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Fee Exempt - Public Entity, Gov Code § 61

6 Attorneys for Plaintiff,
7 **CHINO BASIN MUNICIPAL WATER DISTRICT**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 **CHINO BASIN MUNICIPAL WATER**)
12 **DISTRICT,**)
13)
14) **Plaintiff,**)
15 **vs.**)
16 **CITY OF CHINO, et al.**)
17)
18) **Defendants.**)

CASE NO. RCV 51010

NOTICE OF MOTION AND MOTION FOR
DISQUALIFICATION OF COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATIONS OF JOHN ANDERSON,
GEORGE BORBA, TERRY CATLIN, JEAN
CIHIGOYENETCHE AND KIM PEREZ IN
SUPPORT THEREOF

DATE:
TIME: 8:30 a.m.
DEPT: H

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20 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD, AND TO NOSSAMAN,
21 GUTHNER, KNOX & ELLIOTT, LLP, JOHN OSSIFF AND FREDERIC A. FUDACZ, AND
22 CHINO BASIN ADVISORY COMMITTEE, AND THEIR COUNSEL OF RECORD:

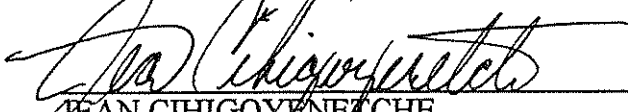
23 NOTICE IS HEREBY GIVEN that on _____, 1997, at 8:30 a.m., in
24 Department H of the above-entitled court, located at 8303 North Haven Avenue, Rancho
25 Cucamonga, California, moving party, CHINO BASIN MUNICIPAL WATER DISTRICT, will
26 move the court for an order disqualifying the law firm of Nossaman, Guthner, Knox & Elliott, LLP,
27 and attorneys John Ossiff and Frederic A. Fudacz, as attorneys representing CHINO BASIN
28 WATERMASTER and CHINO BASIN WATERMASTER ADVISORY COMMITTEE.

1 This motion will be based upon the grounds that said attorneys have concurrently and
2 successively represented the CHINO BASIN WATERMASTER and CHINO BASIN
3 WATERMASTER ADVISORY COMMITTEE, which entities have adverse interests. Additionally,
4 said attorneys have breached their fiduciary duty to the CHINO BASIN WATERMASTER.

5 The motion is based upon this notice of motion, the memorandum of points and authorities
6 and the declarations of John Anderson, George Borba, Terry Catlin, Jean Cihigoyenetche and Kim
7 Perez filed concurrently herewith, and all pleadings and documents on file herein.

8
9 DATED: March 5, 1997

10 CIHIGOYENETCHE, GROSSBERG & CLOUSE

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12 _____
13 JEAN CIHIGOYENETCHE
14 Attorneys for
15 CHINO BASIN MUNICIPAL WATER DISTRICT

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2 MEMORANDUM OF POINTS AND AUTHORITIES

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4 1.

5 STATEMENT OF FACTS

6 On or about December 1, 1993 the law firm of Nossaman, Guthner, Knox & Elliott was
7 retained as special counsel for the Advisory Committee a body created under the Watermaster
8 Judgment presently before the court. A copy of said retainer agreement is attached hereto as Exhibi
9 "A" and incorporated herein by this reference. Thereafter, in or about August of 1994 the same law
10 firm entered into a retainer agreement with the Chino Basin Watermaster whereby they agreed to
11 provide legal services as general counsel to the Watermaster. A copy of said retainer agreement is
12 attached hereto as Exhibit "B" and incorporated herein by this reference. By the terms of Exhibit
13 "B", the retainer lapsed in June of 1995. No subsequent retainer agreement exists between the
14 Watermaster and the subject law firm although they have continued to act as counsel to the
15 Watermaster.

16 Throughout the retention, Nossaman, Guthner, Knox & Elliott have acted primarily through
17 their attorneys Frederic A. Fudacz and John Ossiff (referred to collectively as "Respondents").
18 Historically, Respondents have rendered legal advice to the Advisory Committee but has failed to
19 render legal advice to the Watermaster their true employer. Although they were originally retained a
20 special counsel for the Advisory Committee, and had a written contract as evidence of that, they have
21 since entered into a written contract with the Watermaster thereby acknowledging that these are two
22 separate bodies. Despite Respondent's retention by the Watermaster, they have continued to render
23 legal advice to the Advisory Committee. In fact, the members of the Watermaster Board of Director
24 did not personally meet Mr. Fudacz or Mr. Ossiff until January of 1997 when their conflict of interest
25 became the subject of open discussion by the Watermaster.

