

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

**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”), moving the Court to grant relief as set forth below:

**FACTUAL BACKGROUND**

The Movants are members of the Hearne City Council. Attorneys Bryan F. “Rusty” Russ, Jr. and Bryan F. “Trey” Russ, III appeared in this case and filed counter-claims on behalf of the City of Hearne without notifying the city council, much less obtaining its approval. *See* Affidavits of Hazel Embra (Exhibit 5), Joyce Rattler (Exhibit 6), and Lashunda White (Exhibit 7). As set forth in the attached letter to Robertson County District Attorney Coty Siegert (Exhibit 2), the Russes filed the unauthorized claims in bad faith and for the purpose of delaying *In re Milton Johnson, et al.*, Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas.<sup>1</sup> In prior correspondence (Exhibit 3), the undersigned explained to the Russes in great detail why they

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<sup>1</sup> The Movants are separately requesting that the Court take judicial notice of the pleadings filed in the Tenth Court of Appeals.

could not and cannot purport to represent the City of Hearne without the approval of a majority of the city council. On behalf of the Movants, the undersigned demanded that the Russes withdraw the unauthorized pleadings in this case, as well as the unauthorized pleadings in the Tenth Court of Appeals. *Id.* The undersigned repeatedly urged the Russes to contact the state bar ethics hotline for independent advice, *id.*, but it appears that the Russes did not contact the state bar because they knew that the state bar would tell them what they did not want to hear, *i.e.*, cease and desist immediately.

On December 20, 2014, Ms. Embra attempted to read a prepared statement (Exhibit 8) on behalf of herself as well as Ms. Rattler and Ms. White at a special meeting of the Hearne City Council, but Mayor Ruben Gomez prevented her from reading the statement. *See* Exhibits 4, 5, and 6. Nonetheless, the prepared statement was signed by Ms. Embra, Ms. Rattler, and Ms. White and it was distributed to everyone in attendance at the special council meeting, including the law partner of Rusty Russ. *Id.* That statement warns again that the Russes' actions in this case and in the Tenth Court were unauthorized, further warning that the undersigned would be directed to file motions to disqualify and sanction the Russes if the offending pleadings were not withdrawn by noon on December 22, 2014. Thus far, the Russes have not withdrawn the offending pleadings.

## ARGUMENT

Under the established law of this state, Mr. Russ was without authority to file claims on behalf of the city without first getting authorization from the city council by majority vote at an authorized meeting. “The only way that a political subdivision of the state can act is by and through its governing body...” *DeSoto Wildwood Development, Inc. v. City of Lewisville*, 184 S.W.3d 814, 826 (Tex.App. – Ft. Worth 2006), quoting *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.*). More to the point, “a city acts through its council, not through its counsel...” *DeSoto*, 184 S.W.3d at 826, citing *Corpus Christi v. Bayfront Assocs.*, 814 S.W.2d 98, 105 (Tex.App.-Corpus Christi 1991, *writ denied*).

Cities can express and bind themselves only by way of a duly assembled meeting. *Cent. Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 612 (Tex.App.-Corpus Christi 1998, *pet. dismiss'd w.o.j.*). “A city's governing body may not delegate the right to make decisions affecting the transaction of city business.” *Id.* at 613. However, cities may “delegate to others the right to perform acts and duties necessary to the transaction of the city's business, but can do so only by resolution or ordinance, by a majority vote.” *Id.*

*City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 757 (Tex. 2003). In context, *City of San Benito* was addressing a city's right to delegate decisions concerning litigation. In this case, the city council could not have delegated any authority for the Russes to appear in court or initiate counter-claims unless it adopted a resolution or ordinance “by a majority vote.” Since no such resolution or ordinance was adopted, the Russes are acting without authority. Moreover, since the Russes sought payment for filing the unauthorized claims, they violated Texas Penal Code §38.12, which classifies barratry as a third-degree felony.

As the long-time city attorney for the City of Hearne and neighboring municipalities, Rusty Russ should have known that he could not act without city council approval, and indeed he did know. In 2013, the undersigned filed bar grievances against Rusty Russ and Trey Russ because they were representing private clients against their municipal clients without notifying the respective city councils, much less requesting or obtaining a waiver of the conflict of interest. As part of the grievance process, the undersigned copied the Russes on correspondence with the state bar, and that correspondence explained in detail why Rusty Russ needed authorization from the city council before purporting to act in court on the city's behalf. *See* Exhibit 4.

As if the unauthorized pleadings were not bad enough, the Russes also have a serious conflict of interest. The Hearne City Council is deadlocked 3-3 regarding the dispute that underlies this case, thus the city is officially neutral regarding the dispute. The Russes are acting against the neutral position of the city, however, because they have arbitrarily chosen to represent one half of the council against the other. As explained in the letters between the undersigned and the Russes, *see* Exhibit 3, they have

effectively awarded themselves the tie-breaking vote on the city council. The Russes are fighting against the Movants in this case and/or before the Tenth Court of Appeals, even though the Movants are every bit as much the Russes' clients as the other three members of the council. In the December 13, 2014 letter to the Russes, the undersigned directed their attention to *In re Salazar*, where the court wrote that “[w]e are aware of no statute or common law rule allowing attorneys to prosecute a suit in the name of a corporation *or other entity* on behalf of only one faction or part of that corporation or entity against another part or faction.” 315 S.W.3d 279, 285 (Tex.App.–Fort Worth 2010, *orig. proceeding*)(emphasis added). While that case dealt with a dispute for control of a corporation, the court relied on Rule 1.12 of the Texas Disciplinary Rules of Professional Conduct, which would apply with equal force here. Where an attorney appears without authority, he must be disqualified from the proceeding and his pleadings stricken. *Salazar*, 315 S.W.3d at 283-285.<sup>2</sup> Accordingly, the Russes should be disqualified from this case and their pleadings stricken.

