

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Judge Robert A. Blaeser

State of Minnesota, by its Attorney General,
Lori Swanson, its Commissioner of Pollution
Control, John Linc Stine, and its Commissioner of
Natural Resources, Tom Landwohr,

Plaintiff,

and

City of Lake Elmo, a Minnesota municipal
corporation,

Plaintiff/Intervenor,

and

Metropolitan Council,

Plaintiff/Intervenor/
Counterclaim Defendant,

vs.

3M Company,

Defendant/
Counterclaim Plaintiff.

ORDER

Court File No. 27CV10-28862

The above entitled matter came before the Honorable Robert A. Blaeser, Judge of Hennepin County District Court, on September 17, 2012, on Defendant's motions to disqualify counsel and to stay depositions and for protective order. Appearances were noted on the record.

Based upon all files, records, and proceedings herein, together with the arguments of counsel and the parties, the Court hereby makes the following:

ORDER

1. Defendant 3M's motion to disqualify counsel is **GRANTED**. Plaintiff State of Minnesota has 180 days to secure new counsel. All discovery is stayed until Plaintiff State of Minnesota has secured new counsel.
2. Defendant 3M's motion to stay depositions and for protective order is hereby moot and will not be addressed.
3. The attached memorandum is incorporated herein by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 11, 2012

BY THE COURT:

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Robert A. Blaeser
Judge of District Court

MEMORANDUM

FACTS

In this action, the State of Minnesota (“State”) seeks to recover natural resource damages allegedly caused by 3M Company’s (“3M”) release of fluorochemicals into the Minnesota environment. At issue in the present motion is whether the law firm Covington & Burling, LLC (“Covington”) should be disqualified from representing the State in this Action.

I. 3M Retains Covington for Legal Advice on FC-Related Matters.

3M is a Delaware corporation with its principal place of business and headquarters in Maplewood, Minnesota. 3M develops and manufactures many well-known and widely-used consumer products. In the 1950s, 3M began commercial production of products based on fluorinated organic compounds, generally referred to as fluorochemicals (“FCs”) or perfluorochemicals (“PFCs”). 3M developed its FC technology for use in a variety of product applications. By the 1990s, FCs had become a significant part of 3M’s overall business. Although 3M marketed some FC products directly to consumers, many of its FC products were sold to manufacturing customers as raw materials for use in other applications.

For certain FC product applications, 3M obtained approval from various regulatory agencies, such as the Food and Drug Administration (“FDA”). In the early 1990s, 3M submitted petitions to the FDA for use of two FC products in high temperature food packaging applications, namely Scotchban® FC-807 (“FC-807”) and Scotchban® FC-845 (“FC-845”). As part of the process, the FDA requested that 3M provide certain toxicological and other data concerning those products. 3M turned to Covington and, in December 1992, retained Covington to work on FC regulatory matters for the company. 3M sought legal advice from Covington partner Peter Hutt (“Hutt”) concerning the FDA petitions for FC-807 and FC-845, the FDA’s request for information, and other regulatory matters relating to its FC products.

II. Covington Advises 3M for Over a Decade on FC Health and Safety Issues.

Over time, the scope of Covington’s engagement on FC matters grew to include other legal and regulatory issues affecting 3M’s FC business. By 1993, Covington had become 3M’s principal advisory on dealing with the FDA with respect to its FC-807 and FC-845 fluorochemical products and their food packaging applications. Among Covington’s

responsibilities was advising 3M on the information that should be provided to the FDA regarding 3M's FC products. In the course of that representation, and as an essential component of its work, Covington received detailed information concerning, among other things: (i) tests regarding the purported toxicity of FCs; (ii) analyses prepared at the direction of counsel evaluating the purported health effects of FCs; and (iii) potential regulatory issues posed by 3M's FC business. Covington also participated in numerous FC strategy sessions with 3M executives, consultants, and legal counsel. Throughout its representation of 3M, Covington advocated on behalf of 3M that there were no adverse health effects from 3M's FC products.