26 Despite this, Respondents have continued to file motions with the court designating
27 themselves as counsel for Watermaster. In 1996 and again in January of 1997, Respondents,
28 purportedly on behalf of the Watermaster, filed motions with this court to replace the Watermaster

1 (their employer) with an alternative Watermaster Board. The presently constituted Watermaster f
2 that this was a direct conflict of interest in that they had never advised Respondents to take such
3 action.

4 As recently as February 6, 1997, Jean Cihigoyenette, general counsel for Chino Basin
5 Municipal Water District, which sits as the Watermaster Board as well, sent correspondence to
6 Respondents once again delineating their conflict of interest in the eyes of the Watermaster Board
7 demanding that they take certain action as their general counsel. A copy of said correspondence is
8 attached to the Declaration of Jean Cihigoyenette filed herewith, attached as Exhibit "C" and
9 incorporated herein by this reference.

10 The conflict of interest arises from Respondents continuing to represent the Advisory
11 Committee arguing positions that are directly adverse to those positions maintained by the
12 Watermaster, their former client. The Watermaster has clearly stated that to appoint a new
13 Watermaster which includes any representatives from the Advisory Committee would result in a
14 conflict of interest and, therefore, not in the best interest of the Watermaster. Despite this,
15 Respondents have elected to take their direction from the Advisory Committee who supports
16 appointing a new Watermaster which includes representatives from the Advisory Committee. To ad
17 insult to injury, Respondent file the Advisory Committee motions designating themselves as counsel
18 for Watermaster. They have never received direction from the Watermaster to file those motions.

19 Finally, on February 27, 1997, at a duly noticed meeting of the Watermaster Board of
20 Directors, the legal services contract between Respondents and the Watermaster was considered.
21 Upon hearing comments from those present at the public hearing, a motion was made and passed to
22 terminate the employment of Respondents. Despite having been terminated on February 27,
23 Respondents appeared in court on March 3, 1997 declaring themselves counsel for the Advisory
24 Committee and being present at the request of the Director of Watermaster Services (who is a Chino
25 Basin Municipal Water District employee). Respondents were present so as to argue the merits of a
26 motion which they had filed on behalf of the Watermaster, their prior employer. It is important to
27 note that the motion which Respondents were present to argue was drafted and filed during the time
28 that they were simultaneously acting as attorney for both the Advisory Committee and the

1 Watermaster. Their appearance on March 3, 1997, was to argue the merits of those motions on
2 behalf of the Advisory Committee's point of view which is directly opposite to the position held by
3 the Watermaster. Indeed, the Watermaster's position is that to promote the Advisory Committee's
4 point of view would not be in the best interests of Chino Basin as a whole. Despite this, Respondents
5 continue to pursue the position of the Advisory Committee in direct conflict and against the express
6 desires of the Watermaster.

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8 **2.**

9 **DISQUALIFICATION OF RESPONDENTS IS MANDATORY**
10 **AND NOT SUBJECT TO THE DISCRETION OF THE COURT**

11 Respondents have assumed the position of simultaneous representation of both the
12 Watermaster and the Advisory Committee, despite the fact that the interests of those bodies are
13 clearly adverse to each other. The Advisory Committee seeks to oust the existing Watermaster, and
14 the Watermaster opposes that action. However, Respondents have filed a petition to oust the
15 Watermaster while at the same time, submitting those documents as counsel for the Watermaster.
16 Additionally, counsel appeared in court on March 3, 1997 after having been terminated as
17 Watermaster counsel on February 27, 1997. Such simultaneous representation requires automatic
18 disqualification of Respondents under California law. This motion is timely pursuant to White v.
19 Superior Court (2d Dist. 1979) 98 Cal. App. 3d 51, 159 Cal.Rptr. 278.

