

**NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C.**  
**Renewal No. 1, Permit NACC-1302**  
**Revision No. 9, Permit NACC-1302**  
**Applications**

**Case No. RC-19-189**  
**Case No. RC-19-190**

**MOTION TO DISQUALIFY WADE MANN AND CROWLEY FLECK, PLLP FROM  
REPRESENTING COYOTE CREEK MINING COMPANY, LLC IN THIS MATTER  
DUE TO CONFLICT OF INTEREST UNDER RULE 1.12 OF THE NORTH DAKOTA  
RULES OF PROFESSIONAL CONDUCT**

**September 24, 2019**

**I. Introduction**

Casey and Julie Voigt (“Voigts”), by and through the undersigned counsel, hereby move the Public Service Commission to disqualify Wade Mann and the law firm Crowley Fleck, PLLP (“Crowley Fleck”) from representing Coyote Creek Mining Company, LLC (“CCMC”) in the above-captioned proceedings. The basis for this motion is that CCMC’s attorney in this proceeding, Wade Mann, presided over two previous hearings in 2014 and 2015 between the same parties, on the same mine permit, and regarding the same matters. Rule 1.12 of the North Dakota Rules of Professional Conduct as well as numerous ethics opinions and case law interpreting other states’ versions of this rule are very clear that Wade Mann cannot represent CCMC, and that Crowley Fleck, LLP similarly cannot represent CCMC in this proceeding. The parties have attempted to resolve this issue amongst themselves, but Mr. Mann and Crowley Fleck insist on appearing in this proceeding. Thus, the Voigts have no recourse other than to file this motion to ensure that the integrity of these proceedings is maintained.

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Motion to Disqualify Crowley Fleck Firm Pursuant to Rule 1.12  
Casey and Julie Voigt  
JJ England, Braaten Law Firm

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## II. Factual Background

- A. Wade Mann presided over two prior PSC Hearings regarding the same matters of reclamation, alluvial valley floors, and dust between the same parties regarding the same mine permit in PSC Case Nos. RC-13-850 and RC-14-846.

Coyote Creek Mine (“CCM”) encompasses much of Casey and Julie Voigts’ property, home, and ranch. The Voigts continue to operate a ranch directly upon and adjacent to CCM, almost entirely within the geographic limits of mine permit NACC-1302.

Because this mine permit and CCMC’s operations pursuant to this permit directly affect the present and future of the Voigts’ land and operation, Casey and Julie Voigt (“Voigts”) requested a formal hearing on mine permit NACC-1302 in late 2014. *See* PSC Case No. RC-13-850. This hearing occurred prior to the mine’s operation. The Voigts raised two main categories of issues in that proceeding. First, the Voigts raised detailed concerns about CCMC’s planned reclamation of the mine and of the Voigts’ property, and the adequacy of those plans. *See, e.g.* RC-13-850, Doc. 35 (Voigt request for formal hearing raising concerns about “reclamation practices”). The Voigts presented detailed expert testimony on this issue at the formal hearing, including from a soil health expert familiar with coal mining. The Voigts’ presentation on this issue resulted in additional mine permit conditions to minimize compaction, to test for compaction, and to directly consult with the Voigts when establishing reference areas for reclamation. RC-13-850, Doc. 125, at p. 17. Second, the Voigts’ raised detailed concerns that their alfalfa fields along Coyote Creek were alluvial valley floors subject to impact from the adjacent mining activities (alluvial valley floors receive special protections under the surface mining laws). In general, that issue involved whether CCMC’s mine plan would cut off ground water supply to the Voigts’ subirrigated alfalfa fields. The Voigts presented expert testimony on this issue from a hydrogeologist, but given the compressed timing of the proceeding and the fact that it was in the middle of winter, the

hydrogeologist was unable to visit the site in person. *See generally* RC-13-850, Doc. Nos. 47, 48, 49. The Honorable Wade Mann presided over all aspects of this multi-day hearing as a procedural Administrative Law Judge (“ALJ”) with the exception of the first day of the hearing.<sup>1</sup>

