STATE OF SOUTH DAKOTA)):SS COUNTY OF PENNINGTON)	IN CIRCUIT COURT SEVENTH JUDICIAL CIRCUIT
CITY OF RAPID CITY, a Municipal Corporation Plaintiff, v. GEORGE FISH, CLIFFORD FISH, RANDALL MEIDINGER and FISH GARBAGE SERVICE, INC., a South Dakota Corporation, Defendants. RANDALL MEIDINGER, Third Party Plaintiff, v. JERRY WRIGHT, JOHN LEAHY, LINDA HANSEN, and DARYL BISHOP, Third Party Defendants.	Civil No. 09-2171 **AFFIDAVIT OF JOHN K. NOONEY**

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF PENNINGTON)

COMES NOW, the Affiant, John K. Nooney, being first duly sworn upon his oath, hereby deposes and states as follows:

1. That I am one of the attorneys for the Plaintiff, the City of Rapid City, in the above-captioned matter.

2. After the Motions to Withdraw were filed by Messrs. Duffy and Fransen, I had a telephone conversation with Mr. Hofer wherein Mr. Hofer informed me that he does not

anticipate filing a Motion to Withdraw at this time as he does not perceive that a non-waivable conflict exists.

3. That attached as Exhibit 1 is a true and correct copy of the Notice of Apperance filed by Patrick K. Duffy on August 25, 2011.

4. That attached as Exhibit 2 is a true and correct copy of the Fish and Meidinger Motion for Leave to Amend to Assert Counterclaims, Third Party Claims and Cross Claims, filed by the Fish Defendants on June 1, 2012.

5. That attached as Exhibit 3 is a true and correct copy of the Motion for Continuance filed by the Fish Defendants on June 25, 2012.

6. That attached as Exhibit 4 is a true and correct copy of the Motion to Withdraw filed by Patrick K. Duffy on June 26, 2012.

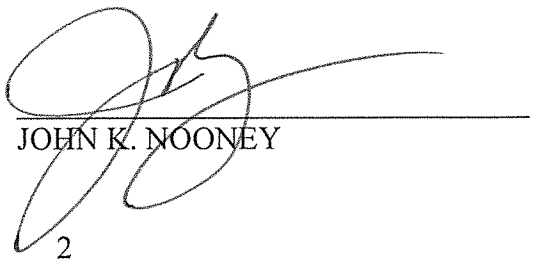
7. That attached as Exhibit 5 is a true and correct copy of the Motion to Withdraw filed by Jeffrey J. Fransen on June 26, 2012.

8. That attached as Exhibit 6 is a true and correct copy of email correspondence from the Honorable Jean Paul Kean, dated June 27, 2012, requesting more information from Messrs. Duffy and Fransen concerning their Motions to Withdraw.

9. That attached as Exhibit 7 is a true and correct copy of correspondence received from Messrs. Duffy and Fransen on July 2, 2012 informing Affiant of Messrs. Duffy and Fransen's *ex parte* communication with the Court on June 27, 2012.

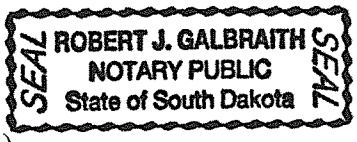
FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 9th day of July, 2012.



JOHN K. NOONEY

Subscribed and sworn to before me this 9th day of July, 2012.



(SEAL)

Notary Public, South Dakota
My Commission Expires: 11/24/2015

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
CITY OF RAPID CITY, a Municipal Corporation,	)	FILE NO. CR. 09-2171
Plaintiff,	)	**NOTICE OF APPEARANCE**
vs.	)	
GEORGE FISH, CLIFFORD FISH, RANDALL MEIDINGER, AND FISH GARGAGE SERVICE, INC., a South Dakota Corporation,	)	
Defendant.	)	

The undersigned attorney hereby notifies the party above-named that he has been engaged to appear for and represent George Fish, Clifford Fish, and Fish Garbage Service, Inc., Defendants above-named, and requests that copies of all further pleadings in the above-entitled matter be served upon them.

Dated this 25TH day of August, 2011.

