

2008

Johnson v. Johnson : Addenda

Utah Court of Appeals

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Rosemond G. Blakelock; Attorney for Appellee.

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FILED IN
4th DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

FEB 22 3 05 PM '02

MAJ

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Telephone: (801) 375-7678

IN THE FOURTH DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

125 North 100 West, Provo, Utah 84601

INA MARIE JOHNSON,, *

Petitioner, *

v. *

NELDON PAUL JOHNSON, *

Respondent. *

AFFIDAVIT OF INA JOHNSON

Case No. 004401468

Judge Claudia Laycock

Petitioner states as follows:

1. The parties were married on May 3, 1964 in Arizona and divorced on June 7, 2001, in the Fourth District Court, Provo, Utah.

2. Petitioner and Respondent were majority share holders of IAS (International Automated Systems, Inc.), which is a publically held corporation. Although the shares were held in the name of Neldon Johnson, the Petitioner was always involved in the IAS corporation.

3. Petitioner was named as one of the original incorporators of the IAS corporation. See restated Articles of Incorporation dated July 2, 1987, page 21, as attached.

4. During the marriage of the parties' the Petitioner was an active participant in IAS, and at the time the divorce proceedings commenced the Petitioner was an officer of the corporation.

5. Petitioner was signing checks, as secretary of IAS at the time the divorce proceedings were commenced. See attachment 2, which are copies of checks signed by Ina Johnson.

6. Petitioner met with and discussed all aspects of the corporation with legal counsel for the corporation, David Nelson, prior to the time when the divorce proceedings began.

7. Thomas Seiler has proffered to the court and stated on the record that he was asked to represent the corporation by co-counsel for the corporation, David Nelson.

8. Thomas Seiler appeared as counsel for the IAS corporation prior to the parties' Decree of Divorce being granted. Mr. Seiler made his appearance in the divorce case of Ina and Neldon Johnson, where Neldon and Ina Johnson were litigating their respective interests in the IAS corporation. See attached Motion dated October 11, 2000.

8. Petitioner has had many meetings with Mr. Nelson over the years and when Mr. Nelson requested that Thomas Seiler also represent the IAS corporation, the Petitioner accepted the judgment and advise of Mr. Nelson and accepted the representation of Mr. Seiler as legal counsel for IAS.

9. Petitioner believes that neither Mr. David Nelson, nor Mr. Seiler can personally represent Neldon Johnson, due to a conflict of interest, as both men represented the IAS corporation at a time when Petitioner was an officer, or in the alternative, at a time when the Petitioner had a major interest in the ownership of the corporation.

10. The fact that Thomas Seiler may have entered his appearance for the IAS corporation during the divorce proceedings, does not eliminate the Petitioner's ownership or interest in the corporation and does not eliminate Thomas Seiler's conflict with personal representation of either party at this time.

11. Petitioner objects to the attempt of Thomas Seiler to represent IAS in the divorce proceedings and objects to his current attempt to represent Neldon Johnson personally. Petitioner considers such a representation to be a conflict of interest. The issue before the court (at this time) is the sale (by Neldon Johnson) of IAS corporate stock prior to the date of

the divorce decree. Thomas Seiler was, at that time, and is now, the corporate attorney for IAS. Mr. Seiler represented IAS during the parties marriage and therefore he was an attorney for Ina Johnson's interests, during her marriage to Neldon Johnson, because Ina Johnson's interests was the IAS corporation.

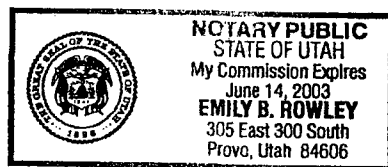
12. At one point the parties' owned over 80% of the stock in IAS and never owned less than a majority of the stock.

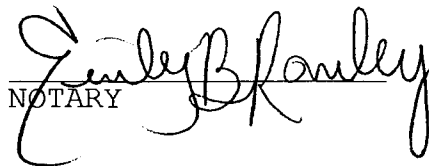
DATED and signed this 22 day of February, 2002.



Ina Johnson

Ina Johnson appeared before me on this 22 day of February, 2002, proved to me her identity and stated that she read and understood the foregoing document and that it was true and accurate to the best of her knowledge.





NOTARY

RECEIVED
1987 JUL -2 PM 3:41
DIVISION OF CORPORATIONS
STATE OF UTAH

RECEIVED BY THE DIVISION OF CORPORATIONS
Commercial Code of the Utah State
Department of Business Regulation
this 2nd day of July A.D. 1987
Corporate Documents Examiner *M.C.*
- paid \$ 35.00

RESTATED

ARTICLES OF INCORPORATION

OF

INTERNATIONAL AUTOMATED SYSTEMS, INCORPORATED

The Board of Directors of International Automated Systems, Incorporated, acting under the provisions of the Utah Business Corporation Act (hereinafter referred to as the "Act") hereby restate and correctly set forth without change the articles of incorporation as previously amended:

ARTICLE I

The name of this corporation is INTERNATIONAL AUTOMATED SYSTEMS, INCORPORATED.

ARTICLE II

The duration of this corporation is to be perpetual.

ARTICLE III

The purposes for which this corporation is organized are as follows:

(a) To engage in any business involving the research, development, design and manufacture of automated systems including checkout systems for grocery and other stores.

(b) To buy, sell, and otherwise deal in notes, stocks, bonds, contracts or other investments, including the right to hold, buy, sell, lease, mortgage or otherwise encumber, sell and dispose of any and all of the real and personal property of the corporation.

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(c) To subscribe or cause to be subscribed for and to purchase or otherwise acquire, hold for investment, sell, assign, transfer, mortgage, pledge, exchange, distribute or otherwise dispose of the whole or any part of the shares of the capital stock, bonds, coupons, mortgages, deeds of trust, debentures, securities, obligations and other evidences of indebtedness of any person, firm or corporation now or hereafter existing, and whether created by or under the laws of the State of Utah or otherwise; and while the owner of any of said shares of capital stock or bonds or other property to exercise all rights, powers and privileges of ownership of every kind and description, including the right to vote thereon, with the power to designate some person for that purpose from time to time to the same extent as natural persons might or could do; and to purchase, hold and fill any of its obligations, including investment trust certificates and make credit advances thereon as may be determined from time to time. None of the above powers by any implication or construction shall be deemed to grant the corporation the power of carrying on the business of banking.

(d) To lend money and negotiate loans and generally to carry on, conduct, promote, operate and undertake any business, transaction or operation commonly carried on, conducted, promoted, operated or undertaken by capitalists, financiers, inventors, entrepreneurs, contractors and builders, insurance brokers and agents, loan brokers and agents, real estate agents, brokers, dealers, subdividers and promoters and security brokers and agents.

(e) To purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares of capital stock; provided, however, that said purchase of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and only with the affirmative vote of the holders of at least two-thirds of all of the shares entitled to vote thereon.

(f) To engage in any lawful act, purpose, or activity for which corporations may be organized under the laws of the State of Utah.

The foregoing clauses shall be construed both as purposes and powers, and shall not be held to limit or restrict in any manner the general powers of this corporation, and the enjoyment and the exercise thereof, conferred by the laws of the State of Utah now in force or hereafter enacted.

ARTICLE IV

The corporation will not commence business until consideration of the value of \$1,000 has been received as consideration for the issuance of shares.

ARTICLE V

Section 1. The aggregate number of shares which this corporation shall have authority to issue is Fifty Million (50,000,000) shares of which Forty-Five Million (45,000,000) shares shall be Common Stock without par value and Five Million (5,000,000) shares of which are Class A Preferred Stock without par value in the form and manner and with the relative rights, preferences, qualifications, limitations or restrictions thereon as the Board of Directors shall determine. Shares of Common Stock may be issued by the corporation from time to time, and for such

consideration and for such purposes as may be fixed by resolution of the Board of Directors.

Section 2. If (a) any two or more shareholders or subscribers to stock of the corporation shall enter into any agreement abridging, limiting or restricting the rights of any one or more of them to sell, assign, transfer, mortgage, pledge, hypothecate or transfer on the books of the corporation, or if (b) the incorporators or the shareholders entitled to vote shall adopt any by-law provision abridging, limiting or restricting the aforesaid rights of any stockholders, then and in either of such events, all certificates of shares of stock subject to such abridgments, limitations or restrictions shall have a reference thereto endorsed thereon by an officer of the corporation, and such stock shall not thereafter be transferred on the books of the corporation except in accordance with the terms and provisions of such agreement or by-law as the case may be.

Section 3. No holder of shares of any class of capital stock of the corporation, whether now or hereafter authorized, shall be entitled, as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of capital stock of the corporation of any class whatsoever, or of securities convertible into or exchangeable for capital stock of the corporation of any

class whatsoever, whether now or hereafter authorized, or whether issued for cash, property, or services.

Section 4. The holders of the Common Stock of the corporation, and, unless otherwise provided in these Articles of Incorporation or in any resolution adopted by the Board of Directors pursuant to authority contained in these Articles of Incorporation, the holders of any other class of stock issued or to be issued by the corporation and entitled to vote at a meeting of stockholders, shall be entitled to one vote for each share of stock held by them. At all elections of directors, cumulative voting shall be allowed so that each such holder shall be entitled to as many votes as shall equal the number of votes which (except for this provision) such holder would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected by him, and such holder may cast all such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them, as such holder may see fit. The entire Board of Directors or any individual director may be removed from office without assignment of cause by a vote of the holders of a majority of the outstanding shares of stock then entitled to vote at an election of directors, except that if less than the entire

Board of Directors is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors.

ARTICLE VI

The address of the initial registered office of this corporation is 170 South Main, Salt Lake City, Utah 84111. The name of the initial registered agent of this corporation at that address is William C. Gibbs.

ARTICLE VII

The internal affairs of the corporation shall be governed by a Board of Directors which shall have not less than three (3) nor more than nine (9) directors, as determined from time to time by the Board of Directors.

The initial Board of Directors shall consist of four (4) members. The names and addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors be elected and qualify are as follows:

J. R. Jolley

E. State Road
American Fork, Utah

Neldon P. Johnson

7420 North 4850 West
American Fork, Utah

Ina Marie Johnson

7420 North 4850 West
American Fork, Utah

Val Marie Jolley

E. State Road
American Fork, Utah

ARTICLE VIII

In furtherance but not in limitation of the powers conferred by the statutes of the State of Utah, the Board of Directors without the authority, consent, vote or other action of the stockholders, or any of them, is expressly authorized:

From time to time, as and when, and upon such terms and conditions as it may determine, to issue any part of the authorized capital stock of the corporation, without being required to offer such stock on a pro rata basis to the stockholders of the corporation.

To purchase, or otherwise acquire for the corporation, any property, rights or privileges which the corporation is authorized to acquire at such price or consideration and generally upon such terms and conditions as it deems fit.

In its discretion to pay for any property or rights acquired by the corporation, either wholly or partly in money, stock, bonds, debentures, or other securities of the corporation.

From time to time to fix and vary the amount of the working capital, and to direct and determine the use and disposition of any surplus or net profits, over and above the capital stock paid in; and in its discretion to use and apply any such surplus or accumulated profits in acquiring the bonds or other obligations or shares of the capital stock of this corporation to such an extent and in such manner and upon such terms as the Board of Directors shall deem expedient, but no funds or property of the corporation shall be used for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of the corporation, and shares of its capital stock, when acquired by the corporation may, from time to time, successively be resold and repurchased.

