

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

SUMMIT CARBON SOLUTIONS, LLC

DOCKET NO: HLP-2021-0001

**RESPONSE TO MOTION TO STRIKE FILINGS
AND PROHIBIT FUTURE FILINGS OF ANNA RYON**

COME NOW the King Intervenors¹ and herby submit their Response to the “Motion to Strike Filings and Prohibit Future Filings of Anna Ryon” (“Motion”) filed by the Office of Consumer Advocate (“OCA”) on July 31, 2023. OCA’s Motion appears to be based on personal animus rather than any argument of legal merit and serves no purpose other than casting doubt on Ms. Ryon’s ethical standards. Furthermore, granting OCA’s motion would unfairly disadvantage the King Intervenors who have chosen to have Ms. Ryon represent them in this proceeding. For the reasons stated below, the Iowa Utilities Board (“Board”) should deny OCA’s Motion.

BACKGROUND

On September 15, 2021, Ms. Ryon began employment at OCA. From that date until her departure on May 30, 2023, she served in the position of Utility Attorney II. In that capacity, she had responsibility as lead attorney on several cases, but all final decisions about OCA’s legal positions were made by the Consumer Advocate. During her time at OCA, Ms. Ryon was

¹ The King Intervenors include the Hon. Steve King, Michael Daly, Mark Joenks, Ted Junker, James and Janet Norris, Jeffrey Reints, and Jessica Wiskus.

assigned to carbon dioxide pipeline permit petitions, including the petition of Summit Carbon Solutions, LLC (“Summit”) in this docket.

ARGUMENT

The Iowa Supreme Court has stated, “A party’s right to select its own counsel is an important public right and a vital freedom that should be preserved; the extreme measure of disqualifying a party’s counsel of choice should be imposed only when absolutely necessary.” *Liquor Bike, LLC v. Iowa Dist. Ct. for Polk Co.*, 959 N.W.2d 693, 694-95 (Iowa 2021) (internal citations omitted). The Court has further noted that “Because of the potential for abuse by opposing counsel, ‘disqualification motions should be subjected to particularly strict scrutiny.’” *Id. at 696* (quoting *Macheca Transp. Co. v. Philadelphia Indem. Co.*, 463 F.3d 827, 833 (8th Cir. 2006)). Although captioned as motion to strike, OCA’s Motion would effectively disqualify Ms. Ryon from representing Mr. King and the King Intervenors, who have the right to select their own counsel. OCA has presented no argument that meets the strict scrutiny required to justify the extreme measure of disqualifying Ms. Ryon and denying the King Intervenors their right to be represented by counsel of their choice.

I. A Motion to Strike Is Improper

OCA contends that it “does not have a position on the filings that Ms. Ryon has filed. It solely has issue with Ms. Ryon participating in this matter.” If OCA truly does not take a position on Ms. Ryon’s filings, then a motion to strike is particularly inappropriate. Striking Ms. Ryon’s filings in this proceeding would eliminate all of Ms. Ryon’s filings on behalf of the King Intervenors and automatically lead to their exclusion from this proceeding. Yet rather than seek to disqualify Ms. Ryon in a manner that would allow adequate opportunity for the King Intervenors to seek alternate counsel, OCA chose to file a motion to strike that would erase Ms.

Ryon's arguments on behalf of the King Intervenors, thereby erasing any potential for the King Intervenors to participate in this proceeding. If OCA wants to pursue action against Ms. Ryon, it should do so in a manner that doesn't prejudice the rights of the King Intervenors.

Furthermore, OCA has a statutory duty to "represent all consumers generally and the public generally in all proceedings before the utilities board." Iowa Code § 475A.2(2). Initiating legal action that would prevent members of the public from participating in this proceeding hardly seems consistent with OCA's statutory duty.

II. OCA's Allegations Related to Iowa Code § 68B.7 Are Wholly Unsupported

In its Motion, OCA stated that "*if* Ms. Ryon has received any compensation, she *may* also be in violation of Iowa Code § 68B.7." (emphasis added). This statement is nothing more than pure conjecture. OCA did not even bother to allege that Ms. Ryon has received compensation for her representation of Mr. King or the King Intervenors. In fact, had OCA conducted the slightest modicum of inquiry before making unsupported hypothetical claims, OCA would have learned that Ms. Ryon has not received any compensation from Mr. King or any of the King Intervenors. Furthermore, neither Mr. King nor any of the King Intervenors have signed a contract obligating them to compensate Ms. Ryon for her legal services in this proceeding. OCA's assertion that Ms. Ryon is violating Iowa Code § 68B.7 is utterly without foundation and should be ignored.