PATRICK K. DUFFY, LLC

Patrick Duffy
629 Quincy Street, Suite 105
P.O. Box 8027
Rapid City, SD 57709
(605)342-1963

Pennington County, SD
FILED
IN CIRCUIT COURT
AUG 25 2011
Ranae Truman, Clerk of Courts
By_____Deputy

EXHIBIT
tabbies
1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of a *Notice of Appearance* upon the person herein next designated, on the date shown below, by depositing the same in the U.S. Mail at Rapid City, South Dakota, first class postage prepaid, at his/her last known address, to wit:

John K. Nooney
Nooney, Solay & Van Norman
PO Box 8030
Rapid City, SD 57709

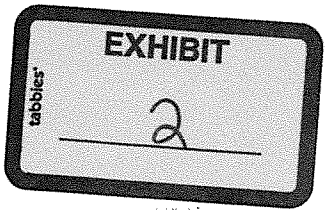
Dated this 25TH day of August, 2011.

Patrick K. Duffy
629 Quincy Street, Suite 105
P.O. Box 8027
Rapid City, SD 57709
(605)342-1963

Pennington County, SD
FILED
IN CIRCUIT COURT
AUG 25 2011
Ranae Truman, Clerk of Courts
By_____Deputy

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT

CITY OF RAPID CITY, a Municipal Corporation, Plaintiff and Counterclaim Defendant, v. GEORGE FISH, CLIFFORD FISH, RANDALL MEIDINGER, and FISH GARBAGE SERVICE, INC., a South Dakota Corporation, Defendants, Counterclaimants Third Party Plaintiffs and Cross-Claimants, v. RANDALL MEIDINGER, Defendant, Third Party Plaintiff, Counterclaimant and Cross-Claimant, v. JERRY WRIGHT, JOHN LEAHY, LINDA HANSEN and DARYL BISHOP, Third Party Defendants, v. SAM KOOIKER, PETER RAGNONE, JERRY WRIGHT, and JOHN LEAHY, Third Party Defendants and Cross Claim Defendants.	)	File No. 09-2171 **FISH AND MEIDINGER MOTION FOR LEAVE TO AMEND TO ASSERT COUNTERCLAIMS, THIRD PARTY CLAIMS AND CROSS CLAIMS**



George Fish, Clifford Fish and Fish Garbage Service, Inc. and Randall Meidinger hereby move the Court for leave to amend pursuant to SDCL §§ 15-6-13,15-6-14 and 15-6-15, to assert a counterclaim against the City of Rapid City and to assert third party and cross claims against Sam Kooiker, Peter Ragnone, Jerry Wright and John Leahy. This motion is support by a brief and a copy of the proposed pleading is attached hereto as Exhibit A.

Dated this 12 day of June, 2012.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

By: _____

Terry L. Hofer
Mark F. Marshall
333 West Blvd., Suite 400;
P.O. Box 2670
Rapid City, SD 57709-2670
605-343-1040

Attorney for Defendants, Counterclaimants, Third Party Plaintiffs, and Cross-Claimants George Fish, Clifford Fish, and Fish Garbage Service, Inc.

Dated this 1st day of June, 2012.

PATRICK K. DUFFY, LLC

By: _____

Patrick K. Duffy
629 Quincy Street, Suite 105
P.O. Box 8027
Rapid City, SD 57709-8027
605-342-1963

Attorney for Defendants, Counterclaimants, Third Party Plaintiffs, and Cross-Claimants George Fish, Clifford Fish, and Fish Garbage Service, Inc.

Dated this 1st day of June, 2012.

JEFFREY J. FRANSEN, LLC

By: _____

Jeffrey J. Fransen
629 Quincy Street, Suite 105
P.O. Box 8027
Rapid City, SD 57709-8027
605-342-1963

Attorney for Defendants, Counterclaimants, Third Party Plaintiffs, and Cross-Claimants George Fish, Clifford Fish, and Fish Garbage Service, Inc.

Dated this 1st day of June, 2012.

