the right to waive certain conflicts is not unfettered.” *Id.* (Footnote omitted). A trial court may disqualify an attorney or decline the proffer of a waiver of potential conflicts where the conflict may result in inadequate representation or jeopardize the institutional interest in the rendition of a just verdict. *Id.* at 132-33. Additionally, Rule 1.7(B)(3) prohibits a waiver under the circumstances presented.

As stated above, the transcript of the February 26, 2026 hearing demonstrates that the trial court failed to conduct a hearing consistent with the Louisiana Supreme Court's mandate in *Cisco*. Nevertheless, upon finding an actual conflict, in violation of Rule 1.7, the trial court disqualified Mr. Netterville from representing Relator. This result is correct. Under Rule 1.7(b)(3), the conflict is not waivable. Accordingly, we find no abuse of discretion by the trial court and Relator's writ is denied.

Gretna, Louisiana, this 25th day of August, 2026.

FHW
JGG
SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **08/25/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink, reading "Curtis B. Pursell", is written over a horizontal line.

CURTIS B. PURSELL
CLERK OF COURT

26-K-110

E-NOTIFIED

24th Judicial District Court (Clerk)	
Honorable Ellen Shirer Kovach (DISTRICT JUDGE)	
Thomas J. Butler (Respondent)	A. Bruce Netterville (Relator)
	Honorable Paul D. Connick, Jr. (Respondent)

MAILED