

FEB 06 2008

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. NC-07-1240-KJuMk  
 )  
 3DFX INTERACTIVE, INC., ) Bk. No. 02-55795  
 )  
 Debtor. )  
 \_\_\_\_\_ )  
 )  
 ADORNO & YOSS LLP, )  
 )  
 Appellant, )  
 )  
 v. ) **MEMORANDUM\***  
 )  
 UNITED STATES TRUSTEE; OFFICIAL )  
 COMMITTEE OF EQUITY SECURITY )  
 HOLDERS; OFFICIAL COMMITTEE OF )  
 UNSECURED CREDITORS; WILLIAM A. )  
 BRANDT, JR., Trustee; NVIDIA )  
 CORP.; 3DFX INTERACTIVE, INC., )  
 )  
 Appellees. )  
 \_\_\_\_\_ )

Argued and Submitted on January 24, 2008  
at San Francisco, California

Filed - February 6, 2008

Appeal from the United States Bankruptcy Court  
for the Northern District of California

Honorable Roger L. Efremsky, Bankruptcy Judge, Presiding

Before: KLEIN, JURY and MARKELL, Bankruptcy Judges.

\*This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

1 This is an appeal from an order disqualifying appellant as  
2 special counsel to the chapter 11 Official Committee of Unsecured  
3 Creditors due to a conflict of interest arising out of  
4 appellant's representation of a creditor and named defendant in a  
5 fraudulent conveyance action brought by the trustee in the same  
6 bankruptcy case. Appellees, the Official Committee of Equity  
7 Security Holders and the United States Trustee, contend that  
8 appellant's concurrent representation violated 11 U.S.C.  
9 § 1103(b) and California State Bar Rule of Professional Conduct  
10 3-310. We AFFIRM.

11  
12 FACTS

13 On October 15, 2002, debtor 3dfx Interactive, Inc. filed for  
14 chapter 11 bankruptcy relief. Subsequently, the Office of the  
15 United States Trustee appointed the Official Committee of  
16 Unsecured Creditors ("Committee") and the bankruptcy court  
17 appointed a chapter 11 trustee.

18  
19 A. Adorno's Employment

20 On January 9, 2004, the bankruptcy court approved employment  
21 of Sedgwick, Detert, Moran & Arnold LLP ("Sedgwick") as attorneys  
22 to the Committee.

23 Due to a potential conflict that existed between Sedgwick  
24 and the Committee in an upcoming mediation of litigation  
25 involving the debtor's trustee, nVidia Corporation, and others,  
26 Sedgwick asked appellant Adorno & Yoss LLP ("Adorno") to serve as  
27 special conflicts counsel for the Committee.

1 On February 1, 2005, the bankruptcy court granted Sedgwick's  
2 application for order approving employment of Adorno as special  
3 counsel to the Committee to participate in and advise the  
4 Committee on the mediation.<sup>1</sup> In support of the employment  
5 application, Charles M. Tatelbaum of Adorno filed a declaration  
6 disclosing that he represented Avnet, Inc., one of the debtor's  
7 creditors and the chair of the Committee, for many years.<sup>2</sup>  
8 Tatelbaum also declared that he would file supplemental  
9 declarations as needed to disclose any other relevant  
10 connections.

11 \_\_\_\_\_  
12 <sup>1</sup>Specifically, the Committee requested an order under  
13 § 1103(a) authorizing the Committee to retain Adorno as special  
14 counsel to perform the following services, among others:

- 15 (a) preparing for and attending the February 10  
16 mediation on behalf of the Committee;  
17 (b) advising the Committee on the results of the  
18 mediation or any settlement that is obtained  
19 thereafter; and  
20 (c) attending to any necessary follow-up or other  
21 required action in response to the outcome of the  
22 mediation.

23 Application for Order Approving Employment of Adorno & Yoss as  
24 Special Counsel for the Official Committee of Unsecured Creditors  
25 at 4:26-5:5.

26 <sup>2</sup>In his declaration, Tatelbaum disclosed:

27 For many years I represented Avnet, Inc. one of the  
28 creditors in this case, and whose representative serves  
as Chair of the Committee. The representation of Avnet  
has included general legal advise [sic], the defense  
and prosecution of contract claims and the defense of  
bankruptcy preference claims.

Decl. of Charles M. Tatelbaum in Support of Application for  
Order Approving Retention of Adorno & Yoss, LLP as Counsel  
for the Official Committee of Unsecured Creditors at 5:6-9.

