

SUPREME COURT OF NORTH DAKOTA

Weigel v. Albertson

2026 ND 4 · No. No. 20250342 · Decided January 15, 2026

SUMMARY

The North Dakota Supreme Court dismissed an appeal from an order disqualifying the plaintiff’s attorney because the order was not immediately appealable. The court exercised supervisory jurisdiction, upheld the disqualification, and denied the petition for a supervisory writ, concluding that the attorney represented both Alan Weigel and Veritas Crane LLC and therefore faced a concurrent-conflict violation under North Dakota Rule of Professional Conduct 1.7(a).

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jerod E. Tufte, Justice; Lisa Fair McEvers, Chief Justice; Daniel J. Crothers, Justice; Jon J. Jensen, Justice; Douglas A. Bahr, Justice
JURISDICTION	Supreme Court of North Dakota
DECIDED	January 15, 2026
DOCKET	No. 20250342
DISPOSITION	other
PROCEDURAL POSTURE	Weigel appealed from an order disqualifying his attorney and alternatively petitioned for a supervisory writ directing the district court to vacate the order. The Supreme Court dismissed the appeal as involving a nonappealable interlocutory order, exercised supervisory jurisdiction to review the disqualification order, and denied the petition for a supervisory writ.
STANDARD OF REVIEW	Orders on motions to disqualify counsel are reviewed for abuse of discretion. Underlying factual findings are reviewed under the clearly erroneous standard.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Alan Weigel, Veritas Crane LLC v. Jason Albertson

TOPICS

appellate jurisdiction

writ of certiorari

appellate procedure

limited liability companies

commercial litigation

PRACTICE AREAS

appellate procedure

civil procedure

legal ethics

limited liability companies

commercial litigation

QUESTIONS PRESENTED

1. Whether an order granting a motion to disqualify an attorney in a civil case is immediately appealable under N.D.C.C. § 28-27-02(3).
2. Whether an order granting attorney disqualification is immediately appealable under the collateral order doctrine.
3. Whether the Supreme Court should exercise supervisory jurisdiction to review the disqualification order.
4. Whether the district court abused its discretion by disqualifying Fremstad based on his concurrent representation of Weigel and Veritas.
5. Whether the district court's conclusion that representation of a shareholder bringing derivative claims necessarily establishes an attorney-client relationship with the company was legal error, and whether that error was harmless.

HOLDINGS

1. An order disqualifying an attorney is not a form of injunctive relief and is not immediately appealable under N.D.C.C. § 28-27-02(3).
2. An order granting disqualification of an attorney in a civil case is not immediately appealable under the collateral order doctrine.
3. The Supreme Court may exercise supervisory jurisdiction to review an attorney-disqualification order when an appeal from final judgment would not provide an adequate alternative remedy.
4. A district court's decision on a motion to disqualify counsel is reviewed for abuse of discretion, while its factual findings are reviewed under the clearly erroneous standard.
5. A district court does not abuse its discretion in finding an attorney-client relationship with a company when objective manifestations, including legal advice to the company's officers or employees and representation in company matters, establish that the attorney represented the company.
6. When an attorney represents both a company and a shareholder who is adverse to the company in derivative claims, N.D.R. Prof. Conduct 1.7(a) prohibits the concurrent representation and supports disqualification.
7. A lawyer's representation of a shareholder bringing derivative claims does not, by itself, establish an attorney-client relationship with the company; additional evidence of actual representation is required.

KEY QUOTATIONS

“We hold that, like an order denying disqualification in a civil case, an order granting disqualification of an attorney in a civil case is also not immediately appealable under the collateral order doctrine.” (¶ 10)

“This Court has discretionary authority to issue supervisory writs exercising superintending control over inferior courts to rectify errors and prevent injustice when no adequate alternative remedy exists.” (¶ 12)

“A finding that a lawyer in fact represented a company must be supported by more than the lawyer’s representation of a shareholder bringing a derivative claim on behalf of the company.” (¶ 19)

