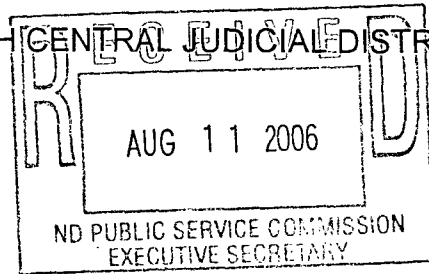


STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT



Montana-Dakota Utilities Co.,)
 a Division of MDU Resources)
 Group, Inc.)
 Appellant,)

vs.)

The Public Service Commission of)
 North Dakota)

and)

Capital Electric Cooperative, Inc.)
 Appellees.)

**CAPITAL ELECTRIC
 COOPERATIVE'S MOTION AND
 BRIEF IN SUPPORT OF
 MOTION TO DISMISS**

Case No. 06-C-1177

MOTION

Capital Electric Cooperative, Inc. (herein "Capital"), moves the Court to dismiss the above entitled appeal because the district court lacks subject matter jurisdiction over this matter. Capital hereby supports said motion with the following brief setting forth the facts and its legal argument.

FACTS

On June 22, 2006, the North Dakota Public Service Commission (herein "PSC"), in an Order, directed Montana-Dakota Utilities Co. (herein "MDU") to cease and desist from providing electric service to Boulder Ridge First Addition to the City of Bismarck and to offer to sell certain of its facilities in Boulder Ridge to Capital. On June 23, 2006, MDU filled its NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR with the South Central

Judicial District. MDU served its NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR upon the PSC; William Binek, the special assistant attorney general representing only the PSC; and Capital. See attached Motion Ex. 1, 2, and 3. MDU failed to serve the attorney general or an assistant attorney general as required by North Dakota law.

LEGAL ARGUMENT

“An appeal from a PSC decision is governed by the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32.” Coteau Properties Co v. Oster, 2000 ND 23, ¶ 5. N.D.C.C. § 28-32-42 governs the process of appealing a determination made by an agency. N.D.C.C. § 28-32-42(4) sets forth the requirements for who must be served with the notice of appeal and specifications of error; it provides:

An appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, ***upon the attorney general or an assistant attorney general***, and upon all the parties to the proceeding before the administrative agency, and by filing the notice of appeal and specifications of error together with proof of service of the notice of appeal, and the undertaking required by this section, with the clerk of the district court to which the appeal is taken....

(Emphasis added). This statute is clear and unambiguous.

In Benson v. Workforce Safety and Insurance, 2003 ND 193, Benson, the claimant, sought to appeal a decision made by the Workforce Safety and Insurance (herein “WSI”) which denied him medical benefits. The district court sua sponte dismissed the appeal for lack of jurisdiction because he did not serve the notice of appeal upon WSI or upon the attorney general (or an assistant attorney general) as required by N.D.C.C. § 28-32-42(4). Id. at ¶¶ 3 and 7. Benson “subsequently filed with the court a request for reconsideration, seeking an extension of time.” Id. at ¶ 4. The request was denied and a “judgment

dismissing the appeal to the district court was entered.” Id. The North Dakota Supreme Court affirmed. The Court reasoned:

Appeals to the district court from decisions of an administrative agency are statutory in nature and are not matters of original jurisdiction, but rather involve the exercise of appellate jurisdiction conferred by statute. (Citations omitted). The statutory requirements for filing a notice of appeal from an administrative agency order are jurisdictional. (Citation omitted). **For the district court to acquire subject matter jurisdiction over an appeal from a decision of an administrative agency, the appellant must satisfy the statutory requirements for perfecting an appeal.** (Citation omitted).

An appeal from a decision of WSI must be taken in accordance with N.D.C.C. ch. 28-32, the Administrative Agencies Practice Act. N.D.C.C. § 65-10-01. The appeal must be taken within thirty days after notice of WSI's order has been given. N.D.C.C. § 28-32-42(1). To perfect an appeal, the appellant must serve a notice of appeal upon WSI, the attorney general or an assistant attorney general, and all parties to the proceeding.... N.D.C.C. § 28-32-42(4). **If the appellant does not serve the notice of appeal as required by the statute, the district court lacks subject matter jurisdiction and the appeal must be dismissed.** (Citation omitted).