SKINNER & WINTER, Prof. LLC

By: _____ for

Paul R. Winter
Angela M. Colbath
409 Kansas City Street
Rapid City, SD 57701
605-718-2330

Attorneys for Defendant, Third Party Plaintiff, Counterclaimant and Cross-Claimant Randall Meidinger

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served copies of this legal document upon the persons herein next designated, all on the date below shown, by hand delivering copies, in envelopes addressed to said addressees, to wit:

John K. Nooney
Nooney, Solay &
Van Norman
632 Main Street
Rapid City, SD 57701

Jerry D. Johnson
Banks, Johnson, Kappelman &
Becker
731 St. Joseph Street, #300
Rapid City, SD 57701

which addresses are the last addresses of the addressees known to the subscriber.

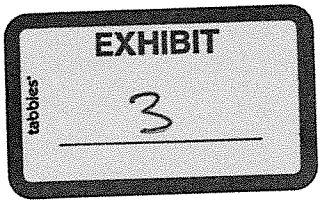
Dated this 1st day of June, 2012.

_____
TERRY L. HOFER

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT

CITY OF RAPID CITY, a Municipal Corporation, Plaintiff, v. GEORGE FISH, CLIFFORD FISH, RANDALL MEIDINGER and FISH GARBAGE SERVICE, INC., a South Dakota Corporation, Defendants, and RANDALL MEIDINGER, Third Party Plaintiff, v. JERRY WRIGHT, JOHN LEAHY, LINDA HANSEN and DARYL BISHOP, Third Party Defendants.	)	File No. 09-2171 **MOTION FOR CONTINUANCE**

George Fish, Clifford Fish and Fish Garbage Service, Inc. (Defendants Fish) hereby move the Court for an order continuing the hearing scheduled for June 28, 2012, for 30 days. Recent developments have given rise to professional considerations which may impact our representation of



Defendants Fish. We respectfully request a continuance of the hearing scheduled for June 28, 2012, to explore and resolve the potential issues.

Dated this 25th day of June, 2012.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

By: _____
Terry L. Hofer
Mark F. Marshall
333 West Blvd., Suite 400;
P.O. Box 2670
Rapid City, SD 57709-2670
605-343-1040
Attorney for Defendant Fish Garbage Service, Inc.

Dated this 25th day of June, 2012.

PATRICK K. DUFFY, LLC

By: _____
Patrick K. Duffy
629 Quincy Street, Suite 105
P.O. Box 8027
Rapid City, SD 57709-8027
605-342-1963
Attorney for Defendant Clifford Fish

Dated this 25th day of June, 2012.

JEFFREY J. FRANSEN, LLC

By: _____
Jeffrey J. Fransen
629 Quincy Street, Suite 105
P.O. Box 8027
Rapid City, SD 57709-8027
605-342-1963
Attorney for Defendant George Fish

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served copies of this legal document upon the persons herein next designated, all on the date below shown, by hand delivering copies, in envelopes addressed to said addressees, to wit:

John K. Nooney
Nooney, Solay & Van Norman
632 Main Street
Rapid City, SD 57701

Paul R. Winter
Angela M. Colbath
Attorneys at Law
409 Kansas City Street
Rapid City, SD 57701

Jerry D. Johnson
Banks, Johnson, Kappelman & Becker
731 St. Joseph Street, #300
Rapid City, SD 57701

which addresses are the last addresses of the addressees known to the subscriber.

Dated this 25th day of June, 2012.

TERRY L. HOFER

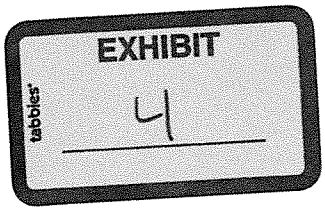
STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
CITY OF RAPID CITY, a Municipal Corporation,	)	FILE NO. CR. 09-2171
Plaintiff,	)	
vs.	)	**MOTION TO WITHDRAW**
GEORGE FISH, CLIFFORD FISH, RANDALL MEIDINGER, AND FISH GARGAGE SERVICE, INC., a South Dakota Corporation,	)	
Defendant.	)	
RANDALL MEIDINGER,	)	
Third Party Plaintiff,	)	
vs.	)	
JERRY WRIGHT, JOHN LEAHY, LINDA HANSEN, and DARYL BISHOP,	)	
Third Party Defendants.	)	

The undersigned counsel of record hereby enters this Motion to Withdraw from the above-entitled case as due to a conflict of interest.