20 The issue of simultaneous representation was articulately addressed by the Supreme Court of
21 California, *in bank*, in the case of *Flatt v. Superior Court*, (1994) 9 Cal.4th 275, 885 P.2d 950, 36
22 Cal.Rptr.2d 537. There, the court discussed the issues of successive representation and simultaneous
23 representation, noting that in the former situation a substantial relationship test is to be employed by
24 the court where in the later situation a more stringent test is to be applied. The court stated as
25 follows:

26 "In evaluating conflict claims in dual representation cases, the courts
27 have accordingly imposed a test that is more stringent than that
28 demonstrating a substantial relationship between the subject matter of
successive representation. Even though the simultaneous

1 representations have nothing in common, and there is no risk that
2 confidences to which counsel is a party in the one case have any
3 relation to the other matter, disqualification may nevertheless be
4 required. Indeed, in all but a few incidences, the rule of disqualification
5 in simultaneous representation cases is a per se or 'automatic' one.”

6 [Citations]

7 Ibid (Emphasis in original).

8 The policy considerations supporting the above cited rule are based upon considerations of
9 loyalty and fidelity to the client. It is not necessary to show that confidential information obtained by
10 one client was used against the other client, but, rather, the mere simultaneous representation of two
11 clients who have adverse interests in the same case or in unrelated cases requires automatic
12 disqualification. The use of confidential information is presumed. (See *Truck Insurance Exchange v.*
13 *Firemans Fund Insurance Co.*, (1992) 6 Cal.App.4th 1050, 8 Cal.Rptr.2d 228).

14 It is undeniable that the Respondents have represented both the Advisory Committee and the
15 Watermaster as counsel on Watermaster issues. Respondents have also assumed the position of one
16 of its clients, the Advisory Committee directly in contradiction to the interests of its other client, the
17 Watermaster. A finding of simultaneous representation mandates disqualification as a matter of law
18 and, under Flatt supra, the court has no discretion to deny the motion.

19 To compound matters further, Respondents filed the motion to replace the Watermaster, as
20 counsel for Watermaster, without ever receiving authorization or instructions from the Watermaster
21 to do so. It is impossible to reconcile the conduct of Respondents in this matter. On the one hand,
22 they purport to represent the Watermaster, and on the other hand, they take direction from the
23 Advisory Committee to oust the Watermaster.

24 Even under the less stringent “substantial relationship” test, Respondents must be disqualified.
25 Under that test, if the facts relative to the representation of the latter client are substantially related to
26 the facts surrounding representation of the former client, then disqualification is likewise mandatory.
27 Moreover, it need not be shown that confidential information acquired in one fiduciary relationship be
28 used against the client in a second fiduciary relationship. That adverse relationship is presumed. (See

1 *Ahmanson & Co. v. Salomon Bros., Inc.*, (1991) 229 Cal.App.3d 1445, 280 Cal.Rptr 614).

2 In short, Respondents have committed the most serious type of conflict of interest that an
3 attorney can commit against a client. Respondents are using information obtained during the attorney
4 client relationship to adversely affect the rights and reputation of its own client. Despite the direct
5 and untenable conflict of interest, Respondents have refused to relent in their position,
6 notwithstanding the correspondence sent to them by their clients delineating the conflict of interest
7 and requesting that they voluntarily recuse themselves.

8 3.

9 **RESPONDENT MUST ALSO BE DISQUALIFIED**

10 **UNDER THE THEORY OF SUCCESSIVE REPRESENTATION**

11 As stated above, Respondents were terminated as counsel for the Watermaster effective
12 February 27, 1997. (See Declarations of John Anderson, George Borba and Terry Catlin attached
13 hereto collectively as Exhibit "D" and incorporated herein by this reference). Therefore, from a
14 technical standpoint it could be argued that Respondents' appearance in court on March 3, 1997 did
15 not constitute a simultaneous representation but rather a successive representation of the Advisory
16 Committee after their termination by the Watermaster. Ignoring for a moment that the motions
17 pending before the court were filed prior to Respondents termination as legal counsel for the
18 Watermaster, Respondents must nevertheless be disqualified for their successive representation of the
19 Advisory Committee.