To issue and sell, pledge or otherwise dispose of bonds, debentures or other obligations of the corporation from time to time, without limitation as to amount, for any of the objects or purposes of the corporation, and, if desired, to secure the same of any thereof by mortgage, pledge, deed of trust or otherwise, upon all or any part of the property of every kind of the corporation, and to cause the corporation to guarantee bonds, debentures, dividends or other obligations of other corporations.

At any time, or from time to time, to sell, assign, transfer, convey, lease or otherwise dispose of the whole or any part of the property and assets of every kind and nature of the corporation upon such terms and conditions as the Board of Directors may deem expedient for the best interests of the corporation.

To cause the corporation to be licensed or recognized in any state, county, city or other municipality of the United States, the territories thereof, the District of Columbia, colonial possessions or territorial acquisitions, and in any foreign country, and in any town, city or municipality thereof, to conduct its business and have one or more offices therein.

To make, alter, amend or rescind the Bylaws of the corporation.

To authorize and cause to be executed, mortgages and liens upon the real and personal property of the corporation.

From time to time to determine whether and to what extent, and at what time and place and under what conditions and regulations, the accounts and books of this corporation (other than the stock ledger) or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or

document of this corporation, except as permitted by statute of the State of Utah or authorized by the Board of Directors.

The corporation may, in its Bylaws, confer powers additional to the foregoing upon the Directors in addition to the powers and authority expressly conferred upon them by statute.

ARTICLE IX

1. Effective as of the initial annual meeting of stockholders, there shall be four (4) directors of the corporation, notwithstanding any other provision of these Articles of Incorporation or of the Bylaws. ~~XXXXXX~~

2. The directors, except those hereinbefore named as initial directors and those chosen to fill a vacancy for an unexpired term, must be-elected by the stockholders at the regular annual stockholders meeting, or, if not held, at any special meeting of the stockholders called for that purpose.

As to the directors elected at the initial annual meeting of stockholders, the first class of directors (consisting of two Directors) shall hold office for an initial term of one (1) year, the second class of directors (consisting of one Director) shall hold office for an initial term of two (2) years, and the third class of directors (consisting of one Director) shall hold office for an initial term of three (3)

years, expiring, respectively, at the first, second and third annual meetings of stockholders held after such initial annual meeting of stockholders. Thereafter, each class shall hold office for terms expiring at the third annual meeting of stockholders following the most recent election of such class.

Notwithstanding any other provision of these Articles of Incorporation or of the Bylaws, any director or directors, including the entire Board of Directors, may be removed at any time, but only with cause and by the affirmative vote of at least two-thirds of the issued and outstanding stock of the corporation that is entitled to vote for the election of directors, and no qualification for the office of director that may be provided for in the Articles of Incorporation or the Bylaws shall apply to any director in office at the time such qualification was adopted or to any successor appointed by the remaining directors to fill the unexpired portion of the term of such director.

ARTICLE X

The corporation reserves the right to amend, alter, change or repeal any provisions contained in the Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Nevertheless, and in

addition to any other provision of these Articles of Incorporation, the Bylaws, or statutes, the affirmative vote of eighty percent of the issued and outstanding capital stock of the corporation that is entitled to vote for the election of directors shall be required for the deletion of language in or any amendment to Article IX, this Article X, or Article XII or for any amendment to these Articles of Incorporation or to the Bylaws (unless such amendment to the Bylaws is approved by the Board of Directors in accordance with the Bylaws) that would restrict or limit the power or authority of the Board of Directors or any other officer or agent of the corporation; that would vest any powers of the corporation in any other officer or agent other than the Board of Directors or officers and agents appointed by or under the authority of the Board of Directors; that would require the approval of any stockholders in order for the Board of Directors or any officer or agent to take any action; or that would change the quorum requirement for any meeting of the Board of Directors, the vote by which it must act in connection with any matter, the manner of calling or conducting meetings of Board of Directors, or the place of such meetings.

ARTICLE XI

The private property of the stockholders shall not be liable for any obligations or debts of the corporation.

ARTICLE XII

Section 1. The affirmative vote of the holders of not less than eighty percent of the outstanding shares of capital stock of the corporation entitled to vote shall be required for the approval or authorization of any "Business Combination" (as hereinafter defined) involving a "Related Person" (as hereinafter defined); provided, however, that the eighty percent voting requirement shall not be applicable if:

(a) The "Continuing Directors" (as hereinafter defined) of the corporation by a two-thirds vote have expressly approved such Business Combination either in advance of or subsequent to such Related Person's having become a Related Person; or

(b) The following conditions are satisfied:

(i) The aggregate amount of the cash and the "Fair Market Value" (as hereinafter defined) of the property, securities or "Other Consideration" (as hereinafter defined) to be received per share by all holders of capital stock of the corporation in the Business Combination, is not less than the "Highest Per Share Price" or the "Highest

Equivalent Price" (as hereinafter defined) paid by the Related Person in acquiring any of its holdings of the corporation's capital stock; and

(ii) A proxy statement complying with the requirements of the Securities Exchange Act of 1934, as amended, whether or not the corporation is then subject to such requirements shall have been mailed to all stockholders of the corporation for the purpose of soliciting stockholder approval of the Business Combination. The proxy statement shall contain at the front thereof, in a prominent place, the position of the Continuing Directors as to the advisability (or inadvisability) of the Business Combination and, if deemed advisable by a majority of the Continuing Directors, the opinion of an investment banking firm selected by the Continuing Directors as to the fairness of the terms of the Business Combination, from the point of view of the holders of the outstanding shares of capital stock of the corporation other than any Related Person.

Such eighty percent vote shall be required notwithstanding the fact that no vote may be required or that a lesser percentage may be specified by law or in any agreement with any national securities exchange or otherwise.

Section 2. For purposes of this Article XII:

(a) The term "Business Combination" shall mean
(i) any merger, consolidation or share exchange of the

corporation or a subsidiary of the corporation with or into a Related Person, in each case without regard to which entity is the surviving entity; (ii) any sale, lease, exchange, transfer or other disposition, including without limitation a mortgage or any other security device, of all or any "Substantial Part" (as hereinafter defined) of the assets of the corporation (including without limitation any voting securities of a subsidiary of the corporation) or a subsidiary of the corporation to or with a Related Person (whether in one transaction or series of transactions); (iii) any sale, lease, exchange, transfer or other disposition, including without limitation a mortgage or any other security device, of all or any Substantial Part of the assets of a Related Person to the corporation or a subsidiary of the corporation; (iv) the issuance, transfer or delivery of any securities of the corporation or a subsidiary of the corporation by the corporation or any of its subsidiaries to a Related Person (other than an issuance or transfer of securities which is effected on a pro rata basis to all stockholders of the corporation); (v) any recapitalization or reclassification of securities (including any reverse stock split) that would have the effect of increasing the voting power of a Related Person; (vi) the issuance or transfer by a Related Person of any securities of such Related Person to the corporation or a

provision of Rule 13d-3 to the contrary, an entity shall be deemed to be the Beneficial Owner of any share of capital stock of the corporation that such entity has the right to acquire at any time pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise.

(c) The term "Substantial Part" shall mean more than 20% of the fair market value, as determined by two-thirds of the Continuing Directors, of the total consolidated assets of the corporation and its subsidiaries taken as a whole as of the end of the its most recent fiscal year ended prior to the time the determination is being made.

(d) The term "Other Consideration" shall include, without limitation, Common Stock or other capital stock of the corporation retained by stockholders of the corporation other than Related Persons or parties to such Business Combination in the event of a Business Combination in which the corporation is the surviving corporation.

(e) The term "Continuing Director" shall mean a Director who is unaffiliated with any Related Person and either (i) was a member of the Board of Directors of the corporation immediately prior to the time the Related Person involved in a Business Combination became a Related Person or (ii) was designated (before his or her initial election or appointment

as Director) as a Continuing Director by a majority of the then Continuing Directors.

(f) The terms "Highest Per Share Price" and "Highest Equivalent Price" as used in this Article XIV shall mean the following: if there is only one class of capital stock of the corporation issued and outstanding, the Highest Per Share Price shall mean the highest price that can be determined to have been paid at any time by the Related Person for any share or shares of that class of capital stock. If there is more than one class of capital stock of the corporation issued and outstanding, the Highest Equivalent Price shall mean with respect to each class and series of capital stock of the corporation, the amount determined by a majority of the Continuing Directors, on whatever basis they believe is appropriate, to be the highest per share price equivalent of the Highest Per Share Price that can be determined to have been paid at any time by the Related Person for any share or shares of any class or series of capital stock of the corporation. In determining the Highest Per Share Price and Highest Equivalent Price, all purchases by the Related Person shall be taken into account regardless of whether the shares were purchased before or after the Related Person became a Related Person. Also, the Highest Per Share Price and the Highest Equivalent Price shall include any brokerage

commissions, transfer taxes, soliciting dealers' fees and other expenses paid by the Related Person with respect to the shares of capital stock of the corporation acquired by the Related Person. In the case of any Business Combination with a Related Person, the Continuing Directors shall determine the Highest Per Share Price and the Highest Equivalent Price for each class and series of capital stock of the corporation.

(g) The term "Fair Market Value" shall mean (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the Exchange, on the principal United States Securities Exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotation System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a two-thirds vote of the Continuing Directors in good faith; and (ii) in the case of property other than stock or cash, the fair market value of

such property on the date in question as determined by a two-thirds vote of the Continuing Directors in good faith.

Section 3. The determinations of the Continuing Directors as to Fair Market Value, Highest Per Share Price, Highest Equivalent Price, and the existence of a Related Person or a Business Combination shall be conclusive and binding.

Section 4. Nothing contained in this Article XII shall be construed to relieve any Related Person from any fiduciary obligation imposed by law.

Section 5. The fact that any Business Combination complies with the provisions of Section 1(b) of this Article XII shall not be construed to impose any fiduciary duty, obligation or responsibility on the Board of Directors, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the stockholders of the corporation, nor shall such compliance limit, prohibit or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

Section 6. Notwithstanding any other provisions of these Articles of Incorporation or the Bylaws of the corporation, the affirmative vote of the holders of not less than eighty percent of the outstanding shares of capital stock

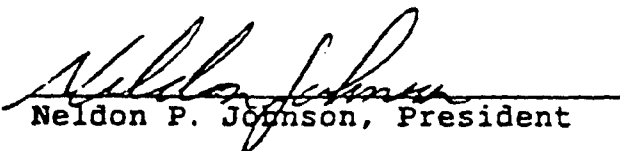
shall be required to amend, alter, change or repeal, or adopt any provisions inconsistent with, this Article XII.


ARTICLE XIII

The name and addresses of the incorporators of this corporation are as follows:

| | |
|-------------------|---|
| Neldon P. Johnson | 7420 North 4850 West American Fork, Utah |
| Ina Marie Johnson | 7420 North 4850 West American Fork, Utah |
| J.R. Jolley | E. State Road American Fork, Utah |

IN WITNESS WHEREOF, the undersigned, by the authority granted pursuant to a resolution of the board of directors, execute these Restated Articles of Incorporation and certify to the truth of the facts herein stated, this 26th day of June, 1987.