It is undisputed that Benson did not serve the notice of appeal upon WSI and the attorney general or the assistant attorney general as required by N.D.C.C. § 28-32-42(4). Accordingly, the district court was without subject matter jurisdiction.

Benson argues the district court could have granted an extension of time for serving the notice of appeal under N.D.R.App.P. 4(a)(4), which authorizes the district court to extend the time for filing a notice of appeal to the Supreme Court upon a showing of excusable neglect or good cause. The Rules of Appellate Procedure, however, govern procedure in the Supreme Court, and the rules on filing the notice of appeal specifically apply only to appeals from the district court to the Supreme Court. See N.D.R.App.P. 1(a) and 3(a)(1). Rule 4(a)(4) cannot be used to enlarge the statutorily mandated period for perfecting an appeal from the decision of an administrative agency to the district court.

...

We conclude the district court lacked subject matter jurisdiction, and the judgment dismissing Benson's attempted appeal from WSI's decision denying benefits is affirmed.

Id. at ¶¶ 5-8, 11 (**emphasis added**); see State v. Higgins, 145 N.W.2d 478, 481 (N.D. 1966) (stating that “[t]here must be a strict compliance with statutes and the rules to confer jurisdiction); Reliable Incorporated v. Stutsman County Commission, 409 N.W.2d 632, 634 (N.D. 1987) (stating that “subject matter jurisdiction cannot be conferred by agreement, consent, or waiver” and that “jurisdiction over the subject matter .. [is] essential for a court to properly act in a case”).

Similarly, MDU failed to serve its notice to appeal and its specification of error “upon the attorney general or an assistant attorney general,” for MDU only served the PSC; William Binek, special assistant attorney general representing only the PSC; and Capital. See Motion Ex. 1, 2, and 3. The attorney general or an assistant attorney general was not served with the notice of appeal or specifications of error. As a result, MDU failed to satisfy the statutory requirements for perfecting the appeal. Thus, the district court, just as it did in Benson, must dismiss MDU’s appeal because it lacks subject matter jurisdiction.

MDU may argue that serving William Binek, as a special assistant attorney general, fulfills the requirement to serve the “attorney general or an assistant attorney general” as required by N.D.C.C. § 28-32-42(4). This contention is without merit, for N.D.C.C. § 28-32-42(4) does not allow for service of a notice of appeal for a special assistant attorney general. See Reliance Ins. Co. v. Public Service Commission, 250 N.W.2d 918, 919-20 (N.D. 1977) (**emphasis added**) (notice of appeal and specifications of error were properly served upon the PSC, **the special assistant attorney general representing the PSC, and the Attorney General**). MDU’s own affidavit of service upon William Binek recognizes that he is counsel for the PSC. See Motion Ex.3, Affidavit of Service.

MDU may argue that N.D.C.C. § 54-12-08 gives a special assistant attorney general broad power, which includes accepting a notice of appeal and specifications of error on behalf of the Attorney General, but this contention is also without merit. N.D.C.C. § 54-12-08 provides: "The powers conferred upon special assistant attorneys general are the same as are exercised by the regular assistant attorneys general, **unless the powers are limited specifically by the terms of the appointment.**" (*Emphasis added*).

William Binek's powers are "limited specifically by the terms of the appointment," for his appointment agreement states:

2. The special assistant attorney general shall provide legal services to the North Dakota Public Service Commission (herein "the Client") **only for the following purpose(s): representing the North Dakota Public Service Commission** (hereinafter "the Legal Services").

...

5. The special assistant attorney general's compensation shall be paid by the Client and not by the Office of the Attorney General.

6. **The special assistant attorney general shall not be considered an employee of the Office of Attorney General.**

See Motion Ex. 4, Binek's appointment agreement (*emphasis added*).