“We dismiss Weigel’s appeal because this Court lacks jurisdiction to consider it. After reviewing the district court’s order under our supervisory authority, we hold that the court did not abuse its discretion in disqualifying Fremstad. Therefore, we deny the petition for a supervisory writ.” (¶ 21)

FACTUAL BACKGROUND

Veritas Crane LLC was formed by Albertson in 2018, and Weigel joined the business in 2019; each claimed to own at least 50 percent of the company. After their relationship deteriorated, Albertson sought to restrict access to Veritas's bank accounts and Weigel restricted Albertson's access to company facilities. Weigel then filed an action asserting direct claims and derivative claims on behalf of Veritas, with attorney Joel Fremstad signing as counsel for the plaintiffs. Fremstad also advised Weigel in his capacity as a Veritas officer and directed company employees to contact him regarding business operations.

PROCEDURAL HISTORY

Weigel and Veritas Crane LLC sued Albertson, asserting direct and derivative claims arising from a business dispute. Albertson moved to disqualify Weigel's attorney, Joel Fremstad, and the district court granted the motion after finding that Fremstad represented both Weigel and Veritas. The Supreme Court dismissed the appeal but reviewed the order under its supervisory jurisdiction and upheld the disqualification.

DISPOSITION

other

CASES CITED

- Allen v. White Drug of Minot, Inc., 346 N.W.2d 279 (N.D. 1984)
- Young v. White, 267 N.W.2d 799 (N.D. 1978)
- Sheets v. Letnes, Marshall & Fiedler, Ltd., 311 N.W.2d 175 (N.D. 1981)
- Almon v. Am. Carloading Corp., 380 Ill. 524, 44 N.E.2d 592 (1942)
- Heringer v. Haskell, 536 N.W.2d 362 (N.D. 1995)
- Thompson v. Goetz, 455 N.W.2d 580 (N.D. 1990)
- Olson v. District Court, 271 N.W.2d 574 (N.D. 1978)
- Gonzalez ex rel. Colonial Bank v. Chillura, 892 So. 2d 1075 (Fla. Dist. Ct. App. 2004)
- Roe v. Rothe-Seeger, 2000 ND 63, 608 N.W.2d 289
- Martinson v. Martinson, 2010 ND 110, 783 N.W.2d 633

- Cavare, Inc. v. Kjelgren, 2021 ND 236, 968 N.W.2d 141
- Kunz v. Slappy, 2021 ND 186, 965 N.W.2d 808
- In re Disciplinary Action Against Ward, 2016 ND 115, 881 N.W.2d 226
- Cain v. Merchants Nat'l Bank & Tr. Co. of Fargo, 66 N.D. 746, 268 N.W. 719 (1936)
- Nodak Mut. Ins. Co. v. Ward Cnty. Farm Bureau, 2004 ND 60, 676 N.W.2d 752
- In re Disciplinary Action Against Bullis, 2006 ND 228, 723 N.W.2d 667
- Edison v. Edison, 2024 ND 196, 13 N.W.3d 110
- Shen v. Miller, 150 Cal. Rptr. 3d 783 (2012)
- Simms v. Rayes, 316 P.3d 1235 (Ariz. Ct. App. 2014)

OPINION

TUFTE, JEROD E., J.

IN THE SUPREME COURT STATE OF NORTH DAKOTA 2026 ND 4 Alan Weigel, Plaintiff and Appellant and Veritas Crane LLC, Plaintiff v. Jason Albertson, Defendant and Appellee No. 20250342 Appeal from the District Court of Cass County, East Central Judicial District, the Honorable Steven E. McCullough, Judge. PETITION FOR SUPERVISORY WRIT DENIED AND APPEAL DISMISSED.

Opinion of the Court by Tufte, Justice. Joel M. Fremstad, Fargo, North Dakota, for plaintiff and appellant. Samuel J. Logterman (argued), Aaron A. Dean (on brief), and Jeffrey A. Wieland (appeared), Minneapolis, Minnesota, for defendant and appellee. Weigel v. Albertson No. 20250342 Tufte, Justice. [¶1] Alan Weigel appeals from the district court order disqualifying his attorney, Joel Fremstad.