20 As stated in the case of *Ahmanson & Co. v. Salomon Bros., Inc.* (1991) 229 Cal.App.3d
21 1445, 280 Cal. Rptr. 614:

22 "It is beyond dispute a court may disqualify an attorney from
23 representing a client with interests adverse to those of a former client. .
24 . . where such a conflict of interest exists, and the former client has not
25 consented to the current representation, disqualification follows as a
26 matter of course. The court does not engage in a 'balancing of
27 equities' between the former and current clients. The rights and
28 interests of the former client will prevail. (Citations)"

1 The sole burden of proof that the moving party must establish in a successive representation
2 argument is that the representation of the former client and present client concerned the same subje
3 matter. The use of confidential material obtained in the attorney-client relationship need not be
4 shown. The sharing of confidential information by the attorneys presumed. Ibid.

5 The fact that the respondent appears in court on behalf of the Advisory Committee to argue
6 the merits of the motions that he filed on behalf of the Watermaster clearly establish that the subject
7 matter of his representation in this instance is the same as between the Watermaster and the Advisor
8 Committee. The only difference is that they share polar opinions regarding that subject matter.
9 Clearly, disqualification is mandated in this matter.

10 4.

11 **RESPONDENTS ANALOGY OF HIS ROLE AS**
12 **WATERMASTER ATTORNEY TO THAT OF**
13 **CORPORATE COUNSEL IS MISPLACED**

14 In the past, Respondents have argued that their position is akin to corporate counsel wherein
15 they represent the corporation as a whole and not specifically the Board of Directors or the
16 shareholders. Accordingly, they are compelled to provide legal representation that they feel promote
17 the best interests of the entire organization as opposed to the separate bodies comprising that
18 organization.

19 In support of their position, Respondents rely on RPC 3-600. They cite to (b) of that rule to
20 support their contention that their duties flow to the organization as a whole. However, what
21 responding parties have failed to cite to the court are the more pertinent provisions of Rule 3-600
22 specifically Section (c), (d) and (e). In general, those provisions state that an attorney should
23 recognize where dual representation has placed him in a position between two adversaries. Under
24 such circumstances, the Rules of Professional Conduct requires the attorney to withdraw as counsel
25 to either of the adversaries on those issues in controversy. Such was the course of conduct that the
26 Respondents should have followed in this matter. Instead, they chose sides and elected to champion
27 the cause of the Advisory Committee in disregard for the best interest of the Watermaster, their then
28 employer. As soon as the Advisory Committee, with the assistance of Respondents counsel, decided

1 to replace the existing Watermaster Board, Respondents found themselves inextricably involved in a
2 conflict of interest.

3 The discussion notes under RPC-600 almost appear to have been drafted with Respondents
4 very situation in mind.

5 "Rule 3-600 is not intended to create or validate artificial distinctions
6 between entities and their officers, employees, or members, nor is it the
7 purpose of the rule to deny the existence or importance of such formal
8 distinctions. In dealing with a close corporation or small association,
9 members commonly perform professional engagements for both the
10 organization and its major constituents. When a change in control
11 occurs or is threatened, members are faced with complex decisions
12 involving personal and institutional relationships and loyalties and have
13 frequently had difficulty in perceiving their correct duty. (Citations) In
14 resolving such multiple relationships, members must rely on case law."

15
16 The case law which must be considered in the present case is that case law which is cited in
17 this brief. Accordingly, disqualification of counsel is mandated.

18 5.

19 **CONCLUSION**

20 Based upon the foregoing arguments and authorities, the moving party respectfully requests
21 the court issue an order disqualifying the Respondents from acting as counsel for the Watermaster,
22 the Advisory Committee or pertaining to any issue relative to the Watermaster Judgment.

23
24 DATED: March 5, 1997

Respectfully submitted,

25 CIHIGOYENETCHE, GROSSBERG & CLOUSE

26 
27 JEAN CIHIGOYENETCHE

28 Attorneys for
CHINO BASIN MUNICIPAL WATER DISTRICT

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5 (909) 483-1850

6 Attorneys for Plaintiff,
7 CHINO BASIN MUNICIPAL WATER DISTRICT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

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11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)
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Plaintiff(s),

vs.

CITY OF CHINO, et al.,

Defendant(s).

CASE NO. RCV 51010

DECLARATIONS OF JOHN ANDERSON,
GEORGE BORBA, TERRY CATLIN, JEAN
CIHIGOYENETCHE AND KIM PEREZ

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Chino Basin Watermaster hereby submits the Declarations of John Anderson, George Borba,
Terry Catlin, Jean Cihigoyenette and Kim Perez re termination of legal services contract.