OCA's newfound concern about the requirements of section 68B.7 highlights the fact that OCA's motion is based on personal animosity and not actual concern for government ethics. At no time prior to her departure from OCA did anyone at the Department of Justice conduct an exit interview with Ms. Ryon. At no time prior to her departure from OCA did Mr. Zieman discuss the obligations of section 68B.7 with Ms. Ryon. OCA's only interest in the ethical requirements

of section 68B.7 seems to be as a basis for hurling unfounded accusations of unethical conduct against Ms. Ryon in an effort to discredit her work on behalf the King Intervenors.

III. Iowa Court Rule 32:1.11 Does Not Prevent Ms. Ryon's Representation of the King Intervenors

OCA would have the Board believe that Ms. Ryon is in flagrant violation of her ethical obligations under the Iowa Rules of Professional Conduct because Ms. Ryon does not have “informed consent” from the Department of Justice to represent Mr. King in this matter. OCA is correct that Ms. Ryon does not have written authorization from the Department of Justice to represent Mr. King or the King Intervenors in this proceeding. However, Mr. Zieman neglected to inform the Board that the reason Ms. Ryon lacks written authorization from the Department of Justice is because representatives of the Department of Justice, including Attorney General Brenna Bird and Chief Deputy Attorney General Sam Langholz, did not respond in good faith to Ms. Ryon's request for that authorization.

Rule 32:1.11's requirement that a former government attorney obtain written authorization from the appropriate government agency in order to represent another party in a proceeding in which the attorney substantively participated while employed by the government only functions if the people with the authority to act on behalf of the appropriate government agency act in good faith when former employees request authorization under that rule. After Mr. King contacted Ms. Ryon about representing him, Ms. Ryon reached out to the Department of Justice by emailing Attorney General Brenna Bird on July 6, 2023 to request authorization to represent Mr. King pursuant to Rule 32:1.11.

As can be seen in Attachment 1, Ms. Ryon thoroughly researched the rationale for the requirement in Rule 32:1.11 and explained to Attorney General Brenna Bird why her representation of Mr. King in this matter did not present the kind of conflict of interest the rule

was intended to prevent. Ms. Bird did not respond to Ms. Ryon's request. Instead, Ms. Ryon received a response from Mr. Zieman, who is merely a department head and does not have the authority to speak on behalf of the Department of Justice following enactment of the government reorganization act that was signed into law by Governor Reynolds on April 4, 2023. In addition to lacking the authority to speak on behalf of the Department of Justice, Mr. Zieman's response failed to contain any assertion of a specific conflict of interest or rebuttal to Ms. Ryon's explanation of why there is no disqualifying conflict of interest in this case. OCA and the King Intervenors are not opposing parties in this proceeding. Without an assertion of a specific conflict of interest, OCA's Motion lacks merit.

Mr. Zieman's response to Ms. Ryon's email request for authorization under Rule 32:1.11 was also based in part on a factual error. Specifically, Mr. Zieman asserted that Ms. Ryon had access to confidential information related to the case during her employment at OCA. This is simply incorrect. During Ms. Ryon's time at OCA, Summit refused to provide confidential information in response to data requests. Consequently, the only information available to Ms. Ryon at that time was publicly available, either from a public source or in response to a Public Information Act request. Ms. Ryon also had no access to any relevant confidential information about OCA, particularly given the fact that OCA is not the opposing party in this case. OCA has made no allegation of the nature of the confidential information to which Ms. Ryon allegedly had access. Furthermore, because the Board has not yet granted the intervention of Mr. King or any of the King Intervenors, Summit has not responded to data requests that Ms. Ryon sent on behalf of Mr. King on July 14, 2023. Thus, Ms. Ryon still does not have access to any confidential information in the case, nor does Ms. Ryon have access to non-confidential information contained in Summit's data responses to other parties. Ms. Ryon does not even have access to

the non-confidential responses Summit sent to OCA's data requests during the time Ms. Ryon was employed at OCA. If anything, Ms. Ryon has a distinct lack of access to information that puts the King Intervenors at a disadvantage to other parties at this point in the proceeding.

