

ETHICS

ETHICS/DISQUALIFICATION OF STATE'S ATTORNEY

[State v. Baker](#), 2007 VT 84 (mem.)

State appealed the decision of the trial court disqualifying the prosecuting attorney and the entire Orleans County State's Attorney's Office (OCSA) based on the appearance of a conflict of interest. While in private practice before becoming a deputy state's attorney for the OCSA, Joseph Malgeri represented a co-defendant and the state's witness in defendant's case. The Supreme Court reversed the order of disqualification finding that the earlier representation did not create a conflict of interest. While V.R.Cr.P. 1.9 would preclude Attorney Malgeri from representing the State against a co-defendant "in the same or a substantially related matter", in this case the trial court abused its discretion because it failed to consider whether the co-defendant's 1995 case and the defendant's 2005 case involved substantially related matters. (Determination of whether representation involves substantially related matters requires analysis of the facts, circumstances and legal issues of the two representations). Furthermore, the Supreme Court reviewed the same and found that the matters were not substantially related because there was no relationship between the two matters.

STAR DECISIS/EMBEZZLEMENT V. LARCENY

[State v. Willard-Freckleton](#), 2007 VT 67

In three consolidated appeals, the three defendants were charged with embezzlement for allegedly stealing cash receipts from their employer. In each case the trial court granted motions to dismiss following [State v. Ward](#), 151 Vt. 448 (1989) ruling that employees who take money already held in the constructive possession of their employers could not be guilty of embezzlement because there was no conversion of the money while in legal possession of the employee. Under [Ward](#), taking such money would be a trespass by the employee against the employer's constructive possession constituting a larceny. "We now avoid the needless perpetuation of technicalities rendered obsolete by the Legislature's adoption of § 2531 and give meaning to the phrase "under his care" in that section to extend embezzlement to all cases in which employees convert their employers' property that is within their custody or control by virtue of their employment."