A. Covington concludes that 3M's FC products are not hazardous.

As 3M continued to pursue its FC petitions with the FDA, Covington recommended that 3M retain Environ International Corporation ("Environ"), a safety evaluations expert and scientific consultant, to conduct FC safety assessments and to work closely with Covington to develop 3M's regulatory strategy. In connection therewith, 3M formed an FC-807 Working Group that including Covington, Environ, and individuals with various specialties within 3M, including researchers, executives, and legal counsel. The FC-807 Working Group developed, discussed, and exchanged privileged and confidential information relating to the overall safety of all of 3M's FC products, including toxicological research, the nature and purported health effects of FCs, and the company's confidential communications with its customers with respect thereto. In 1996, Environ issued a safety assessment report concluding that 3M's FC-807 and FC-845 products were safe for use in food packaging applications. Around the same time, Covington regularly communicated with 3M executives, including members of 3M's Fluorochemical Steering Committee that oversaw all of 3M's FC products, regarding their analyses of FCs and products containing FCs.

On or about November 18, 1996, following a meeting between Covington, Environ, and Dr. William Weppner, 3M's then-Director of Environmental Health Safety and Regulatory Affairs, 3M asked Covington to "provide legal advice concerning the legal and regulatory risks" associated with 3M's manufacture and sale of its Scotchban® products.

By March 1998, Covington helped 3M develop a Communication Plan for a meeting with the FDA regarding 3M's FC petitions. On April 24, 1998, Covington, Environ, Dr. Weppner, and Dr. Jeffrey Mandel, 3M's then-Director of Medical/Occupational Medicine, met with the

FDA to discuss FC-807 and FC-845. At the meeting, Covington advocated 3M's position that there were no observable adverse health effects from exposure to the FC products. In preparation for, and following, the meeting, Covington conferred with 3M executives Dr. Weppner and Charles Kiester, 3M's then-Senior Vice-President of Engineering, Manufacturing, and Logistics, and a member of 3M's FC Oversight Committee.

B. Covington becomes a member of 3M's interdisciplinary FC legal team.

In 1998, based in part on 3M's data on the nature of certain FCs and their presence in the environment, 3M began to actively evaluate sources of exposure, exposure pathways, product lines, and processes for its perfluorooctanyl ("C-8") class of FCs to better understand potential health, environmental, and regulatory implications. At that time, 3M assembled an FC Legal Team (informally referred to within 3M as the "virtual law firm") to advise 3M on scientific, regulatory, legal, and business issues posed by the company's manufacture and use of C-8 FC products. The FC Legal Team brought together counsel from different firms to share information and collectively address interrelated issues pertaining to 3M's FC business. As a member of the FC Legal Team, Covington participated in confidential meetings and conference calls with other members of the FC Legal Team and 3M executives to address company-wide FC issues, which involved the Environmental Protection Agency ("EPA"), the FDA, the Consumer Product Safety Commission, and other regulatory agencies.

3M executives, scientists, and in-house counsel provided Covington and other members of the FC Legal Team with information such as: (i) epidemiological exposure and toxicological analyses related to FCs; (ii) 3M product information related to FCs; (iii) 3M's business analysis of the competitive marketplace related to FCs; and (iv) potential business and regulatory issues associated with FCs. Covington's involvement extended beyond FDA issues; Covington participated in numerous meetings with in-house counsel and outside counsel during which environmental issues concerning FCs were also discussed in detail. As such, Covington received information with respect to, and gave advice concerning, a broad spectrum of FC products and issues.

C. Covington advises 3M in connection with 3M's decision to cease manufacturing C-8 FC products.

In May 2000, 3M decided to phase out the production of C-8 FCs and discontinue the Scotchban® FC-807 and FC-845 product lines. Covington presented 3M's phase-out plan to the FDA in May 2000, and reiterated that there were no health risks associated with 3M's FC products. Covington also advised 3M in communicating the phase-out decision to 3M's customers. Covington continued to represent 3M on its FC issues until 2006.

D. Covington terminates its attorney-client relationship with 3M in 2010.

Covington's attorney-client relationship with 3M was not limited to FC matters; it also included legal advice regarding insurance coverage, intellectual property, product liability, and employee benefit issues. In May 2010, 3M engaged Covington to provide legal advice regarding the company's employee benefits program.

Unbeknownst to 3M, as of November 19, 2010, Covington and the State were engaged in discussions about the State possibly asserting claims against 3M relating to 3M's FC business.