Dated: March 2, 1997

CIHIGOYENETCHE, GROSSBERG & CLOUSE

By: 

JEAN CIHIGOYENETCHE

Attorneys for Plaintiff,

CHINO BASIN MUNICIPAL WATER DISTRICT

DECLARATION OF JOHN ANDERSON

I, John Anderson, hereby declare as follows:

1. I am a member of the Board of Directors of Chino Basin Watermaster. I have first hand knowledge of the matters set forth herein and, if called as a witness would be competent to testify thereto.

2. On February 27, 1997, Chino Basin Watermaster Board of Directors held a duly noticed meeting. The purpose of the meeting was to discuss the legal services contract between the Watermaster and the law firm of Nossaman, Guthner, Knox & Elliott and specifically Fred Fudacz and John Ossiff, members of that firm, who had been acting as Watermaster counsel prior to that time.

3. I was concerned about the legal representation of Mr. Fred Fudacz and his law firm with respect to Watermaster matters. Within the last twelve months there have been a series of motions filed with the court presumably at the direction of the Advisory Committee seeking to replace the Watermaster Board of Directors. I was concerned about the motions brought in 1996 as well as the motions presently pending in this court to replace the Watermaster in that if those motions are granted, Advisory Committee members would also share a seat on the Watermaster Board of Directors. I believe this would create an inherent conflict of interest with regard to the Watermaster and have held that belief since the initial motions to replace the Watermaster were filed in 1996. I oppose those motions.

4. I was also deeply troubled that Mr. Fudacz and his law firm would file those motions on behalf of the Watermaster when in fact the Watermaster had never directed him to do so. In fact, although I have served on the Watermaster Board of Directors for more than fifteen years, I had never met Mr. Fudacz or any representatives from his law firm until January of 1997. Although Mr. Fudacz held himself out as filing the motions to replace the Watermaster on behalf of the Watermaster, neither I nor to my knowledge has any other member of the Watermaster Board ever given direction to Mr. Fudacz to do so. Indeed, until January of 1997 when Mr. Fudacz finally attended a Watermaster meeting, he had never rendered legal advice to me as a board member. I as a Watermaster board member was never notified that the motions to replace Watermaster were being brought until I received service of the motions after they had been filed. Additionally, Mr. Fudacz has never contacted me to discuss the

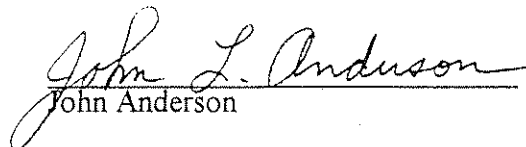
1 possibility of resolving issues between the Advisory Committee and the Watermaster Board of Directors
2 and he has never discussed with me directly the reasons why the Advisory Committee wishes to replace
3 the Watermaster.

4 5. I believe that Mr. Fudacz and his law firm have rendered the Watermaster Board of
5 Directors no legal representation over the years. I also believe that Mr. Fudacz has a conflict of interest
6 in representing the Advisory Committee and seeking to replace the Watermaster Board who he actually
7 represented.

8 6. At the Watermaster Board hearing of February 27, 1997, upon discussion of the issue of
9 the legal service contract including comments from Mr. Fudacz and other attorneys and individuals who
10 were present to speak on the issue, a motion was made to sever the legal services contract between the
11 Watermaster and Mr. Fudacz and his law firm. I voted in favor of severing that relationship and, as I
12 understood it, Mr. Fudacz and his law firm are no longer retained by the Watermaster to provide legal
13 services in any capacity whatsoever.

14 7. On Saturday, March 1, 1997 a newspaper article was published in the Daily Bulletin, a
15 local newspaper. That article suggested that the action of the Board of Directors at its February 27
16 meeting was somehow unclear and that Mr. Fudacz intended to appear in court as legal counsel for the
17 Watermaster on March 3, 1997. I do not believe that there was any uncertainty related to the vote taken
18 by the Watermaster at that meeting. I voted to terminate the services of Mr. Fudacz and his law firm and
19 by that vote I do not expect him to provide legal services on behalf of Watermaster and/or relative to any
20 Watermaster issues. In fact, after the meeting I asked Jean Cihigoyenette to secure Mr. Fudacz'
21 signature on a Substitution of Attorney form for the case of Chino Basin Municipal Water District vs.
22 City of Chino, Case No. RCV 51010. I am informed that he has refused to sign it.