1 On behalf of the Committee, Adorno attended the mediation  
2 session that sought a global settlement of the bankruptcy case on  
3 February 10, 2005. Adorno remained involved throughout that year  
4 in the mediation process, which culminated in a vote by the  
5 Committee on November 1, 2005, to approve a settlement. As the  
6 bankruptcy court noted, the docket indicates that until at least  
7 July 2006, Adorno continued to do work for the Committee which  
8 was not limited to the mediation.<sup>3</sup>

9  
10 B. The Avnet Action

11 In October 2004, the trustee filed numerous fraudulent  
12 conveyance actions (collectively referred to as the "STB Actions"  
13 by the trustee), including one against the predecessor to Avnet,  
14 Inc.<sup>4</sup> Avnet, a member of the Committee, is represented by  
15 Adorno. A default judgment was entered against Avnet's  
16 predecessor in March 2005.

17 According to Tatelbaum, he first learned of the default  
18 judgment on March 31, 2005. Thereafter, on May 3, 2005,  
19 Tatelbaum, on Adorno's behalf, and the trustee's counsel  
20 stipulated to set aside the default judgment and allow the  
21 trustee to amend the complaint to name Avnet as a defendant.

22  

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23 <sup>3</sup>In July 2006, Adorno represented the Committee in filing an  
24 opposition to the motion of Zoran Corporation to deem its claim  
25 timely filed. The court noted that this "belies Adorno's  
26 contention that it was retained only for the purpose of attending  
the mediation and then departed from the case." Mem. Decision at  
9:5-7.

27 <sup>4</sup>Kent Electronics Corporation was predecessor to Avnet.  
28 Avnet had purchased the stock of Kent in 2002, and subsequently  
had merged Kent into Avnet.

1           Tatelbaum also declared that it was his understanding and  
2 belief based on email and facsimile correspondence in April 2005  
3 that the trustee's adversary proceeding against Avnet was to be  
4 held in abeyance once the amended complaint was filed until the  
5 conclusion of the mediation.

6           On May 11, 2005, the trustee filed an amended complaint  
7 naming Avnet, which sought to avoid and recover for the benefit  
8 of the estate an alleged fraudulent conveyance of \$902,619.74  
9 ("Avnet Action").

10          Adorno's response to the amended complaint was due June 13,  
11 2005, as required by the court's October 2004 scheduling order  
12 for the STB Actions. A series of emails between the trustee's  
13 counsel and Tatelbaum ensued over a period of several months  
14 revealing that an answer had to be filed on behalf of Avnet in  
15 the trustee's litigation in compliance with the Federal Rule of  
16 Civil Procedure 26 "meet and confer" and initial disclosure  
17 requirements, regardless of whether the STB Actions were to be  
18 held in abeyance pending the nVidia settlement discussions.

19          In summary, the bankruptcy court noted that the email  
20 correspondence provided by the Official Committee of Equity  
21 Security Holders ("Equity Committee") in its Reply Brief  
22 indicated the following:

23           Adorno promised to respond by the end of the week of  
24 June 20, 2005 -- which it did not do. It also  
25 indicates that when no response had been filed by  
26 September 16, 2005 and Adorno had failed to serve its  
27 Rule 26 initial disclosures as it had agreed by August  
28 31, the Trustee threatened to take Avnet's default.

27 Mem. Decision at 5:7-11.

1 After months of postponing, on September 21, 2005, Adorno  
2 defended Avnet by filing an answer, which denied all allegations  
3 of trustee's amended complaint and asserted twenty-three  
4 affirmative defenses.

5  
6 C. Disqualification of Adorno

7 On December 20, 2005, Adorno was replaced by another law  
8 firm in the Avnet Action.

9 On November 22, 2006, the Equity Committee filed its motion  
10 to disqualify Adorno from its Committee representation. The  
11 United States Trustee ("UST") filed its motion to disqualify  
12 Adorno on January 12, 2007. Both appellees, the Equity Committee  
13 and the UST, contend that Adorno should be disqualified for  
14 violating § 1103(b) and Rule 3-310.

15 In opposition, Adorno argued that there was no conflict of  
16 interest in violation of § 1103(b) or violation of Rule 3-310 and  
17 that the Equity Committee and the UST lacked standing to seek  
18 disqualification of Adorno.