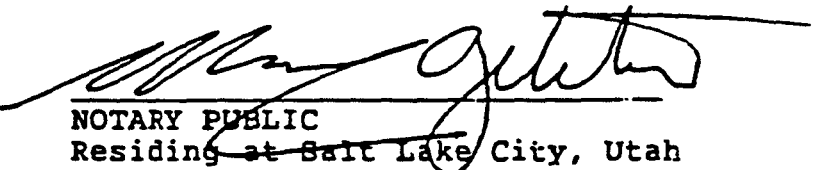

Neldon P. Johnson, President

ATTEST:

Merlin Jolley, Secretary

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, William C. Gibbs, a Notary Public,
certify that on the 26th day of Jan, 1987,
personally appeared before me Neldon P. Johnson and Merlin
Jolley, who being first by me duly sworn, declared that they
are the persons who signed the foregoing document and that
the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this 26th day of Jan, 1987.



NOTARY PUBLIC
Residing at Salt Lake City, Utah

My Commission Expires:

May 1991

0662g
WCG

BY-LAWS
OF
INTERNATIONAL AUTOMATED SYSTEMS, INCORPORATED

ARTICLE I
OFFICES

The principal office of the corporation in the State of Utah shall be located in Utah County. The corporation may have such other offices, either within or without the State of Utah as the Board of Directors may designate or as the business of the corporation may from time to time require.

The corporation shall have and continuously maintain in the State of Utah a registered office, and a registered agent whose office is identical with such registered office. The registered office may be, but need not be, identical with the principal office in the State of Utah, and the address of the registered office may be changed from time to time by the Board of Directors. .

ARTICLE II
STOCKHOLDERS

Section 1. Annual Meeting. The annual meeting of the stockholders shall be held during the month of April in each year, beginning with the year 1987, at such time and on such day as the president of the corporation shall designate, for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

Section 2. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president, the Board of Directors or the chairman of the Board, and shall be called by the president at the request of the holders of not less than ten percent (10%) of all the outstanding shares of the corporation entitled to vote at the meeting.

Section 3. Place of Meeting. Stockholder meetings may be held at any place, either within or without the State of Utah. If no designation is made, the place of meeting shall be the principal office of the corporation.

Section 4. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

Section 5. Closing of Transfer Books or Fixing of Record Date. For the purpose of determining stockholders entitled to notice of or to vote in any meeting of stockholders or any adjournment thereof, or stockholders entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the Board of Directors of the corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the directors may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than fifty days and, in case of a meeting of stockholders, not less than ten days prior to the date on which the particular action requiring such determination of stockholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders, or stockholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders. When a determination of

stockholders entitled to vote at a meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 6. Voting Lists. The officer or agent having charge of the stock transfer books for shares of the corporation shall make a complete list of the stockholders entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder for any purpose germane to the meeting during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the stockholders entitled to examine such list or transfer books or to vote at the meeting of stockholders.

Section 7. Quorum. At any meeting of stockholders, a majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum. If a quorum is present, the affirmative vote of a majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders unless the vote of a greater number is otherwise required by law or the provisions of these by-laws.

Section 8. Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder or by his duly authorized attorney in fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting.

Section 9. Voting. Each stockholder entitled to vote in accordance with the terms and provisions of the certificate of incorporation and these by-laws shall be entitled to one vote, in person or by proxy, for each share of stock entitled to vote held by such stockholders. Upon the demand of any stockholder, the vote for directors and upon any question before the meeting shall be by ballot. All elections for directors shall be decided by plurality vote. All other questions shall be decided by majority vote except as otherwise provided by law.

Section 10. Order of Business. The order of business at all meetings of the stockholders shall be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of directors.
7. Unfinished business.
8. New business.

Section 11. Informal Action by Stockholders. Unless otherwise provided by law, any action required to be taken at a meeting of the stockholders, or any other action which may be taken at a meeting of the stockholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the stockholders entitled to vote with respect to the subject matter thereof.

ARTICLE III BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by its Board of Directors. The directors shall in all cases act as a board, and they may adopt such rules and regulations for the conduct of their meetings and the management of the corporation, as they may deem proper, not inconsistent with these by-laws and the laws of the State of Utah.

Section 2. Number, Tenure and Qualifications. The number of directors of the corporation shall be at least three (3) and no more than nine (9), one of which shall be designated as chairman. Each director shall hold office until the next annual meeting of stockholders and until his successor shall have been elected and qualified.

Section 3. Regular Meetings. A regular meeting of the directors shall be held without other notice than this by-law immediately after and at the same place as the annual meeting of stockholders. The directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 4. Special Meeting. Special meetings of the directors may be called by or at the request of the president, the chairman of the Board or a majority of the directors. The person or persons authorized to call special meetings of the directors may fix the place for holding any special meeting of the directors called by them.

Section 5. Notice. Notice of any special meeting shall be given at least four (4) days previously thereto by written notice delivered personally, or by telegram or mailed to each director at his business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 6. Quorum. At any meeting of the Board of Directors, a majority of directors shall constitute a quorum for the transaction of business.

Section 7. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 8. Newly Created Directorships and Vacancies. Vacancies and newly created directorships resulting from any increase in the number of directors may be filled by a majority of the directors then in office, though less than a quorum, and the directors so chosen shall hold office until the next annual meeting of stockholders and until their successors are duly elected and qualified. A director elected to fill a vacancy caused by resignation, death or removal shall be elected to hold office for the unexpired term of his predecessor.

Section 9. Removal of Directors. Any director may be removed, at a meeting called expressly for that purpose, either for or without cause, at any time by vote of the holders of a majority of the outstanding shares of capital stock of the corporation then entitled to vote at an election of directors. Any directorship to be filled by reason of the removal of a director by the stockholders pursuant to this section may be filled by a vote of a majority of the shares represented at the meeting at which the director was removed, or at an annual meeting of stockholders, and then entitled to vote at an election of directors.

Section 10. Resignation. A director may resign at any time by giving written notice to the Board, the president or the secretary of the corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

Section 11. Compensation. No compensation shall be paid to directors, as such, for their services, but by resolution of the Board a fixed sum and expenses for actual attendance at each regular or special meeting of the Board may be authorized. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 12. Presumption of Assent. A director of the corporation who is present at a meeting of the directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 13. Executive and Other Committees. The Board, by resolution, may designate from among its members an executive committee and other committees, each consisting of two or more directors. Each such committee shall serve at the pleasure of the Board.

Section 14. Informal Action by Directors. Unless otherwise provided by law, any action required to be taken at a meeting of the Board of Directors, or any other action which may be taken at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 15. Interest of Directors in Contract. Any contract or other transaction between the corporation and one or more of its directors shall be valid for all purposes, notwithstanding the presence of such director or directors at the meeting of the Board of Directors which acts upon such contract or transaction, and notwithstanding his or their participating in such action, if the fact of such interest shall be disclosed or known to the Board of Directors, and such Board shall nevertheless approve and ratify such contract or transaction by unanimous vote of the Board. This section shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory law applicable thereto.

ARTICLE IV OFFICERS

Section 1. Number. The officers of the corporation shall be a president, a vice-president, a secretary and a treasurer, each of whom shall be selected by the directors. The secretary and the treasurer may be the same person. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the directors.

Section 2. Election and Term of Office. The officers of the corporation to be elected by the directors shall be elected annually at the first meeting of the directors held after each annual meeting of the stockholders. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the directors may be removed by the directors whenever in their judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the directors for the unexpired portion of the term.

Section 5. President. The president shall be the principal executive officer of the corporation and, subject to the control of the directors, shall in general supervise and control all of the business and affairs of the corporation. The president shall, when present, preside at all meetings of the stockholders and of the directors. The president may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the directors, certificates for shares of the corporation, any deeds, mortgages, bonds, contracts, or other instruments which the directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the directors or by these by-laws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the directors from time to time.

Section 6. Vice President. In the absence of the president or in the event of his death, inability or refusal to act, the vice president shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice president shall perform such other duties as from time to time may be assigned by the president or the directors.

Section 7. Secretary. The secretary shall keep the minutes of the stockholders' and of the directors' meetings in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these by-laws or as required, be custodian of the corporate records and of the seal of the corporation and keep a register of the post office address of each stockholder which shall be furnished to the secretary by such stockholder, have general charge of the stock transfer books of the corporation and, in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or by the directors.

Section 8. Treasurer. If required by the directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the directors shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with these by-laws and, in general, perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned by the president or by the directors.

Section 9. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the corporation.

ARTICLE V CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts and Leases. The directors may authorize any officer or officers, agent or agents, to enter into any contract or lease or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the corporation, and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the directors.

Section 4. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time

to the credit of the corporation in such banks, trust companies or other depositaries as the directors may select.

ARTICLE VI
CERTIFICATES FOR SHARES AND THEIR TRANSFER

Section 1. Certificates for Shares. Certificates representing shares of the corporation shall be in such form as shall be determined by the directors. Such certificates shall be signed by the president and by the secretary or by such other officers authorized by law or by the directors. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the stockholders, the number of shares and date of issue, shall be entered on the stock transfer books of the corporation. All certificates surrendered to the corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the corporation as the directors may prescribe.

Section 2. Transfers of Shares.

(a) Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, and cancel the old certificate; every such transfer shall be entered on the transfer book of the corporation which shall be kept at its principal office.

(b) The corporation shall be entitled to treat the holder of record of any share as the holder in fact thereof, and accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person whether or not it shall have express or other notice thereof, except as expressly provided by the laws of the State of Utah.

ARTICLE VII
FISCAL YEAR

The fiscal year of the corporation shall end on the 31st day of December in each year.

ARTICLE VIII
DIVIDENDS

The directors may from time to time declare and the corporation may pay dividends on its outstanding shares in the manner and upon the terms and conditions provided by law.

ARTICLE IX
WAIVER OF NOTICE

Unless otherwise provided by law, whenever any notice is required to be given to any stockholder or director of the corporation under the provisions of these by-laws or under the provisions of the articles of incorporation, a waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE X
AMENDMENTS

These by-laws may be altered, amended or repealed and new by-laws may be adopted by the affirmative vote of a majority of the Board of Directors at a regular or special meeting of the Board. No by-law shall be adopted by the Board of Directors which shall require more than a majority of the voting shares for a quorum at a meeting of shareholders, or more than a majority of the votes cast to constitute action by the shareholders, except where higher percentages are required by law or by the Articles of Incorporation. The shareholders shall have the right to change or repeal any by-laws adopted by the Board of Directors.

Herby certify that the foregoing has been filed and approved on the 15th day of Dec 1995 in the office of this Division and hereby issue this Certificate thereof.

ARTICLES OF AMENDMENT FOR
INTERNATIONAL AUTOMATED SYSTEMS, INC.

RECEIVED

DEC 15 1995

Examiner pp Date 12-21-95



Karla S. Woods
KARLA T. WOODS
Division Director

I
NAME OF CORPORATION

Utah Div. of Corp.
& Comm. Code

The name of the corporation for which the articles of amendment are being filed is International Automated Systems, Inc. (also the "Corporation"). These articles of amendment are filed pursuant to the Utah Code, Revised Business Corporation Act, Section 16-10a-1006.

