

TRANSACTION REPORT

2012/MAY/02/WED 14:05

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**OFFICE OF THE KOOTENAI COUNTY
PROSECUTING ATTORNEY
BARRY McHUGH**
P.O. BOX 9000
COEUR D'ALENE, IDAHO 83816-9000

CRIMINAL DIVISION
501 Government Way
208-446-1800
FAX
208-446-1833

CIVIL DIVISION
451 Government Way
208-446-1620
FAX
208-446-1621

JUVENILE DIVERSION
205 N 4th St.
208-446-1970
FAX
208-446-1978

FAX TRANSMISSION COVER SHEET

Date : *May 2, 2012*

To : *Michael L. Haman
Haman Law Office, P.C.
Fax: 676-1683*

cc : *Frank Orzell, individually and as Registered
Agent for Recall CDA, Inc. via hand-delivery*

Subject : *Clifford T. Hayes, et al. v. Recall CDA et al.
Kootenai Case No. CV-12-3135*

Sender : *Barb Nyquist, Legal Assistant*

YOU SHOULD RECEIVE 8 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (208) 446-1626.

Please see the attached letter from Barry McHugh dated May 2, 2012, together with a copy of the May 1, 2012, letter from Ben Ysura, Secretary of State, and our Notice of Voluntary Dismissal filed with District Court. The original of the letter will follow via U.S. Mail.



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May 2, 2012

Michael L. Haman
HAMAN LAW OFFICE, P.C.
923 North 3rd Street
P.O. Box 2155
Coeur d'Alene, ID 83816-2155
Fax: (208) 676-1683

Frank Orzell
310 E. Garden Avenue
Coeur d'Alene, ID 83814

Frank Orzell
Registered Agent
RECALL CDA, Inc.
296 W. Sunset Ave., Suite 21

Re: Dismissal of Clifford T. Hayes et al. v. Recall CDA et al.
Kootenai County Case No. CV-12-3135

Please find enclosed the Notice of Dismissal filed today in the above-entitled action pursuant to Idaho Rule of Civil Procedure 41(a)(1). This Notice was prepared and filed at the direction of my client, Kootenai County Clerk, Clifford T. Hayes.

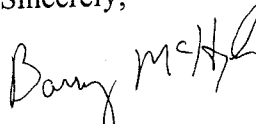
On May 1, 2012, my client received correspondence from the Idaho Secretary of State, Ben Ysursa, providing an interpretation that, while acknowledging that reasonable minds may differ, and also while not constituting an instruction or directive pursuant to Idaho Code § 34-202, does provide additional guidance not previously clearly presented concerning the deadline for perfecting the recall petitions. I have attached a copy of the Secretary of State's letter for your information. In light of this additional guidance, Clerk Hayes in his discretion is electing to follow that interpretation, and has dismissed his Petition.

However, Clerk Hayes intends to satisfy his statutory duties under either interpretation of Idaho Code §§ 34-1704 and 1706. He will examine and certify all valid signatures for which his office has completed an examination on June 19, 2012 and communicate those results to the City Clerk. In the event he receives signatures on a date that makes it impossible to complete his examination by June 19, 2012, he will examine and certify any remaining valid signatures and report those results as soon as possible after June 19, 2012. That way, my client will have performed his duty pursuant to Idaho Code § 34-1706, regardless of which interpretation is ultimately controlling.

Clerk Hayes asked for me to emphasize to all involved that the Petition was intended to provide him definitive direction regarding the uncertainty that exists in interpreting §§ 34-1704 and 1706. However, he is willing to follow the additional guidance from the Secretary of State and dismiss the Petition. In no way should the filing of the Petition, or the decision to dismiss it at this time, be interpreted to mean that Clerk Hayes or I have taken a position on the recall. It is our obligation to the citizens to remain neutral on such matters.

Thank you for your professional courtesy in this matter, and please contact me should you have any further questions or concerns.

Sincerely,



Barry McHugh
Kootenai County Prosecuting Attorney

BM/lkg
Enclosures

cc: Clifford T. Hayes



STATE OF IDAHO
OFFICE OF THE SECRETARY OF STATE
BEN YSURSA

May 1, 2012

Susan Weathers
Coeur d'Alene City Clerk
710 East Mullan
Coeur d'Alene, ID 83816

Cliff Hayes
Kootenai County Clerk
P.O. Box 9000
Coeur d'Alene, ID 83816

Dear Susan and Cliff,

Pursuant to § 34-201, Idaho Code, it is the Secretary of State's responsibility to provide interpretations of the election laws:

"The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws. . . ."