19 On June 1, 2007, the bankruptcy court granted appellees'  
20 motions disqualifying Adorno as special counsel to the  
21 Committee.<sup>5</sup> It concluded that once Adorno acted on behalf of  
22 Avnet in the Avnet Action, it had a disqualifying adverse  
23 interest under § 1103(b) and Rule 3-310. Adorno's defense of  
24 Avnet, if successful, would be detrimental to the interests of  
25 the Committee.

26 \_\_\_\_\_  
27 <sup>5</sup>The court noted that it would not then rule on the UST's  
28 request that fees paid to Adorno be disgorged, and that such a  
request would be considered if and when the UST (or other  
interested parties) filed a separate motion.

1 Adorno's timely appeal ensued.

2 According to the Panel's September 25, 2007, order granting  
3 the third motion for extension of time for Adorno to file its  
4 opening brief, the issue regarding finality of the order on  
5 appeal and leave to appeal, raised sua sponte by the Panel,  
6 remains unresolved.<sup>6</sup> Although Adorno responded to this issue in  
7 its memorandum of law on August 7, 2007, the Panel ordered that  
8 the parties address this issue further in their appellate briefs.

9  
10 JURISDICTION

11 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334.  
12 We have jurisdiction under 28 U.S.C. § 158(a)(1).

13  
14  
15 ISSUES

16 (1) Whether the appeal from an order disqualifying counsel  
17 is final or whether leave to appeal should be granted.

18 (2) Whether the court erred in holding that a conflict of  
19 interest existed under § 1103(b) and California Rule of  
20 Professional Conduct 3-310 requiring disqualification of Adorno.

21  
22 

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<sup>6</sup>On July 25, 2007, the Panel ordered the appellant Adorno to  
23 file a written response explaining how the order on appeal was  
24 final and immediately reviewable under § 158(a)(1) or file a  
25 motion for leave to appeal. Adorno filed its memorandum of law  
26 responding to the issue on August 7, 2007.

27 Thereafter, due to settlement negotiations underway, three  
28 stipulations to extend the time for Adorno to file its opening  
brief were granted on August 8, 2007, August 28, 2007, and  
September 25, 2007, ultimately allowing Adorno until October 9,  
2007 to file its opening brief, including further discussion of  
the finality issue.

1 (3) Whether the court erred in holding that the Equity  
2 Committee and the UST had standing to seek disqualification of  
3 Adorno.

4  
5 STANDARDS OF REVIEW

6 The trial court's decision ordering disqualification of  
7 counsel generally will not be reversed unless the court either  
8 misperceives the relevant rule of law or abuses its discretion.  
9 Paul E. Iacono Structural Eng'r, Inc. v. Humphrey, 722 F.2d 435,  
10 438 (9th Cir. 1983). An order disqualifying an attorney will not  
11 be disturbed if the record reveals "any sound" basis for the  
12 court's action. Id.

13 We review issues of statutory construction, including  
14 interpretation of provisions of the Bankruptcy Code, de novo.  
15 Einstein/Noah Bagel Corp. v. Smith (In re BCE W., L.P.), 319 F.3d  
16 1166, 1170 (9th Cir. 2003); Mendez v. Salven (In re Mendez), 367  
17 B.R. 109, 113 (9th Cir. BAP 2007). The bankruptcy court's  
18 interpretation of state law is also reviewed de novo. Conestoga  
19 Servs. Corp. v. Exec. Risk Indem., Inc., 312 F.3d 976, 981 (9th  
20 Cir. 2002); State Bd. of Equalization v. Leal (In re Leal), 366  
21 B.R. 77, 80 (9th Cir. BAP 2007).

22 The bankruptcy court's findings of fact are reviewed for  
23 clear error, and conclusions of law are reviewed de novo.  
24 Wechsler v. Macke Int'l Trade, Inc. (In re Macke Int'l Trade,  
25 Inc.), 370 B.R. 236, 245 (9th Cir. BAP 2007). We review mixed  
26 questions of law and fact de novo. Id.

1 DISCUSSION

2 Before turning to the merits of this appeal regarding  
3 Adorno's disqualification as special counsel to the Committee, we  
4 must first address the jurisdictional issue of the finality of  
5 the order on appeal or whether to grant leave to appeal.

6  
7 I

8 Generally, an order disqualifying or refusing to disqualify  
9 counsel is considered interlocutory. Stanley v. S.S. Retail  
10 Stores Corp. (In re S.S. Retail Stores Corp.), 162 F.3d 1230,  
11 1232 (9th Cir. 1998). See also In re Devlieg, 56 F.3d 32, 34  
12 (7th Cir. 1995). Appeal of an interlocutory order requires leave  
13 of the Panel. 28 U.S.C. § 158.

