

# **ATTACHMENT C**



**INSLEE BEST**  
INSLEE, BEST, DOEZIE & RYDER, PS

Attorneys at Law

Meghan M. Bowen  
Jerome D. Carpenter  
Don E. Dascenzo  
Eric C. Frimodt  
Scott L. Espiritu  
Henry R. Hanssen, Jr.  
Anneliese E. Johnson  
Rod P. Kaseguma  
Kenneth M. Kilbreath  
Rosemary A. Larson  
David J. Lawyer  
Mark S. Leen  
William J. Lindberg, Jr.  
William A. Linton  
Dan S. Lossing\*

Eric C. Frimodt  
Dir + 425.450.4262  
efrimodt@insleebest.com

John W. Miller  
John W. Milne  
Jessica L. Minnitti  
Donald F. Nelson\*\*  
Dawn F. Reitan  
John F. Rodda  
Milan Gail Ryder  
Kate A. Schmidt  
Adam G. Snyder  
Zosia E. Stanley  
John F. Sullivan\*  
Andrew L. Symons  
Gregory L. Ursich  
Katherine F. Weber  
Brett N. Wiese

\*Also Admitted in Alaska  
\*\*Also Admitted in California

June 4, 2010

**VIA E-MAIL AND  
REGULAR U.S. MAIL**

Mr. Sidney J. Strong  
Law Offices of Sidney J. Strong  
600 University Street, Suite 2100  
Seattle, WA 98101

Ms. Eileen M. Lawrence  
Mr. Chris L. Hilgenfeld  
Davis Grimm Payne & Marra  
701 5<sup>th</sup> Avenue, Suite 4040  
Seattle, WA 98104

Re: Lynnwood Investigation

Dear Mr. Strong, Ms. Lawrence and Mr. Hilgenfeld:

I am writing to you in your capacity as legal counsel for the Mayor (Sid Strong) and the City Council (Eileen Lawrence/Chris Hilgenfeld). I was recently informed by the investigator, Kris Cappel, that she would like to interview me in connection with the current investigation. In particular, Ms. Cappel made the following request:

This confirms that two issues that have emerged in this investigation, which include: (1) Mayor Gough's reaction and response to being informed by Stephanie Simpson that she had applied or planned to apply for the Assistant City Administrator (ACA) position; and (2) Mayor

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Symetra Financial Center, Suite 1900  
777 - 108th Avenue Northeast

P.O. Box 90016  
Bellevue, WA 98009-9016

Tel + 425.455.1234  
Fax + 425.635.7720

[www.insleebest.com](http://www.insleebest.com)



June 4, 2010

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Gough's knowledge of and role in the hiring process for that position, if any, including the initial evaluation of Stephanie's minimum qualifications and the subsequent reconsideration of her minimum qualifications by Robin Hall. I have also been informed by one individual that it is believed that the Mayor was concerned about the hiring process in light of Stephanie's pregnancy and sought legal counsel on that issue. I understand and appreciate the challenges of unintended consequences associated with the waiver of attorney-client privilege but am requesting that the City consider waiving its privilege with respect to communications with you regarding these limited fact issues. I do not make this request lightly and would normally pursue all other reasonable efforts to obtain the information in lieu of requesting a waiver. Sadly, Robin Hall, a material witness to these events is deceased and therefore not available. I believe resolving these fact issues is important to reaching a sound conclusion in this investigation and therefore respectfully request a limited waiver as described above.

In my role as City Attorney, I am called upon to provide legal advice to the Executive branch (Mayor/Administration) and Legislative branch (Council) of the City of Lynnwood. In light of this dual responsibility, I believe it is important that both the Executive and Legislative branches be advised of Ms. Cappel's request and that both branches of the City government consent to my participation in the interview.

Ms. Cappel's request to interview me raises issues relating to (1) the attorney-client privilege, and (2) the confidentiality of information under Rule of Professional Conduct (RPC) 1.6. Under either of these legal requirements, it is my interpretation of the applicable law and the RPC's that I am not allowed to reveal information of this nature unless the client gives informed consent for me to do so. Therefore, the purpose of this letter is to request that the Mayor and the Council consent to the limited waiver consistent with Ms. Cappel's request.