The Movants request that the Court take judicial notice of the following cases filed in this Court, where the Russes or one of their colleagues at Palmos, Russ, McCullough, and Russ, LLP (i.e., James H. McCullough or Molly Hedrick)<sup>3</sup> have represented private clients against the City of Hearne without notifying the city council, much less requesting or obtaining a waiver of their conflicts of interest:

*Hearne I.S.D., et al. v. Rodney Seymore, et al.*, Cause No. 13-01-07522-TX: Bryan F. Russ, III represents defendants Allen Parker, Jr. and Linda Jean Parker against the City of Hearne.

*Hearne I.S.D., et al. v. Hearne Lumber Co., et al.*, Cause No. 07-02-07110-TX: Bryan F. Russ, Jr. represented defendants Hearne Lumber Co. and James Edward Chandler against the City of Hearne.

*Hearne I.S.D., et al. v. Teresa Cotton, et al.*, Cause No. 06-11-07086-TX: Bryan F. Russ, Jr. represented defendants Teresa Cotton and Teresa Consula Cotton against the City of Hearne.

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<sup>2</sup> If the Court does not wish to disqualify the Russes outright based on the evidence attached to this motion, the Movants ask the Court to consider this a motion to show authority pursuant to Tex. R. Civ. P. 12.

<sup>3</sup> According to Disciplinary Rule 1.06(f), the conflicts of Rusty Russ are imputed to the entire firm.

*Hearne I.S.D., et al. v. Thomas B. Matthews and Jan Matthews*, Cause No. 02-05-06712-TX: James H. McCullough represented both defendants against the City of Hearne.

*Hearne I.S.D., et al. v. Roy L. Henry*, Cause No. 01-10-06673-TX: James H. McCullough represented defendant Roy L. Henry against the City of Hearne.

*Hearne I.S.D., et al. v. Donald Denny*, Cause No. 06-08-7028-TX: Molly Hedrick represented defendant Donald Denny against the City of Hearne.

The Movants will further show that Rusty Russ has purported to settle claims against the City of Hearne without notifying the city council, and that he has refused to show the settlement agreement to members of the council, much less seek ratification of the settlement agreement.

In light of the pattern of conflicts of interest and unauthorized litigation activity, the Movants ask the Court to enjoin the Russes from appearing in any court on behalf of the City of Hearne without first obtaining the approval of the city council, as expressed by majority vote in favor of a resolution or ordinance, except in cases of an emergency (such as a temporary retraining order). Likewise, the Movants ask the Court to enjoin the Russes from representing clients against the City of Hearne without first (1) notifying the Hearne City Council, (2) requesting a waiver of the conflict of interest from the city council, (3) advising the city council to obtain independent legal advice regarding the conflict, and (4) obtaining a waiver from the city council, as expressed by majority vote in favor of a resolution or ordinance. Rusty Russ should further be enjoined from purporting to settle any claims on behalf of the City of Hearne without first obtaining the approval of the Hearne City Council by majority vote, and he should be compelled to submit to the council any such settlement agreements that he has already signed.

The Movants also request that the Court sanction the Russes, ordering them to pay all costs and attorney fees related to the Movants' appearance in this case. Finally, the Movants ask the Court to refer the Russes' to the Office of Chief Disciplinary Counsel of the State Bar of Texas for further investigation of their misconduct.

Respectfully submitted,



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Ty Clevenger  
Texas Bar No. 24034380  
1095 Meadow Hill Drive  
Lavon, Texas 75166  
Tel. (979) 985-5289  
Fax. (979) 530-9523

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  
December \_\_\_\_, 2014 via the means indicated:

Bryan F. Russ, Jr., City Attorney  
City of Hearne  
P.O. Box 909  
Hearne, Texas 77859

*Via facsimile and e-mail*  
(979) 279-3712 / bryanruss@palmosruss.com

Bryan F. Russ, III  
P.O. Box 1288  
Franklin, Texas 77856

*Via facsimile and e-mail*  
(979) 828-3676 / treyruss@palmosruss.com



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Ty Clevenger

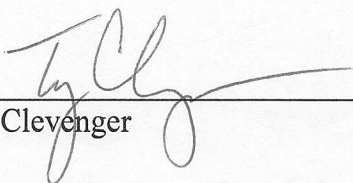
## Exhibit 1

## AFFIDAVIT

My name is Ty Clevenger, I am greater than 18 years of age and competent to testify, and I do testify as follows based on my own personal knowledge and under penalty of perjury, as witnessed by my signature below:

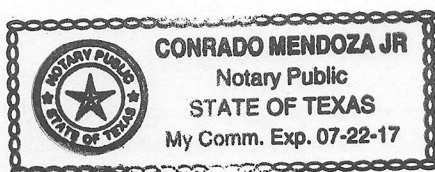
1. I am the attorney for Milton Johnson, Hazel Embra, Joyce Rattler, and Lashunda White in *In re Milton Johnson, Hazel Embra, Joyce Rattler, and Lashunda White*, Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas, where they are the relators.
2. I am the attorney for Hazel Embra, Joyce Rattler, and Lashunda White in *Hearne Citizen Oversight Committee, et al. v. Hearne Texas City Council, et al.*, Cause No. 14-08-19,607, 82<sup>nd</sup> District Court of Robertson County, Texas, where they are defendants.
3. Hazel Embra, Joyce Rattler, and Lashunda White are members of the Hearne City Council.
4. Exhibit 2 is a true and correct copy of a letter that I sent to Robertson County District Attorney Coty Siegert.
5. Exhibit 3 contains true and correct copies of correspondence that I exchanged with Bryan F. "Rusty" Russ, Jr. and Bryan F. "Trey" Russ, III. Rusty Russ is the Hearne City Attorney. The correspondence is listed in chronological order.
6. Exhibit 4 contains true and correct copies of letters that I sent to the State Bar of Texas concerning bar grievances against Rusty Russ and Trey Russ. Copies of those letters were simultaneously provided to Rusty Russ and Trey Russ.

