

IN THE SUPREME COURT OF TEXAS

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No. 97-0654
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IN RE AMERICAN HOME PRODUCTS CORPORATION, WYETH-AYERST
LABORATORIES DIVISION OF AMERICAN HOME PRODUCTS CORPORATION,
WYETH LABORATORIES, INC., AND WYETH-AYERST LABORATORIES COMPANY,
RELATORS

=====
ON PETITION FOR WRIT OF MANDAMUS
=====

- consolidated with -

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No. 97-0655
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IN AMERICAN HOME PRODUCTS CORPORATION, WYETH-AYERST LABORATORIES
DIVISION OF AMERICAN HOME PRODUCTS CORPORATION, WYETH
LABORATORIES INC., AND WYETH-AYERST LABORATORIES COMPANY,
RELATORS

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ON PETITION FOR WRIT OF MANDAMUS
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Argued on November 5, 1997

JUSTICE BAKER concurring in part and dissenting in part.

I joined the Court's May 8, 1998 opinion because I agreed with the Court that, based on the record in this mandamus proceeding, the trial courts abused their discretion and that both law firms should have been disqualified.

Today, based upon exactly the same record, the Court grants the real party in interests' motion for rehearing and decides that the Cherry law firm should not be disqualified. I disagree with the Court's decision to grant the motion for rehearing and to change its prior decision.

Accordingly, I concur in the disqualification of the Law Offices of Frank Herrera. I dissent from the Court's decision to grant the real party in interests' motion for rehearing and its decision that the trial courts did not abuse their discretion in failing to disqualify the Cherry firm.

James A. Baker
Justice

OPINION DELIVERED: December 31, 1998