

IN THE 82<sup>nd</sup> DISTRICT COURT  
ROBERTSON COUNTY, TEXAS

HEARNE CITIZENS OVERSIGHT  
COUNCIL, et al.,  
Plaintiffs,

v.

CITY OF HEARNE, TEXAS, et al.  
Defendants

Cause No. 14-08-19,607

**SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO DISQUALIFY COUNSEL,  
MOTION TO STRIKE PLEADINGS, MOTION FOR SANCTIONS, MOTION FOR  
REFERRAL, and REQUEST FOR INJUNCTIVE RELIEF**

NOW COME Defendants Hazel Embra, Joyce Rattler, and Lashunda White (hereinafter “Movants”), submitting this supplemental brief in support of their Motion to Disqualify Counsel, Motion to Strike Pleadings, Motion for Sanctions, Motion for Referral, and Request for Injunctive Relief:

The Movants wish to make the Court aware of a letter (Exhibit 4) that was attributed to Bryan F. “Rusty” Russ, Jr. and published in the December 25, 2014 edition of the *Robertson County News*. The letter states that Mr. Russ notified the Hearne City Council of his litigation plans during an executive session, and it flatly accuses the Movants of lying. As set forth in the attached affidavits, Mr. Russ did not brief the city council about his intentions vis-a-vis the litigation before this Court or the Court of Appeals, whether in executive session or at any other time. *See* Affidavit of Hazel Embra (Exhibit 1), Affidavit of Joyce Rattler (Exhibit 2), and Affidavit of Lashunda White

(Exhibit 3). If the letter to the editor was indeed written by Mr. Russ, then he was lying even as he accused the Movants of doing the same. While Mr. Russ cannot be charged with perjury for lying in a letter to the editor, the Movants challenge Mr. Russ to “put his money where his mouth is” and make those same statements under oath to this Court and the Court of Appeals. The Movants further challenge Mr. Russ to name the date of the meeting where he supposedly notified the council of his litigation plans, and to produce a copy of the audio recording of that meeting. The executive sessions of the Hearne City Council are recorded by audio, *see* Exhibits 1-3, and Mr. Russ can submit any such recording to the Court under seal. Of course, Mr. Russ will not submit such a recording because it does not exist.

With respect to the Movants' motion to refer Mr. Russ to the State Bar of Texas, the Movants would note that the false statements in the December 25, 2014 letter to the editor appear to be a violation of Disciplinary Rule 4.01(a), which states that a lawyer shall not knowingly “make a false statement of material fact or law to a third person.” Tex. Disciplinary R. Prof. Conduct 4.01(a); *see also* Rules 4.04(a)(in representing a client, “a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person”) and 8.04(a)(3)(a lawyer shall not “engage in conduct involving dishonesty, fraud, deceit or misrepresentation”). Insofar as Mr. Russ did not notify the city council of his litigation activities, it appears that he also violated Rules 1.03 and 1.12.

Finally, even the December 25, 2014 letter appears to concede that Mr. Russ did not seek council authorization for his activities before this Court and the Court of Appeals. Instead, the letter claims that Mr. Russ notified the council in executive session and no one objected to his plans. Even if this was true, it would still indicate that Mr. Russ is appearing before this Court and the Court of Appeals without authority. As noted in the earlier-filed motion to disqualify Mr. Russ, the City of Hearne can only authorize litigation by majority vote of the city council in support of a resolution or ordinance. *See City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 757 (Tex. 2003); *DeSoto Wildwood Development, Inc. v. City of Lewisville*, 184 S.W.3d 814, 826 (Tex.App. – Ft. Worth 2006); *Central Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 612–13 (Tex.App.-Corpus Christi 1998, *pet. dismiss'd w.o.j.*); and *Corpus Christi v. Bayfront Assocs.*, 814 S.W.2d 98, 105 (Tex.App.-Corpus Christi 1991, *writ denied*). As city attorney, it was Mr. Russ's responsibility to explain the requirements for authorizing litigation on behalf of the City of Hearne. However, Mr. Russ knew that he could not get a majority vote in favor of his litigation plans, thus he “went behind the back of the city council” by entering appearances and filing claims without notice to the council, much less authorization from the council. *See* Affidavits of Hazel Embra, Joyce Rattler, and Lashunda White (Exhibits 1-3).

The Movants also wish to provide further proof that Mr. Russ and his son, Bryan F. “Trey” Russ, III, are engaged in barratry even as they appear before this Court. The

Movants have attached true and correct copies of documents that were provided to the undersigned in response to a Texas Public Information Act request to the City of Hearne. *See* Affidavit of Ty Clevenger (Exhibit 5) and records from the City of Hearne (Exhibit 6). Those records show unequivocally that the Russes sought and received payment for the unauthorized claims that they filed with this Court, thereby violating Texas Penal Code §38.12 and Tex. Disciplinary R. Prof. Conduct 8.04(a)(9).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

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Ty Clevenger  
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ATTORNEY FOR HAZEL EMBRA, JOYCE  
RATTLER, and LASHUNDA WHITE

CERTIFICATE OF SERVICE

I certify that copies of the foregoing notice were provided to the individuals below on January 2, 2015 via the means indicated:

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A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal stroke extending to the right.

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Ty Clevenger