

In The News

Former Conn's In-House Lawyer Booted From Case 'Substantially Related' to Her Old Job

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Texas Lawyer

Shareholder Michael Harvey was quoted in a recent article in *Texas Lawyer*, which discusses the importance of ethics within the legal field.

Conn's attorney, Michael Harvey of Munsch Hardt Kopf & Harr in Houston, said, "We are pleased that the Court agreed that Ms. Johnson's actions violated the ethical principle of client loyalty and warranted the harsh and rare result of attorney disqualification."

The full article can be viewed below or by [clicking here](#).

Retailer Conn's Appliances Inc. has won a battle to have its former senior legal counsel barred from representing a plaintiff now suing the company on causes of action similar to those that the in-house attorney defended during her time there. Conn's bid to have the lawyer sanctioned for filing the lawsuit failed, however.

Judge Vanessa Gilmore of the U.S. District Court for the Southern District of Texas in Houston found that the Telephone Consumer Protection Act and Texas Debt Collection Act claims that Trista Johnson brought against Conn's in May for a client are "substantially related" to the work she did while serving as Conn's No. 2 in-house lawyer from December 2016 to February 2018.

The judge concluded that relationship precludes Johnson's representation of her client under local, state and national professional conduct rules.

Johnson unsuccessfully argued she did not spend the bulk of her day-to-day work managing TCPA and TCDA claims but leaned heavily on outside counsel and in-house paralegals to manage cases against the Woodlands, Texas-based seller of furniture, mattresses, home appliances and consumer electronics.

She said she attended only three arbitration hearings and one settlement conference and any knowledge of the company's approach to litigating claims under the laws was public information and thus not secret.

Gilmore also rejected Johnson's claim that the matters are not "substantially related" because her client is a new one and factually distinct from cases Johnson handled on behalf of Conn's.

"There is no dispute that Johnson managed TDCA and TCPA claims for [Conn's] and that Johnson's current client has raised TDCA and TCPA claims," the judge wrote. "The claims Johnson managed for [Conn's] involved the same factual allegations about [Conn's] use of an automatic telephone dialing system to repeatedly call consumers without their consent."

She continued: "Anytime a lawyer represents a new client, there are factual differences because the client has a different identity and subjective viewpoint of the facts. The relevant [disciplinary] rules focus not on the identity of the client, but on the similarity between the subject matter of the current and former representations."

Gilmore accepted Conn's argument that Johnson's knowledge of specific facts—related to Conn's use of the automatic telephone dialing system, arbitration strategy for defending TCPA claims, and her organization and participation in a corporate witness training system on Conn's telephony equipment—precluded her representation in the new case. But the judge found that Conn's provided no evidence of bad faith sufficient to warrant sanctions.

"Johnson put forth reasonable and compelling arguments for why she believed she could represent" her new client, Gilmore wrote.

Conn's attorney, Michael Harvey of Munsch Hardt Kopf & Harr in Houston, said, "We are pleased that the Court agreed that Ms. Johnson's actions violated the ethical principle of client loyalty and warranted the harsh and rare result of attorney disqualification."

In an emailed statement reflecting her pleasure with denial of the sanctions motion, Johnson, a consumer protection solo practitioner in Conroe, Texas, said: "While my client and I knew this was a potential outcome, we are still disappointed in the court's decision. I believed I was on solid footing given the applicable rules and case law analyzing other disqualification motions, and that Conn's motion misstated the facts and applicable standards."

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