Binek's appointment states that he is not an employee of the Office of Attorney General; thus, he has no authority to accept service on the Attorney General's behalf. Binek, as a special assistant attorney general, is counsel only for the PSC. Capital concedes that service upon the PSC would have been fulfilled if Binek was served and the Public Service Commissioners were not, for he was appointed for the limited purposes of representing the PSC. See Pederson v. North Dakota Workers Compensation Bureau, 534 N.W.2d 809 (N.D. 1995). But the same is not true in regards to a special assistant attorney general receiving service for the Attorney General, for Binek's appointment is

limited to representing the PSC and he is not considered an employee of the Office of Attorney General. Binek was appointed as a special assistant attorney general for the sole purpose to represent the PSC; he is employed and paid by the PSC. It is only for the PSC for which Binek can rightfully accept a notice of appeal. See also Motion Ex. 5, Binek Oath of Office.

The limitation of his service as special assistant attorney general is further emphasized under the article entitled General Counsel Services of Binek's appointment agreement as follows:

17. If the special assistant attorney general appears before a legislative committee to provide testimony or information on behalf of the Client, the special assistant attorney general shall clearly identify that the appearance is on behalf of the Client and not the Office of Attorney General. If the special assistant attorney general appears before a legislative committee other than on behalf of the Client, the special assistant attorney general shall not identify himself or herself as a special assistant attorney general.

The role of the special assistant is dramatically different than the role of a general assistant attorney general. The special assistant's role is for a limited purpose, in service of a particular client, in this case the PSC. Binek represents only the PSC and not the attorney general. He has no authority to speak for the attorney general and no authority to accept service on his behalf.

Attached hereto as Motion Exhibit 6 and 7 is a copy of the appointment of a regular assistant attorney general and the Oath of Office. Assistant attorney general appointments are unqualified and therefore without the express limitations of a special assistant attorney general appointment. The oath of the special is also limited to the purpose of representing the Public Service Commission.

Contrast Sande v. State of North Dakota, 440 N.W.2d 264 (N.D. 1989) wherein Sande served the assistant attorney general, who represented both the Board and the state in the administrative proceedings. In the present case the Appointment of William Binek as special assistant attorney general appoints Binek only for the limited purpose of "representing the North Dakota Public Service Commission." The limitation prevents Binek from acting as an assistant attorney general for the purpose of service on the "attorney general or an assistant attorney general."

CONCLUSION

The statute is clear and unambiguous, MDU must have served the attorney general or an assistant, as well as the PSC and Capital to give the court subject matter jurisdiction.

For the foregoing reasons, MDU's appeal must be dismissed per N.D.R.Civ.P. 12(h)(3) because the district court lacks subject matter jurisdiction.

Dated this 10 day of August, 2006.

PRINGLE & HERIGSTAD, P.C.

By: Carol K. Larson

Carol K. Larson - #04406

Attorneys for Capital Electric Cooperative, Inc.

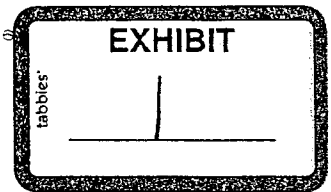
Pringle & Herigstad, P.C.

2525 Elk Drive

PO Box 1000

Minot, ND 58702-1000

(701) 852-0381



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Montana-Dakota Utilities Co., a
Division of MDU Resources Group,
Inc.,

Appellant,

vs.

North Dakota Public Service
Commission and Capital Electric
Cooperative, Inc.,

Appellees.

CIVIL NO. 06 C 1177

AFFIDAVIT OF SERVICE
(PERSONAL)

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH)

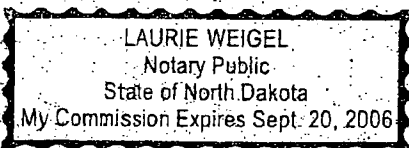
HAL W. SIMONS, being first duly sworn upon his oath, deposes and says that he is a citizen of the United States of America and a bona fide resident of the State of North Dakota; that he is over the age of 21 years; not an interested party to this action; and that he is a resident of Bismarck, Burleigh County, North Dakota.