In the alternative, he petitions for a supervisory writ directing vacation of the order. Although this order is not appealable, we exercise our supervisory jurisdiction to review it. We deny the petition for a supervisory writ. I [¶2] The district court disqualified Fremstad from representing Weigel in an action involving a business dispute with Jason Albertson over Veritas Crane, LLC, a North Dakota limited liability company that provides crane and hoist inspection, training, and related services.

Albertson formed Veritas in 2018 and brought Weigel into the business in 2019. Each claims to own at least 50% of Veritas. [¶3] Initially, the two had a good business relationship and spoke daily. Eventually, problems arose between them.

In April 2025, Albertson requested that Alerus Bank lock Weigel and others out of Veritas's bank accounts, alleging fraudulent activity. Alerus placed an "administrative hold" on the accounts, requiring either joint written direction from both authorized signers (Weigel and Albertson) or a court order to release the hold. Albertson refused to authorize release of the hold.

Weigel, in turn, restricted Albertson's access to Veritas's facilities. [¶4] On May 20, 2025, Weigel filed a complaint naming himself and Veritas Crane LLC as plaintiffs. The complaint, summons, and related documents were served on Albertson on May 26, 2025.

The complaint asserted both derivative claims on behalf of Veritas and direct claims by Weigel individually against Albertson. Attorney Joel Fremstad signed the complaint as "Attorney for Plaintiffs." In his amended answer, Albertson asserted both derivative counterclaims on behalf of Veritas and direct counterclaims against Weigel. 1 [¶5] Albertson moved to disqualify Fremstad from representing Weigel or Veritas.

The district court granted the motion. The court reasoned that because Albertson was bringing claims on Veritas's behalf, disqualification was necessary if Fremstad had a lawyer-client relationship with both Weigel and Veritas—in that case, Fremstad would be representing adverse clients in a single action in violation of N.D.R. Prof. Conduct 1.7(a). [¶6] The district court found that Fremstad had a lawyer-client relationship with both Weigel and Veritas.

It based this finding on the following evidence. First, Veritas and Weigel are co-plaintiffs in the amended complaint, and Fremstad signed the pleadings for both. Second, Fremstad stated in a declaration that he "represented the plaintiffs," including Veritas.

Third, Fremstad engaged with Albertson and his counsel to request cooperation in restoring full banking access with Alerus. Finally, in a June 23, 2025 email to Veritas employees after Weigel restricted Albertson's access to Veritas's facilities, Weigel identified himself as "CEO" and "member manager" of Veritas and stated he had acted "per my attorney's recommendation" to "maintain the integrity of the business" by locking Albertson out, and he directed employees to contact "the attorney, Joel Fremstad" regarding access issues.

The court held that these objective manifestations established that Fremstad represented Veritas and disqualified him under Rule 1.7(a) because of his concurrent representation of Weigel. II [¶7] We dismiss Weigel's appeal from the order disqualifying Fremstad because such orders are not immediately appealable. Weigel argues the order is appealable under N.D.C.C. § 28-27-02(3) or the collateral order doctrine. [¶8] "The right of appeal in this State is purely statutory." *Allen v. White Drug of Minot, Inc.*, 346 N.W.2d 279, 280 (N.D.

1984) (citing *Young v. White*, 267 N.W.2d 799, 800 (N.D. 1978)). "Only those judgments and decrees which constitute a final judgment of the rights of the parties to the action and those orders enumerated by statute are appealable." *Id.* (citing *Sheets v. Letnes, Marshall & Fiedler, Ltd.*, 311 N.W.2d 175, 178 (N.D. 1981)). A party may appeal from an order that "grants, refuses, continues, or modifies," or "dissolves an injunction or refuses to modify or dissolve an injunction." N.D.C.C. § 28-27-02(3).

2 [¶9] Weigel argues that an order disqualifying an attorney is essentially an injunction as defined in N.D.C.C. § 32-06-02(1) and is therefore appealable under N.D.C.C. § 28-27-02(3). But we have held that an order disqualifying an attorney is not a form of injunctive relief. *Allen*, 346 N.W.2d at 281 (citing *Almon v. Am. Carloading Corp.*, 380 Ill. 524, 44 N.E.2d 592, 595 (1942)).