Given the factual error in Mr. Zieman's response and his lack of authority to speak for the Department of Justice, Ms. Ryon responded to Mr. Zieman requesting a response from someone with the authority to act on behalf of the Department of Justice. Ms. Ryon received a reply from Chief Deputy Attorney General Sam Langholz stating, "We will not be providing any further response to your request." Mr. Langholz's reply was in no way a substantive response to Ms. Ryon's request. Had the Attorney General intended for Mr. Zieman's response to speak with the authority of the Department of Justice, Mr. Langholz could have simply said so. The specific refusal to support Mr. Zieman's response suggests that the Attorney General did not acknowledge Mr. Zieman's authority to respond on behalf of the Department of Justice. Additionally, the Attorney General's failure to respond to the factual inaccuracies in Mr. Zieman's response suggests a lack of concern on the part of the Department of Justice for ensuring that attorneys in that agency conduct business in an honest manner.

In this instance, where the head of the appropriate agency under Rule 32:1.11 is the Attorney General, the agency is also obligated to make good faith efforts to comply with the Rules of Professional Conduct. To the contrary Ms. Bird and Mr. Langholz have attempted to circumvent their ethical obligations by relying on, but refusing to support, a dishonest assertion by an employee who lacks authority to speak on behalf of the Department of Justice. As the chief legal officer of the state, the Attorney General should demonstrate the highest regard for the Rules of Professional Conduct and expect her employees to do the same. In this instance, Ms. Bird and Mr. Langholz have done just the opposite.

Furthermore, with respect to the Rules of Professional Conduct, the Iowa Supreme Court has stated that “the rules themselves are not dispositive.” *State v. Mulatillo*, 907 N.W.2d 511, 519 (Iowa 2018). Ms. Ryon may technically be in violation of Rule 32:1.11, but that is only because the Department of Justice failed to respond in good faith to her request to represent Mr. King in this proceeding. The technical violation of Rule 32:1.11 alone is insufficient to justify the extreme measure of disqualification. Rather the disqualification must be based on whether or not an actual conflict of interest exists. For all the reasons contained in Ms. Ryon’s July 6, 2023 email to Attorney General Brenna Bird, there is no disqualifying conflict of interest in this case. OCA has alleged no facts that dispute the reasoning in Ms. Ryon’s July 6, 2023 email and no facts that justify the extreme measure of disqualifying Ms. Ryon and denying the King Intervenor’s of their right to be represented by counsel of their choosing.

CONCLUSION

For the reasons stated above, the King Intervenor’s respectfully request that the Board deny OCA’s “Motion to Strike Filings and Prohibit Future Filings of Anna Ryon.” Absent an order from a court or the Attorney Disciplinary Board, Ms. Ryon should be allowed to continue to represent the King Intervenor’s in this proceeding.

Respectfully submitted,
/s/ Anna K. Ryon
Anna K. Ryon

3106 Ingersoll Ave.
Des Moines, IA 50312
(515) 745-4552
anna@anna-ryon.com

Attorney for the King Intervenor’s

From: anna@anna-ryon.com
Subject: Re: Iowa Court Rule 32:1.11 Request
Date: July 9, 2023 at 11:57 AM
To: Langholz, Sam Sam.Langholz@ag.iowa.gov
Cc: Steve King sk.skiron@gmail.com, Zieman, Lanny [OCA] lanny.zieman@oca.iowa.gov, Bird, Brenna [AG] BB@ag.iowa.gov

Mr. Langholz,

I understand that the Attorney General is busy and has more substantive issues to address than my request. However, the intent of your email was not clear and I would appreciate a response to my questions below. As you know, there is an intervention deadline on Monday, July 10 in the Summit pipeline proceeding. Additionally, intervening parties must submit pre-filed written testimony by July 24. It is important that I receive a clear answer so that I can counsel my client as to what actions he needs to take.