At the end of 2014, CCMC filed another application with the PSC to expand the geographic extent of permit NACC-1302 to include a several mile haul road and a coal processing facility to physically connect CCMC to Coyote Station. RC-14-846. That application process continued into 2015. Again, given the impact of this significant permit modification on the Voigts, the Voigts requested and participated in an informal hearing on this mine permit revision. *Id.* at Docs. 15-16. At the informal hearing, the Voigts raised detailed concerns about air quality and dust arising from the mine (especially from its planned haul road), which included detailed argument and discussion of the mine’s Fugitive Dust Control Plan contained in Section 3.1.1.2 of the mine’s permit application. *Id.* Like in the first hearing, the Honorable Wade Mann presided over all aspects of this informal hearing, and for this particular hearing, he served as a substantive ALJ rather than a procedural ALJ and issued recommended findings of fact and conclusions of law in that proceeding. *Id.* at Doc. Nos. 22, 38. The PSC then adopted Mr. Mann’s recommended findings and conclusions, which resulted in no changes to the permit, even though the Voigts had argued that CCMC’s Fugitive Dust Control Plan was so ambiguous that it, in effect, was unenforceable. *Id.* at Docs. 15-16.

On or about January of 2016 and after the above-described hearings had concluded in 2014 and 2015, Mr. Mann returned to his position as a partner with the firm Crowley Fleck. *See, e.g.*

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<sup>1</sup> The Honorable Janette Demarais Seaworth presided over the first day of this hearing. *See* PSC Case No. RC-13-850, Doc. Nos. 45, 47 (designation of ALJ and recording of first day of hearing). The Honorable Wade Mann presided over the second and third days of the hearing. *See, e.g.* PSC Case No. RC-13-850, Doc. Nos. 48, 49 (recording of second and third days of hearing).

*Statoil Oil & Gas LP v. 1280 Royalties, LLC*, 53-2015-CV-01437, Doc. No. 95, at p. 3 (pleading dated January 7, 2016 indicating Mr. Mann's appearance).<sup>2</sup>

In the proceedings at issue here (RC-19-189 and RC-19-190), Mr. Mann so far participated in a meeting amongst the parties on behalf of CCMC on Tuesday, September 17, 2019, and has communicated with the administrative law judge and the parties via e-mail on behalf of CCMC. He also participated in a pre-hearing conference on the morning of September 23 on behalf of CCMC. In other words, even though Mr. Mann has not yet filed a formal document entitled "Notice of Appearance" in RC-19-189 and RC-19-190, it is apparent that Mr. Mann (and by extension, Crowley Fleck) is representing CCMC in this proceeding and intends to represent CCMC in these proceedings. Shortly after the meeting on September 17 was held, the undersigned filed a notice of intent to file a motion to disqualify Crowley Fleck from representing CCMC in this proceeding. *See* RC-19-189, Doc. 11; RC-19-190, Doc. 16.

The Voigts raised seven issues in their opening comments, objections, and request for this informal hearing. These issues include mine reclamation practices (issue six), alluvial valley floors (issue three), and dust (issue two). *See* RC-19-189, Doc. 3; RC-19-190, Doc. 8. Regarding dust, the Voigts noted in their opening comments and objection to CCMC's mine plan in these proceedings that

[a]s the Voigts have previously explained to the PSC, CCMC's existing fugitive dust control plan is "extremely vague," and is practically unenforceable. See Comments of Casey and Julie Voigt, Docket RC-14-846. Unfortunately, the Voigts' previously-expressed concerns are now confirmed based upon four years of mining."

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<sup>2</sup> In addition, Casey Furey, who represented the PSC as a special assistant attorney general in Case No. RC-14-846 left her position with the PSC to join Crowley Fleck in 2016. In other words, both the judge and the PSC's attorney in RC-14-846 are now with the firm Crowley Fleck.

*Id.* at p. 4. The Voigts intend to provide a detailed presentation regarding dust problems over the last four years.

For purposes of this motion, though, the main point is that this is the same issue on which Mr. Mann issued proposed findings of fact and conclusions of law in RC-14-846. The Voigts intend to present the specifics of this matter on the basis of four years of evidence that they can now provide, but the matter at issue is nonetheless substantively the same as what Mr. Mann ruled upon in 2015: whether the PSC should modify CCMC's fugitive dust control plan to minimize dust. At that time, Mr. Mann, in his capacity as an administrative law judge, substantively recommended to the PSC that the PSC was not obligated to require CCMC to modify its fugitive dust control plan. Further, alluvial valley floors and mine reclamation are the same matters that the Mr. Mann presided over in 2014.