23 I declare under penalty of perjury the foregoing to be true and correct to the best of my
24 knowledge. Executed on this 2nd day of March, 1997 at Chino, California.

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27 
28 John Anderson

DECLARATION OF GEORGE BORBA

I, George Borba, hereby declare as follows:

1. I am a member of the Board of Directors of Chino Basin Watermaster and have held a position on that Board of Directors since 1978, the inception of the Watermaster. I have first hand knowledge of the matters set forth herein and, if called as a witness would be competent to testify thereto.

2. On February 27, 1997 a duly noticed meeting of the Watermaster Board of Directors was held. The meeting was called at my request for the specific purpose of reviewing the legal services contract between the Watermaster and the law firm of Nossaman, Guthner, Knox & Elliott. I requested the meeting to be held because I was deeply concerned that the law firm of Nossaman, Guthner, Knox & Elliott through its lawyers Fred Fudacz and John Ossiff had a conflict of interest in representing the Watermaster on one hand and the adverse interests of the Advisory Committee on the other. I also felt that Watermaster had not been adequately represented by that firm and its attorneys. I had made my feelings known to Mr. Fudacz prior to the February 27, 1997 meeting however, I wished to further discuss the issue of his legal representation at a duly noticed Watermaster meeting.

3. I am aware that Mr. Fudacz and his law firm filed a motion in 1996 to replace the Watermaster Board of Directors with an alterative board which contained members of the Advisory Committee. I believe that to appoint an Advisory Committee representative to the Watermaster Board of Directors would create an inherent conflict of interest under the Watermaster Judgment. I also understand that a similar motion is pending before this court at the present time. Neither the motions that were filed in 1996 or the motion presently pending before this court to replace the Watermaster was discussed with me by Mr. Fudacz or any representative from his firm prior to it being filed. In fact, I had no notice of either motion prior to the time that they were filed. Mr. Fudacz has never consulted with me regarding the purpose of those motions nor has he ever consulted with me regarding why the Advisory Committee wishes to replace the Watermaster Board. I oppose those motions.

4. On February 27, 1997 at the Watermaster board meeting, after discussion was held regarding the legal services contract in question, I made a motion that the Watermaster sever its legal

1 relationship with the law firm Nossaman, Guthner, Knox & Elliott which would include Mr. Fudacz and
2 Mr. Ossiff. The motion was approved by a majority of the board at that time.

3 5. I had previously reviewed two retainer agreements pertaining to Mr. Fudacz and his law
4 firm including one wherein he was retained to act as special counsel for the Advisory Committee and
5 a more recent agreement, which lapsed in 1995, wherein he was retained as general counsel for the
6 Watermaster. During the course of the February 27 meeting, Mr. Fudacz stated there were no more
7 recent retainer agreements between his firm and the Watermaster. Mr. Fudacz also stated during the
8 course of the meeting that the Watermaster Board had the authority to fire his law firm if they so desired.
9 It was apparent to me from the comments of Mr. Fudacz that he knew exactly why the meeting had been
10 called.

11 My motion, and my vote in support of that motion were intended to terminate all attorney-client
12 relationships between the Watermaster and Mr. Fudacz, Mr. Ossiff and their law firm Nossaman,
13 Guthner, Knox & Elliott. I do not believe that there was any uncertainty in the Board's action at all.

14 6. On March 1, 1997, I read an article in the Daily Bulletin, a local newspaper. As I
15 understood it, the article set forth a position attributed to Mr. Fudacz that he was unclear as to the action
16 taken by the Watermaster Board at the February 27 meeting and that he intended to appear in court on
17 March 3, 1997 to argue motions on behalf of the Advisory Committee which he had previously filed.

18 7. When I read the newspaper article referred to above, and if Mr. Fudacz indeed
19 communicated such information to the newspaper reporter, I believe that it constitutes yet another
20 example of how Mr. Fudacz and his law firm have worked on behalf of the Advisory Committee to
21 undermine all actions taken by the Watermaster Board of Directors. In my mind, there is no doubt
22 whatsoever that he is acting in a direct conflict of interest with respect to his representation of the
23 Watermaster. The action which the Watermaster Board of Directors took on February 27, 1997 was
24 intended to, and did sever all relationship with Mr. Fudacz and his law firm and precludes him from

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1 representing the Watermaster, in any capacity, even the Advisory Committee, in matters concerning
2 Watermaster affairs.