In late December 2010, Covington partner Seth Safra ("Safra") contacted 3M's Assistant General Counsel, David Overstreet ("Overstreet"), to request a written termination of Covington's engagement on the employee benefits matter. By letter dated December 7, 2010, Safra told Overstreet that Covington had completed its legal opinion regarding the employee-benefit matter. On December 22, 2010, Overstreet sent an e-mail to Safra terminating the employee benefits engagement.

III. Covington Represents the State in the Current Action Against 3M.

On December 30, 2010, Covington was appointed as "Special Attorney" to "examine, investigate, recommend, and litigate . . . the State's statutory and common-law claims against" 3M related to PFCs and other contaminants. Covington agreed to fund all litigation expenses, including costs for expert witnesses and consultants, in exchange for a percentage of any funds obtained from 3M. If no funds are obtained, the State owes Covington nothing.

On December 30, 2010, the State filed a thirty-page Complaint against 3M. The State filed an Amended Complaint on January 18, 2011. The State alleges that: (i) "3M used PFCs to manufacture many consumer, commercial and industrial products;" (ii) "PFCs pose serious risks to human health and the environment;" (iii) "[d]uring the time that it manufactured PFCs, 3M extensively studied the impact of PFCs on human health and the environment;" (iv) "3M knew

or should have known of the potentially harmful effects that PFCs have on human health and the environment;” and (v) “3M released PFCs into the Minnesota environment, . . . causing injury to and destruction and loss of natural resources of the State of Minnesota.” The Amended Complaint also alleges that 3M produced PFCs “[f]or over fifty years” and that, for purposes of the State’s claims, PFCs “include all perfluorochemicals manufactured by 3M, and all byproducts . . . associated with 3Ms manufacture . . . of perfluorochemicals.” Covington attorneys, William F. Greaney, Joanne B. Grossman, and Sarah L. Wilson, filed their notice and motion for admission *pro hac vice* late January 2011.

A. The State requests information relating to Covington’s prior representation of 3M.

In response to 3M’s interrogatory seeking the factual and legal basis for the State’s allegation that “PFCs released into the environment by 3M . . . are hazardous substances as defined in MERLA [the Minnesota Environmental Response and Liability Act under which the State seeks damages in Count One],” Covington stated that PFCs are hazardous “because they may pose a substantial present or potential hazard to human health” Covington further stated that PFCs are hazardous because they exhibit the characteristics of “toxicity.” Covington has sought information from 3M concerning “human health and environmental risks” of PFCs, “steps that 3M has taken . . . to develop analytical methods, techniques or equipment to detect concentration of PFCs in the human body,” and governmental entities to whom “3M has submitted information concerning the actual or potential impacts of PFCs on human health.”

Covington served document requests that focused on the safety of 3M’s FC products. Covington sought documents that refer or relate to “the effects on . . . human health of concurrent exposure to PFCs and other chemicals or substances,” as well as documents that refer or relate to “the actual or possible designation . . . of any PFC as . . . [a] toxic substance”

Covington sought the production of documents and information related to 3M’s communications with regulatory entities, such as the FDA and EPA, its decision to phase-out the production of C-8 FCs, and its communications with customers. Covington has noticed depositions of current and former 3M employees who consulted with, provided information to, and received advice from, Covington on FC matters. In depositions, Covington has focused on the FC matters on which it previously counseled 3M on.

In response to Covington's discovery requests, 3M produced documents related to its communications with regulatory agencies. During its review of those documents in March 2012, 3M's outside counsel, Bickel & Brewer, learned that Covington had previously represented 3M in connection with FC matters. By letter dated March 26, 2012, 3M raised the conflict issue with Covington and asked Covington to return all of its 3M-related files and records. By letter dated March 27, 2012, Covington partner Sarah Wilson responded that the "Food & Drug Administration popcorn packaging representation" did not bear any relationship to the State's claims. Following Ms. Wilson's letter, 3M asked Covington to provide: (i) all paper and electronic files related to its representation of 3M in FC matters; (ii) copies of all engagement or retention agreements between Covington and 3M; (iii) any invoices related to Covington's work for 3M; and (iv) information relating to any measures taken by Covington to protect 3M's interests, including what steps Covington had taken to ensure that 3M's confidential information has not been available to lawyers and other individuals working on this Action.