That on the 23rd day of June, 2006, at 3:00 p.m. at Capital Electric Cooperative, Inc. 4111 State Street Bismarck, N.D. he served the attached Notice of Motion For Stay Pending Appeal, Motion For Stay of Public Service Commission Order Pending Appeal, Brief In Support of Motion For Stay of Public Service Commission Order Pending Appeal, Undertaking on Appeal to District Court & Notice of Appeal and Specifications of Error upon Hal Fitterer, Vice President, Capital Electric Cooperative, Inc. personally, at said place, on said date, by then and there delivering a true and correct copy of said documents listed above.

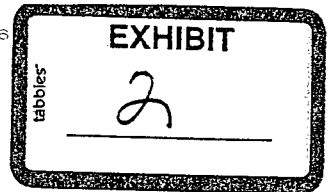
Hal W. Simons
HAL W. SIMONS

Subscribed and sworn to before me this 23 day of June, 2006

Laurie Weigel
Notary Public



RECEIVED & FILED
JUN 26 2006
Clk. of Ct. Burleigh Co.



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Montana-Dakota Utilities Co., a
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CIVIL NO. 06 C 1177

AFFIDAVIT OF SERVICE
(PERSONAL)

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH)

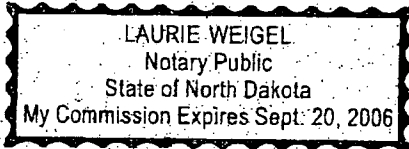
HAL W. SIMONS, being first duly sworn upon his oath, deposes and says that he is a citizen of the United States of America and a bona fide resident of the State of North Dakota; that he is over the age of 21 years; not an interested party to this action; and that he is a resident of Bismarck, Burleigh County, North Dakota.

That on the 23rd day of June, 2006, at 2:45 p.m. at the North Dakota Public Service Commission office, State Capital Building, Bismarck, N.D. he served the attached Notice of Motion For Stay Pending Appeal, Motion For Stay of Public Service Commission Order Pending Appeal, Brief In Support of Motion For Stay of Public Service Commission Order Pending Appeal, Undertaking on Appeal to District Court, & Notice of Appeal and Specifications of Error upon Public Service Commissioner Susan Weigel personally, at said place, on said date, by then and there delivering a true and correct copy of said documents listed above.

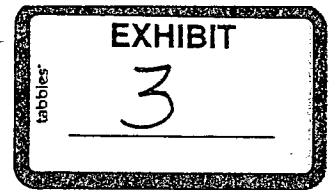
Hal W. Simons
HAL W. SIMONS

Subscribed and sworn to before me this 23 day of June, 2006

Laurie Weigel
Notary Public



RECEIVED & FILED
JUN 26 2006
Clk. of Crt. Burleigh Co.



STATE OF NORTH DAKOTA

IN DISTRICT COURT

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CIVIL NO. 06 C 1177

AFFIDAVIT OF SERVICE
(PERSONAL)

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH)

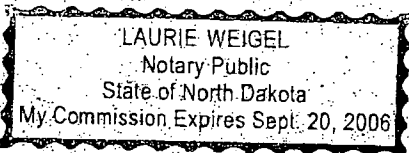
HAL W. SIMONS, being first duly sworn upon his oath, deposes and says that he is a citizen of the United States of America and a bona fide resident of the State of North Dakota; that he is over the age of 21 years; not an interested party to this action; and that he is a resident of Bismarck, Burleigh County, North Dakota.

That on the 23rd day of June, 2006, at 2:50p.m. at the North Dakota Public Service Commission office, State Capitol Building, Bismarck, N.D. he served the attached Notice of Motion For Stay Pending Appeal, Motion For Stay of Public Service Commission Order Pending Appeal, Brief In Support of Motion For Stay of Public Service Commission Order Pending Appeal, Undertaking on Appeal to District Court, & Notice of Appeal And Specifications of Error upon William Bink, Special Assistant Attorney & Counsel to Public Service Commission personally, at said place, on said date, by then and there delivering a true and correct copy of said documents listed above.