Accordingly, we conclude the order is not appealable under N.D.C.C. § 28-27-02(3). [¶10] Weigel also argues that the order is immediately appealable under the collateral order doctrine. Under this doctrine, an order is immediately appealable if it (1) conclusively determines the disputed question, (2) resolves an important issue, (3) is completely separate from the merits of the underlying action, and (4) is effectively unreviewable on appeal from a final judgment.

Allen, 346 N.W.2d at 281. In *Allen*, we concluded an order denying disqualification of counsel was not immediately appealable and “express[ed] no opinion regarding the appealability of an order granting disqualification or denying disqualification in a criminal action.” *Id.* at 282.

We hold that, like an order denying disqualification in a civil case, an order granting disqualification of an attorney in a civil case is also not immediately appealable under the collateral order doctrine. We dismiss Weigel’s appeal. III [¶11] Although the district court’s order is not immediately appealable, an appeal from the judgment would not provide an adequate remedy.

This is an appropriate case to exercise our supervisory jurisdiction to review the disqualification order. [¶12] This Court has discretionary authority to issue supervisory writs exercising superintending control over inferior courts to rectify errors and prevent injustice when no adequate alternative remedy exists. *Heringer v. Haskell*, 536 N.W.2d 362, 364 (N.D.

1995) (citing N.D. Const. art. VI, § 2). This power is discretionary and cannot be invoked as a matter of right. *Id.* [¶13] This is an appropriate case to exercise supervisory jurisdiction because a civil litigant has a protected interest in the counsel of the litigant’s choice. *Thompson v. Goetz*, 455 N.W.2d 580, 587-88 (N.D. 1990). An opposing party may not interfere with that choice for mere strategic or tactical reasons.

Id. Additionally, an appeal from a final judgment is not an adequate alternative remedy for erroneous disqualification given the difficulty of showing prejudice from trying the case without counsel who was erroneously disqualified, as well as the time and expense of retrying a case with reinstated counsel. Compare *Olson v. District Court*, 271 N.W.2d 574, 578 (N.D.

1978) (reasoning that an appeal was an inadequate remedy for an order improperly denying change of venue due to “burden, expense, and delay” of retrial); and *Gonzalez ex rel. Colonial Bank v. Chillura*, 892 So. 2d 1075, 1077 (Fla. Dist. Ct. App. 2004) (holding that an order disqualifying an attorney is “a material injury without remedy on appeal”); with *Roe v. Rothe-Seeger*, 2000 ND 63, ¶ 5, 608 N.W.2d 289 (holding that an increase of time and expense by itself

is not an adequate reason for the Supreme Court to exercise supervisory jurisdiction when an appeal of the final judgment is available). [¶14] A district court's decision on a motion to disqualify counsel is reviewed for abuse of discretion.

Thompson, 455 N.W.2d at 587. "The court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, misinterprets or misapplies the law, or its decision is not the product of a rational mental process leading to a reasoned determination." *Martinson v. Martinson*, 2010 ND 110, ¶ 15, 783 N.W.2d 633.

We review findings of fact under the clearly erroneous standard. *Cavare, Inc. v. Kjelgren*, 2021 ND 236, ¶ 8, 968 N.W.2d 141 (citing N.D.R.Civ.P. 52(a)). "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, we are left with a definite and firm conviction a mistake has been made." *Id.* (citing *Kunz v. Slappy*, 2021 ND 186, ¶ 8, 965 N.W.2d 408). [¶15] The district court found that Fremstad represented Veritas on the basis of outward manifestations that he was practicing law on behalf of the company. "The existence of an attorney-client relationship depends on the circumstances of the case and may be implied from the parties' conduct, but it does not depend on an express contract or the payment of fees." *In re Disciplinary Action Against Ward*, 2016 ND 115, ¶ 12, 881 N.W.2d 226.