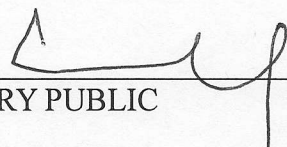
THE AFFIANT SAYS NOTHING FURTHER.

  
\_\_\_\_\_  
Ty Clevenger

## VERIFICATION

On this 20th day of December, 2014, Ty Clevenger appeared before me and attested under oath that the foregoing affidavit was true and correct, based on her own personal knowledge, as witnessed by my signature and seal below.



  
\_\_\_\_\_  
NOTARY PUBLIC



## Exhibit 2

TY CLEVENGER

Attorney at Law  
1095 Meadow Hill Drive  
Lavon, Texas 75166

telephone: 979.985.5289  
facsimile: 979.530.9523

tyclevenger@yahoo.com  
Texas Bar No. 24034380

December 16, 2014

The Hon. Coty Siegert, District Attorney  
Robertson County  
Franklin, Texas 77856

*Via e-mail attachment*

Re: Bryan F. "Rusty" Russ, Jr. and Bryan F. "Trey" Russ, III

Dear Mr. Siegert:

I represent Hazel Embra, Joyce Rattler, and Lashunda White, all of whom are members of the Hearne City Council, in a petition for a writ of mandamus against the City of Hearne. My clients seek to force the city council to schedule a recall election for Maxine Vaughn, another member of the council. As a result of those proceedings in the Tenth Court of Appeals, I have obtained unequivocal evidence that Bryan F. "Rusty" Russ, Jr., the Hearne City Attorney, and his son Bryan F. "Trey" Russ, III, violated Section 38.12 of the Texas Penal Code, which outlaws barratry. On behalf of my clients, I request a criminal investigation.

Rusty Russ and Trey Russ both filed a counter-claim on October 17, 2014, another counter-claim on November 17, 2014, and a third on November 18, 2014, purportedly on behalf of the Hearne City Council, in *Hearne Citizens Oversight Committee, et al. v. City of Hearne, et al.*, Cause No. 14-08-19,607-CV, 82<sup>nd</sup> District Court of Robertson County. As set forth below, the latter claim was filed for the apparent purpose of delaying proceedings in the Tenth Court. Regardless, the Russes did not consult with the city council about the counter-claims, nor were they authorized to file the counter-claims. According to the Penal Code, "[a] person commits an offense if, with intent to obtain an economic benefit the person... knowingly institutes a suit or claim that the person has not been authorized to pursue..." Texas Penal Code §38.12(a)(1). My clients inform me that the Russes sought payment for the unauthorized court filings.

This apparent violation is aggravated by the fact that I had previously filed a bar grievance against both of the Russes after I learned that they were representing private clients against their municipal clients. Neither of the Russes notified the respective city councils, much less obtained a waiver of their conflicts of interest. In 2013, Rusty Russ even advised the Calvert City Council about whether it should intervene as a plaintiff in a case where Mr. Russ was already representing the defendant.

As part of the grievance process, Mr. Russ and I wrote back and forth to the state bar, and I explained in detail how the law obligates Mr. Russ to obtain the approval of the city council before purporting to act in court on behalf of a municipality. I have attached some of our 2013 correspondence as Exhibit 1. As a municipal attorney, Mr. Russ should have

already known that the city can only act through its city council, but he certainly was aware of that fact after I filed the grievance.

After I learned that the Russes filed the counter-claims without authorization, I wrote to both of them on behalf of my clients, demanding that they cease and desist immediately. I have attached a copy of that letter, as well as our subsequent correspondence, as Exhibit 2. You will note that I twice encouraged them to contact the state bar ethics hotline for further guidance. I doubt seriously that either one of them made that call, because they would have known what the state bar would tell them: cease and desist immediately.

As a further aggravating factor, you should know that the November 17 and November 18 counter-claims appear to be a fraud on both the district court and the Tenth Court of Appeals. I have attached a copy of the petition for mandamus (Exhibit 3), respondents' response (Exhibit 4), and relators' reply (Exhibit 5) from *In re Milton Johnson, et al.*, Case No. 10-14-00341-CV, Tenth Court of Appeals. The reply notes that the November 17, 2014 counter-claim was not only filed without authorization, but for the apparent purpose of delaying proceedings in the Tenth Court of Appeals. The same is true of the November 18, 2014 counter-claim.

You may wonder why the Russes have gone to such lengths to fight a recall election for Councilwoman Vaughn. For one thing, my clients wish to hire a forensic accountant to audit city finances, because the city has previously awarded taxpayer funds to companies and projects owned by council members or their relatives, as well as a company owned by Rusty Russ and his law partner. If Ms. Vaughn is recalled, my clients will constitute a majority of the council, and they will be able to force such an audit. Moreover, my clients intend to terminate Mr. Russ as city attorney because of his pattern of professional misconduct.

I might have more sympathy for the Russes, but for the fact that both of them have previously tried to frame me for barratry. In fact, Rusty Russ and his law partner have twice tried to frame me for barratry, and both times the charges were shown to be baseless. Whereas the Russes went behind my back and only presented partial information to your office, I have given the Russes fair warning to cease and desist, and I am even copying them on this letter (which is far more courtesy than they ever showed me). Regardless, the Russes are very familiar with the law against barratry, and it appears that they have violated it anyway.

A special grand jury is scheduled to convene on January 13, 2015 for the purpose of determining whether former District Attorney John Paschall misappropriated money from the estate of Marium Oscar, and I recommend that the case against the Russes be presented on that date. I filed a public information request with the City of Hearne, and I should have all the evidence needed to present to the grand jury prior to January 13. Yesterday I spoke with Asst. Attorney General Shane Attaway, the special prosecutor for the Paschall case, and he does not object.