3 I declare under penalty of perjury the foregoing to be true and correct to the best of my
4 knowledge. Executed on this 2nd day of March, 1997 at Ontario, California.

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9 George Borba
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DECLARATION OF TERRY CATLIN

I, Terry Catlin, hereby declare as follows:

1. I am a member of the Board of Directors of Chino Basin Watermaster and have first hand knowledge of the matters set forth herein and, if called as a witness, I would be competent to testify thereto.

2. On February 27, 1997, I attended a duly noticed meeting of the Chino Basin Watermaster Board of Directors. During that meeting, the Board considered the legal services contract between the Watermaster and the law firm of Nossaman, Guthner, Knox & Elliott including Mr. Fudacz and John Ossiff. It was my understanding that the purpose of the meeting was primarily to consider whether the Watermaster should continue to retain the services of Mr. Fred Fudacz, Mr. John Ossiff and their law firm as general counsel. Despite only having assumed my elected office in December of 1996, I had studied the Watermaster Judgment and was familiar with its terms prior to certain Watermaster meetings which were held in January of 1997. I was also aware that there were deep concerns about the conduct of the Chief of Watermaster Services and her staff relative to the day to day affairs of the Watermaster. In fact, I supported and voted for an independent third party audit of Watermaster Services. During the course of studying the issues concerning the Watermaster and the Advisory Committee as well as the Watermaster Services staff, I became aware of the nature of the relationship between Mr. Fudacz, Mr. Ossiff and their law firm with respect to the representaiton of the Watermaster. From the information that I have studied and the knowledge I have obtained through review of documents and the attendance at Watermaster Board meetings, it seemed to me rather clear that Mr. Fudacz and his firm were representing the interests of the Advisory Committee and in no way representing the interestes of the Watermaster Board despite the fact that he had a retainer agreement, although lapsed, to represent the Watermaster and not the Advsiory Committee. Additionally, I am aware that Mr. Fudacz and his law firm have filed a motion presently pending before this court to replace the Watermaster Board of Directors with a proposed board that would include representatives from the Advisory Committee. I believe that appointing members of the Advisory Committee to sit on a Watermaster Board would create an inherent conflict of interest. As a Watermaster Board Member, I opposed the motion to replace

1 Watermaster which was brought by Mr. Fudacz. I was never consulted by Mr. Fudacz or any other
2 member of his firm prior to that motion being filed and, to date, have not been explained a reason why
3 the motions were brought as they were. I believe that Mr. Fudacz has rendered virtually no legal counsel
4 to the Watermaster Board since I have served on that body.

5 3. At the February 27, 1997 meeting of the Watermaster Board of Directors, I voted in
6 support of the motion brought by Director Borba to sever all legal ties with Mr. Fudacz, Mr. Ossiff and
7 the law firm of Nossaman, Guthner, Knox & Elliott. It was my understanding that if that motion passed
8 by a majority vote of the Watermaster Board Members, which it did, Mr. Fudacz, Mr. Ossiff and their
9 law firm would be terminated as attorneys for the Watermaster. I noted nothing whatsoever that was
10 unclear with respect to the motion or the action that was taken by the Watermaster Board of Directors.
11 It is my understanding that, based upon the vote taken on February 27, 1997 Mr. Fudacz, Mr. Ossiff and
12 their law firm have no further standing to represent the Watermaster or any other Agency under the
13 Watermaster, including the Advisory Committee with regard to legal matters pertaining to the
14 Watermaster.

15 I declare under penalty of perjury the foregoing to be true and correct to the best of my
16 knowledge. Executed on this 2nd day of March, 1997 at Ontario, California.

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20 Terry Catlin

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DECLARATION OF JEAN CIHIGOYENETCHE

I, Jean Cihigoyenette, hereby declare as follows:

1. I am an attorney duly licensed to practice law in all of the courts of the State of California and have first hand knowledge of the matters set forth herein. If called as a witness, I am competent to testify thereto.