14 The Ninth Circuit has adopted the pragmatic approach to  
15 finality in bankruptcy cases, according to which an order is  
16 final and thus appealable if it: (1) resolves and seriously  
17 affects substantive rights and (2) finally determines the  
18 discrete issue to which it is addressed. Schulman v. California  
19 (In re Lazar), 237 F.3d 967, 985 (9th Cir. 2001).

20 Finality in the bankruptcy context does not require complete  
21 adjudication of the underlying bankruptcy case but rather only of  
22 the given issue. See e.g., Brown v. Wilshire Credit Corp. (In re  
23 Brown), 484 F.3d 1116, 1121 (9th Cir. 2007) ("a complete act of  
24 adjudication need not end the entire case, but need only end any  
25 of the interim disputes from which an appeal would lie"), quoting  
26 Slimick v. Silva (In re Slimick), 928 F.2d 304, 307 n.1 (9th Cir.  
27 1990). Moreover, flexibility of the finality test in the  
28 bankruptcy context has allowed some courts to conclude that a

1 disqualification order is a final judgment. See e.g., In re  
2 Albright, 95 B.R. 560 (N.D. Ill. 1989).

3 Adorno argues that the bankruptcy court order should be  
4 deemed a final order because the order resolved the substantive  
5 issue under Lazar by stating that, "Adorno is therefore  
6 disqualified as special counsel for the Creditors' Committee."  
7 Mem. Decision at 13:28-14:1.

8 In addition, Adorno contends that finality is addressed  
9 because there is no risk of the issue coming up on appeal again.  
10 See e.g., Silver Sage Partners, Ltd. v. City of Desert Hot  
11 Springs (In re City of Desert Hot Springs), 339 F.3d 782, 788  
12 (9th Cir. 2003) (traditional finality concerns dictate the  
13 avoidance of a case making two complete trips through the  
14 appellate process). Adorno asserts that its representation of  
15 Avnet in the fraudulent conveyance action and its representation  
16 of the Committee in the mediation have both concluded on their  
17 own right.

18 We agree that the order disqualifying Adorno as special  
19 counsel to the Committee was a final order. Accordingly, we have  
20 appellate jurisdiction to review the order under § 158(a)(1).

21 Alternatively, if the order is interlocutory, and no motion  
22 for leave to appeal has been filed, we can consider a timely  
23 notice of appeal to be a motion for leave, which we would grant.  
24 See Fed. R. Bankr. P. 8003(c); Pfeiffer v. Couch (In re Xebec),  
25 147 B.R. 518, 522 (9th Cir. BAP 1992). Although Adorno did not  
26 file a motion for leave to appeal, it filed a timely notice of  
27 appeal. Thus, we nevertheless have appellate jurisdiction to  
28 review the order under § 158(a)(3).

1 II

2 The bankruptcy court concluded that Adorno's conduct on  
3 behalf of Avnet in the Avnet Action while still representing the  
4 Committee in the mediation constituted a disqualifying adverse  
5 interest under § 1103(b) and Rule 3-310 because Adorno's defense  
6 of Avnet, if successful, would be detrimental to the interests of  
7 the Committee.

8 We examine Adorno's conduct under applicable federal and  
9 state law in turn.

10  
11 A

12 In pertinent part, § 1103(b) provides that an attorney  
13 employed to represent the Official Committee of Unsecured  
14 Creditors in the bankruptcy case may not, while employed by such  
15 committee, represent any other entity having an adverse interest  
16 in connection with the case. Congress qualified this with a 1984  
17 amendment: "Representation of one or more creditors of the same  
18 class as represented by the committee shall not per se constitute  
19 the representation of an adverse interest." 11 U.S.C. § 1103(b).

20 The stakes in the "adverse interest" calculus are high  
21 because the representation of an "interest adverse to the  
22 interest of the estate" with respect to the matter on which the  
23 professional is employed that occurs "at any time during such  
24 professional person's employment under section 327 or 1103 of  
25 this title" may lead to denial of all compensation for services  
26 and reimbursement of expenses. 11 U.S.C. § 328(c).

27 Section 1103(b) prohibits dual representation if such  
28 representation would interfere with counsel's vigorous advocacy

1 for either client, jeopardize counsel's undivided loyalty to  
2 either client, or endanger the confidences and secrets of either  
3 client. In re Nat'l Liquidators, 182 B.R. 186, 192 (Bankr. S.D.  
4 Ohio 1995). It also prohibits concurrent representation where  
5 there exists even the appearance of impropriety. Id.