Hal W. Simons
HAL W. SIMONS

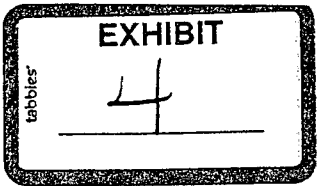
Subscribed and sworn to before me this 23 day of June, 2006

Laurie Weigel
Notary Public



RECEIVED & FILED

JUN 26 2006
Clk. of Cr. Burleigh Co.



**SPECIAL ASSISTANT ATTORNEY GENERAL
APPOINTMENT AGREEMENT**

1. Wayne Stenehjem, Attorney General of the State of North Dakota (hereinafter "the Attorney General"), hereby appoints William W. Binek (hereinafter "the special assistant attorney general") as a special assistant attorney general to serve at the pleasure of the Attorney General specifically to provide legal services subject to the conditions set forth in this agreement.
2. The special assistant attorney general shall provide legal services to the North Dakota Public Service Commission (hereinafter "the Client") only for the following purpose(s): representing the North Dakota Public Service Commission (hereinafter "the Legal Services").
3. The special assistant attorney general recognizes that the appointment of a special assistant attorney general is personal in nature and does not extend to any person with whom the special assistant attorney general works or with whom the special assistant attorney general is associated as an associate, a partner, or otherwise.
4. The special assistant attorney general shall not undertake legal work for the Client outside of the scope of this appointment.

COMPENSATION:

5. The special assistant attorney general's compensation shall be paid by the Client and not by the Office of Attorney General.
6. The special assistant attorney general shall not be considered an employee of the Office of Attorney General.

CONFLICTS:

7. The special assistant attorney general agrees to follow the North Dakota Rules of Professional Conduct (hereinafter "Rules of Professional Conduct") and the conflict of interest policy set forth in the North Dakota Office of Attorney General Policy Regarding Special Assistant Attorney General Appointments (attached to and incorporated into this agreement) (hereinafter "the Conflict Policy"). If there is a more stringent standard in the Conflict Policy than in the Rules of Professional Conduct, the Conflict Policy controls over the Rules of Professional Conduct.
8. The special assistant attorney general may not represent a party involved in a claim, dispute, or transaction of any kind which would create a conflict of interest for the special assistant attorney general, the Office of Attorney General, or the Client unless and until the special assistant attorney general has informed the Office of Attorney General and the Client of the proposed representation and received the written approval of the Office of Attorney General and the Client to proceed with the representation. The special assistant attorney general understands that this duty to inform and obtain approval applies to potential as

well as actual conflicts of interest and to conflicts imputed to the attorney under North Dakota Rule of Professional Conduct 1.10.

9. If at any point during the period of the special assistant attorney general's appointment the attorney becomes aware of an actual or potential conflict of interest involving the Legal Services or the appointment, the special assistant attorney general shall immediately notify the Office of Attorney General and the Client.
10. If the special assistant attorney general wishes to obtain a waiver of a conflict or potential conflict of interest, the attorney shall submit a written request for waiver to the Office of Attorney General, with a copy to the Client, that contains the following information: a) full disclosure of the scope of the matter the special assistant attorney general or the member of the special assistant attorney general's firm desires to perform for the named entity or individual, and b) a statement of the reason why the conflict would not be so substantial as to be deemed likely to interfere with the lawyer's exercise of independent professional judgment or affect the integrity of services which the Office of Attorney General expects and the special assistant attorney general has contracted to perform.

COMMUNICATIONS WITH OFFICE OF ATTORNEY GENERAL AND CLIENT:

11. Upon request, the Office of Attorney General will send the special assistant attorney general notification by e-mail of all Attorney General opinions as they are issued.
12. The special assistant attorney general shall send to the Office of Attorney General a copy of any memos or letters in which the attorney has provided substantial statutory or legal interpretations to the Client. Those copies shall be sent when the memo or letter is given to the Client. This paragraph does not require that the special assistant attorney general provide the Office of Attorney General with every piece of correspondence with the Client, but only that written product that provides significant interpretations of legal questions.
13. The special assistant attorney general shall submit an annual status report to the Office of Attorney General on all litigation he or she has handled for the Client during that year. The status report is due on or before August 1 of each year. The status report shall include a summary of all state and federal court proceedings and all administrative proceedings and appeals the special assistant attorney general has handled during the previous year, including the numbers and categories of cases handled and results achieved. The status report shall also include more detailed information about all state and federal court proceedings and all administrative proceedings and appeals the special assistant attorney general has handled during the previous year having a significant financial impact on the State of North Dakota or involving constitutional or statutory interpretation questions that may have an effect on Office of Attorney General clients. For the purposes of this paragraph, "significant financial impact" is defined as those cases in which the amount (either to be paid or received by the Client) is \$150,000 or more.