The matters raised by the Voigts in RC-13-850 and RC-14-846 are directly at issue in this proceeding, which is merely another renewal and revision of the same permit. Due to Mr. Mann's prior role presiding over the matters at issue in these proceedings, the North Dakota Rules of Professional Responsibility directly prohibit Mr. Mann and Crowley Fleck from representing CCMC in these proceedings. Therefore Mr. Mann and Crowley Fleck must be disqualified as counsel for CCMC. The Voigts do not oppose an extension of the hearing to allow CCMC to retain different counsel.

### **III. The legal standard for a motion to disqualify counsel.**

The circumstances here require the filing of this motion because N.D.R.Prof.C. 1.12 clearly and unequivocally states that Mr. Mann, who has twice served as a hearing officer regarding the matters that are directly at issue in these proceedings, cannot represent CCMC. The Rules of Professional Conduct have made a policy judgment that, by rule, the potential for bias in past and

present proceedings, as well as the appearance of bias, is simply too great to allow a former judge to later advocate for a client on the same matter.

This section first discusses the procedural basis for filing this motion and then turns to the applicability of Rule 1.12 of the Rules of Professional Conduct to these circumstances.

A. Procedural standards applicable to this motion

The federal courts have established the largest body of case law regarding motions to disqualify counsel. The 10<sup>th</sup> Circuit, in a heavily-cited opinion, has stated the procedural basis for a motion to disqualify counsel as follows:

Motions to disqualify are governed by two sources of authority. First, attorneys are bound by the local rules of the court in which they appear. Federal district courts usually adopt the Rules of Professional Conduct of the states where they are situated. Second, because motions to disqualify counsel in federal proceedings are substantive motions affecting the rights of the parties, they are decided by applying standards developed under federal law. *In re American Airlines, Inc.*, 972 F.2d 605, 610 (5th Cir.1992), *cert. denied sub nom. Northwest Airlines, Inc. v. American Airlines*, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Therefore, motions to disqualify are governed by the ethical rules announced by the national profession and considered “in light of the public interest and the litigants' rights.” See *Dresser*, 972 F.2d at 543.

*Cole v. Ruidoso Mun. Sch.*, 43 F.3d 1373, 1383 (10th Cir. 1994). The North Dakota Supreme Court’s decisions on this topic comport with the general principle found in federal case law and in jurisdictions elsewhere that if the Rules of Professional Conduct do not allow an attorney to represent a party, then an order disqualifying counsel is proper. See, e.g., *Sargent Cty. Bank v. Wentworth*, 500 N.W.2d 862, 864 (N.D. 1993) (“if the conflict rules alone would preclude the testifying lawyer from acting as both advocate and witness, then no one in the testifying lawyer's firm may serve as an advocate in the case”); see also *Heringer v. Haskell*, 536 N.W.2d 362, 367 (N.D. 1995) (granting supervisory writ and directing disqualification of law firm under Rule 1.10).

The same principles apply to practice before the PSC. The Public Service Commission has expressly adopted the North Dakota Rules of Professional Conduct for attorneys that practice before the Commission and has empowered itself and hearing officers to disqualify counsel who violate those rules.

All persons appearing before the commission must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota. The commission or a hearing officer may bar a person from appearing before the commission for improper conduct.

N.D.A.C. § 69-02-01-06(4).

*B. Mr. Mann is barred from representing CCMC under Rule 1.12(a)*

Rule 1.12(a) of the North Dakota Rules of Professional Conduct states the following:

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person, or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding consent in writing after consultation.

“[A]djudicative officer” includes “hearing officers and other parajudicial officers.” N.D.R.Prof.C. 1.12, Comment 1.

The North Dakota Supreme Court has ruled that “presiding as a judge, in a divorce proceeding, whether by default or trial, constitutes personal and substantial involvement” under Rule 1.12(a). *In re Application for Disciplinary Action Against Hoffman*, 2003 ND 161, ¶ 12, 670 N.W.2d 500. In the *Hoffman* matter, Judge Hoffman issued “findings of fact, conclusions of law, and an order for [a default divorce] judgment” in favor of Michele Toltzman. *Id.* at ¶ 3. In January of 1999, Hoffman resigned as judge. *Id.* In February of 1999, Bruce Toltzman filed a motion to amend the judgment. In late 2001 (more than two years later), Hoffman informed Michele Toltzman that “he was representing Bruce.” *Id.* “Michele did not consent and was distressed at the knowledge that the judge in the divorce case was now representing her husband.” *Id.*

In *In re Hoffman*, the North Dakota Supreme Court favorably cited to *Gen. Counsel of the Ala. State Bar*, Op. 93–04 (1993) (stating that a former judge may not represent a party on a motion related to a divorce decree the former judge signed even “where the decree was based upon an answer, waiver and agreement and thus required minimal participation from the judge”). The Court also favorably cited to *Cho v. Superior Court*, 39 Cal.App.4th 113, 45 Cal.Rptr.2d 863, 863–64 (1995) (disqualifying an attorney’s firm from representing a party in an action where the lawyer sat as judge in settlement conferences).