I do not believe the case should be presented to the regular grand jury because the presiding judge, Robert M. Stem, has a serious conflict of interest. As detailed in my July 14, 2014 letter to you, Judge Stem secretly accepted free legal services from Rusty Russ around the same time that he was helping Mr. Russ and his law partner perpetrate a seven-figure real

estate fraud. Two weeks ago, I was informed that state and federal law enforcement agencies are now investigating that fraud. Moreover, when I asked Judge Stem to recuse himself from any grand jury investigation of Mr. Paschall, Judge Stem just carried on with business as usual, *e.g.*, stacking the grand jury with political cronies and appointing the sister-in-law of one of Paschall's attorneys as the forewoman.

I have copied this letter to Judge Olen Underwood and Judge Doug Shaver because I believe the scope of Judge Shaver's visiting-judge appointment should be expanded to include the barratry cases as well as any of the other matters pertaining to the Russes, Judge Stem, the real estate fraud, etc. I have copied Judge Towslee-Corbett on this letter because it appears that a fraud on the court is being perpetrated in Cause No.

Thank you in advance for your consideration.

Sincerely,

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

Ty Clevenger

cc:    The Hon. Olen Underwood, Judge Presiding  
          Second Judicial Administrative District  
The Hon. Doug Shaver, Visiting Judge  
          82<sup>nd</sup> District Court of Robertson County  
The Hon. Reva Towslee-Corbett, Visiting Judge  
          82<sup>nd</sup> District Court of Robertson County  
The Hon. Robert M. Stem, Judge  
          82<sup>nd</sup> District Court of Robertson County  
The Hon. Shane Attaway, Asst. Attorney General  
          Office of the Attorney General of Texas  
Mr. Dirrell S. Jones, Asst. Disciplinary Counsel  
          State Bar of Texas  
Mr. Frank Malinek, Assistant Chief  
          Texas Ranger Division  
Mr. John Anderson, Special Agent  
          Federal Bureau of Investigation  
Mr. Bryan F. "Rusty" Russ, Jr.  
Mr. Bryan F. "Trey" Russ, III

## Exhibit 3

TY CLEVINGER

Attorney at Law  
1095 Meadow Hill Drive  
Lavon, Texas 75166

telephone: 979.985.5289  
facsimile: 979.530.9523

tyclevenger@yahoo.com  
Texas Bar No. 24034380

December 12, 2014

Mr. Bryan F. "Rusty" Russ, Jr., City Attorney  
City of Hearne  
Hearne, Texas

*Via facsimile and email*  
(979) 279-3712 and [bryanruss@palmosruss.com](mailto:bryanruss@palmosruss.com)

Mr. Bryan F. "Trey" Russ, III, Asst. City Attorney  
City of Hearne  
Hearne, Texas

*Via facsimile and email*  
(979) 828-3676 and [treyruss@palmosruss.com](mailto:treyruss@palmosruss.com)

Re: *In re Milton Johnson, Hazel Embra, Joyce Rattler, and Lashunda White*,  
Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas

Mr. Russ and Mr. Russ:

As you know, I represent Councilwomen Joyce Rattler, Hazel Embra, and Lashunda White in the case listed above. With the e-mail version of this letter, I have attached a copy of the reply that I filed yesterday in the Tenth Court of Appeals on their behalf. As set forth in that reply, both of you are representing the City of Hearne without authority, and on behalf of my clients I must demand that you cease and desist.

Specifically, neither of you have been authorized by the city council to file counter-claims on behalf of the city in *Hearne Citizen Oversight Committee, et al. v. Hearne Texas City Council, et al.*, Cause No. 14-08-19,607, 82<sup>nd</sup> District Court of Robertson County, Texas. On the other hand, both of you were copied on my August 22, 2013 letter to Chad Childers of the State Bar of Texas, which explained that "[t]he only way that a political subdivision of the state can act is by and through its governing body.... It is a well-settled rule that the governing authorities of cities can express themselves and bind the cities only by acting together in a meeting duly assembled...." *DeSoto Wildwood Development, Inc. v. City of Lewisville*, 184 S.W.3d 814, 826 (Tex.App. – Ft. Worth 2006), quoting *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.*). Moreover, "a city acts through its council, not through its counsel..." *DeSoto*, 184 S.W.3d at 826, citing *Corpus Christi v. Bayfront Assocs.*, 814 S.W.2d 98, 105 (Tex.App.-Corpus Christi 1991, *writ denied*).

In other words, both of you knew that you were acting without authority when you filed the counter-claims. In fact, my clients told me that they have previously objected to Mr. Russ, Jr.'s purported representation of the city council contrary to the wishes of half its members. Thus it appears that you have engaged in barratry, which is a violation of the professional rules and a third-degree felony, because you have sought payment for filing the unauthorized counter-claims. *See* Texas Disc. Rule P. Conduct 8.04(a)(9) and Texas Penal Code § 38.12.

Admittedly, the situation we face is somewhat unique because the city council is deadlocked 3-3, thus there is no council majority. However, that does not authorize you to arbitrarily decide which half of the council you want to side with and take your orders from. *See City of Corpus Christi v. Bayfront Associates, Ltd.*, 814 S.W.2d 98, 105 (Tex.App. - Corpus Christi 1991, *writ denied*) (“A city council can transact a city's business transactions only by resolution or ordinance, by majority rule of the council.”). In essence, you have given yourselves the tie-breaking vote on the council.

Since you do not have approval from the council, you do not have the authority to represent the city in any litigation capacity, whether as a defendant or counter-plaintiff in the district court or as a respondent in the Tenth Court of Appeals. To be perfectly clear, my clients expressly object to your conflict of interest in representing the wishes of the other city council members contrary to their wishes. If Mayor Gomez, Councilwoman Vaughn, and Councilman Werlinger want to be represented individually, they should retain private counsel as my clients have done.

