

O'NEILL, O'NEILL & BARDUSON

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April 13, 2023

City of Pipestone

Attn: Deb Nelson

VIA EMAIL

Re: Legal Services—Criminal Prosecution

Dear Deb:

Our office is formally submitting this proposal to the City for consideration of the criminal prosecution duties for the City. Any inquiries about the proposal may be directed to me at the address and telephone number stated above or via email at dsandy@ooblawfirm.com.

As for the description and overview of legal services proposal:

1. Firm History. O'Neill, O'Neill & Barduson has been a fixture in Pipestone since the 1940s, originally founded by Francis and Emmett O'Neill, and subsequently joined by Jim O'Neill in the early 1970s and Scott Barduson in the late 1970s. I joined the firm in February 1998 and Destiney Grooters joined in October 2020. In addition to being a private practice law firm, attorneys with the firm have held the office of the Pipestone County Attorney since January 1979, with Jim serving nine terms and me serving as an Assistant County Attorney to Jim for 17 years and succeeding Jim as County Attorney beginning in January 2015.

2-5. Name, Qualifications, Experience, Trials. Destiney Grooters, any person we may hire in the future and I will be responsible for City criminal prosecution. This would include petty misdemeanor, misdemeanor and targeted gross misdemeanors, as well as violations of City Ordinances.

I am a 1988 graduate of St. John's University, Collegeville, MN. I graduated cum laude from William Mitchell College of Law, St. Paul, MN in 1993. Upon joining this office in 1998, I was assigned prosecution and litigation duties of the County Attorney's Office and have prosecuted well over 1500 adult criminal cases, mostly consisting of felonies and gross misdemeanors, as well as hundreds of juvenile criminal cases. I have had approximately 25 jury trials and approximately 100 misdemeanor and petty misdemeanor court trials. I have also been involved in numerous other contested hearings and have written several appellate briefs.

Destiney is a 2016 graduate of Minnesota State University—Moorhead and a 2019 graduate of the University of North Dakota Law School. Prior to joining the firm, Destiney was employed as

a law clerk for a judge in Ottertail County and had experience in the Becker County Attorney's Office and the United States Attorney's Office for North Dakota. She is currently handling all adult criminal prosecutions for the County. Destiney has had four jury trials and several court trials.

6. Information Services: We have access to the NCIC and Minnesota BCA databases.
7. Other Background. We have a good and solid working relationship with the Pipestone Sheriff's Office, Minnesota State Patrol and investigative branch of the BCA.
8. Other Services. We have not recently performed any services for the City. In the past, we, as the County Attorney's Office, would undertake conflict prosecutions for the City when past attorneys such as Bill Scott, Jeff Jones and Mark Steffen had conflicts.
9. Conflicts. I cannot foresee any conflicts of interest arising from prosecuting for the City with our current duties and responsibilities as the Office of the Pipestone County Attorney, with a conflict being defined as representation of one client whose representative is adverse to another past or existing client. Conflicts may arise, however, due to a direct conflict or because of the appearance of a conflict if we are asked to prosecute an existing or former private client. If we have a conflict, we will refer the conflict case out to another local County Attorney's Office/private law firm to handle the case.
10. Research Capabilities. In addition to standard research and reference capabilities used by most attorneys, such as Westlaw, we also have access to educational and substantive materials provided through the Minnesota County Attorneys Association.
11. Response Capabilities. We are well aware of the deadlines and time-needs relating to prosecution and have always had an open-door policy for law enforcement and those we work with.
12. Crime Victims. We have policies and procedures in place to comply with the Crime Victims Act.
13. Fees/Charges. Our proposal for fees is a flat fee, stated below, plus any extraordinary costs that the firm may have to advance relating to said prosecutions. I cannot fathom that we would have such a need or ever advance such costs. However, if extraordinary costs become possible, we will notify the City and get the City's approval before agreeing to incur such costs. An example of extraordinary costs may include lodging for BCA personal required to testify in DWI cases or expert witness fees. I note, however, during my 24-plus years as a prosecutor, that the County has only once or twice needed to pay for lodging expenses and only once retained an expert. Costs would not include incidentals for day-to-day expenses, such a postage, paper, copying fees, pens, etc.
14. Office proximity. 114 North Hiawatha Avenue, Pipestone.

15. Complaints. Destiney and I have not had a malpractice or ethics claim filed against us in the past five years.

16. Malpractice Insurance. The firm has malpractice insurance through Berkley Insurance Company with \$500,000.00 per claim and \$1,000,000.00 aggregate limits.

Firm Qualifications:

1. References. You may contact Keith Vreeman, Pipestone County Sheriff, Mike Hamann, Pipestone County Chief Deputy, and Edison Dengler, Lt. Investigator at 825-6700.

2. Prosecutions for other Cities. As the County Attorney's Office, we have prosecuted city cases for the smaller communities in the county as a courtesy for as long as Jim O'Neill and I have been the County Attorney. I have also handled conflict cases for Klosterbuer & Haubrich, who prosecute for the City of Luverne. I doubt, however, that any official in any of the cities in Pipestone County or the City of Luverne is aware of any of the facts relating to said prosecutions.

3. Proposed rate and fees: I propose a flat rate of \$3,000.00 per month plus reimbursement for extraordinary expenses. This would not be a retainer, there would be no maximum number of hours we will work and there would be no hourly rate applied and fees tacked on above the \$3,000.00 rate if we exceeded a maximum number of hours--the proposed rate will apply regardless of the number of hours work prosecuting city cases. As stated above, we will not charge additional fees for equipment, office space, postage, paper, etc. If a conflict arises and we have to engage outside counsel, I'd request the City set a rate of \$125.00 per hour for conflict counsel. This rate is line with what the City of Luverne and Murray County have authorized for conflict counsel.

I also suggest we contract a yearly basis, with the City able to terminate on 30 days written notice to our office, and our office able to terminate on 90 days written notice to the City. These different termination periods are based on the possibility that the City may at some point find a capable person to manage both the civil and criminal duties of the Pipestone City Attorney and the City should not be handcuffed and unable to quickly put such a person into the dual roles because it is locked into a contract for the criminal prosecution. The longer termination notice for our office to terminate the contract is requested to afford the City adequate time to get find a replacement should we elect to terminate the contract.

If you have any questions, please contact me. Thank the council for its consideration.

Very truly yours,

O'NEILL, O'NEILL & BARDUSON

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April 3, 2023
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Damain D. Sandy