RCW 35A.12.100 provides, in part, as follows: "The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. . . ." Consistent with this statutory authority, my involvement in the issues raised by Ms. Cappel would have involved the Executive branch and the Administration, and not the Council. However, I am interpreting the law applicable to the waiver of the attorney-client privilege and the release of confidential information under RPC 1.6 as requiring the unanimous consent of both the Executive and Legislative branches.



June 4, 2010

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Since a waiver of the attorney-client privilege and consent to release confidential information must meet the requirement of "informed consent," I would like to schedule a meeting or conference call with you so I can explain the extent of my knowledge and what information I would reveal relating to the limited issues raised by Ms. Cappel. Importantly, in order to comply with my interpretation and understanding of the applicable law and RPC's, I will need to first meet or confer with Sid Strong (and the Mayor if he desires to be present). If the Mayor provides written consent to the limited waiver requested by Ms. Cappel, I will then proceed to advise Eileen Lawrence and/or Chris Hilgenfeld (and representatives of the Council if they desire to be present).

I take my responsibilities and duties under the RPC's very seriously. This is a very complex issue and I am attempting my best to set forth a process that addresses the issues that I have identified. I can assure you that it is my intent to comply fully with the requirements of obtaining a proper waiver and consent to release information. If you believe the process that I have outlined is misguided or erroneous in any respect, I would welcome any suggestions you may have.

As you will see, I have included appropriate signature blocks below that can be signed to signify that the Mayor and the Council have provided me with the necessary consent to participate in an interview with Ms. Cappel to the limited extent described herein.

If you have any questions, please let me know. I will call you early next week to follow up on this request.

Very truly yours,

Eric C. Frimodt

ECF:

[Written consents contained on following page]



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### WRITTEN CONSENT

Having been requested to (1) waive the attorney-client privilege and (2) consent to the release of confidential information, and after being fully informed and advised as to the nature of the information to be released, Eric Frimodt is hereby given permission and consent to participate in the interview requested by Ms. Cappel, but only to the limited extent described in this letter. In the course of that interview, Mr. Frimodt may reveal information that would otherwise be covered by the attorney-client privilege or that would be considered confidential information under RPC 1.6.

Consent of Mayor

Consent of City Council

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_



**INSLEE BEST**  
INSLEE, BEST, DOEZIE & RYDER, PS

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\*\*Also Admitted in California

June 7, 2010

**VIA E-MAIL AND  
REGULAR U.S. MAIL**

Mr. Sidney J. Strong  
Law Offices of Sidney J. Strong  
600 University Street, Suite 2100  
Seattle, WA 98101

Ms. Eileen M. Lawrence  
Mr. Chris L. Hilgenfeld  
Davis Grimm Payne & Marra  
701 5<sup>th</sup> Avenue, Suite 4040  
Seattle, WA 98104

Re: Lynnwood Investigation

Dear Mr. Strong, Ms. Lawrence and Mr. Hilgenfeld:

Please be advised that on Friday afternoon, June 4, 2010, I received an addendum or clarification to Ms. Cappel's original request to interview me in connection with her pending investigation. Ms. Cappel clarified her request for a waiver of privileged conversations as follows:

My specific request is that the City allow me to interview you regarding your communications with Mayor Gough and/or Robin Hall regarding the ACA hiring process in 2009; Mayor Gough's reaction and response to the fact that Stephanie applied for the ACA position; Mayor Gough's

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Symetra Financial Center, Suite 1900  
777 - 108th Avenue Northeast

P.O. Box 90016  
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Fax + 425.635.7720

www.insleebest.com



June 7, 2010

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knowledge of and role in the hiring process, if any, including the initial determination that Stephanie met minimum qualifications and a later determination by Robin Hall that she did not meet minimum qualifications and the reason for the re-evaluation. Additionally, I would like to inquire into the issue of whether Mayor Gough sought legal advice in connection with Stephanie's application and/or her pregnancy status.

This clarification supplements my letter to you dated June 4, 2010, and should be taken into consideration as you consider my request for a waiver of the attorney-client privilege and consent to release confidential information under RPC 1.6.

Thank you for your attention to this matter.