The main purpose of Rule 1.12 “is not so much to protect against misuse of confidential information as it is to protect against the integrity of the adjudicative process by removing the incentive for the judge, third-party neutral, or law clerk to make decisions with the conscious or unconscious objective of currying favor with a potential future employer or client.” THE NEW YORK RULES OF PROFESSIONAL CONDUCT: SPRING 2011, at p. 295 (discussing New York's version of rule 1.12); *see also James v. Mississippi Bar*, 962 So. 2d 528, 535 (Miss. 2007) (“In order to protect the integrity of our profession, our Rules of Professional Conduct specifically prohibit attorneys who are former judges from later representing anyone in a matter in which they personally and substantially participated as a judge.”). In Mr. Mann’s situation, there appears to be a second, equally important reason. There is a risk that the PSC will give undue weight to Mr. Mann’s position as a former judge in these proceedings. And regardless of the whether the PSC will do so, it is not unreasonable for lay citizens such as the Voigts to have serious concerns about the integrity of the proceedings under such circumstances.

Applying Rule 1.12(a) to the circumstances present here, there is no question that the rule applies and that Mr. Mann as a matter of law is disqualified from representing CCMC. Here, Mr. Mann is “a lawyer” “represent[ing]” CCMC in PSC case numbers RC-19-189 and RC-19-190.

N.D.R.Prof.C. 1.12(a). The “matter[s]” that will be heard in these dockets include air quality and dust, reclamation, and alluvial valley floors for surface mining permit NACC-1302, and the parties are Casey Voigt, Julie Voigt, CCMC, and the PSC (through advocacy counsel and staff). Mr. Mann “participated personally and substantially as a[n] ... adjudicative officer” on these same matters by presiding over a formal hearing on alluvial valley floors and reclamation for this *same mine permit* in RC-13-850 and by presiding over and issuing a recommended decision regarding dust control in RC-14-846. Regarding Mr. Mann’s recommended decision in RC-14-846, it is entirely possible that it will be necessary to address that decision itself in this proceeding, which makes this proceeding somewhat analogous to the motion to modify judgment discussed in *Hoffman*. Further, the parties are the same. As the North Dakota Supreme Court explained in *Hoffman*, “presiding as a judge ... constitutes personal and substantial involvement” under N.D.R.Prof.C. 1.12(a). *In re Application for Disciplinary Action Against Hoffman*, 2003 ND 161, ¶ 12, 670 N.W.2d 500. Presiding as an “adjudicative officer” or an “administrative law” judge is no different under Rule 1.12(a) – adjudicative officers and administrative law judges are treated exactly the same as a judge.

Regardless of the above, Mr. Mann has explained to the undersigned that he does not believe that this is the same “matter.” For example, he has verbally stated to the undersigned that several years have passed since the 2014 and 2015 decisions.

Mr. Mann’s position is directly belied by the Rules themselves and two North Dakota ethics opinions on this this very topic. The general definition of “matter” contained in Rule 1.0 is the definition that applies to Rule 1.12.

“Matter”, for purposes of Rules 1.7 through 1.12, includes any judicial or other proceeding, application, request for a ruling or other determination, contract claim, controversy, investigation, charge, accusation, arrest, or other transaction.

N.D.R.Prof.C. 1.0(i). Additionally, a second, narrower definition of “matter” is contained within Rule 1.11.

As used in this rule, the term “matter” includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

N.D.R.Prof.C.1.11(e). The definition in Rule 1.11, which applies to former government attorneys, is narrower because this definition applies to circumstances “involving a specific party or parties,” whereas the more general definition that applies to Rule 1.12 is not limited to circumstances “involving a specific party or parties” (though it should be noted that even the narrower definition applies here because this matter *does* include the same parties).