Please let me know not later than 5:00 p.m. on Monday, December 15, 2014 whether you intend to withdraw the unauthorized counter-claims and withdraw as counsel. If you need additional time to evaluate the matter, please let me know. I apologize for the short deadline, but time is of the essence in the mandamus proceeding before the Tenth Court. If I do not hear from you before 5:00 p.m. on Monday, I will conclude that you do not intend to take corrective action.

Thank you in advance for your attention to these matters.

Sincerely,

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

Ty Clevenger

cc: Councilwoman Hazel Embra  
Councilwoman Joyce Rattler  
Councilwoman Lashunda White

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**Subject:** Re: Please see the attached letter

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**From:** Ty Clevenger (tyclevenger@yahoo.com)

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**To:** bryanruss@palmosruss.com; treyruss@palmosruss.com;

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**Date:** Friday, December 12, 2014 10:04 AM

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Something occurred to me after I sent the letter... You obviously may disagree with my interpretation of the law, but you can get an independent opinion (for free) from the state bar's ethics hotline at (800) 532-3947. I called the bar on Wednesday for an unrelated matter and received some good advice, as I had on previous occasions.

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**From:** Ty Clevenger <tyclevenger@yahoo.com>  
**To:** Bryan Russ Jr. <bryanruss@palmosruss.com>; "treyruss@palmosruss.com" <treyruss@palmosruss.com>  
**Sent:** Friday, December 12, 2014 9:12 AM  
**Subject:** Please see the attached letter



COPY

*Law Offices***PALMOS, RUSS, McCULLOUGH & RUSS, L.L.P.**

306 Cedar Street • P.O. Box 909

Hearne, Texas 77859

Telephone: (979) 279-3456 • Fax: (979) 279-3712

www.palmosruss.com

HEARNE OFFICEJames H. McCullough  
Bryan F. Russ, Jr.  
Molly A. HedrickIN MEMORIAMBryan F. Russ (1925-1996)  
Bill Palmos (1915-2007)FRANKLIN OFFICE

Bryan F. Russ III

December 12, 2014

**Via Certified Mail No. 7014 1820 0001 6073 7810.****Return Receipt Requested**Mr. Ty Clevenger  
1095 Meadow Hill Drive  
Lavon, Texas 75166**Re: Milton Johnson, Hazel Embra, Joyce Rattler, and Lashunda White,  
Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas**

Dear Mr. Clevenger:

I am in receipt of your letter of December 12, 2014. As you know I am the City Attorney for the City of Hearne, with respect to the issue set forth in your letter, I briefed the City Council on my course of action as the City Attorney and was not directed otherwise.

However, I certainly concur this is an unusual situation. Because of the nature of this situation, I will once again discuss with the City Council to make sure I am not proceeding in a fashion my client does not desire.

Thank you.

Very truly yours,

**PALMOS, RUSS, McCULLOUGH & RUSS, L.L.P.**

BRYAN F. RUSS, JR.

BFRjr:jc

cc: Honorable Ruben Gomez  
Mr. Pee Wee Drake

TY CLEVENGER

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Lavon, Texas 75166

telephone: 979.985.5289  
facsimile: 979.530.9523

tyclevenger@yahoo.com  
Texas Bar No. 24034380

December 13, 2014

Mr. Bryan F. "Rusty" Russ, Jr., City Attorney  
City of Hearne  
Hearne, Texas

*Via facsimile and email*  
(979) 279-3712 and [bryanruss@palmosruss.com](mailto:bryanruss@palmosruss.com)

Re: *In re Milton Johnson, Hazel Embra, Joyce Rattler, and Lashunda White*,  
Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas

Mr. Russ:

Thank you for your quick response to my December 12, 2014 letter. My clients assure me that you did *not* brief the Hearne City Council regarding the counter-claims that you filed in *Hearne Citizen Oversight Committee, et al. v. Hearne Texas City Council, et al.*, Cause No. 14-08-19,607, 82<sup>nd</sup> District Court of Robertson County, Texas, much less seek or obtain the council's permission to file those counter-claims. Likewise, they assure me that you did not consult with the council before appearing in the Tenth Court matter listed above.

Since you did not obtain the council's approval to file the counter-claims or to oppose the petition for mandamus, you are acting without authority:

Cities can express and bind themselves only by way of a duly assembled meeting. *Cent. Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 612 (Tex.App.-Corpus Christi 1998, *pet. dismissed w.o.j.*). "A city's governing body may not delegate the right to make decisions affecting the transaction of city business." *Id.* at 613. However, cities may "delegate to others the right to perform acts and duties necessary to the transaction of the city's business, but can do so only by resolution or ordinance, by a majority vote." *Id.*

*City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 757 (Tex. 2003). In context, *City of San Benito* was addressing a city's right to delegate decisions concerning litigation. Thus the city council could not have delegated any authority for you to initiate counter-claims or oppose the petition for mandamus unless it adopted a resolution or ordinance "by a majority vote." *Id.*

I would also direct your attention to *In re Salazar*, where the court wrote that “[w]e are aware of no statute or common law rule allowing attorneys to prosecute a suit in the name of a corporation or other entity on behalf of only one faction or part of that corporation or entity against another part or faction.” 315 S.W.3d 279, 285 (Tex.App.–Fort Worth 2010, *orig. proceeding*). While that case dealt with a dispute for control of a corporation, the court relied on Rule 1.12 of the Texas Disciplinary Rules of Professional Conduct, which would apply with equal force here. As I previously wrote, you have essentially given yourself the tie-breaking vote on the city council, deciding which half gets to speak for the city and which does not. More to the point, you are representing one half of the council against the other, which is a conflict of interest. By virtue of the 3-3 deadlock, the City of Hearne is officially neutral with regard to the proceedings in the district court and the court of appeals, and that means you cannot arbitrarily pick sides as city attorney.