II
AMENDMENTS

At the Meeting of Shareholders the following amendments to the Corporation's Articles of Incorporation were duly adopted:

Article III, section (e) shall read as follows:

(e) to purchase, take, receive or otherwise acquire, hold, own pledge, transfer or otherwise dispose of its own shares of capital stock; provided, however, that said purchase of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and only with the affirmative vote of the holders of at least (a majority of all of the shares entitled to vote thereon).

Article V, section 4 shall read as follows:

At all elections of the directors, cumulative voting shall no longer be allowed. The holders of the Common Stock of the corporation, and, unless otherwise provided in these Articles of Incorporation or in any resolution adopted by the Board of Directors pursuant to authority contained in these Articles of Incorporation, the holders of any other class of stock issued or to be issued by the corporation and entitled to vote at a meeting of stockholders, shall be entitled to one vote for each share of stock held by them. The entire Board of Directors or any individual director may be removed from office without assignment of cause by vote of the holders of a majority of the outstanding shares of stock then entitled to vote at an election of directors.

0620

Article IX, sections 1 and 2 shall read as follows:

ARTICLE IX

1. Effective as of the initial annual meeting of stockholders, there shall be at least three (3) directors of the corporation, notwithstanding any other provision of these Articles of Incorporation or Bylaws.

2. The directors, except those herein before named as initial directors and those chosen to fill a vacancy for an unexpired term, must be elected by the stockholders at the regular annual stockholders meeting, or if not held, at any special meeting of the stockholders called for that purpose. Notwithstanding any other provision of these Articles of Incorporation or of the Bylaws, any director or directors, including the entire Board of Directors, may be removed at any time, without cause and by the affirmative vote of at least a majority of the issued and outstanding stock of the corporation that is entitled to vote for the election of directors and no qualification for the office of director that may be provided for in the Articles of Incorporation or the Bylaws shall apply to director in office at the time such qualification was adopted or to any successor appointed by the remaining directors to fill the unexpired portion of the terms of such director.

Article X shall read as follows:

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provisions contained in the Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Nevertheless, and in addition to any other provision of these Articles of Incorporation, the Bylaws or statutes, the affirmative vote of fifty-one per cent of the issued and outstanding capital stock of the corporation that is entitled to vote for the deletion of language in or any amendment to Articles of Incorporation or to

the Bylaws (unless such amendment to the Bylaws is approved by the Board of Directors in accordance with the Bylaws) that would restrict or limit the power or authority of the Board of Directors or any other officer or agent of the corporation; that would vest any powers of the corporation in any other officer or agent other than the Board of Directors or officers and agents appointed by or under the authority of the Board of Directors; that would require the approval of any stockholders in order for the Board of Directors or any officer or agent to take any action; or that would change the quorum requirement for any meeting of the Board of Directors, the vote by which it must act in connection with any matter, the manner of calling or conducting meetings of the Board of Directors, or the place of such meetings.

Article XII, Section 1 shall read as follows:

Section 1. The affirmative vote of the holders of not less than fifty-one per cent of the outstanding shares of capital stock of the corporation entitled to vote shall be required for the approval or authorization of any "Business Combination" (as hereinafter defined) involving a "Related Person" (as hereinafter defined);

Article XII, Section 6 shall read as follows:

Section 6. Notwithstanding any other provisions of these Articles of Incorporation or the Bylaws of the corporation, the affirmative vote of the holders of not less than fifty-one per cent of the outstanding shares of capital stock shall be required to amend, alter, change or repeal or adopt any provisions inconsistent with this Article XII.

III

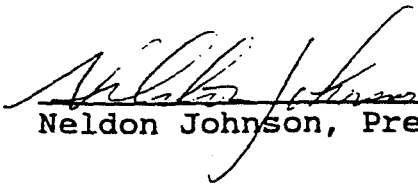
DATE OF ADOPTION AND RESULTS OF SHAREHOLDER VOTING


The amendments in Paragraph II were adopted at the Meeting of Shareholders held on or about October 25, 1990, a quorum of the shares being represented at the meeting. On that date 5,716,100 shares of common stock of the Corporation were issued and outstanding and were entitled to vote. At the meeting, approximately 5,516,100 shares were present and voting. The resolutions approving the Amendments to the Articles of

Incorporation had the following vote: approximately 5,516,100 shares for, no shares against and no shares abstaining.

DATED this 12th day of December, 1995.


INTERNATIONAL AUTOMATED SYSTEMS, INC.


Neldon Johnson, President


Ina Johnson, Secretary

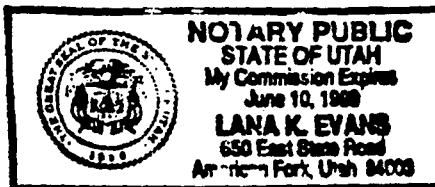
STATE OF UTAH)
)
COUNTY OF Utah ~~SALT LAKE~~) ss.

The undersigned, a Notary Public, hereby certifies that on the 12th day of December 1995, personally appeared before me Neldon Johnson and Ina Johnson who are known to be the president and secretary, respectively, International Automated Systems, Inc., and that they signed this document as officers with full authority to execute this document and that the statements contained here are true. As witness, I have set my hand and seal this 12th day of December 1995.


NOTARY PUBLIC
Residing at: Am. Fork

My Commission Expires:

6-10-99



INTERNATIONAL AUTOMATED SYSTEMS, INC. 08172
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Hundred sixty-seven and 31/100 Dollars
May 31, 1999 *****167.31*

Lindy Harris
#008172# C1243010250010 L&S 7# /0000016731/

6/04/99 8172 167.31

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08178
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Three Hundred Nineteen and 42/100 Dollars
May 31, 1999 *****319.63*

Brenda Marie Smith
184 N. 1165 E.
Lindon, UT 84042
USA #008178# C1243010250010 L&S 7# /0000031963/

6/07/99 8178 319.63

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08173
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Forty-Two and 21/100 Dollars
May 31, 1999 *****42.21*

Devlin Harper
CCTR 030 0987305 1078 06/18/99
#42.21
#008173# C1243010250010 L&S 7# /0000004221/

6/21/99 8173 42.21

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08179
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eight Hundred Eighteen and 59/100 Dollars
May 31, 1999 *****818.59*

Lakeland Johnson
1303 N. 550 W.
Pleasant Grove, UT 84062
#008179# C1243010250010 L&S 7# /0000081859/

6/07/99 8179 818.59

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08174
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Thousand Seventeen and 84/100 Dollars
May 31, 1999 *****1017.84*

Donnal Robert Johnson
1396 North 1028 East
Am. Fork, UT 84003
USA #008174# C1243010250010 L&S 7# /0000101784/

6/07/99 8174 1017.84

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08180
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Five Hundred Thirty-Six and 53/100 Dollars
May 31, 1999 *****536.53*

Robert W. Bean
1432 W. 550 S.
Orem, UT 84058
USA #008180# C1243010250010 L&S 7# /0000053653/

6/07/99 8180 536.53

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08175
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eight Hundred sixty-Eight and 38/100 Dollars
May 31, 1999 *****868.38*

Randall Paul Johnson
794 S. 1130 E.
Alpine, UT 84004
USA #008175# C1243010250010 L&S 7# /0000086838/

6/02/99 8175 868.38

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08181
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Four Hundred Thirty-Two and 73/100 Dollars
May 31, 1999 *****432.73*

Gregory Ryan Lyman
19 East 500 North
Orem, UT 84057
USA #008181# C1243010250010 L&S 7# /0000043273/

6/07/99 8181 432.73

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08176
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Six Hundred Fifty and 9/100 Dollars
May 31, 1999 *****650.09*

Christopher John Taylor
602 North 1120 East
Spanish Fork, UT 84606
USA #008176# C1243010250010 L&S 7# /0000065009/

6/02/99 8176 650.09

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08182
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Seven Hundred Twenty-Six and 5/100 Dollars
May 31, 1999 *****726.05*

Monty D. Hamilton
2901 N. 4310 S.
Salt Lake City, UT 84124
USA #008182# C1243010250010 L&S 7# /0000072605/

6/07/99 8182 726.05

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08177
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Six Hundred and 29/100 Dollars
May 31, 1999 *****600.29*

Stacy Cattle Snow
1227 S. 10 S.
Lindon, UT 84042
USA #008177# C1243010250010 L&S 7# /0000060029/

6/09/99 8177 600.29

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08184
312 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Five Hundred sixty-One and 51/100 Dollars
May 31, 1999 *****561.51*

Randall J. Degeer
84 N. 290 W.
American Fork, UT 84003
#008184# C1243010250010 L&S 7# /0000056151/

6/03/99 8184 561.51

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08143
412 SO. 800 E.
AMERICAN FORK, UT 84003

Four Hundred Ten and 41/100 Dollars
May 27, 1999 CONTROL NUMBER *****410.41

PAY TO THE ORDER OF
Sandra T. Smith
408 South Willow Lane
Pleasant Grove, UT 84062

#008143# C124301025C0010 468 7# /0000041041#

6/01/99 8143 410.41

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08151
412 SO. 800 E.
AMERICAN FORK, UT 84003

Two Hundred Eighty-Nine and 90/100 Dollars
May 27, 1999 CONTROL NUMBER *****289.90

PAY TO THE ORDER OF
Jeffery D Larson
558 North 2210 West
Provo, UT 84601

#008151# C124301025C0010 468 7# /0000028990#

6/07/99 8151 289.90

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08145
412 SO. 800 E.
AMERICAN FORK, UT 84003

Eight Hundred Fourteen and 42/100 Dollars
May 27, 1999 CONTROL NUMBER *****814.42

PAY TO THE ORDER OF
Brian L. Bayless
1916 W. 1560 N.
Lehi, UT 84043

#008145# C124301025C0010 468 7# /0000081442#

6/09/99 8145 814.42

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08152
412 SO. 800 E.
AMERICAN FORK, UT 84003

One Hundred Forty-Three and 54/100 Dollars
May 27, 1999 CONTROL NUMBER *****143.56

PAY TO THE ORDER OF
Bryce K. Homer
1802 West 680 North
Pleasant Grove, UT 84062
USA

#008152# C124301025C0010 468 7# /0000014356#

6/02/99 8152 143.56

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08146
412 SO. 800 E.
AMERICAN FORK, UT 84003

Two Hundred Nine and 10/100 Dollars
May 27, 1999 CONTROL NUMBER *****209.10

PAY TO THE ORDER OF
Michael L. Smith
184 N. 1165 E.
Lindon, UT 84042

#008146# C124301025C0010 468 7# /0000020910#

6/02/99 8146 209.10

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08156
412 SO. 800 E.
AMERICAN FORK, UT 84003

One Hundred Seventy-Three and 30/100 Dollars
May 31, 1999 CONTROL NUMBER *****173.30

PAY TO THE ORDER OF
Jeremiah S. Melonick
782 N. Summit Way
Alpine, UT 84004

#008156# C124301025C0010 468 7# /0000017330#

6/02/99 8156 173.30

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08147
412 SO. 800 E.
AMERICAN FORK, UT 84003