1. Is it your intent that Mr. Zieman's email speak with the authority of the Department of Justice?
2. If so, would the prohibition on my representation of Mr. King also apply to potential representation of Exhibit H landowners whose only participation in the process is testifying to the Utilities Board about their parcels of land?
3. Mr. Zieman's email contains an inaccurate assertion about my access to confidential information. Given that inaccuracy, can you clarify the basis for refusing my request to represent another party?

I appreciate your attention to this matter.

Anna Ryon

From: Langholz, Sam <Sam.Langholz@ag.iowa.gov>
Date: Friday, July 7, 2023 at 3:17 PM
To: anna@anna-ryon.com <anna@anna-ryon.com>
Cc: Steve King <sk.skiron@gmail.com>, Zieman, Lanny [OCA] <lanny.zieman@oca.iowa.gov>, Bird, Brenna [AG] <BB@ag.iowa.gov>
Subject: Re: Iowa Court Rule 32:1.11 Request

Ms. Ryon,

We will not be providing any further response to your request.

Best,

Sam Langholz
Chief Deputy Attorney General

From: anna@anna-ryon.com <anna@anna-ryon.com>
Sent: Friday, July 7, 2023 1:31:21 PM
To: Zieman, Lanny [OCA] <lanny.zieman@oca.iowa.gov>; Bird, Brenna [AG] <BB@ag.iowa.gov>; Langholz, Sam <Sam.Langholz@ag.iowa.gov>
Cc: Steve King <sk.skiron@gmail.com>; Finnegan, Karen [OCA] <Karen.Finnegan@oca.iowa.gov>
Subject: Re: Iowa Court Rule 32:1.11 Request

Mr. Zieman,

Thank you for your prompt attention to my request. However, pursuant to Rule 32, you are not the individual with the authority to accept or deny my request. I merely included you on my request to Attorney General Bird as a courtesy.

Section 32:1.11(a)(ii) states that the prohibition on representation exists “unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.” As I’m sure you are aware, Division IV of the government reorganization act signed into law by Governor Reynolds on April 4, 2023, removed the Office of Consumer Advocate’s unique status as a semi-independent division of the Department of Justice and placed complete control of OCA under the direction of the Attorney General. Because OCA is now merely another division of the Department of Justice, the appropriate agency to respond to my request is the Department of Justice, not OCA. Accordingly, a response to my request must come from the head of the appropriate agency – Attorney General Bird.

Furthermore, your assertion that I had extensive access to confidential material is inaccurate, as described in my request. Nor do any privileged conversations in which I was involved while at have any relevance or use relating to my representation of Mr. King in this matter. I trust that Attorney General Bird’s decision will take that into consideration and that she will reach a determination based on a good-faith interpretation that balances the concerns of Rule 32 with the public interest in intervening parties’ ability to engage qualified counsel for complicated proceedings and the potential disincentivization of qualified attorneys to serve in the government in the future if the government unreasonably restricts their ability to practice law after leaving government service (see Comment [4] to Rule 32).

Regards,
Anna Ryon

From: Zieman, Lanny <lanny.zieman@oca.iowa.gov>
Date: Friday, July 7, 2023 at 12:17 PM
To: anna@anna-ryon.com <anna@anna-ryon.com>
Cc: bb@ag.iowa.gov <bb@ag.iowa.gov>, sam.langholz@ag.iowa.gov <sam.langholz@ag.iowa.gov>, Steve King <sk.skiron@gmail.com>
Subject: Re: Iowa Court Rule 32:1.11 Request

Anna,

I am in receipt of your Iowa Rule of Professional Conduct 32:1.11(a)(2) request for consent to waive a conflict of interest. The Office does not consent to waiving this conflict.

At the Office of Consumer Advocate, you worked extensively in this matter over an extended period with access to confidential information and privileged work-product of the Office of Consumer Advocate. Your representation of any client in this matter will be a conflict of interest.

I wish you the best in all your future endeavors.