Based upon the reason stated above, counsel respectfully request that this Court enter an order granting the Motion to Withdraw.

Dated this 26th day of June, 2012.

Patrick K. Duffy
P.O. Box 8027
Rapid City, SD 57709
(605)342-1963



STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
CITY OF RAPID CITY, a Municipal Corporation, Plaintiff, vs. GEORGE FISH, CLIFFORD FISH, RANDALL MEIDINGER, AND FISH GARGAGE SERVICE, INC., a South Dakota Corporation, Defendant. RANDALL MEIDINGER, Third Party Plaintiff, vs. JERRY WRIGHT, JOHN LEAHY, LINDA HANSEN, and DARYL BISHOP, Third Party Defendants.	)	FILE NO. CR. 09-2171 **ORDER TO WITHDRAW**

The Court having considered the Defendant's Motion to Withdraw, and for good cause appearing, it is ORDERED that Defendant's Motion to Withdraw is GRANTED.

Dated this _____ day of June, 2012.

_____
The Honorable Gene Kean

ATTEST:
RANAE TRUMAN, CLERK
BY:_____,Deputy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of a ***Motion and Order to Withdraw*** upon the person herein next designated, on the date shown below, by depositing the same in the U.S. Mail at Rapid City, South Dakota, first class postage prepaid, at his/her last known address, to wit:

John K. Nooney
Nooney, Solay & Van Norman
PO Box 8030
Rapid City, SD 57709

Terry Hofer
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City, SD 57709

Paul Winter
Angela Colbath
409 Kansas City Street
Rapid City, SD 57701

Jerry D. Johnson
Banks, Johnson, Kappelman & Becker
PO Box 9007
Rapid City, SD 57709

Mark Marshall
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City, SD 57709

Dated this 26th day of June, 2012.

Patrick K. Duffy
P.O. Box 8027
Rapid City, SD 57709
(605)342-1963

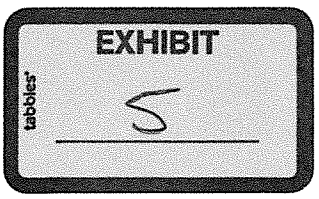
STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
CITY OF RAPID CITY, a Municipal Corporation, Plaintiff, vs. GEORGE FISH, CLIFFORD FISH, RANDALL MEIDINGER, AND FISH GARGAGE SERVICE, INC., a South Dakota Corporation, Defendant. RANDALL MEIDINGER, Third Party Plaintiff, vs. JERRY WRIGHT, JOHN LEAHY, LINDA HANSEN, and DARYL BISHOP, Third Party Defendants.	)	FILE NO. CR. 09-2171 **MOTION TO WITHDRAW**

The undersigned counsel of record hereby enters this Motion to Withdraw from the above-entitled case due to a conflict of interest.

Based upon the reason stated above, counsel respectfully request that this Court enter an order granting the Motion to Withdraw.

Dated this 26th day of June, 2012.

Jeffrey J. Fransen
P.O. Box 8027
Rapid City, SD 57709
(605)342-1963



STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
CITY OF RAPID CITY, a Municipal Corporation, Plaintiff, vs. GEORGE FISH, CLIFFORD FISH, RANDALL MEIDINGER, AND FISH GARGAGE SERVICE, INC., a South Dakota Corporation, Defendant. RANDALL MEIDINGER, Third Party Plaintiff, vs. JERRY WRIGHT, JOHN LEAHY, LINDA HANSEN, and DARYL BISHOP, Third Party Defendants.	)	FILE NO. CR. 09-2171 **ORDER TO WITHDRAW**

The Court having considered the Defendant's Motion to Withdraw, and for good cause appearing, it is ORDERED that Defendant's Motion to Withdraw is GRANTED.

Dated this _____ day of June, 2012.

_____
The Honorable Gene Kean

ATTEST:
RANAE TRUMAN, CLERK
BY:_____,Deputy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of a ***Motion and Order to Withdraw*** upon the person herein next designated, on the date shown below, by depositing the same in the U.S. Mail at Rapid City, South Dakota, first class postage prepaid, at his/her last known address, to wit:

John K. Nooney
Nooney, Solay & Van Norman
PO Box 8030
Rapid City, SD 57709

Terry Hofer
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City, SD 57709

Paul Winter
Angela Colbath
409 Kansas City Street
Rapid City, SD 57701

Jerry D. Johnson
Banks, Johnson, Kappelman & Becker
PO Box 9007
Rapid City, SD 57709

Mark Marshall
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City, SD 57709

Dated this 26th day of June, 2012.