Your representation of the interests of Mayor Gomez, Councilman Werlinger, and Councilwoman Vaughn conflicts with the interests of the three council members whom I represent, and it conflicts with the interests of your ultimate client, *i.e.*, the Hearne City Council, because the council has not taken a position in these disputes. I urge you again to consult the state bar's ethics hotline, because these are serious matters. In *Salazar*, the court granted mandamus compelling the trial court not only to bar the attorneys who appeared without authority, but to strike all of their pleadings.

If you do not withdraw all of your pleadings and withdraw as counsel in the cases listed above by 5 p.m. on Monday, December 15, 2014, I will bring these matters to the attention of the respective courts. If Mayor Gomez, Councilman Werlinger, and Councilwoman Vaughn wish to continue pursuing claims in these courts, they should hire private counsel to re-submit your pleadings.

Thank you in advance for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a stylized, flowing script.

Ty Clevenger

cc: Councilwoman Hazel Embra  
Councilwoman Joyce Rattler  
Councilwoman Lashunda White  
Mr. Bryan F. “Trey” Russ, III, Asst. City Attorney

---

**Subject:** Re: Please see attached letter

---

**From:** Ty Clevenger (tyclevenger@yahoo.com)

---

**To:** bryanruss@palmosruss.com;

---

**Cc:** jamesmccullough@palmosruss.com; treyruss@palmosruss.com;

---

**Date:** Saturday, December 13, 2014 4:21 PM

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Mr. Russ,

You seem to be suggesting that you need authorization from your client to withdraw claims that you were not authorized to pursue in the first place. I do not think the courts will look favorably on that. If you are hoping to get retroactive authorization or authorization going forward from the council, my clients have assured me that they will block that. The bottom line is that the claims are being pursued without authority, and there is no chance that your client (i.e., the city council) will grant you that authority going forward. The only solution is to withdraw the claims immediately.

/s/ Ty Clevenger

---

**From:** Rusty Russ <bryanruss@palmosruss.com>  
**To:** Ty Clevenger <tyclevenger@yahoo.com>  
**Cc:** James McCullough <jamesmccullough@palmosruss.com>  
**Sent:** Saturday, December 13, 2014 3:45 PM  
**Subject:** Re: Please see attached letter

Dear mr. Clevenger:

I'm in receipt of you second letter. Again, I have a duty to meet with me client, the city of Hearne, and my office is going to do that.

Once my office has consulted with our client you will be informed with respect to any action I will take.

But given the requirements of the statutes on governmental meetings do decision or direction is possible by Monday.

I'm sure you understand that. Thank you.

Sent from my iPhone

On Dec 13, 2014, at 7:24 AM, Ty Clevenger <[tyclevenger@yahoo.com](mailto:tyclevenger@yahoo.com)> wrote:

<2014.12.13 Letter to Rusty Russ.pdf>

TY CLEVENGER

Attorney at Law  
1095 Meadow Hill Drive  
Lavon, Texas 75166

telephone: 979.985.5289  
facsimile: 979.530.9523

tyclevenger@yahoo.com  
Texas Bar No. 24034380

December 18, 2014

Mr. Bryan F. "Rusty" Russ, Jr., City Attorney  
City of Hearne  
Hearne, Texas

*Via facsimile and email*  
(979) 279-3712 and [bryanruss@palmosruss.com](mailto:bryanruss@palmosruss.com)

Re: *Hearne Citizen Oversight Committee, et al. v. Hearne Texas City Council, et al.*, Cause No. 14-08-19,607, 82<sup>nd</sup> District Court of Robertson County

Mr. Russ:

As you know, I represent Hearne City Council members Hazel Embra, Joyce Rattler, and Lashunda White in *In re Milton Johnson, Hazel Embra, Joyce Rattler, and Lashunda White*, Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas. According to the agenda for the December 19, 2014 special meeting of the Hearne City Council, you are scheduled to meet with the council in executive session, then the council is scheduled to "discuss and act upon the authority the city attorney has in representing the city and the council in pending litigation in the 82<sup>nd</sup> District Court regarding the alleged recall petition against Maxine Vaughn."

It appears that you are trying to communicate with my clients *ex parte*, and I object accordingly. As you know, we are in unique circumstances insofar as you are representing one half of the city council against the other half, *i.e.*, my clients. The matters that you plan to discuss are directly related to the ongoing litigation in the Tenth Court of Appeals, where I am counsel of record. To remove any doubt about your conflict, my clients have also authorized me to represent them in the district court proceeding listed above. Accordingly, I must be present during any attempt to communicate with my clients about the district or appellate court proceedings, or you will be in violation of Disciplinary Rule 4.02.

As discussed in our previous correspondence, the City of Hearne is officially neutral in the cases listed above because of the 3-3 deadlock on the council. You are already hopelessly conflicted because you arbitrarily chose to represent the interests of one half of the council versus the other, and because you did so without notifying the entire council, much less seeking its approval. I strongly urge you to review Disciplinary

Rule 1.12 and its comments in their entirety, as well as 315 S.W.3d 279, 285 (Tex.App.—Fort Worth 2010, *orig. proceeding*)(discussing Rule 1.12). Insofar as you are asking (much less *advising*) the council to retroactively and/or prospectively approve your unauthorized activities, your conflicts of interest are compounded. Naturally, you have a strong incentive to persuade the council that your actions were legal and ethical, so you will be acting as an advocate for yourself at the same time you are supposed to be acting as an unbiased legal adviser to the council.

At this stage, the *only* advice that you may give the council in these matters is to retain neutral and unbiased counsel for further advice. Once again, I must urge you to contact the legal ethics hotline at the State Bar of Texas before proceeding any further. Thank you in advance for your attention to these matters.