One Hundred Fifty-Two and 39/100 Dollars
May 27, 1999 CONTROL NUMBER *****152.38

PAY TO THE ORDER OF
Shane V. Scott
1544 East 280 South
Pleasant Grove, UT 84062

#008147# C124301025C0010 468 7# /0000015238#

6/02/99 8147 152.38

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08157
412 SO. 800 E.
AMERICAN FORK, UT 84003

Two Hundred Eighty-Nine and 90/100 Dollars
May 31, 1999 CONTROL NUMBER *****289.90

PAY TO THE ORDER OF
Jeffery D Larson
558 North 2210 West
Provo, UT 84601

#008157# C124301025C0010 468 7# /0000028990#

6/18/99 8157 289.90

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08148
412 SO. 800 E.
AMERICAN FORK, UT 84003

Seventy-Five and 61/100 Dollars
May 27, 1999 CONTROL NUMBER *****75.61

PAY TO THE ORDER OF
Bryan Jay Robinson
25 E. 1380 W.
Pleasant Grove, UT 84062

#008148# C124301025C0010 468 7# /0000007561#

6/01/99 8148 75.61

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08158
412 SO. 800 E.
AMERICAN FORK, UT 84003

Eighty-Five and 25/100 Dollars
May 31, 1999 CONTROL NUMBER *****85.29

PAY TO THE ORDER OF
Orcula Kitchen
562 South 480 West
American Fork, UT 84003

#008158# C124301025C0010 468 7# /0000008529#

6/07/99 8158 85.29

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08149
412 SO. 800 E.
AMERICAN FORK, UT 84003

Seventy-Five and 61/100 Dollars
May 27, 1999 CONTROL NUMBER *****75.61

PAY TO THE ORDER OF
Ed Anacher

#008149# C124301025C0010 468 7# /0000007561#

6/02/99 8149 75.61

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08159
412 SO. 800 E.
AMERICAN FORK, UT 84003

One Hundred Sixty and 85/100 Dollars
May 31, 1999 CONTROL NUMBER *****160.89

PAY TO THE ORDER OF
Bally Melonick
782 N. Summit Way
Alpine, UT 84004

#008159# C124301025C0010 468 7# /0000016089#

6/02/99 8159 160.89

BANK OF AMERICAN FORK

Account: 00 104687
Page: 11

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08201
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Two Hundred One and 78/100 Dollars
June 7, 1999 *****8201.78*

Jessica L. Lauer
558 W. 2310 W.
Salem, UT 84653

PODS201* C124301025C0010 LEB 7* /0000020178/

6/10/99 8201 201.78

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08207
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Hundred Thirty-Four and 97/100 Dollars
June 7, 1999 *****8207.134*

Annelyn Christopher
135 E. 280 E.
Salem, UT 84653

PODS207* C124301025C0010 LEB 7* /00000207134/

6/09/99 8207 134.97

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08202
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Two Hundred Seventeen and 66/100 Dollars
June 7, 1999 *****8217.66*

Phillip M. Randolph
115 W. 550 E.
Salem, UT 84653

PODS202* C124301025C0010 LEB 7* /0000021766/

6/10/99 8202 217.66

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Two Hundred Fourteen and 7/100 Dollars
June 7, 1999 *****8214.07*

Melanie Baker
161 South 500 East
P.O. Box 818
Salem, UT 84653

PODS208* C124301025C0010 LEB 7* /0000021407/

6/15/99 8208 214.07

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08203
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Hundred Twenty-Two and 4/100 Dollars
June 7, 1999 *****8222.04*

Derek S. Miller
29 S. Shadyline
Salem, UT 84653

PODS203* C124301025C0010 LEB 7* /0000022204/

6/09/99 8203 122.04

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08209
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Hundred Thirty-One and 22/100 Dollars
June 7, 1999 *****8231.22*

Karalyn Snyder

PODS209* C124301025C0010 LEB 7* /0000023122/

6/24/99 8209 131.22

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08204
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Twenty-Two and 83/100 Dollars
June 7, 1999 *****8222.83*

James T. McCloy
280 W. Apple Blossom Way
Salem, UT 84653

PODS204* C124301025C0010 LEB 7* /0000022283/

6/21/99 8204 22.83

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08210
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eighty-Eight and 41/100 Dollars
June 7, 1999 *****8288.41*

Luke Perced

PODS210* C124301025C0010 LEB 7* /0000028841/

6/09/99 8210 88.41

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08205
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Hundred Twenty and 89/100 Dollars
June 7, 1999 *****8220.89*

Dustin T. Fife
134 E. 1200 E.
Spanish Fork, UT 84650

PODS205* C124301025C0010 LEB 7* /0000022089/

6/10/99 8205 120.89

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08211
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Two Hundred Nine and 69/100 Dollars
June 7, 1999 *****8209.69*

Lindy Harris
150 E. 280 E.
Salem, UT 84653

PODS211* C124301025C0010 LEB 7* /0000020969/

6/10/99 8211 209.69

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08206
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Hundred Sixty-Three and 8/100 Dollars
June 7, 1999 *****8213.08*

Scott A. Halliday
140 E. 900 E.
Salem, UT 84653

PODS206* C124301025C0010 LEB 7* /0000021308/

6/10/99 8206 163.08

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08212
412 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Thousand Seventeen and 84/100 Dollars
June 7, 1999 *****8217.84*

Donald Robert Johnson
1295 South 1020 East
Am. Fork, UT 84603

PODS212* C124301025C0010 LEB 7* /0000021784/

6/10/99 8212 1017.84

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08225
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eighty-One and 79/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8225
AMOUNT *****81.79

Jarid Carter
5 South 400 East
Pleasant Grove, UT 84062

POB225* C1243010250010 468 7* /0000008179*

6/18/99 8225 81.79

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08233
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF One Hundred Thirty and 79/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8233
AMOUNT *****130.79

Any Beaton

POB233* C1243010250010 468 7* /0000013079*

6/16/99 8233 130.79

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08226
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eighty-Two and 68/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8226
AMOUNT *****82.68

Borris J. Brown
40 N. 600 E.
Pleasant Grove, UT 84062

POB226* C1243010250010 468 7* /0000008268*

6/14/99 8226 82.68

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08237
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eighty-Four and 8/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8237
AMOUNT *****84.00

American Concept Insurance Co.
P.O. Box 410017
S.L.C., UT 84141-0017
USA

POB237* C1243010250010 468 7* /0000008400*

6/21/99 8237 84.00

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08227
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eighty-One and 79/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8227
AMOUNT *****81.79

Michael M. Roberts
572 East Center Street
Pleasant Grove, UT 84062

POB227* C1243010250010 468 7* /0000008179*

6/10/99 8227 81.79

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08238
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Two Hundred Forty-One and 89/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8238
AMOUNT *****241.80

ALL-THINK LEASING
13755 First Avenue North
Plymouth, MN 55441

POB238* C1243010250010 468 7* /0000024180*

6/15/99 8238 241.80

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08228
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eighty-Two and 65/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8228
AMOUNT *****82.65

Jack F. Newman
321 North Main
Pleasant Grove, UT 84062

POB228* C1243010250010 468 7* /0000008265*

6/10/99 8228 82.65

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08239
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Forty-Eight and 8/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8239
AMOUNT *****48.00

Summit-Parris Industries
Salt Lake City District
P.O. Box 78425
Phoenix, AZ 85078

POB239* C1243010250010 468 7* /0000004800*

6/25/99 8239 48.00

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08229
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Seventy-Five and 61/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8229
AMOUNT *****75.61

Nike M. Bartoll
1155 East Main
American Fork, UT 84003

POB229* C1243010250010 468 7* /0000007561*

6/11/99 8229 75.61

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08240
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Four Hundred Thirteen and 47/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8240
AMOUNT *****413.47

Central Bank & Trust Co.
P.O. Box 251
Payson, UT 84651
USA

POB240* C1243010250010 468 7* /0000041347*

6/11/99 8240 413.47

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08230
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Eighty-One and 79/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8230
AMOUNT *****81.79

Shane V. Scott
1544 West 200 South
Pleasant Grove, UT 84062

POB230* C1243010250010 468 7* /0000008179*

6/11/99 8230 81.79

INTERNATIONAL AUTOMATED SYSTEMS, INC. 08241
402 SO. 800 E.
AMERICAN FORK, UT 84003

PAY TO THE ORDER OF Sixty-Two and 52/100 Dollars
DATE Jun 7, 1999
CHECK NUMBER 8241
AMOUNT *****62.52

Central Utah Electronics
735 E. State Street
Provo, UT 84606
USA

POB241* C1243010250010 468 7* /0000006252*

6/15/99 8241 62.52

Thomas W. Seiler, #2910
ROBINSON, SEILER & GLAZIER, LC
80 North 100 East
P.O. Box 1266
Provo, UT 84603-1266
Telephone: (801) 375-1920

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

INA MARIE JOHNSON,

:

Petitioner,

**MOTION FOR PROTECTIVE ORDER
: AND TO RECOVER ITEMS TAKEN
BY THE PETITIONER**

vs.

NELDON PAUL JOHNSON,

:

Respondent.

Case No. 004401468

: Judge Taylor / Division 5

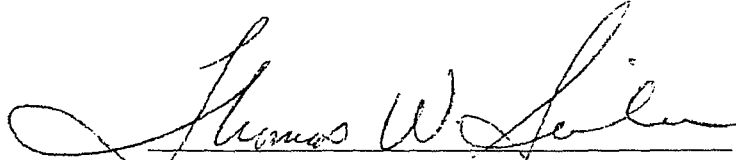
COMES NOW International Automated Systems, Inc., a Utah corporation, by and through its counsel of record, Thomas W. Seiler of ROBINSON, SEILER & GLAZIER, L.C., appearing specially and not entering a general appearance, and hereby respectfully requests that the court enter:

1. A protective order regarding any and all documents, computer discs, electronic information or other items in the possession of the petitioner, relating to International Automated Systems, Inc.'s business be returned to International Automated Systems, Inc.; and
2. That a protective order be issued prohibiting the petitioner from retaining or disclosing

any trade secret, confidential research, development, proprietary or confidential commercial or private information within the meaning of Rule 26 of the Utah Rules of Civil Procedure obtained from or belonging to International Automated Systems, Inc.

DATED this 11th day of October, 2000.

ROBINSON, SEILER & GLAZIER, L.C.