6 While the Bankruptcy Code does not define "adverse  
7 interest," the generally accepted definition is the (1)  
8 possession or assertion of an economic interest that would tend  
9 to lessen the value of the bankruptcy estate; or (2) possession  
10 or assertion of an economic interest that would create either an  
11 actual or potential dispute in which the estate is a rival  
12 claimant; or (3) possession of a predisposition under  
13 circumstances that create a bias against the estate. Dye v.  
14 Brown (In re AFI Holdings, Inc.), 355 B.R. 139, 148-49 (9th Cir.  
15 BAP 2006) (context of trustee's lack of disinterestedness in  
16 having adverse interest under § 101(14)).

17 Adherence to or violation of § 1103(b) is determined on a  
18 case-by-case basis. In re Oliver's Stores, Inc., 79 B.R. 588,  
19 595 (Bankr. D.N.J. 1987).

20 In the instant case, appellees argue that disqualification  
21 under § 1103(b) is necessitated by Adorno's concurrent  
22 representation of two parties with adverse interests: (1) the  
23 Committee, whose goal it was to maximize the assets available for  
24 distribution to unsecured creditors and (2) the creditor, Avnet,  
25 in the same bankruptcy case, whose goal it was to defeat an  
26 action brought by the trustee on behalf of the debtor's estate,  
27 thereby diminishing the assets available to unsecured creditors.

28

1 Appellees contend that Adorno's disqualifying simultaneous  
2 representation occurred during the course of its representation  
3 of the Committee, but no later than when it filed an answer to  
4 the complaint brought by the trustee against Avnet. The answer  
5 sought to deny the debtor's bankruptcy estate the right to  
6 recover from Avnet the approximate \$902,000 alleged fraudulent  
7 transfer.

8 On the other hand, Adorno contends that only a theoretical  
9 conflict existed, in which the bankruptcy court's interpretation  
10 of the Code would read an absolute ban against concurrent  
11 representation. Adorno also argues that its representation to  
12 each client was limited in scope and that it was under the  
13 impression that the STB Actions would be put on hold until the  
14 conclusion of the mediation. Thus, Adorno's filing the answer on  
15 behalf of Avnet would only be a "stop-gap measure" to keep Avnet  
16 from forfeiting any rights it might have in the Avnet Action  
17 until the mediation was concluded.

18 The bankruptcy court concluded that Adorno violated  
19 § 1103(b) by representing another entity with an adverse interest  
20 in early 2005 because Adorno was resisting the recovery of the  
21 approximate \$900,000 that the trustee sought to recover, which  
22 would benefit the Committee's constituents. Accordingly, the  
23 bankruptcy court determined that Adorno's continued  
24 representation of the Committee on these facts was improper and  
25 the court exercised its discretion to disqualify Adorno. The  
26 court ruled that Adorno's dual role raised serious concerns about  
27 the vigor and loyalty with which the firm could pursue the  
28 interests of the Committee.



1 contained in the State Bar Act, the Rules of Professional Conduct  
2 of the State Bar of California, and decisions of any court  
3 applicable thereto.”

4 Rule 3-310(C) of the California State Bar Rules of  
5 Professional Conduct provides that a member shall not, without  
6 the informed written consent of each client, accept  
7 representation of more than one client in a matter in which the  
8 interests of the clients potentially or actually conflict, or  
9 represent a client in a matter and simultaneously accept  
10 representation of another entity whose interest is adverse to the  
11 client in the first matter.

12 Rule 3-310(E) further states that a member shall not,  
13 without the informed written consent of the client, accept  
14 employment adverse to the client, where the member has obtained  
15 confidential information material to the employment during  
16 representation of the client.

17 Moreover, California law generally requires automatic  
18 disqualification where an attorney simultaneously represents  
19 clients with adverse interests. See People v. Speedee Oil Change  
20 Sys, Inc., 980 P.2d 371, 379 (Cal. 1999) (attorney’s actual  
21 intention and motives are immaterial, and the rule of automatic  
22 disqualification applies); Cal West Nurseries, Inc. v. Super. Ct.  
23 of Sonoma County, 129 Cal. App. 4th 1170, 1175 (Ct. App. 2005);  
24 Flatt v. Super. Ct. of Sonoma County, 9 Cal. 4th 275, 284 (Ct.  
25 App. 1994) (with few exceptions, disqualification follows  
26 automatically, even though the simultaneous representations have  
27 nothing in common and there is no risk of disclosure of  
28 confidential information).