Sincerely,

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

Ty Clevenger

cc: Councilwoman Hazel Embra  
Councilwoman Joyce Rattler  
Councilwoman Lashunda White  
Mr. Dirrell S. Jones, Asst. Disciplinary Counsel  
State Bar of Texas  
Mr. Bryan F. “Trey” Russ, III, Asst. City Attorney

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● Re: Letter to Ty Clevenger

People



me

Dec 19 at 11:01 PM

To: Bryan Russ

CC: James McCullough, Trey Russ

Mr. Russ,

You are misrepresenting what I wrote, and I think you know it. I never said that a "majority of the council" wants you to do anything. My point is the same as it has been all along: you did not get permission from a majority of the council before filing the counterclaims, and the council has now made it clear that you will never get approval for your unauthorized actions.

You don't have to take my word for anything, because you know as well as anyone that you never sought nor obtained the council's approval before purporting to act on its behalf. You have the burden of proving majority support for your actions, not me. Meanwhile, it is obvious you have never called the state bar's ethics hotline, because we both know that the bar would have told you that your actions are prohibited by the professional rules.

If you continue on this course of conduct, you are only strengthening the civil, criminal, and professional misconduct cases against yourself.

Ty Clevenger

**From:** Bryan Russ <bryanruss@palmosruss.com>**To:** Ty Clevenger <tyclevenger@yahoo.com>**Cc:** James McCullough <jamesmccullough@palmosruss.com>; Trey Russ <treyruss@palmosruss.com>**Sent:** Friday, December 19, 2014 10:24 PM**Subject:** Re: Letter to Ty Clevenger

dear mr. Clevenger:

as you know i am out of town. i did not appear at the city council meeting tonight. so, you will forgive me if i don't take your word that a "majority of the council" wants me to ignore the requirements of the city charter and allow the city to be forced into a recall election over a petition that does not meet the requirements of the charter.

if you are correct and majority of the council wants me to dismiss the counterclaim and dismiss my response to your petition for mandamus then of course, i will honor the majority's decision.

but, if you don't mind, i will just confirm that for myself.

Bryan F.Russ,Jr.  
Palmos,Russ,Mccullough & Russ L.L.P  
306 Cedar St.  
Hearne,Texas 77859  
Phone: 979-279-3456  
Fax: 979-279-3712

\*this message is privileged and confidential\*

**From:** Ty Clevenger <tyclevenger@yahoo.com>**To:** Bryan Russ <bryanruss@palmosruss.com>**Cc:** James McCullough <jamesmccullough@palmosruss.com>; Trey Russ <treyruss@palmosruss.com>**Sent:** Friday, December 19, 2014 9:44 PM**Subject:** Re: Letter to Ty Clevenger

Mr. Russ,

My clients distributed a written statement at the council meeting this evening, and it is my understanding that Mr. McCullough was provided with a copy. It is now unequivocally clear that you do not have the support of a majority of the council, and that your actions in the Tenth Court of Appeals and the 82nd District Court were and are unauthorized. Per my clients' statement, I will file a motion to strike your pleadings, a motion to disqualify you, and a motion for sanctions if you do not withdraw all of your unauthorized pleadings by noon on Monday,



## Exhibit 4



TY CLEVINGER

Attorney at Law

1095 Meadow Hill Drive  
Lavon, Texas 75166

telephone (979) 985-5289  
facsimile (979) 530-9523

---

August 22, 2013

Mr. Chad Childers, Administrative Attorney  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711-2487

*Via facsimile*  
(512) 427-4167

RE: 201302595 – Ty Odell Clevenger – Bryan Franklin Russ, III  
201302596 – Ty Odell Clevenger – Bryan Franklin Russ, Jr.  
James H. McCullough (SBOT #13503800)  
Molly Hedrick (SBOT #09370595)

Dear Mr. Childers:

I write in response to the affidavits provided by Bryan F. Russ, Jr. on August 21, 2013. While attempting to save his own skin, Mr. Russ has only illustrated his willingness to ignore conflicts of interest. All of the affidavits appear to have been drafted by the same person, *i.e.*, Mr. Russ, and the affidavits from each of the mayors say essentially the same thing, with minor variations.

Consider the fact that each of those affidavits purports to waive Mr. Russ's conflicts. As a municipal attorney, Mr. Russ should know that in Texas, municipalities can only act through their city councils. "The only way that a political subdivision of the state can act is by and through its governing body.... It is a well-settled rule that the governing authorities of cities can express themselves and bind the cities only by acting together in a meeting duly assembled...." *DeSoto Wildwood Development, Inc. v. City of Lewisville*, 184 S.W.3d 814, 826 (Tex.App. – Ft. Worth 2006), quoting *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.*). "[S]ince a city acts through its council, not through its counsel, even statements by an individual council member are not binding on the City." *DeSoto*, 184 S.W.3d at 826, citing *Corpus Christi v. Bayfront Assocs.*, 814 S.W.2d 98, 105 (Tex.App.-Corpus Christi 1991, writ denied).

Each of the mayors is only a single member of his respective city council, ergo the mayors cannot and have not waived anything. But that's really a secondary issue. Did Mr. Russ advise his municipal clients that they needed to seek independent legal advice about whether to waive his conflicts? Of course not. He just threw together some affidavits and quickly distributed them among the mayors in an attempt to save himself

from a bar grievance, either oblivious or indifferent to the fact that his interests conflicted with those of his municipal clients *on the very issue of waiving all his conflicts*.