On April 5, 2012, Covington informed 3M that over 165 timekeepers worked on thirteen matters for 3M and that it has more than 400 3M-related files in storage, not including electronically-stored information. On April 12, 2012, Covington informed 3M that it would not provide information concerning: (a) when it checked for conflicts in connection with its representation of the State; (b) the process used by Covington to check for conflicts; or (c) the individuals involved in Covington's conflict check process. Covington also informed 3M that it did not impose any screens or other protections to safeguard 3M's privileged and confidential information from attorneys representing the State; nor were any measures taken to prevent Covington attorneys who represented and advised 3M from sharing confidential information with others in the firm. By letter dated April 19, 2012, 3M asked Covington to withdraw as counsel for the State. By letter dated April 25, 2012, Covington refused to withdraw.

ANALYSIS

I. Legal Standard

All attorneys admitted to practice in Minnesota must comply with the standards and mandates set forth in the Minnesota Rules of Professional Conduct and the Minnesota Rules on Lawyers Professional Responsibility. *In re Disciplinary Action Against Otis*, 582 N.W.2d 561, 563 (Minn. 1998). The Covington attorneys representing the State in this matter have been

admitted by the Court *pro hac vice* and are subject to the disciplinary rules and regulations governing Minnesota lawyers. *See* Minn. Gen. R. Prac. 5.

A court should disqualify counsel whenever necessary to protect the attorney-client relationship and uphold the ethical principles that underlie the practice of law. *See National Texture Corp. v. Hymes*, 282 N.W.2d 890, 894 (Minn. 1979). Counsel may be disqualified to avoid the risk that confidential information may be used improperly. *Olson v. Snap Prods., Inc.*, 183 F.R.D. 539, 545 (D. Minn. 1998). The party seeking disqualification has the initial burden to show that disqualification is warranted under the applicable rules of professional conduct. *Olson*, 183 F.R.D. at 542.

II. Covington is Disqualified From Representing the State Because of Its Conflicts of Interest in This Action.

A. Covington violated Minnesota Rule of Professional Conduct 1.9 governing “former client” conflicts.

Minnesota Rule of Professional Conduct 1.9 (“Rule 1.9”) proscribes conflicts of interest involving former clients.

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

Minn. R. Prof. Conduct. 1.9(a).

Because a lawyer may not use any information “relating to” a prior representation to the detriment of a former client, disqualification is necessary where an attorney provided legal services to a former client relative to matters substantially related to the subject matter of the present suit. *See* Minn. R. Prof. Conduct 1.9(c); see also *Niemi v. Girl Scouts of Minnesota and Wisconsin Lakes and Pines*, 768 N.W.2d 385, 387-88 (Minn. Ct. App. 2009). For purposes of Rule 1.9, matters are “substantially related” if there is a “substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” Minn. R. Prof. Conduct 1.9 cmt. 3. *See also Niemi*, 768 N.W.2d at 387 (“When interpreting the ‘substantially related’ requirement of rule 1.9(a), it is appropriate to refer to comments to the rule.”).

In analyzing a motion to disqualify under Rule 1.9, the court “first factually reconstructs the scope of the prior representation.” *Niemi*, 768 N.W.2d at 390 (quoting *Production Credit Ass’n v. Buckentin*, 410 N.W.2d 820, 822 (Minn. 1987)). Second, the court “determines whether it can reasonably be inferred that confidential information allegedly given would have been given to a lawyer representing a client in those matters.” *Id.* Finally, the court “determines whether that information is relevant to the issues raised in the litigation pending against the former client.” *Id.*

i. The scope of Covington’s prior representation is substantially related to the FC matters at issue in the present Action.

The substantial relationship test is met because the State’s claims against 3M for natural resource damages are premised upon the same matters on which Covington previously advised and represented 3M. The State’s claims are predicated on four general allegations: (i) For over fifty years, 3M manufactured products and disposed of wastes containing FCs; (ii) 3M’s FC products and wastes were hazardous because they allegedly were toxic and posed a significant risk to human health and the environment; (iii) 3M knew in the 1990s and early 2000s that its FC products and wastes were toxic and posed a significant risk to human health and the environment; and (iv) 3M did not properly inform regulatory authorities regarding the toxicological and health effects associated with its FC products and wastes.