THOMAS W. SEILER
Attorney at Law

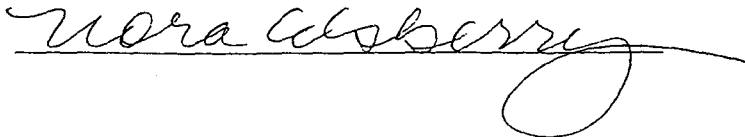
MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed, via U.S. Mail, with postage prepaid, this 11 day of October, 2000, addressed to the following:

Don R. Peterson
Howard, Lewis & Peterson
120 East 300 North
PO Box 1248
Provo, UT 84603

Rosemond G. Blakelock
305 East 300 South
Provo, UT 84606

Frederick A. Jackman
1327 South 800 East, #110
Orem, UT 84058



FILED IN
4th DISTRICT COURT
STATE OF UTAH
UTAH COUNTY
FEB 22 3 05 PM '02
MM

Rosemond Blakelock #6183
Attorney for Petitioner
305 East 300 South
Provo, Utah 84606
Telephone: (801) 375-7678

IN THE FOURTH DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

125 North 100 West, Provo, Utah 84601

INA MARIE JOHNSON,, *

Petitioner, *

v. *

NELDON PAUL JOHNSON, *

Respondent. *

MEMORANDUM ON SUPPORT OF
MOTION FOR WITHDRAWAL OF
THOMAS SEILER AS COUNSEL
FOR NELDON JOHNSON
AND MOTION FOR AWARD OF
ATTORNEY'S FEES

Case No. 004401468
Judge Claudia Laycock

Petitioner, by and through her attorney, Rosemond Blakelock,
and in support of her motion for an order requiring Thomas
Seiler to withdraw as counsel for Neldon Johnson, and Motion
for attorney's fees and costs, submits the following;

FACTS

1. The parties were married on May 3, 1964 in Arizona and
divorced on June 7, 2001, in the Fourth District Court, Provo,
Utah.

2. Petitioner and Respondent were majority share holders of IAS (International Automated Systems, Inc.), which is a publically held corporation. Although the shares were held in the name of Neldon Johnson, the Petitioner was always involved in the IAS corporation. See affidavit of Petitioner

3. Petitioner was named as one of the original incorporators of the IAS corporation. See restated Articles of Incorporation dated July 2, 1987, page 22, as attached to affidavit of Petitioner.

4. During the marriage of the parties' the Petitioner was an active participant in IAS, and at the time the divorce proceedings commenced the Petitioner was an officer of the corporation.

5. Petitioner was signing checks, as secretary of IAS at the time the divorce proceedings were commenced. See attachment 2, on Affidavit of Petitioner, which are copies of checks signed by Ina Johnson.

6. Petitioner met with and discussed all aspects of the corporation with legal counsel for the corporation, David Nelson, prior to the time when the divorce proceedings began.

7. Thomas Seiler has proffered to the court and stated on the record that he was asked to represent the corporation by co-counsel for the corporation, David Nelson.

8. Thomas Seiler appeared as counsel for the IAS corporation prior to the parties' Decree of Divorce being granted. See attached Motion dated October 11, 2000.

8. Petitioner has had many meetings with Mr. Nelson over the years and trusted the judgment of David Nelson and thus trusted the judgment of Thomas Seiler.

9. Petitioner believes that neither Mr. David Nelson, nor Mr. Seiler can personally represent Neldon Johnson, due to a conflict of interest, as both men represented the IAS corporation at a time when Petitioner was an officer, or in the alternative, at a time when the Petitioner had a major interest in the ownership and welfare of the corporation.

10. The fact that Thomas Seiler may have entered his appearance for the IAS corporation during the divorce proceedings, does not eliminate the Petitioner's ownership or interest in the corporation and does not eliminate Thomas Seiler's conflict with personal representation of either party at this time.

11. Petitioner objected, in her personal affidavit, to the attempt of Thomas Seiler to represent IAS in the divorce proceedings and now attempt to represent Neldon Johnson personally and considers the attempt to be a conflict.

ARGUMENT

1. An attorney-client relationship existed between Petitioner and Thomas Seiler when he appeared as legal counsel for IAS in October, 2000 and continued until such time as the Petitioner no longer had a legal interest in IAS.

The fact that Mr. Seiler never met with the Petitioner does not mean that she never considered him her legal counsel, when he represented to the Court that he was legal counsel for IAS. IAS was the Petitioner's company, since 1987 and the divorce proceedings did not void the Petitioner's interest in IAS corporation.

In the case of Margulies ex rel Margulies v. Upchurch 696 P.2d 1195, (Utah 1985), (as attached), the law firm of Jones, Waldo represented plaintiff Marguiles against defendants Upchurch, Woolsey, Chichester and St. Mark's hospital. Jones Waldo had, at the same time another case going in the federal court in which they represented a Plaintiff "Diversified Energy/Intermountain Capital Private Drilling Fund" in which Woolsey and Chichester were limited partners. Mr. Upchurch was a stockholder, former officer and director of the Intermountain group.

The Court in the Margulies case found that Jones, Waldo could not remain as counsel in the case. In Margulies, the court stated that, "In a situation similar to this one, a federal district court implied a professional relationship where an officer of a corporation reasonably believed that an attorney had represented him although the attorney disclaimed any such relationship", and cited to E.F. Hutton and Co. v. Brown, 305 F. Supp. 371, 387-92 (S.D. Tex. 1971). The court in Margulies stated that "it was not at all unreasonable for the limited partners to believe that Jones, Waldo was acting for their individual interests as well as the interests of the partnership in that litigation". Id. See attached case.

Similarly, Ina Johnson was the founding member of IAS corporation, married to Neldon Johnson, owning a majority of the shares in the corporation (as much as 80% at one point), signing the checks for the corporation and a secretary for the corporation, she could only assume that any legal counsel for IAS would certainly be looking out after her best interests at a minimum and would never be appearing in court, opposing her interests, fighting over the same stock that she had paid him to protect.

2. Rule 1.9 of the Utah Rules of Professional Conduct states that "A lawyer who has formerly represented a client in a matter

shall not thereafter (a) Represent another person in the same or a substantially factually related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation."

Ina Johnson has not consented to Thomas Seiler's representation of Neldon Johnson. When Thomas Seiler entered his appearance in October of 2000 for IAS corporation, he represented Ina Johnson because she was an owner of the corporate stock (through her husband because it was marital property), a former officer of the corporation and a person who had worked extensively for and with the corporation.

CONCLUSION

When Thomas Seiler made an appearance for IAS corporation in October of 2000, the parties were married. Thomas Seiler made an appearance as counsel for IAS, in the divorce matter. At that time Ina Johnson and Neldon Johnson, as a married couple, owned the majority of stock in IAS. IAS ownership was the subject of the divorce proceedings. At the time of his appearance in October, 2000, Ina Johnson believed Thomas Seiler to be representing her, because he was counsel for a corporation of which she held a major ownership interest. Thomas Seiler cannot now represent Neldon Johnson, in a hearing against Ina Johnson, involving the sales of stock in IAS corporation.

Thomas Seiler should be ordered to withdraw as counsel for Neldon Johnson and Ina Johnson should be awarded her attorney's fees and costs which were incurred in the research, Motions, Affidavit and Memorandum drafted by her counsel in this matter.

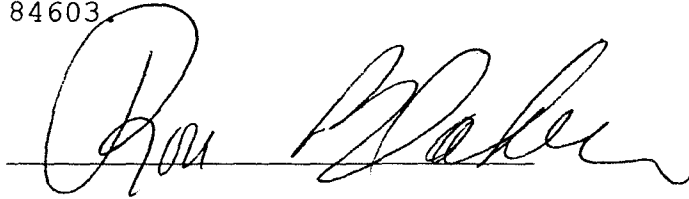
DATED and signed this 22 day of February, 2002.

A handwritten signature in cursive script, appearing to read "Rosemond Blakelock".

Rosemond Blakelock
Attorney for Ina Johnson

CERTIFICATE OF HAND DELIVERY

On this 22 day of February, 2002, I hand delivered a copy
of the foregoing to Thomas Seiler, 80 North 100 East, Provo, Utah
84603.

A handwritten signature in cursive script, appearing to read "Ron Baker", is written over a horizontal line.

696 P.2d 1195 MARGULIES EX REL. MARGULIES V. UPCHURCH (Utah 1985)

Jason Mark Margulies, by and through his Guardian ad Litem,

David K. Margulies; David K. Margulies; and Janet C.

Margulies, Plaintiffs, Respondents, and

Cross-Appellants,

vs.

John J. Upchurch, M.D.; Carl T. Woolsey, Jr., M.D.; Dan L.

Chichester, M.D.; Ob-Gyn Associates, Inc., a Utah

professional corporation; St. Mark's Hospital, a Utah

corporation; and Dennis L. Morris, M.D.; Defendants,

Appellants, and Cross-Respondents, v. Third Judicial

District Court in and for Salt Lake County, State of Utah,

and The Honorable Dean E. Conder, District Judge,

Respondents, John J. Upchurch, M.D., Plaintiff, v. Third

Judicial District Court and The Honorable Dean E. Conder,

District Judge, Defendants, Jason Mark Margulies, etc.,

Plaintiffs and Cross-Appellants, v. John J. Upchurch, et

al.; St. Mark's Hospital, a Utah corporation, Defendants,

Appellant, and Cross-Respondents, v. Third Judicial

District Court and The Honorable Dean E. Conder, District

Judge, Respondents

**Nos. 19762, 19763, 19776
SUPREME COURT OF UTAH**

696 P.2d 1195

January 28, 1985, Filed

COUNSEL

Elliot J. Williams (Morris), Salt Lake City; David W. Slagle (Morris), Salt Lake City; Keith P. Nelson (Upchurch), Salt Lake City; Stewart M. Hanson, Jr. (Woolsley & Chichester), Salt Lake City; Michael W. Homer (Woolsley & Chichester), Salt Lake City; Carman E. Kipp (St. Marks), Salt Lake City, for Plaintiff.

Donald Holbrook (Margulies), Salt Lake City; Robert M. McDonough (Margulies), Salt Lake City; William B. Bohling (Margulies), Salt Lake City; Jeffrey L. Fillerup (Margulies), Salt Lake City; David L. Wilkinson, A. G. (Margulies), Salt Lake City, for Defendant.

JUDGES

DURHAM, Justice, wrote the opinion. WE CONCUR: Gordon R. Hall, Chief Justice, I. Daniel Stewart, Justice, Richard C. Howe, Justice. Zimmerman, Justice, does not participate herein.

AUTHOR: DURHAM

OPINION

DURHAM, Justice: This is an interlocutory appeal, involving consolidated cases, from an order of the district court denying appellants' (Upchurch, Woolsey, and Chichester) motion to disqualify plaintiffs' counsel in the case of **Margulies v. Upchurch**. The plaintiffs have filed a cross-appeal challenging the trial court's findings regarding the existence of a conflict of interest on the part of plaintiffs' counsel. We reverse on the appeal and affirm on the cross-appeal.

The law firm of Jones, Waldo, Holbrook & McDonough ("Jones", Waldo") represents the plaintiffs and cross-appellants Margulies in a major medical malpractice action filed in Third District Court. The defendants in that action include the appellants and cross-respondents Upchurch, Woolsey, Chichester, and St. Mark's Hospital. The complaint alleges negligence resulting in severe disabilities (quadriplegia, blindness, brain damage, and cerebral palsy) in the plaintiff Jason Margulies. The claim is for several million dollars in general and punitive damages, which amounts are likely to be in excess of available insurance coverage.

At the time of the entry of the order appealed from, Jones, Waldo was also involved as counsel in a federal case, **Diversified Energy/Intermountain Capital Private Drilling Fund 1981-A v. First City National Bank of Midland**, No. C84-0041A (D. Utah filed Jan. 17, 1984) (hereinafter cited as "**Diversified**"). In that case, Jones, Waldo represented the plaintiff Diversified Energy/Intermountain Capital Private Drilling Fund 1981-A ("**Diversified Energy**"), a Utah limited partnership with nineteen limited partners. Appellants Woolsey and Chichester are limited partners of Diversified Energy. Appellant Upchurch is a stockholder, former officer, and director of Intermountain Capital, a corporation that is co-general partner in Diversified Energy.

