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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

AL HUTTON and DOUG WHORTON,)
)
Plaintiff,)

v.)

CITY OF FAIRBANKS, CHIEF)
DANIEL P. HOFFMAN AND DEPUTY)
CHIEF BRAD JOHNSON, each in his)
Individual and Official Capacity,)

Defendant.)

Case No. 4:08-cv-00029-RRB

**CITY OF FAIRBANKS' OPPOSITION TO
MOTION TO DISQUALIFY JOE EVANS**

The City joins its police chief, Daniel Hoffman, and deputy police chief, Brad Johnson, in opposing plaintiffs' motion to disqualify Joe Evans. The motion is premature and would improperly interfere with the rights of Hoffman and Johnson to select the attorney of their choice to represent them in this case.

Alaska Professional Rule 3.7 prohibits a lawyer from acting as an “advocate at trial” if he is a necessary witness and his testimony involves contested issues. This case is in its infancy and nowhere near trial.

If the case does go to trial, the mere fact that Whorton and Hutton identified Joe Evans in their wordy complaint does not make Mr. Evans a “necessary witness.” Mr. Evans conducted tape-recorded interviews of Hutton and Whorton. Since there is a recording, it is hard to conceive that anything that occurred in the interviews will be disputed. In addition to Mr. Evans and plaintiffs, the interviews were each attended by plaintiffs’ union representative, Ms. Kliener. In their motion, Hutton and Whorton do not identify a single piece of disputed evidence on which they expect Mr. Evans to testify. Nor do they explain why Mr. Evans is a “necessary witness” when the events to which he is supposedly a witness are all events for which others also have personal knowledge.

Finally, in the unlikely event that any claim survives to trial, and that Mr. Evans is a necessary witness, the undersigned attorneys for the City are working and will continue to work closely with Mr. Evans and will be prepared to defend all defendants if it becomes necessary for Mr. Evans to disqualify himself. Thus, there is no prejudice to any party to allowing Chief Hoffman and Deputy Chief Johnson to be represented by the attorney of their choice at this early stage in the litigation, and the court can revisit this matter if it remains an issue prior to trial.

DATED in Anchorage Alaska this 7th day of November, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2008,
a true and correct copy of the foregoing
document was served electronically on
the following counsel of record:

Linda J. Johnson
Clapp, Peterson, Van Flein,
Tiemessen & Thorsness LLC

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s/Matthew Singer

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