During its representation of 3M, Covington received privileged and confidential information from 3M relevant to each of those allegations. As a member of 3M’s FC Legal Team, Covington communicated with, and received detailed confidential information from, 3M executives and other 3M counsel regarding the nature, characteristics, safety, and environmental effects of 3M’s FC products, as well as the company’s coordinated business, legal, and regulatory strategies with respect thereto. Likewise, as 3M’s primary legal advisor on FC matters before the FDA, Covington received confidential information concerning: (i) the design and results of toxicological studies on FCs; (ii) analyses concerning sources of exposure, exposure pathways, and processes related to 3M’s FC products; (iii) scientific evaluations regarding whether human health effects could be caused by exposure to FCs; and (iv) 3M’s confidential business position in the marketplace with respect to FCs.

All of these matters directly relate to the allegations underlying the State's natural resource damages claims and the discovery Covington seeks in this Action on behalf of the State. Covington has "switched sides" by representing a client who is now suing its former client. By representing the State, Covington will benefit by contradicting the very positions it had long advocated on 3M's behalf.

The State argues that the scope of Covington's prior representation was limited to FDA issues and did not include environmental issues. The State argues that it is not reasonable to conclude that Hutt obtained confidential information within the meaning of the rule because of his narrow scope of expertise and responsibilities. The State also argues that there is no violation of Rule 1.9 because 3M's information about the health effect of PFCs has been made public. *See* Minn. R. Prof. Conduct 1.9 cmt. 3 ("Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying."). However, Hutt's work for 3M on FC issues made Hutt privy to a broad range of confidential and privileged communications among members of 3M's inter-disciplinary FC Legal Team. The FC Legal Team discussed 3M's FC Strategy which is substantially related to the issues in the present Action. 3M submitted affidavits and documentary evidence that shows Covington participated in discussions about: (i) how to manage 3M's communications with regulators about its decision to phase out C-8 FCs; (ii) what information to share with regulators and the public; (iii) how to conduct certain scientific studies; and (iv) when and how to communicate with 3M's customers about 3M's ultimate phase-out decision. A lawyer's legal conclusions and opinions that go to 3M's concerns about vulnerabilities relative to FCs and its potential damages is not public information. The record supports a finding that Covington was specifically consulted on a number of confidential and privileged matters regarding 3M's FC strategy. Accordingly, Covington's representation of the State in this Action is substantially related to the FC matters on which Covington previously advised and represented 3M.

ii. The Court presumes that Covington received and shared confidential information from 3M relating to its FC business.

Under Minnesota law, a party seeking disqualification is not required to offer direct evidence of confidences shared with its former counsel. *See Niemi*, 768 N.W.2d at 390. Instead, where there is a "substantial, relevant relationship" between the subject matters of the two representations, the Court applies certain presumptions. *See Mid-States Bldg. Servs., Inc., v.*

Richfield Senior Housing, Inc., No. C9-02-412, 2002 WL 31056985, at *2 (Minn. Ct. App. Sept. 17, 2002) (citing *Jenson v. Touche Ross & Co.*, 335 N.W.2d 720, 731-32 (Minn. 1983)). First, the Court presumes that counsel received relevant confidential information from its former client. *Id.* Second, the Court presumes, subject to rebuttal, that such relevant confidential information of the former client was shared with the attorney's affiliates. *Id.* Therefore, because Covington's representation of the State in this Action is substantially related to the FC matters on which Covington advised and represented 3M for over a decade, the Court presumes that Covington received relevant confidential information from 3M and that Covington has shared that confidential information among all attorneys in the firm. The State has not overcome this presumption. Covington admits to not imposing screens or other protections to safeguard 3M's information. Covington also admits to not taking any measures to prevent Covington lawyers from sharing confidential information with others in the firm. Accordingly, the Court presumes that Covington received and shared 3M's confidential information relating to its FC business.

As discussed *supra*, the confidential information Covington was privy to is relevant to the issues raised in the present Action.

iii. Covington failed to obtain 3M's informed written consent.