2. On February 27, 1997, I attended a meeting of the Watermaster Board of Directors. At that meeting, I witnessed the Board of Directors for the Watermaster vote to sever all legal relationship with the law firm of Nossaman, Guthner, Knox & Elliott. After the vote was taken, I was requested by Chairman John Anderson to secure the signature of Mr. Fred Fudacz on a Substitution of Attorney in the case of Chino Basin Municipal Water District vs. City of Chino, Case No. RCV 51010. I personally requested Mr. Fudacz to execute the Substitution of Attorney which he refused to do. I advised Mr. Fudacz that his client had requested that he sign the Substitution form. Rather, Mr. Fudacz instructed me to send the Substitution of Attorney to his offices for signature.

3. In the afternoon of February 27, 1997, I sent by way of facsimile, a copy of the Substitution of Attorney together with a cover letter requesting that Mr. Fudacz execute the Substitution form. A copy of said correspondence is attached hereto as Exhibit "A" and incorporated herein by this reference.

4. Mr. Fudacz did not respond to my correspondence and, therefore, I instructed my legal assistant, Kim Perez to contact the offices of Mr. Fudacz so as to determine the status of the Substitution of Attorney.

5. To date, I have not received the executed Substitution of Attorney nor have I received any communication in that regard from Mr. Fudacz.

I declare under penalty of perjury the foregoing to be true and correct to the best of my knowledge. Executed on this 2nd day of March, 1997 at Ontario, California.

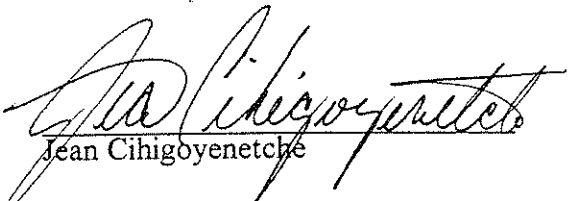
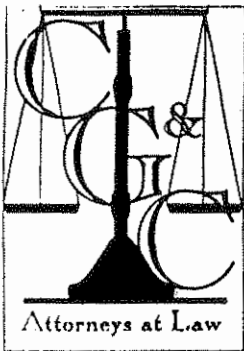

Jean Cihigoyenette
-1-

EXHIBIT A



February 27, 1997

**Cihigoyenette,
Grossberg
& Clouse**

A Partnership of Professional Corporations

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Frederic A. Fudacz
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, Thirty-First Floor
Los Angeles, California 90071

Re: Chino Basin Municipal Water District v. City of Chino

Dear Mr. Fudacz:

In light of today's action by the Watermaster Board, I was requested by Chairman Anderson to secure a signature on the Substitution of Attorney with respect to the Watermaster Adjudication. Although you were requested to sign the Substitution of Attorney after the meeting, you refused to do so instructing us rather to direct the document to your offices.

Accordingly, enclosed herein please find the Substitution of Attorney form prepared for your signature. As you are aware, there is a pending hearing date of March 3, 1997 with regard to certain Watermaster motions. It would be imperative for us to file the Substitution of Attorney prior to that date and, therefore, expeditious handling of this matter is appreciated.

Respectfully submitted,

CIHIGOYENETTE, GROSSBERG & CLOUSE


JEAN CIHIGOYENETTE

JC:kp

enc.

DECLARATION OF KIM PEREZ

I, Kim Perez, hereby declare as follows:

1. I am the legal assistant to Jean Cihigoyenette, attorney for Chino Basin Municipal Water District and have first hand knowledge of the matters set forth herein. If called as a witness, I would be competent to testify thereto.

2. At the direction of Mr. Cihigoyenette, on February 27, 1997, I contacted Mr. Fred Fudacz' office to determine the status of the Substitution of Attorney which I had faxed to his offices. At that time, I spoke with his secretary who indicated that he was not in the office at that time however, she would discuss the matter with him as soon as he returned.

3. On February 28, 1997, I had not yet heard from Mr. Fudacz and, therefore, contacted his offices once again. I inquired of Mr. Fudacz' secretary as to whether or not he had executed the Substitution of Attorney and, on this occasion she advised that Mr. Fudacz was not in the office and would not be returning all day. I have not received a Substitution of Attorney form executed by Mr. Fudacz in this matter.

I declare under penalty of perjury the foregoing to be true and correct to the best of my knowledge. Executed on this 2nd day of March, 1997 at Ontario, California.


Kim Perez