In order to become limited partners, Upchurch, Chichester, and Woolsey were all required to submit "suitability" forms outlining their personal financial status and investment experience to Diversified Energy. They were also required to purchase units in Diversified Energy by paying twenty percent of the value of the units in cash and financing the remaining eighty percent by obtaining individual, personal letters of credit. Those letters of credit were subsequently pledged by Diversified Energy to First National Bank of Midland ("Midland"). Appellant Upchurch, in addition to the above-described participation, also provided Intermountain Capital with personal financial statements and cosigned on lines of credit for the corporation from Midland.

The Margulies malpractice action was filed in October 1982 and was scheduled for trial in March 1984. In approximately September 1983, David Sundstrom, a co-general partner (along with

a tool to harass and delay the opposition, such is not the case here. There is no basis in the record for the contention that appellants acted in bad faith in this case. The initial motion to disqualify was made shortly after the federal action was filed (and more than a month before trial of the malpractice action was to commence), the first time that the full dimensions of the conflict of interest became apparent to appellants and their counsel in the malpractice action. The facts here are not comparable to those in **Redd v. Shell Oil Co.**, 518 F.2d 311 (10th Cir. 1975), where the motion to disqualify was not filed until the Friday afternoon before a Monday trial, although the information upon which the motion was based had been known for five months. Further, the appellants cannot be presumed to have waived the right to object based on their alleged consent when adequate disclosure of the effects of Jones, Waldo's representation was not made.

In finding that conflict of interest existed by reason of Jones, Waldo's concurrent representation of the appellants and the Margulies family, the trial court noted: "The law has long recognized that an attorney is held to the highest duty of fidelity, honor, fair dealing and full disclosure to a client." We believe that the trial court's language is an excellent summary of the obligations imposed on counsel by the Utah Code of Professional Responsibility Canons 4, 5, 9 (1977): the duty to preserve the confidences and secrets of the client, Canon 4; the duty to exercise independent professional judgment on behalf of the client, Canon 5; and the duty to avoid even the appearance of professional impropriety, Canon 9.

CANONS 4 AND 5

The appellants contend that Jones, Waldo, as counsel in the federal action, obtained or had access to certain confidential financial information about them which might be used to their detriment in the malpractice action if Jones, Waldo continues to litigate that case. Canon 4's prohibitions against disclosure of client confidences and secrets³ have generally been interpreted to forbid an attorney from representing a client against a former client in a matter substantially related to the former client's representation. **Trone v. Smith**, 621 F.2d 994, 998-99 (9th Cir. 1980); **General Electric Co. v. Valeron Corp.**, 608 F.2d 265, 267 (6th Cir. 1979), **cert. denied**, 455 U.S. 930 (1980); **United States v. Standard Oil Co.**, 136 F. Supp. 345, 354 (S.D.N.Y. 1955). This rule is intended to prevent the possibility that an attorney might use information given in confidence by a former client in a later action against that client. Allowing later adverse representation when the former client's disclosures might be used against him could inhibit the free exchange of information between attorney and client which our legal system presupposes. We would be reluctant, however, to grant disqualification in the instant case solely on the basis of Canon 4. Case law on the degree of congruence necessary for two cases to be considered "substantially related" varies widely. **Compare Government of India v. Cook Industries, Inc.**, 569 F.2d 737, 739-40 (2d Cir. 1978) (disqualification granted only when issues identical or essentially the same) **with Melamed v. ITT Continental Baking Co.**, 592 F.2d 290, 292 (6th Cir. 1979) (matters embraced within suit need only be substantially related). There is in this case a dispute about the extent and confidential nature of information Jones, Waldo actually obtained by virtue of its employment in the federal action. Although the facts and issues involved may be so related that an attorney or firm will clearly be precluded from undertaking representation against a former client, the inevitable frequency with which large and departmentalized law firms will be asked to litigate against former clients suggests that disqualification pursuant to Canon 4 should not be

and belief. Jones, Waldo's efforts, although limited, to notify appellants of the potential conflict of interest indicate that Jones, Waldo also recognized that the appellants might consider the firm to be representing their individual interests. Under these circumstances, actual consent is not necessary, and an attorney-client relationship or fiduciary duty may be implied. **See E. F. Hutton**, 305 F. Supp. at 387-92.

It should be noted that we do not find that an attorney automatically becomes counsel for limited partners when he or she undertakes representation of a limited partnership. Ethical Consideration 5-18 of the Utah Code of Professional Responsibility (1977) states that an attorney representing a corporation or similar entity owes allegiance to the entity rather than to its shareholders. A limited partnership is an entity equivalent to a corporation for litigation purposes, **Wall Investment Co. v. Garden Gate Distributing, Inc.**, Utah, 593 P.2d 542, 544 (1979), and therefore representation of a limited partnership does not of itself require allegiance to the interests of the limited partners. If the limited partners stand to gain nothing more from the attorney's representation of the limited partnership than the incidental gain which will accrue to them as partners, and not in their individual capacities, no attorney-client relationship should be implied. When, however, the individual interests of the limited partners are directly involved, as they are here, there may be sufficient grounds for implying the existence of an attorney-client relationship.²

Jones, Waldo argues that its representation in the federal action could neither benefit nor harm the appellants because the letters of credit pledged to Midland were obtained by appellants to finance eighty percent of their individual capital contributions to the limited partnership in lieu of cash. Because the limited partners would remain liable to the partnership for the value of the letters of credit even if Jones, Waldo succeeded in blocking Midland's execution on the note, any benefit realized would come from the renewed financial health of the partnership rather than from any individual benefit. This argument ignores the potential personal liability of the limited partners to Midland should the federal action be unsuccessful. The loan agreement between the partnership and Midland expressly makes the limited partners personally liable to Midland up to the amount of their individual letters of credit. Similarly, pursuant to assumption agreements signed by appellants, the limited partners were liable for the partnership's indebtedness up to the face value of their letters of credit. These documents demonstrate that the limited partners would benefit directly from Jones, Waldo's efforts to prevent Midland from collecting on the obligation. The fact that the partnership might at some future date utilize the letters of credit in some other transaction does not reduce the direct benefit the limited partners would receive by being freed from possible personal liability to Midland.

Under these circumstances, Jones, Waldo's representation of the limited partnership in the federal action gave rise to an attorney-client relationship between the firm and appellants, with a consequent obligation to conform to all applicable standards of professional behavior. We, therefore, uphold the district court's finding in this regard.

Jones, Waldo also argues that appellants should be estopped from objecting to the firm's representation of the Margulieses because of the timing of their motion, or should be deemed to have waived any right to object, based on appellants' consent to the firm's dual representation. Although Jones, Waldo is correct in pointing out that motions to disqualify opposing counsel may be used as

conduct of attorneys in matters before the court, **Redd v. Shell Oil Co.**, 518 F.2d 311, 314 (10th Cir. 1975); their discretion extends to deciding whether disqualification is a proper sanction after a finding of an ethical violation, **W.T. Grant Co. v. Haines**, 531 F.2d 671, 676 (2d Cir. 1976). Some appellate courts, however, have undertaken review without deference to the trial court on the ground that the interpretation of the ethical rules governing the legal profession involves substantial legal questions. **Unified Sewerage Agency v. Jelco Inc.**, 646 F.2d 1339, 1344 n.3 (9th Cir. 1981); **Kramer v. Scientific Control Corp.**, 534 F.2d 1085, 1088 (3d Cir. 1976), **cert. denied**, 429 U.S. 830 (1976); **American Roller Co. v. Budinger**, 513 F.2d 982, 985 n.3 (3d Cir. 1975). We believe that the trial court's findings in the instant case generally involve mixed questions of fact and law which, on review, do not require the deference due to findings on questions of pure fact. However, the proper standard of review of that portion of the trial court's order which allowed Jones, Waldo to remain as counsel in the malpractice action is the abuse of discretion standard. See **Central Milk Producers Cooperative v. Sentry Food Stores, Inc.**, 573 F.2d 988, 991 (8th Cir. 1978); **W.T. Grant Co. v. Haines**, 531 F.2d at 676; **Bicas v. Superior Court**, 116 Ariz. 69, 69, 567 P.2d 1198, 1198 (Ariz. Ct. App. 1977).

The record here adequately supports, and we agree with, the trial court's findings that an attorney-client relationship existed between Jones, Waldo and the appellants; that Jones, Waldo's concurrent representation of the doctors and the Margulies family created a conflict of interest; and that Jones, Waldo did not fully disclose the nature and possible effects of its concurrent representation to the appellants. Furthermore, under the circumstances of this case, we are persuaded that the trial court's order permitting Jones, Waldo to continue representing the Margulieses constituted an abuse of discretion.

Unless an attorney-client relationship or some fiduciary duty existed between Jones, Waldo and the appellants, there could be no conflict of interest created by the firm's representation of the Margulieses in their malpractice suit. The lower court found that an attorney-client relationship did in fact exist because the federal action, if successful, would directly aid and benefit Upchurch, Woolsey, and Chichester. We agree.

Jones, Waldo contends that a personal request for legal services or advice by the client and an acceptance by the attorney is necessary for an attorney-client relationship to be formed. We disagree. Even in the absence of an express attorney-client relationship, circumstances may give rise to an implied professional relationship or a fiduciary duty toward the client, thereby invoking the ethical mandates governing the practice of law. **Westinghouse Electric Corp. v. Kerr-McGee Corp.**, 580 F.2d 1311, 1319-20 (7th Cir. 1978), **cert. denied**, 439 U.S. 955 (1978). In a situation similar to this one, a federal district court implied a professional relationship where an officer of a corporation reasonably believed that an attorney had represented him although the attorney disclaimed any such relationship. **E.F. Hutton & Co. v. Brown**, 305 F. Supp. 371, 387-92 (S.D. Tex. 1971). Jones, Waldo's successful representation of the limited partnership in **Diversified** would have protected the appellants from substantial personal liability. Therefore, it was not at all unreasonable for the limited partners to believe that Jones, Waldo was acting for their individual interests as well as the interests of the partnership in that litigation. All three of the appellants attested that this was their impression

Intermountain Capital, of which he was president) of Diversified Energy, retained Jones, Waldo as counsel for the partnership. Jones, Waldo informed Sundstrom of the pending medical malpractice suit against three of Diversified's limited partners and requested that Sundstrom attempt to acquire the three limited partners' written consent to Jones, Waldo's representation of Diversified Energy in a lawsuit against Midland. The **Diversified** litigation was aimed at preventing foreclosure on the individual letters of credit.

Sundstrom discussed the proposed representation with the appellants Woolsey and Upchurch, but failed to acquire their written consent. Chichester was not contacted at all, and he and Woolsey were apparently never informed of the nature and ethical implications of the potential conflict of interest. Upchurch discussed the problem with his individual counsel in the malpractice action and, after being told about the significance of the conflict, declined to consent to Jones, Waldo's undertaking the **Diversified** litigation. The uncontroverted facts appear to establish that the appellants neither consented to the representation nor affirmatively objected to it at this stage.¹ It is also established that Jones, Waldo never discussed the problem with any of appellants' individual counsel in the malpractice action.