Very truly yours,

Eric C. Frimodt

ECF:

LAW OFFICES OF  
**SIDNEY J. STRONG**

600 UNIVERSITY STREET  
ONE UNION SQUARE, SUITE 2100  
SEATTLE, WASHINGTON 98101  
PHONE (206) 623-5221 FAX (206) 623-5214

**Sidney J. Strong**  
Also admitted in Montana  
email: sid@sidstronglaw.com

June 10, 2010

Eric C. Frimodt  
INSLEE BEST DOEZIE & RYDER, P.S.  
777 - 108<sup>th</sup> Avenue N.E., Suite 1900  
P.O. Box 90016  
Bellevue, WA 98009-9016


Re: Lynnwood Investigation

Dear Eric,

By letter you informed me, as counsel for Mayor Don Gough, that Ms. Kris Cappel proposed interviewing you in your capacity as Lynnwood City Attorney as part of her investigation into the Stephanie Simpson matter. You asked whether or not Mayor Gough would waive the attorney-client privilege implicated by such an interview.

Mayor Gough asked that I inform you he would not waive any attorney-client privilege he might have as Mayor of the city of Lynnwood under the circumstances presented in your letter.

Sincerely,

  
Sidney J. Strong

cc: Mayor Don Gough

LAW OFFICES OF  
**SIDNEY J. STRONG**

600 UNIVERSITY STREET  
ONE UNION SQUARE, SUITE 2100  
SEATTLE, WASHINGTON 98101  
PHONE (206) 623-5221 FAX (206) 623-5214

**Sidney J. Strong**  
Also admitted in Montana  
email: sid@sidstronglaw.com

June 24, 2010

Eric C. Frimodt  
INSLEE BEST DOEZIE & RYDER, P.S.  
777 – 108<sup>th</sup> Avenue N.E., Suite 1900  
P.O. Box 90016  
Bellevue, WA 98009-9016

Re: Lynnwood Investigation

Dear Eric:

I have been authorized by Mayor Don Gough to make a waiver of the attorney client privilege he has to the communications described below, between you in your capacity as City for the city of Lynnwood and Mayor Gough.

The purpose of this letter is to respond to the request for interview which you received from Kris Cappel and which is set forth in your letter dated June 4, 2010, and then your subsequent letter of June 7, 2010, quoting Ms. Cappel's clarification of her request for a waiver.

Mayor Gough does not take lightly any decision asked of him to waive the attorney client privilege he would have as to communications with you as city legal advisor. However, he has come to the conclusion that in this instance to enable Ms. Cappel at her request to supplement her investigation, he will permit that conversation with you without bar of privilege. You may speak with Ms. Cappel about the subjects described by her as they were discussed at the April 27<sup>th</sup> meeting between you and Mayor Gough. This includes the results and follow-up from that meeting.

To be more specific, we understand that subjects discussed during that April 27<sup>th</sup> meeting include the HR application process, comments alleged of Mayor Gough including Ms. Simpson's use of a desk light and about a mommy thing. We understand the subjects also to include Robin Hall's commitment to follow up

Eric Frimodt  
June 24, 2010  
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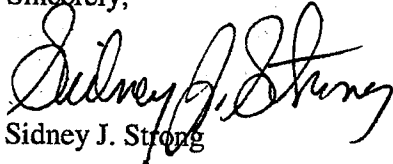
promptly with Ms. Simpson to discuss the issues with her and to continue "monitoring". All are included within the waiver.

Further, whatever work, communications and/or memorandums that were the direct outcomes of the April 27, 2009, meeting and which were prepared and/or which may have occurred later, are included in the scope of this waiver.

The scope of this waiver is limited to Ms. Cappel's "clarified" request as quoted by you in your letter of June 7<sup>th</sup>, and not the first version contained in your letter of June 4<sup>th</sup>.

Therefore, on behalf of Don Gough, the Mayor and Chief Administrative Officer of the City of Lynnwood, I hereby hereby waive the attorney client privilege as described in this letter. We believe this fully satisfies the limited waiver requested by Ms. Cappel.

Sincerely,



Sidney J. Strong

cc: Kris Cappel  
Chris Hilgenfeld