In that capacity, I have reviewed the different interpretations of § 34-1704, Idaho Code, in regard to the application of the 75 day time frame with regard to the collection of recall petition signatures. Specifically, I have reviewed this section of the Code to determine whether the county clerk's certification time is included in that 75 day time frame.

Though reasonable minds could differ, it is my interpretation that the "certified signatures" can have only one meaning, i.e., signatures that have been certified by the County Clerk pursuant to § 34-1706, Idaho Code (and its reference to § 34-1807, Idaho Code).

The word "certify" was included in the 1972 revision of § 34-1706, Idaho Code, and was repealed and replaced in 2004 with reference to § 34-1807, Idaho Code, (the initiative statute) which contains the form of the certificate the County Clerk uses to "certify" signatures.

Therefore, pursuant to § 34-1704, Idaho Code, the recall petition must be perfected with the required number of certified signatures within 75 days following the date of approval as to form. It is my understanding that the deadline for the Coeur d'Alene recall is June 19, 2012.

Please be advised that this letter is an interpretation of the election law issued under the authority of § 34-201, Idaho Code, and is an affirmation of the letter sent to Susan Weathers, Coeur d'Alene City Clerk on April 18, by Tim Hurst, my Chief Deputy.

Please contact my office if you are in need of further clarification.

Sincerely,

A handwritten signature in black ink that reads "Ben Yursa". The signature is written in a cursive, flowing style.

BEN YURSA
Idaho Secretary of State

BY/lm



Barry McHugh, Kootenai County Prosecuting Attorney
 R. David Ferguson, II, Civil Deputy, ISB #6629
 451 N. Government Way
 P.O. Box 9000
 Coeur d'Alene, ID 83816-9000
 Telephone: (208) 446-1608
 Fax: (208) 446-1621

Attorneys for Petitioner

STATE OF IDAHO
 COUNTY OF KOOTENAI } SS
 FILED:

2012 MAY -2 PM 1:39

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

**CLIFFORD T. HAYES, in his official
 capacity as KOOTENAI COUNTY
 CLERK, KOOTENAI COUNTY, IDAHO;**

Petitioner,

vs.

**RECALL CDA, INC., an Idaho
 corporation, and/or FRANK ORZELL,
 individually and as registered agent;
 the CITY OF COEUR D'ALENE, an
 Idaho municipal corporation; MIKE
 KENNEDY, WOODY McEVERS,
 DEANNA GOODLANDER, AND SANDI
 BLOEM, individually and in their
 capacity as officers of the City of
 Coeur d'Alene;**

Respondents.

Case No. CV-12-3135

**NOTICE OF VOLUNTARY
 DISMISSAL**

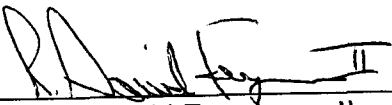
COMES NOW Petitioner Clifford T. Hayes, in his official capacity as Kootenai
 County Clerk, by and through his counsel of record, Barry McHugh, Kootenai County
 Prosecuting Attorney, and R. David Ferguson, II, Civil Deputy Prosecuting Attorney, and

pursuant to I.R.C.P. 41(a)(1) and 57(a), hereby voluntarily dismisses the above-entitled action as no other parties have filed any answer, any Motion for Summary Judgment, nor any responsive pleadings.

Petitioner further requests this Court vacate the hearing set on this matter for May 11, 2012.

Dated this 2nd day of May, 2012.

Kootenai County Prosecuting Attorney

By 
R. David Ferguson, II
Civil Deputy

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2012, I caused to be served a true and correct copy of the foregoing to the following persons via the method as indicated:

- U.S. Mail
- HAND DELIVERED
- OVERNIGHT MAIL
- TELEFAX (FAX)

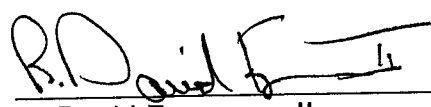
Michael L. Haman
HAMAN LAW OFFICE, P.C.
923 North 3rd Street
P.O. Box 2155
Coeur d'Alene, ID 83816-2155
Fax: (208) 676-1683

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Frank Orzell
Registered Agent
RECALL CDA, Inc.
296 W. Sunset Ave., Suite 21
Coeur d'Alene, ID 83815

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Coeur d'Alene, ID 83814



R. David Ferguson, II