Under Rule 1.9, an attorney is prohibited from representing a client against a former client in a substantially related matter unless the attorney first obtains the former client's "informed consent, confirmed in writing." Minn. R. Prof. Conduct 1.9(a). For such a written consent to be "informed," the attorney must notify the former client about the conflict and provide "adequate information and explanation" about the risks and alternatives involved in consenting to the conflict before the client can effectively consent. Minn. R. Prof. Conduct 1.0(f); see also Minn. R. Prof. Conduct 1.0(b). The conflicted attorney has the duty to educate the former client about the conflict; a former client's mere awareness of a potential conflict does not vitiate the conflicted attorney's obligation to fully disclose the nature of the conflict and obtain the former client's informed, written consent. *In re SRC Holding Corp.*, 364 B.R. 1, 48 (D. Minn. 2007) (applying Minnesota law), *rev'd on other grounds sub nom, Leonard v. Dorsey & Whitney, LLP*, 553 F.3d 609 (8th Cir. 2009).

Covington did not notify 3M of its conflicts nor did it seek 3M's informed consent to represent the State in this Action. Covington claims that its conflicts check did not identify a

conflict and that, as a result, it did not raise its conflicts with 3M to obtain informed consent. Because Covington's representation of the State in this Action is substantially related to the FC matters on which it previously advised and represented 3M, and because the Court must presume that Covington received relevant confidential information from 3M and shared it among all attorneys in the firm, Covington is prohibited from representing the State in this Action pursuant to Rule 1.9.

iv. Disqualification is the appropriate remedy.

Under Minnesota law, disqualification is required for an attorney's violations of the Minnesota Rules of Professional Conduct. *Lennartson v. Anoka-Hennepin Ind. Sch. Dist. No. 11*, 662 N.W.2d 125, 135 (Minn. 2003). Covington has not complied with Minnesota Rules of Professional Conduct 1.9. Covington has exhibited a conscious disregard for its duties of confidentiality, candor, full disclosure, and loyalty to 3M by failing to raise its conflicts arising from the fact that it previously advised and represented 3M on FC matters. Additionally, Covington is disqualified in order to protect 3M's confidential information Covington obtained during its representation of 3M, which is relevant to the issues at the heart of the State's case. When Covington agreed to represent the State in this Action, Covington did not impose any screens or otherwise limit access to 3M's confidential information. Covington's failure to protect 3M's confidential information raises a strong inference that 3M's confidential information has been improperly accessed by Covington and will continue to. Covington has even gone so far to seek discovery on the very issues on which it previously counseled 3M. Therefore, disqualification is the appropriate remedy in this Action.

B. 3M Did Not Waive its Right to Seek Disqualification.

The Court rejects the State's arguments that Covington's ethical violations should be disregarded under the theories of waiver. Covington did not disclose the nature of its conflicts to 3M and never sought 3M's informed written consent to its representation of the State; therefore, there is no waiver. The State urges the Court to deny 3M's motion on a theory of implied waiver because 3M did not move for disqualification earlier. However, a purported waiver – other than an informed written consent as required by the Rules – cannot prevent disqualification. *See In re SRC Holding Corp.*, 364 B.R. at 48 (no waiver because former client's mere knowledge of

conflict did not satisfy conflicted attorney's duty to disclose conflict and obtain informed written consent).

Additionally, the parties dispute when 3M became aware of the extent of Covington's prior representation of 3M. Covington attorneys filed and served *pro hac vice* motions in late January 2011. In March 2011, 3M's then General Counsel, Marschall Smith, contacted an attorney at Covington regarding the firm representing the State. At the time, Mr. Smith was not aware of Covington's representation of 3M in FC matters; his statements regarded the conflicts with Covington's pension and insurance coverage work for 3M. It was not until March 2012 when 3M's lawyers realized the extent of Covington's prior representation of 3M and its FC business. At that time, 3M contacted Covington requesting that it withdraw as counsel for the State. After Covington's denial of 3M's request, 3M brought the present motion. Although the exact timing is disputed, the obligation to discover, disclose, and address potential conflicts is, and remains on, Covington, not 3M. Any legitimate doubts must be resolved in favor of disqualification. *See Olson*, 183 F.R.D. at 542 (citing *Coffelt v. Shell*, 577 F.2d 30, 32 (8th Cir. 1978)). Therefore, the Court rejects the State's arguments that 3M impliedly waived any conflicts.

CONCLUSION

For the foregoing reasons, Defendant 3M's motion for disqualification is granted. Defendant 3M's motion to stay depositions and for protective order is hereby moot and the Court will not make a ruling on the motion. The Court finds the parties' other arguments unpersuasive.

R.A.B.