Jones, Waldo filed a complaint in the **Diversified** case in January 1984. During that same month, the trial court entered an order in the malpractice action regarding discovery efforts by Jones, Waldo, on behalf of the plaintiffs, to obtain detailed information regarding Upchurch's personal and professional finances. Upchurch, upon learning that Jones, Waldo had not withdrawn from either lawsuit, contacted his lawyer, and a motion was made to have the firm disqualified in the **Margulies** case.

After hearing the motion for disqualification, the trial court prepared a memorandum decision in which it found that: (1) for all practical purposes, the appellants are parties in the **Diversified** litigation; (2) Jones, Waldo had a conflict of interest in violation of the Utah Rules of Professional Conduct in undertaking its representation in both cases; (3) there was "no willful nor intentional violation of [the] standards" in the rules by Jones, Waldo; and (4) there was not full disclosure to the appellants of the possible effect of their representation on the exercise of their professional judgment, as required by Utah Code of Professional Responsibility DR 5-105(C) (1977) and, therefore, any consent to or acquiescence in the representation did not satisfy the rule's requirement regarding exceptions. Further finding that "great inconvenience and problems of delay" would be imposed on the plaintiffs by Jones, Waldo's withdrawal from the malpractice case, the court gave the firm the alternative option of withdrawing from the **Diversified** case in federal court and submitting to an order prohibiting them from using in the **Margulies** case any information "gained or available" in connection with the federal court action. The court also found that "in addition to the ethical considerations..., there is a direct conflict in that in this action the plaintiffs have sought the financial statements of these defendants which was denied by the court but now the access to these very statements is [inherently] included in the federal case." Jones, Waldo withdrew from the federal actions, and an order was subsequently entered as outlined above.

There being relatively few reported decisions from this Court regarding the principles applicable to professional conduct, we look initially to standards of review articulated in other jurisdictions under similar rules of conduct. Trial courts are usually given broad discretion in controlling the

granted lightly. We are not persuaded, however, by Jones, Waldo's argument that the financial information in question relates only to the prayer for punitive damages in the **Margulies** action and is, therefore, not relevant until after a demonstration of a basis for a punitive award. Even though it is true that Jones, Waldo could legitimately acquire such personal financial information on behalf of the Margulieses if there is a prima facie showing of grounds for punitive damages at trial, the premature possession of such information could well have substantial impact on settlement proposals and discussions and on trial strategy.

We believe, however, that this case is more easily resolved by considering, in conjunction with the Canon 4 problems, Canon 5. Disciplinary Rule 5-105 of the Code concerns situations where an attorney is representing two adverse clients simultaneously, rather than representing a current client against a former client. Although Jones, Waldo has discontinued its representation in **Diversified** as a condition to being allowed to continue in the **Margulies** action, Jones, Waldo was counsel in both actions at the time the disqualification motion was filed. It is our strong view that an attorney who is simultaneously representing two clients with differing interests should not be able to avoid conforming to Canon 5 by simply dropping one of the clients at his option when a disqualification motion is filed. See **Unified Sewerage Agency v. Jelco Inc.**, 646 F.2d 1339, 1345 n.4 (9th Cir. 1981); see also **Fund of Funds, Ltd. v. Arthur Andersen & Co.**, 435 F. Supp. 84, 95 (S.D.N.Y. 1977), **aff'd in part, rev'd in part on other grounds**, 567 F.2d 225 (2d Cir. 1977). Otherwise, little incentive would exist for attorneys to avoid dual employment by adverse parties in the first place. Jones, Waldo's continued representation of the Margulieses must be judged by the standards applicable at the time the trial court's order was made, namely, at the time the firm was simultaneously representing appellants in the federal action.

Disciplinary Rule 5-105 of the Utah Code of Professional Responsibility states in part:

(b) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients **if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.**

(Emphasis added.) The first requirement of DR 5-105(C) is that it be "obvious" that the attorney be able to represent both clients adequately. Although adverse representation in itself might not frustrate fulfillment of this requirement, Jones, Waldo's receipt of financial information regarding the appellants' direct interests in the federal action should have raised some doubt in the minds of firm members as to the propriety of undertaking the federal action. At the very least, one has to wonder about the trust and confidence a physician will be able to repose in an attorney whose partners and associates are suing him for professional malpractice. The evidence before the trial court in this case demonstrated that Jones, Waldo was in fact aware that a conflict of interest problem did exist. The readily apparent nature of the problem indicates that it was not "obvious" that the firm could represent both clients adequately. See DR 5-105(C); cf. **Cinema 5, Ltd. v. Cinerama, Inc.**, 528 F.2d

1384, 1387 (2d Cir. 1976) (burden on firm to show that adverse representation not harmful).

The second requirement of DR 5-105(C) is that the attorney obtain consent to the dual representation after **"full disclosure of the possible effect of such representation."** (Emphasis added.) The burden of showing full disclosure rests upon the attorney undertaking adverse employment. **In re Hansen**, Utah, 586 P.2d 413, 415 (1978).⁴ Jones, Waldo contends that it obtained the requisite consent because it disclosed its relationship with the Margulies family to Sundstrom, the general partner in Diversified Energy, and to Ralston, the limited partner named as a party in the federal action. Jones, Waldo relies on the fact that the limited partnership gave its consent through Sundstrom and on the assertion that all the physicians expressly consented to the firm's representation of the limited partnership. Although there is a dispute about the details of appellants' alleged consent, there is no dispute about the fact that Jones, Waldo did not undertake "full disclosure of the possible effect of [the] representation on the exercise of [its] independent professional judgment on behalf of [appellants]," as required by the rule DR 5-105(C). For client consent to be adequate in a conflict of interest situation, the attorney must not only inform both parties that he is undertaking to represent them, but must also explain the nature and implications of the conflict in enough detail so that the parties can understand why independent counsel may be desirable. **In re Boivin**, 271 Or. 419, 424, 533 P.2d 171, 174 (1975). No attorneys from Jones, Waldo spoke with appellants about the possible conflict of interest; instead, the firm requested a layman, Sundstrom, to pass on the information and required no adequate assurances that he had done so properly. Reliance on a lay person is simply not sufficient to meet the standard of professional conduct. Sundstrom could not be supposed to understand the nuances of the ethical requirements of the situation and the alternatives available to the appellants. It does not even appear that he understood Jones, Waldo's dual representation to be possible unethical. Nor can the fact that appellants paid a pro rata share of the limited partnership's legal fees to the firm vitiate the lack of full disclosure.

Although the trial court found that the requirements of DR 5-105(C) were not met, it allowed Jones, Waldo to continue as counsel for the Margulies family if the firm agreed to withdraw as counsel in the federal action and also agreed not to use any information obtained in the federal action. We believe that the trial court abused its discretion by not requiring Jones, Waldo to withdraw from employment in the malpractice case. Jones, Waldo's failure to comply with the standards set forth in Canon 5 may not be cured or rectified by an optional withdrawal in the case of its choice, for reasons we discuss hereafter.

CANON 9

Motions to disqualify opposing counsel present the court with two important but often opposing policy considerations: on the one hand, the undesirability of separating litigants from the counsel of their choice and, on the other, the necessity of ensuring that litigants and the public perceive lawyers and courts as possessing the integrity necessary for the disposition of justice. We are especially mindful of the latter consideration, as this Court is charged by law with approving and administering rules of conduct and discipline governing the practice of law in the State of Utah. U.C.A., 1953, §§ 78-51-14, -19 (1977). Among the guidelines for professional conduct which we have approved is Canon 9, which states: "A lawyer should avoid even the appearance of professional impropriety." The basis of this tenet is that society's perception of the integrity of our legal system may be as important

as the reality, since it is the perception that engenders public confidence that justice will be dispensed. Litigants are highly unlikely to be able to maintain this confidence if their attorney in one matter is allowed simultaneously to sue them in another. As this Court said in another case involving an attorney representing two adverse parties concurrently:

The practice of law is a profession whose members are granted a special privilege of holding themselves out as having the education, the skills and the integrity to give help and guidance to others in their affairs.... This includes that the attorney will become unreservedly identified with his client's interests and protect his rights. It means not only in dealing with the client's adversary, but also that the attorney will adhere to the ideals of honesty and fidelity with the client himself, and that he will not use his position to take any unfair advantage of the special confidence which the client is entitled to repose in him.

In re Hansen, Utah, 586 P.2d 413, 416 (1978). Although **Hansen** was a disciplinary action rather than a disqualification motion, the principle that an attorney should become identified solely with the rights of his client and not use, or appear to use, his position to take advantage of his client's confidence in him is nonetheless valid here. We recognize that disqualification motions based on very slight appearances of impropriety have been misused for tactical advantage in litigation. See **Alexander v. Superior Court**, 141 Ariz. 157, 685 P.2d 1309, 1317 (1984). In this case, however, a serious appearance of impropriety is coupled with violations of the Code of Professional Responsibility which in and of themselves call for disqualification. The integrity of the court system as well as the integrity of the profession requires that Jones, Waldo withdraw from the malpractice action. We are aware that considerable hardship is thereby imposed on the Margulies family, the resolution of whose claim has been delayed by this unfortunate problem. We are hopeful, however, that the advanced state of discovery in their action and the availability of other counsel skilled in medical malpractice litigation in our bar will allow the case to proceed to trial relatively quickly. We urge the assistance of the district court in that regard. That portion of the order of the trial court allowing Jones, Waldo to remain as counsel in the malpractice action is reversed. The remainder of the order is affirmed.

WE CONCUR: Gordon R. Hall, Chief Justice, I. Daniel Stewart, Justice, Richard C. Howe, Justice.

Zimmerman, Justice, does not participate herein.

OPINION FOOTNOTES

1 The affidavits submitted below show a conflict in the evidence respecting the consent question. Sundstrom's statement says: "Dr. Upchurch, based upon my personal conversations with him not only knew about the Firm's representation but consented to as well as paid for the Firm's representation of the Partnership." Upchurch stated that, after Sundstrom asked him to sign a letter of consent, he consulted with his attorney and was advised that a conflict existed and that he should not sign. No one talked directly to Chichester about this question.

The following facts, however, appear to be undisputed: first, none of the appellants affirmatively objected to the representation, second, no one from the partnership or Jones, Waldo disclosed or explained to them the possible effects of the representation or the ethical position of Jones, Waldo, and finally, no one from Jones, Waldo ever discussed the matter at all with any of the appellants before deciding to proceed.

2 See **In re Banks**, 283 Or. 459, 471, 584 P.2d 284, 290 (1978), where the Oregon Supreme Court

found that an attorney who was representing a closely held corporation was in fact representing both the corporation and its dominant shareholder because the interests of both were at stake.

3 Utah Code of Professional Responsibility DR 4-101 (1977) forbids an attorney from using a confidence or secret of a client to the disadvantage of the client and bans revealing the information unless the client consents after full disclosure.

4 **Hansen** appears to presume that any conflicting representation has the "adverse effect" required by DR 5-105(B) to invoke DR 5-105(C), as the subject matter of the two suits involved in **Hansen** was unrelated. *Id.* at 414; accord *I.B.M. v. Levin*, 579 F.2d 271, 280 (3d Cir. 1978); *Unified Sewerage Agency*, 646 F.2d at 1351.