Jeffrey J. Fransen
P.O. Box 8027
Rapid City, SD 57709
(605)342-1963

Robert Galbraith

From: Gene.Kean@ujs.state.sd.us
Sent: Wednesday, June 27, 2012 12:00 PM
To: John Nooney; jglanzer@duffylaw.pro; jdjbjck@aol.com; thofer@bangsmccullen.com; winterlaw@rushmore.com; acolbath@rushmore.com; mmarshall@bangsmccullen.com
Cc: jfransen@fransenlaw.pro; joel.landeen@rcgov.org; Robert Galbraith; Gwen Aberle
Subject: RE: City of Rapid City v. George Fish et. al.

Counsel:

Due to Mr. Nooney's email objecting to the request for leave to withdraw, I want to save all of us some time. The motion to withdraw was brief in content and did not spell out the factual reasons upon which the motion was based. Rather than trying to determine what the facts are and ending up with a series of emails and affidavits back and forth, I believe it would be proper at this stage to request Messrs. Duffy and Fransen to resubmit the request with some additional reason why they are seeking the Order. Then, Mr. Nooney can respond to specifics and we are not left floundering in vagueness which will save us all some time. For a time frame, could counsel resubmit their motion by July 5? And Mr. Nooney file his resistance within one week thereafter? I am trying to use this interim time economically for the benefit of all.

Gene Kean

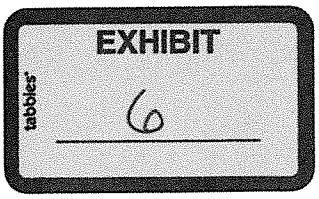
From: John Nooney [mailto:John@nsvnlaw.com]
Sent: Wed 6/27/2012 10:10 AM
To: Kean, Judge Gene; jglanzer@duffylaw.pro; jdjbjck@aol.com; thofer@bangsmccullen.com; winterlaw@rushmore.com; acolbath@rushmore.com; mmarshall@bangsmccullen.com
Cc: jfransen@fransenlaw.pro; joel.landeen@rcgov.org; Robert Galbraith; Gwen Aberle
Subject: RE: City of Rapid City v. George Fish et. al.

Judge Kean and Counsel....

This is apprize each of you the I will be filing an Objection to the Motions to Withdrawal of Mr. Franzen and Duffy and we will be filing that yet this week.

John K. Nooney
Nooney Solay & Van Norman, LLP
632 Main Street, Second Floor
PO Box 8030
Rapid City, SD 57701
(605) 721-5846 (phone)
(605) 721-5867 (fax)

The information contained in this e-mail message and any attachments thereto may be privileged and confidential information intended only for the use of the intended recipient and protected by the attorney-client privilege, the work product doctrine, or the Electronic Communication Privacy Act, 18 U.S.C. §§ 2510-2521, 2701-2712. If the reader of this e-mail message is not the intended recipient or the employee or agent responsible for delivery of it to the intended recipient, you are hereby on notice that you are in possession of confidential and/or privileged information and that any dissemination, distribution or copying of this e-mail and any attachments thereto is strictly prohibited. If you have received this e-mail in error, please notify me by replying to this message and permanently delete the original and any copy, including written (printed) copies of this e-mail and any attachments thereto.



Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than to the taxpayer to which it has been sent) without our express written consent.

From: Gene.Kean@ujs.state.sd.us [mailto:Gene.Kean@ujs.state.sd.us]
Sent: Tuesday, June 26, 2012 5:30 PM
To: jglanzer@duffylaw.pro; jdjbjck@aol.com; John Nooney; thofer@bangsmccullen.com; winterlaw@rushmore.com; acolbath@rushmore.com; mmarshall@bangsmccullen.com
Cc: jfransen@fransenlaw.pro
Subject: RE: CIty of Rapid CIty v. George Fish et. al.