Regards,

Lanny

Lanny Zieman
Consumer Advocate
Office of Consumer Advocate of Iowa
1375 East Court Avenue
Des Moines, IA 50319-0063



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On Thu, Jul 6, 2023 at 1:48 PM anna@anna-ryon.com <anna@anna-ryon.com> wrote:

July 6, 2023

Attorney General Bird,

I am writing to you to request authority pursuant to Iowa Rule of Professional Conduct 32:1.11(a)(2) to represent a client in a matter in which I substantially participated as a public employee during my time as an attorney at the Office of Consumer Advocate (“OCA”). Specifically, I am requesting permission to represent former U.S. Representative from the Fourth District of Iowa, Steve King in Iowa Utilities Board (“Board”) Docket HLP-2021-0001, *In re Summit Carbon Solutions, LLC*. For the reasons stated below, this representation would not provide any special advantage to Mr. King as a result of my employment at OCA and is not the kind of conflict of interest the requirements of Rule 32:1.11(a)(2) are meant to prevent. Because the deadline for intervention in IUB Dkt. HLP-2021-0001 is 3:30pm, Monday, July 10, 2023, I would appreciate a response to my request in writing by the close of business Friday, July 7, 2023, or as soon thereafter as possible.

Events in IUB Dkt. HLP-2021-0001 that have occurred since my departure from OCA have caused interested parties to reconsider their level of participation in the proceeding and raised interest in legal representation for their participation. In particular, the Board’s “Order Regarding June 6, 2023 Status Conference; Setting Procedural Schedule; and Granting Intervention,” issued on June 16, 2023 (“June 16 Order”) which changed the start date of the evidentiary hearing has raised new concerns. Previous Board orders had indicated that the evidentiary hearing would start on or around October 23, 2023. The June 16 Order changed the start date to August 22, 2023, and reversed the order of testimony placing landowners subject to eminent domain at the beginning of the hearing instead of the past practice of placing them last in the order of testimony. There is a very small number of attorneys in Iowa who have sufficient experience practicing in front of the Iowa Utilities Board to be able to represent clients in a case as complicated as Summit’s hazardous liquid pipeline permit petition. The accelerated schedule established in the June 16 Order makes it even more imperative that intervening parties have experienced counsel who does not need to be “brought up to speed” in order to provide competent representation.

Events subsequent to the June 16 Order led to my eventual introduction to Mr. King on June 30, 2023, a full month after my departure from OCA. Conversations concerning my potential representation of Mr. King have all occurred in the last week. There are therefore no potential violations of Rule 32:1.11(d)(ii), which limits the ability of government officials to negotiate future employment during their employment with the government. Additionally, because I will be representing Mr. King as a sole practitioner and not as a member of a firm, there are no imputed conflicts of interest to consider. Furthermore, as described below, none of the additional concerns that are meant to be addressed by Rule 32 are applicable to my representation of Mr. King.

Comment [3] to Rule 32 states that the purpose of section 32:1.11(a)(2) is “to prevent a lawyer from exploiting public office for the advantage of another client.” The reasons that my representation of Mr. King would not involve the types of conflicts of interest that section 32:1.11(a)(2) is meant to prevent include:

(1) While at OCA I served as a staff attorney and did not have the authority to speak or file pleadings on behalf of OCA without the express permission of the Consumer Advocate, and my representation of Mr. King will not carry any additional apparent governmental authority than that of any other attorney practicing in this field; and

(2) During my time at OCA, OCA did not take a position for or against Summit’s petition for a hazardous liquid pipeline permit, and my representation of Mr. King will not be in conflict with any positions taken by OCA before my departure.

Comment [4] to Rule 32 also expresses concern that “unfair advantage could accrue to the other client by reason of access to confidential government information about the client’s adversary obtainable only through the lawyer’s government service.” This concern is also inapplicable because:

(1) During my time at OCA, I did not have access to any confidential information about OCA or the Department of Justice that is of any relevance to the representation of Mr. King, or any other party, in this proceeding;

(2) During my time at OCA, I did not have access to any confidential information relating to Summit Carbon Solutions, LLC, and therefore had no access to information that is not either publicly available or available to every other party to the proceeding through discovery requests; and

(3) I left OCA shortly after Summit filed its direct testimony on May 25, 2023. I was not involved in any discussions of OCA’s discovery requests in response to Summit’s testimony or discussions about OCA’s strategy for responding to Summit’s direct testimony in OCA’s direct testimony, which will be filed July 24, 2023.

I appreciate your prompt attention to my request. If you have questions about my representation of Mr. King, I am happy to discuss those with you at your convenience.

Regards,
Anna Ryon

(515) 745-4552
anna@anna-ryon.com