In 1995, the North Dakota Ethics Commission issued Opinion 1995-10. That opinion, which was drafted by Brian Bjella and signed by Alice Senechal, discusses the scope of a matter under Rule 1.12.<sup>3</sup> In this opinion, the Ethics Committee determined that Rule 1.12 applies to various circumstances including a “collateral matter,” a circumstance in which the judge’s judgment was stipulated by the parties, and a circumstance in which the judge’s order had been modified by another judge. N.D. Ethics Committee Opinion 95-10, at 3 (emphasis added). The adjective definitions of the word “collateral” include “accompanying, auxiliary” and “aside from the main subject, course, etc.; secondary.”<sup>4</sup> The clear takeaway from Opinion 1995-10 is that a

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<sup>3</sup> The opinion is available at the following link:

[https://cdn.ymaws.com/www.sband.org/resource/resmgr/docs/for\\_lawyers/95-10.pdf](https://cdn.ymaws.com/www.sband.org/resource/resmgr/docs/for_lawyers/95-10.pdf).

<sup>4</sup> Dictionary.com, available at <https://www.dictionary.com/browse/collateral?s=t>. (accessed September 20, 2019).

matter that involve the same *circumstances*, even if they are collateral or auxiliary, is the same “matter” for purposes of N.D.R.Prof.C. 1.12.

In 1996, the Ethics Committee issued Opinion 96-03,<sup>5</sup> which discussed whether a former government attorney’s work on various files constituted work on a “matter” for purposes of Rule 1.11. The Committee explained that “the issues involved in the 1994 dispute upon which the Requesting Attorney advised the [redacted agency] and the issues presently in dispute are different. However, both relate to the claimant’s actual injuries and physical condition. As such, the Committee is of the opinion that both involve the same ‘matter.’” Because the Requesting Attorney was both personally and substantially involved in advising the [redacted agency] with respect to claimant’s file, the Committee believes that he is disqualified from representing that specific client in a matter adverse to the [redacted agency].” *Id.* (emphasis added).

In other words, the Ethics Committee explained in 1995 that a matter is the same matter even if it is “collateral” in some way, and in 1996 the Committee explained that a matter is the same matter even if “the issues ... in dispute are different,” so long as the matter “relate[s] to” the general topic area (e.g., “injuries and physical condition”). *Id.*

Other states have viewed the definition of the word “matter” similarly to North Dakota. For example, a federal district court ruling on a motion to disqualify counsel ruled the same way as North Dakota’s Ethics Committee:

By choosing the word “matter” for Rule 1.11 and Rule 1.12, the Utah Supreme Court intended the two rules to encompass more than just the same lawsuit. In the context of interpreting “matter” for the purpose of understanding Rule 1.12, courts have held: “The same lawsuit or litigation is the same matter. The same issue of fact involving the same parties and the same situation or conduct is the same matter.... [T]he same ‘matter’ is not involved [when] ... there is lacking the discrete,

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<sup>5</sup> This opinion is available at the following link:

[https://cdn.ymaws.com/www.sband.org/resource/resmgr/docs/for\\_lawyers/96-03.pdf](https://cdn.ymaws.com/www.sband.org/resource/resmgr/docs/for_lawyers/96-03.pdf)

identifiable transaction of conduct involving a particular situation and specific parties.”

*Archuleta v. Turley*, 904 F. Supp. 2d 1185, 1189–90 (D. Utah 2012) (quoting *Poly Software Int'l v. Datamost Corp.*, 880 F.Supp. 1487, 1492 (D.Utah 1995)). In yet another example, a federal court held that two civil lawsuits, filed ten years apart with some identical and some different claims, constituted the same matter because they addressed the same conduct involving a particular situation and specific parties. *Sec. Investor Protection Corp. v. Vigman*, 587 F.Supp. 1358, 1365 (C.D.Cal.1984). Numerous other cases and ethics opinions have reached the same result.

Applying the above to the circumstances here, there is no question that Mr. Mann participated personally and substantially over the same matters at issue here. Three of the seven issues raised by the Voigts in this proceeding involve air quality, coal mine reclamation, and alluvial valley floors on surface mine permit NACC-1302. Mr. Mann presided as a hearing officer over these same issues amongst the same parties regarding the same permit in 2014 and 2015. There is no doubt that the issues to be considered in RC19-189 and RC-19-190 include the same “matter[s]” as Mr. Mann presided over previously, and therefore N.D.R.Prof.C. 1.12(a) *requires* that he be disqualified because the rule plainly states that he “shall not” represent “anyone in connection with” such a “matter.”

