

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

DR. JIM SISNEY, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 MIKE RAMPEY, an individual;)
 DOUGLAS J. HUDKINS, an individual;)
 MARYANNE FLIPPO, an individual;)
 SHARI WILKINS, an individual;)
 SHARON WHELPLEY, an individual,)
)
 Defendants.)

Case Number: CJ-2008-06173
Judge: Daman Cantrell

**PLAINTIFF’S REPLY TO THE BROKEN ARROW SCHOOL DISTRICT’S RESPONSE
IN OPPOSITION TO PLAINTIFF’S MOTION TO DISQUALIFY COUNSEL**

COMES NOW Plaintiff, Jim Sisney (“Plaintiff”), by and through his attorneys of record, Gary L. Richardson, Charles L. Richardson, David R. Keesling and Denise P. James of Richardson Richardson Boudreaux, and submits his Reply to the Broken Arrow School District’s Response in Opposition to Plaintiff’s Motion to Disqualify Counsel. In support of this Reply, Plaintiff submits the following:

1. There is ample support and justification for the Court to disallow the special appearance and/or disqualify Rosenstein, Fist & Ringold, as a whole, as defense counsel in this case, as counsel has a clear conflict of interest in the lawsuit. In *Arkansas Valley State Bank v. Phillips*, 2007 OK 78, 171 P.3d 899, the Oklahoma Supreme Court held that the standard for granting a motion to disqualify counsel is whether “real harm to the integrity of the judicial process is likely to result of counsel is not disqualified.” Considering the totality of circumstances in this case specifically, where allegations include egregious and conspiratorial misconduct on the part of Mr. Mann and Rosenstein, Fist & Ringold, the continued representation in the instant case by Mann, Rainey and Rosenstein,

Fist & Ringold, as a whole, is the type of representation that would harm the integrity of the judicial process. *See id.*

2. The Oklahoma Rules of Professional Conduct provide, in part, that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyers's own interests. Rule 1.7 (b), 5 O.S.1991, Ch. 1, App. 3-A. Further, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not represent a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm. Rule 1.10(a), 5 O.S.1991, Ch. 1, App. 3-A.

3. Inherent in a court's power to regulate the professional conduct of attorneys admitted to its bar is the power and duty to disqualify an attorney from participating in a particular case when there is a conflict of interest or other ethical impropriety which may prejudice an adversary or impugn the public perception of the judicial system. When courts exercise that power and disqualify an attorney from a particular matter, they may extend the attorney's disqualification to an entire firm. *See id;* *See also* 6 A.L.R. 5th 242; *Pappas v. Waggoner's Heating & Air, Inc.*, 108 P.3d 9, Okla.Civ.App. Div. 3, 2004.

4. Not only are Rosenstein, Fist & Ringold attorneys, members and staff potential witnesses in this lawsuit, they have the potential for personal liability as potential parties and are in possession of, and have been disseminating, confidential information for the intended purposes of use against the Plaintiff. Defendant is well-aware of the aforementioned activities, including defense counsel's direct contact with parties and witnesses, distribution of relevant and confidential

documents, and other inappropriate activities concerning the causes of action giving rise to this lawsuit. Clearly, the interests of the lawyers and the firm, as a whole, have not only the potential, but the likelihood, of limiting the ability to represent the School District in a competent, fair and unbiased manner.

5. Further, an attorney may be disqualified if he or she has “improper possession of confidential information.” *Arkansas Valley State Bank v. Phillips*, 2007 OK 78, 171 P.3d 899. Rosenstein, Fist & Ringold were legal counsel for Defendant while Plaintiff was Superintendent of Schools. Rosenstein, Fist & Ringold had access to all of Dr. Sisney’s files, documents and correspondence during that time and either overheard and/or participated in confidential conversations regarding the incidents at issue. Allegations include egregious and conspiratorial misconduct on the part of Mr. Mann and Rosenstein, Fist & Ringold, in that capacity. The law firm’s legal billing and issues related thereto are evidence to be used in support of Plaintiff’s allegations in the instant case. Mr. Rainey and the law firm seek to defend the school district without bias or conflict, while at the same time evaluating their own firm’s legal billing on behalf of the school district, which is clearly a conflict, in and of itself.

6. At some point, the school district and/or its board members may take a position inapposite the law firm, which would be procedurally and prejudicially devastating. Disqualifying the law firm at that time would result in prejudice to all parties. The conflict, and potential for further conflicts is clearly present, and the firm and its attorneys, staff, and other employees should be disqualified from representation of any party herein.

7. Whatever the specific circumstances may be, courts in the various jurisdictions have been willing to extend the disqualification of a member of a law firm to the entire firm when

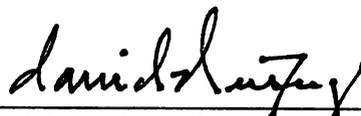
required. While a few courts have made the decision by adopting the view that the disqualification of the member automatically requires the disqualification of the entire firm most courts have considered the factual setting in reaching a decision. 6 A.L.R. 5th 242; *See also Pappas*, 108 P.3d

8. Allowing defense counsel's special appearance and/or any continued representation in this specific litigation, given the factual allegations specific to the instant case, causes unfair prejudice, wrongfully punishes the Plaintiff, and otherwise prevents the administration of justice as it pertains to Plaintiff.

CONCLUSION

WHEREFORE, premises considered, Plaintiff Jim Sisney respectfully requests the Court to enter an order disqualifying Bo Rainey and the law firm of Rosenstein, Fist & Ringold, as a whole, from representing Independent School District No. 3 in the instant case and any other relief This Court deems just and equitable.

Respectfully submitted,
RICHARDSON RICHARDSON BOUDREAU



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of May, 2010, a true and correct copy of the foregoing instrument was mailed with proper postage prepaid thereon to:

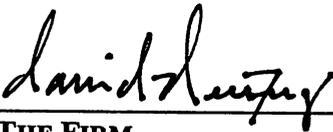
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