Giving legal advice constitutes the practice of law. *Cain v. Merchants Nat'l Bank & Tr. Co. of Fargo*, 66 N.D. 746, 752- 4 54, 268 N.W. 719, 722-23 (1936). The district court found that Fremstad signed several documents as "attorney for the plaintiffs" and that he also gave legal advice to Weigel in his capacity as an officer of Veritas and offered to provide legal advice to other employees regarding the business's operation.

The record supports these findings, and they are not clearly erroneous. [¶16] Fremstad's representation of Veritas creates a conflict with his representation of Weigel. A derivative claim is a claim belonging to a company that a shareholder asserts on the company's behalf—typically against officers, directors, or other insiders alleged to have harmed the company.

Nodak Mut. Ins. Co. v. Ward Cnty. Farm Bureau, 2004 ND 60, ¶ 15, 676 N.W.2d 752; see *Gonzalez*, 892 So. 2d at 1078. Here, Albertson asserts derivative claims on behalf of Veritas against Weigel. If Fremstad represents both Veritas and Weigel, he represents parties on opposite sides of Albertson's derivative claims. Rule 1.7(a) prohibits such concurrent representation of adverse clients: (a) A lawyer shall not represent a client if the lawyer's ability to consider, recommend, or carry out a course of action on behalf of the client will be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests.

N.D.R. Prof. Conduct 1.7 (emphasis added). [¶17] Unlike Rule 1.7(c), Rule 1.7(a) lacks exceptions or safe harbors, such as client consent, that would allow an attorney to represent two

adverse parties. In re Disciplinary Action Against Bullis, 2006 ND 228, ¶ 13, 723 N.W.2d 667 (citing the comments to Rule 1.7). Representing one client would necessarily adversely affect the other client.

Id. In such a situation, the lawyer is prohibited from undertaking or continuing representation of the adverse clients. Id. [¶18] Here, the district court weighed the evidence and found Fremstad represented Veritas, creating adversity between two of his clients—Weigel and Veritas.

On the basis of this finding, the court did not abuse its discretion by ordering Fremstad's disqualification. [¶19] The district court, however, made a legal error in its reasoning, although that error was harmless. A court's error is harmless if it does not affect the outcome of the case or a party's substantial rights. Edison v. Edison, 2024 ND 196, ¶ 27, 13 N.W.3d 110.

The court stated that the derivative nature of the lawsuit reinforced its conclusion that Fremstad represented Veritas—that by signing and prosecuting the derivative claims brought by Weigel on behalf of Veritas, Fremstad necessarily acted as counsel for Veritas.

As Albertson admits and as courts in other jurisdictions have held, this was legal error because a lawyer representing a shareholder bringing a derivative suit does not necessarily have a lawyer-client relationship with the company. E.g., Shen v. Miller, 150 Cal. Rptr. 3d 783, 791 (2012); Gonzalez, 892 So.2d at 1077-79; Simms v. Rayes, 316 P.3d 1235, 1239 (Ariz.

Ct. App. 2014). A finding that a lawyer in fact represented a company must be supported by more than the lawyer's representation of a shareholder bringing a derivative claim on behalf of the company. It follows that if a lawyer has in fact represented a company, that lawyer may not be counsel for a shareholder defending a derivative claim brought on behalf of that company. [¶20] Despite this error in the district court's supportive reasoning, its finding that Fremstad represented Veritas is not clearly erroneous.

The court found that Fremstad represented Veritas because Fremstad advised Weigel in his capacity as CEO and member-manager of Veritas. The email directing Veritas's employees to contact Fremstad with questions regarding the business's operation provides a sufficient factual basis to support finding a lawyer-client relationship with the company.

The erroneous additional rationale was unnecessary to the decision, and any error was harmless. IV [¶21] We dismiss Weigel's appeal because this Court lacks jurisdiction to consider it. After reviewing the district court's order under our supervisory authority, we hold that the court did not abuse its discretion in disqualifying Fremstad.

Therefore, we deny the petition for a supervisory writ. [¶22] Lisa Fair McEvers, C.J. Daniel J. Crothers Jerod E. Tufte Jon J. Jensen Douglas A. Bahr 6