I printed out the Orders and made two slight modification to each. One change was to make the defendants a plural posessive rather than a singular one (defendants'). The next was to add in a caption the name of Mr. Duffy and the other caption the name of Mr. Fransen as there was a motion from each attorney.

Gene Kean

From: Glanzer, Jodi [mailto:jglanzer@duffylaw.pro]
Sent: Tue 6/26/2012 4:47 PM
To: Kean, Judge Gene; jdjbjck@aol.com; John Nooney; Terry Hofer; Paul R. Winter; acolbath@rushmore.com; mmarshall@bangsmccullen.com
Cc: Fransen, Jeff
Subject: CIty of Rapid CIty v. George Fish et. al.

Judge, Ladies and Gentlemen,

Attached please find a copy of the Motion and proposed Order to Withdraw for Patrick K. Duffy which was submitted to the Clerk for filing by US Mail today in the above-referenced matter.

Feel free to contact our office with any questions.

Jodi Glanzer, Legal Assistant
PATRICK K. DUFFY, LLC &
JEFFREY J. FRANSEN, LLC
PO Box 8027
629 Quincy Street, Suite 105
Rapid City, SD 57709
Phone (605) 342-1963
Fax (605) 399-9512
jglanzer@duffylaw.pro
nonduffy@rushmore.com

On 6/26/12 3:34 PM, "jodi" <nonduffy@rushmore.com> wrote:

>This E-mail was sent from "RNP00267342EE57" (Aficio MP C4502).
>
>Scan Date: 06.26.2012 15:34:52 (-0600)
>Queries to: jglanzer@duffylaw.pro
>

PATRICK K. DUFFY, LLC
Attorney at Law
629 Quincy Street, Suite 105; P.O. Box 8027
Rapid City, SD 57709-8027
(605) 342-1963 voice
(605) 399-9512 fax

July 2, 2012

John Nooney
Nooney, Solay & Van Norman
PO Box 8030
Rapid City, SD 57709

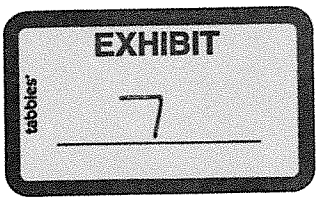
Re: Fish Garbage Service, Inc. / City of Rapid City
CIV. 09-2171

Mr. Nooney:

Mr. Fransen and I contacted Judge Kean *ex parte* concerning our conflicts in this case. We contacted Judge Kean ex *parte* because we felt Common 12 to Rule 1.6 limited any disclosure to "no greater...than necessary to accomplish the purpose" of withdrawal.

Judge Kean has directed us to inform you of our contact with him. The text of our letter to Judge Kean was as follows:

> We have received your email requesting additional information. We can state that based upon information recently learned we have a conflict of interest as between Clifford Fish individually, Clifford Fish as a corporate officer, George Fish and the Corporation. We represent all three in this case. We believe the information we have learned creates non-waivable conflicts. We respectfully request that we not be compelled to reveal the exact nature of the information that we have recently learned. It is protected by the attorney client privilege, and the precise contours of our reasoning we believe to be protected under the work product doctrine as well. We believe we are duty-bound not to reveal the precise nature of what we have learned because, to put it mildly, it is not the kind of information to which Mr. Nooney would have a right to learn from us.
>
> We respectfully request that you honor our motions to withdraw on the strength of our conclusions concerning the conflict issues we face.



> We are sending this missive to you, alone, because we do not believe the reasoning we've set forth is properly discoverable by anyone else in the case. To that extent, it is our intent that this letter be viewed as "under seal." We would rather have the decision concerning its discoverability be made by you, should you decide this letter is discoverable.

Judge Kean Letter, June 27, 2012.

It seems to me you have no standing to object to a motion to withdraw. It seems to me you have no standing under any disciplinary rules.

In addition, Mr. Hofer has informed us that you told him that you could see the conflict on our part between George and Cliff Fish after our motion to withdraw had been filed. Thus, I'll be interested in any pleading that you file which seems to suggest that you have a right to challenge our motion to withdraw.

Sincerely,

Patrick K. Duffy

Jeffry J. Fransen

cc: Judge Kean