14. The special assistant attorney general shall inform the Office of Attorney General of any important litigation or developments or significant issues which arise in litigation on a more frequent basis, as appropriate. "Important litigation" includes litigation that involves a challenge to the constitutionality of a statute or rule, issues that affect other State entities, or issues important to the legal interests of the State as a whole.

GENERAL COUNSEL SERVICES:

15. The special assistant attorney general understands that only the Attorney General, and not the special assistant attorney general, may issue official opinions of the Attorney General.
16. The special assistant attorney general understands that when the Client requests an Attorney General's opinion a special assistant attorney general employed by the Client shall do the initial research and submit a draft of the opinion to the Office of Attorney General with the Client's letter requesting the opinion. The special assistant attorney general also understands that at times the Attorney General may have the special assistant attorney general draft a response to a constituent's letter or a request for an Attorney General's opinion or review a draft response prepared by someone else.
17. If the special assistant attorney general appears before a legislative committee to provide testimony or information on behalf of the Client, the special assistant attorney general shall clearly identify that the appearance is on behalf of the Client and not the Office of Attorney General. If the special assistant attorney general appears before a legislative committee other than on behalf of the Client, the special assistant attorney general shall not identify himself or herself as a special assistant attorney general.

CONDUCT OF LITIGATION:

18. Subject to the terms of the special assistant attorney general's appointment, it is recognized and agreed that the special assistant attorney general shall act as chief litigation counsel for the Client in litigation matters undertaken by the special assistant attorney general as part of the Legal Services. However, the Attorney General retains the Attorney General's authority as the chief legal officer of the State of North Dakota.
19. The special assistant attorney general shall represent the Client in litigation in a manner that is consistent with the Office of Attorney General's philosophy of pursuing litigation in an aggressive and forthright manner while maintaining the overall objective of resolving litigation in the most expeditious and cost-effective manner.
20. The special assistant attorney general shall avoid taking extreme advocacy positions in litigation which are not likely to have a substantive impact on the litigation. Coercive, delaying, or obstructive tactics are also not permissible.
21. Dispositive motions that have a significant likelihood of success shall be filed as early in litigation as possible.

22. Discovery practice shall be handled reasonably. Lengthy interrogatories or extensive requests for document production or requests for admission solely for the purpose of burdening another party are not permitted. "Standard" interrogatories, requests for production of documents, and requests for admission shall be closely reviewed before being issued to make sure that the information or documents being requested are relevant and necessary.
23. The special assistant attorney general shall identify and consider early in the proceedings, and at each subsequent stage, the settlement possibilities of litigation to achieve the greatest degree of cost-effectiveness while protecting the public interest.
24. The special assistant attorney general shall promptly report any settlement overtures received to the Client.
25. The special assistant attorney general shall consult with the Office of Attorney General before settling any case that has a significant financial impact on the State of North Dakota or that involves issues that would be relevant to matters the Office of Attorney General is handling for other State agencies. A "significant financial impact" is defined as those cases in which the settlement amount (either to be paid or received by the State) is \$150,000 or more.
26. The special assistant attorney general shall be alert to and apprise the Client of any opportunities for using non-judicial dispute resolution approaches.
27. The appointment as a Special Assistant is to the individual, not the firm, and the firm's name shall not be included in the signature block. Unless the special assistant attorney general and the Attorney General agree otherwise in writing, the special assistant attorney general shall not use the Attorney General's name in the signature block on court filings for the Clients. Accordingly, the special assistant shall use the following signature block:

 [Name of special assistant]
 Special Assistant Attorney General
 [Bar registration #, if required]
 [Address of special assistant]
 [Telephone number of special assistant]
 [Facsimile number of special assistant, if
 desired]


Attorney for [specify Client(s)]

MISCELLANEOUS:

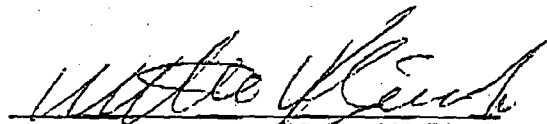
28. The special assistant attorney general shall comply with all applicable federal, state, and local laws, regulations, and judicial rules of procedure.
29. The special assistant attorney general agrees to notify the Attorney General either orally or in writing if any disciplinary complaints are filed against the attorney during the pendency of the appointment and of the disposition of any such complaints that are filed.

30. All records, documents, and account procedures and practices of the special assistant attorney general relevant to the litigation or this appointment shall be subject to examination by the Office of Attorney General except to the extent that access to those records, documents, or account procedures and practices must be restricted because the Office of Attorney General has a conflict of interest on a particular matter. These records are considered records of the State of North Dakota for the purposes of the North Dakota open records law.
31. The special assistant attorney general understands that his or her representation of the Client is subject to and governed by North Dakota's open records and open meetings laws. The special assistant attorney general shall be familiar with those laws and exceptions and follow those laws. Under those laws the special assistant attorney general may not agree -- either in writing, including in a settlement agreement, or orally -- to keep confidential any information or documents that would fall within the purview of the North Dakota open records law unless a state or federal statute specifically exempts such information or documents from the open records law. If the special assistant attorney general has a question about the application of the State's open records or open meetings law to a particular fact situation, the special assistant attorney general shall consult with and follow the decision of the Office of Attorney General on that issue.
32. The special assistant attorney general agrees that the special assistant attorney general and his or her agents and employees shall follow the Office of Attorney General Debt Collection Policy (attached to and incorporated into this agreement) when engaging in any debt collection activities for the Client.
33. This agreement is governed in all respects, whether as to validity, construction, capacity or otherwise, by the laws of the State of North Dakota. Any litigation arising out of or relating in any way to this agreement or the performance under this agreement shall be brought in the courts of North Dakota and the special assistant attorney general hereby consents to such jurisdiction.

Dated: February 10, 2005.


Wayne Stenehjem
Attorney General

Dated this 11th day of February, 2005.


William W. Binek

Oath of Office



STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

I, William W. Binek of Bismarck, North Dakota, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the state of North Dakota and that I will faithfully discharge the duties of the office of Special Assistant Attorney General for the purpose of representing the North Dakota Public Service Commission, without compensation from the Office of Attorney General, according to the best of my ability, so help me God.

Dated this 11th day of February, 2005.

William W. Binek

Subscribed and sworn to before me this 11th day of February, 2005.

Notary Public

My commission expires:

CHARLENE A. MAGSTADT
Notary Public
State of North Dakota
My Commission Expires Jan 7, 2010

EXHIBIT

4

tabbles



**STATE OF NORTH DAKOTA
OFFICE OF
ATTORNEY GENERAL**

APPOINTMENT

I, **Wayne Stenehjem**
Attorney General
of the State of North Dakota
hereby appoint



To the office of:

ASSISTANT ATTORNEY GENERAL

until the appointment is revoked

Dated at Bismarck, North Dakota

this 2nd day of January, 2001.

A handwritten signature in cursive script, appearing to read "Wayne Stenehjem", written over a horizontal line.

Wayne Stenehjem, Attorney General

Oath of Office



STATE OF NORTH DAKOTA)
) SS
County of Burleigh)

I, [REDACTED] of Bismarck, North Dakota, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of North Dakota, and that I will faithfully discharge the duties of the office of Assistant Attorney General according to the best of my ability, so help me God.

[REDACTED]

Subscribed and sworn to before me this 20th day of February, 2001.

Sherril A. Jahraus

Notary Public

SHERRI A. JAHRAUS
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires OCT. 18, 2002
STATE OF NORTH DAKOTA
NOTARY PUBLIC SEAL