Further, the applicability of the rule to these circumstances is very clear, but even assuming for sake of argument that there is some doubt, “close or doubtful cases are resolved in favor of disqualification in order to preserve the integrity of the judicial system.” *Richards v. Holsum Bakery, Inc.*, 2009 WL 3740725, at \*6 (D.Ariz. Nov. 5, 2009).

C. Failure to give notice of this Rule 1.12 conflict automatically imputes the conflict to Crowley Fleck, requiring disqualification of the firm under Rule 1.12(c).

Rule 1.12(c) states the following:

If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

Here, the facts clearly indicate that Mr. Mann was not “timely screened from any participation in the matter.” To the contrary, Mr. Mann has been actively representing CCMC in this matter, including by advocating his client’s position at a meeting amongst the parties on September 17, and a pre-hearing on September 23. Second, “written notice” was not “promptly given to the parties.” Mr. Mann and Crowley Fleck gave no notice at all, and it was the undersigned who brought this issue to the attention of Mr. Mann when it became apparent that he was attempting to represent CCMC in this proceeding after participating twice as a hearing officer in these matters.

Under Rule 1.12(c), “no lawyer” in Mr. Mann’s firm of Crowley Fleck may “undertake or continue representation in th[i]s matter.” Therefore, Mr. Mann and Crowley Fleck must be disqualified.

D. The Voigts themselves are very concerned that CCMC’s representation by the former hearing officer in this matter suggests bias and impropriety.

The Voigts’ reaction to learning of Mr. Mann’s representation of CCMC illustrates the importance of Rule 1.12. Upon learning that Wade Mann would be representing CCMC in these proceedings, the Voigts were very concerned and believed that his representation calls into question the validity of the two former hearings. Not surprisingly, the Voigts’ concerns appear

quite similar to the “distress” of Ms. Hoffman upon learning that her former divorce proceeding judge was now representing her ex-husband to modify the judge’s own order. *In re Application for Disciplinary Action Against Hoffman*, 2003 ND 161, ¶ 3. Whether any impropriety has actually taken place is not the issue – Rule 1.12 exists to preserve the integrity of the judicial system by minimizing even the appearance of impropriety, especially for former judges and hearing officers. Just as the Court has held that “in order to preserve public confidence in the legal profession, and to insure the confidentiality and integrity of client information, [a] firm must not be allowed to ‘switch sides,’” it is similarly true that a judge may not take *any* side in a matter that he or she has “participated personally and substantially.” *Heringer v. Haskell*, 536 N.W.2d 362, 367 (N.D. 1995); N.D.R.Prof.C. 1.12(a).

**IV. Request for relief and Conclusion**

The Voigts request the entry of an order disqualifying Wade Mann and Crowley Fleck, PLLP from representing CCMC in this proceeding. The Voigts do not oppose a modification of the hearing date to allow CCMC to retain substitute counsel and to allow that counsel time to come up-to-speed on these proceedings, including information in dockets RC-13-850 and RC-14-846. Respectfully submitted this 24<sup>th</sup> day of September, 2019.

**BRAATEN LAW FIRM**

/s/ Derrick Braaten  
Derrick Braaten, ND Bar # 06394  
JJ England, ND Bar #08135  
109 North 4<sup>th</sup> Street, Suite 100  
Bismarck, ND 58501  
Phone: 701-221-2911  
Fax: 701-221-5842  
derrick@braatenlawfirm.com  
jj@braatenlawfirm.com

**NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C.  
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**Case No. RC-19-189  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was on September 24, 2019 filed with the Public Service Commission by e-mail to ndpsc@nd.gov and USPS First Class Mail, and that the same was served by e-mail and by USPS First Class Mail upon the following:

The Honorable Timothy Dawson  
Administrative Law Judge  
Office of Administrative Hearings  
2911 N 14<sup>th</sup> St., #303  
Bismarck, ND 58503  
tjdawson@nd.gov

Wade Mann  
Crowley Fleck, PLLP  
PO Box 2798  
Bismarck, ND 58502-2798  
wmann@crowleyfleck.com

John Schuh  
Special Assistant Attorney General  
North Dakota Public Service  
Commission  
600 E Boulevard Dept. 408  
Bismarck, ND 58505  
jschuh@nd.gov

**BRAATEN LAW FIRM**

/s/ JJ England  
JJ England, ND Bar #08135  
109 North 4<sup>th</sup> Street, Suite 100  
Bismarck, ND 58501  
Phone: 701-221-2911  
Fax: 701-221-5842  
jj@braatenlawfirm.com