1           Among other reasons, Adorno contends that it disclosed its  
2 simultaneous representation of Avnet to the Committee by  
3 Tatelbaum's statement in his declaration, filed in support of  
4 Adorno's employment as special counsel to the Committee, that he  
5 represented Avnet for many years.

6           Appellees argue, however, that Tatelbaum did not disclose to  
7 the Committee that Adorno would be defending Avnet against the  
8 trustee's fraudulent conveyance action in the same case.

9 Furthermore, appellees contend that Tatelbaum never filed any  
10 supplemental declarations disclosing Adorno's involvement in the  
11 Avnet Action.

12           The court determined that Adorno had not obtained the  
13 informed written consent of the Committee in advance of Adorno's  
14 representation of Avnet, even if Adorno claims the Committee and  
15 other interested parties were "aware" of its representation of  
16 Avnet. It concluded that this awareness, if it existed, was  
17 insufficient, where informed written consent of Rule 3-310  
18 requires the client's written agreement to the representation  
19 following written disclosure. Rule 3-310(A)(1) & (2).

20           The court's findings of fact were not clearly erroneous, and  
21 we agree with its conclusions of law. We will not substitute our  
22 judgment for that of the trial court, which followed from factual  
23 findings that were based on substantial evidence. Speedee Oil  
24 Change Sys, Inc., 980 P.2d at 377. Thus, the court did not err  
25 in disqualifying Adorno as special counsel to the Committee  
26 because no informed written consent was obtained as required by  
27 Rule 3-310.

28

2 Adorno further contends that the Equity Committee and UST  
 3 lacked standing to contest its representations under the general  
 4 rule that only former or current clients have standing to seek  
 5 disqualification based on a conflict of interest, and that the  
 6 appellees did not suffer an injury in fact.

7 As the court determined, Adorno's argument is not persuasive  
 8 because § 1109 provides that any party in interest may raise, and  
 9 be heard, on any issue in a bankruptcy case.<sup>7</sup>

10 Furthermore, the court may raise the issue sua sponte and  
 11 take any action necessary to prevent an abuse of process.  
 12 Interwest Bus. Equip., Inc. v. United States Tr. (In re Interwest  
 13 Bus. Equip., Inc.) 23 F.3d 311, 317 (10th Cir. 1994). The court  
 14 has an independent duty to disqualify an attorney to preserve  
 15 public trust in the administration of justice and the integrity  
 16 of the legal system. City & County of San Francisco v. Cobra  
 17 Solutions, Inc., 135 P.3d 20, 25 (Cal. 2006).

18 Courts have also recognized an exception to the general rule  
 19 limiting standing to clients or former clients in cases where the  
 20 ethical breach so infects the litigation that it impacts the  
 21 moving party's interest in a just and lawful determination of the  
 22

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23 <sup>7</sup>Section 1109(b) of the Code provides:

24 A party in interest, including the debtor, the trustee,  
 25 a creditors' committee, an equity security holders'  
 26 committee, a creditor, an equity security holder, or  
 27 any indenture trustee, may raise and may appear and be  
 heard on any issue in a case under this chapter.

28 11 U.S.C. § 1109(b).

1 claims. Colyer v. Smith, 50 F. Supp. 2d 966, 971-72 (C.D. Cal.  
2 1999).

3 Here, the court determined that the facts of this case  
4 bring the Equity Committee and UST within this exception to have  
5 constitutional standing in bringing their motions to disqualify.  
6 The court did not abuse its discretion in this regard.

7 Regardless of whether the appellees are qualified under  
8 § 1109(b) to be heard, the court raises the conflict of interest  
9 issue on its own accord, or the appellees fall within the  
10 exception to the general rule, the court did not err in hearing  
11 and granting appellees' motions to disqualify.

12  
13 CONCLUSION

14 Upon determination that this appeal from the order  
15 disqualifying Adorno is final, or alternatively granting leave to  
16 appeal, that the Equity Committee and UST had standing to seek  
17 disqualification of Adorno, and agreeing with the analysis of the  
18 bankruptcy court regarding conflict of interest under § 1103(b)  
19 and Rule 3-310 requiring disqualification of Adorno as special  
20 counsel for the Committee, we AFFIRM the court's order.