Contrast this with the lawful and ethical way to handle such conflicts. Mr. Russ should have informed the respective city councils of his desire for a waiver, and he should have informed the city councils that he could not ethically give them a recommendation one way or another. The issue would have been placed on the agenda of the respective councils, and the *public* would have some input on whether the city attorney should be representing private clients against the city. Likewise, the voters might have opinions about whether the city attorney should be cross-examining and impeaching the city's police officers as part of his private criminal defense practice. After public deliberation, the city councils might very well decide to waive Mr. Russ's conflicts, and that would be fine. But the point remains that Mr. Russ had a duty to inform the councils and seek a waiver *before* he undertook representation of the private clients, not after he became the subject of a state bar investigation.

Mr. Russ can be quite likeable and even charming (when he is not stealing from you), and he is one of the primary political brokers in Robertson County, so I do not doubt that the mayors and the county judge would like to provide Mr. Russ with some political cover. But their affidavits may have created more problems for Mr. Russ, and for themselves.

I have enclosed a copy of a July 16, 2013 letter that I sent to the City of Hearne, wherein I requested documents pertaining to Mr. Russ's representation (or his firm's representation) of private clients against the city. I sent the same request to the cities of Calvert, Franklin, and Bremond. None of those municipalities had any responsive records. In other words, there is no record whatsoever that Mr. Russ (or his firm) notified the cities of his conflicts or sought waivers, much less obtained waivers.

In his affidavit, Mayor Ruben Gomez refers to "our practice and understanding" and elsewhere "our long standing practice." As noted above, Mayor Gomez can only speak for himself, not the city. In my August 19, 2013 letter, I noted that I have spoken with one current and two former Hearne City Council members who did not know that Mr. Russ was representing private clients against the city. If Mayor Gomez is telling the truth, where are the records?

Let's assume, for the sake of argument, that Mayor Gomez is right, *i.e.*, the entire city council knew what Mr. Russ was doing and authorized it. Is Mayor Gomez saying that the city council considered the issue and reached a decision outside of a city council meeting? In other words, is Mayor Gomez saying that the city council has been acting in violation of the Texas Open Meetings Act? Is that what the other mayors are saying?

I don't think so. Mayor Greaves writes that the City of Calvert has "never objected" to Mr. Russ's practice of representing private clients against the city, but there is a big difference between "never objected" and informed consent, much less a waiver granted by the city council. Did Mr. Russ inform the respective city councils and seek a

waiver, or did the occasional council member learn about it on his own and keep it to himself? It would be one thing to declare that Mr. Russ informed the city council of his practices in 2005 and obtained a waiver, but the meeting minutes were destroyed when the Calvert City Hall burned in 2007. Instead, it appears that the mayors are trying to give Mr. Russ some political cover with vague references to understandings and practices. I encourage you to call Mayor Gomez (979-279-3461), Mayor Greaves (979-364-2881), and Mayor Ellison (979-828-3257) to find out the specifics of when and whether Mr. Russ informed the *entire* city councils, and when and whether a waiver was granted.

In his affidavit, tax attorney Alan Bristol claims that “[i]n each occasion, to the extent anyone may believe there is a conflict, the conflict is waived and no objection is made.” Mr. Bristol, however, is not in a position to waive conflicts, even when he is appearing in court on behalf of the city. *See DeSoto*, 184 S.W.3d at 826 (“a city acts through its council, not through its counsel...”). And Mr. Bristol has a conflict of his own. In my August 19, 2013 letter, I noted Section 4.05 of the Hearne City Charter: “The City Attorney, or such other attorneys selected by him with the approval of the City Council, shall represent the city in all litigations.” So Mr. Bristol has been asked to waive the conflict of the attorney who hires and supervises him?

All that said, Mr. Russ’s vigorous defense in response to this issue is almost a distraction. The conflicts with his municipal clients are small potatoes when compared with the uncontested evidence of a felony theft from his clients in *Velnon, L.L.C. v. Unknown Heirs of Elizabeth Warren*. Mr. Russ knows his actions were indefensible in that case, so he has not even tried to explain himself. Likewise, he has not attempted to explain the unlawful deposition of Alan Eppers, his undisclosed attorney-client relationship with Judge Stem, or his role in *Erickson v. Milstead*. Even now, after being presented with unequivocal proof that the City of Calvert is a contingent beneficiary of the Marium Oscar 1992 Trust (see *Marsh v. Frost National Bank*, 129 S.W.3d 174, 177-178 (Tex.App.–Corpus Christi 2004), cited in my August 9, 2013 letter), Mr. Russ continues to represent John Paschall against the interests of the City of Calvert. Has Mr. Russ requested a waiver from the Calvert City Council in that case? Of course not. Perhaps he will quickly draft another affidavit for the mayor.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a stylized, flowing script.

Ty Clevenger

P.S. I am not certain why Mr. Russ sought an affidavit from Robertson County Judge Jan Roe. The county attorney (Coty Siegert) is elected by the voters, and I have not

alleged that Mr. Russ or Mr. Siegert have any conflict vis-à-vis representation of the county.

cc: Mr. Bryan F. Russ, Jr.  
Mr. Bryan F. Russ, III  
The Hon. Coty Siegert, County and District Attorney  
Robertson County  
Robertson County Commissioners Court  
Hearne City Council  
Calvert City Council  
Franklin City Council  
Bremond City Council

## Exhibit 5

## AFFIDAVIT

My name is Hazel Embra, I am greater than 18 years of age and competent to testify, and I do testify as follows based on my own personal knowledge and under penalty of perjury, as witnessed by my signature below:

1. I am a member of the Hearne City Council, and I was elected to the city council in May of 2014 along with council members Joyce Rattler and Lashunda White. We are three of the four relators in *In re Milton Johnson, et al.*, Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas, and hereinafter I will refer to the three of us as the "Relators."
2. The Hearne City Council has five members, plus the mayor, who serves as the presiding officer. Prior to our election, the mayor did not vote in council meetings unless there was a tie. After our election, when we began opposing some of the initiatives of Hearne City Attorney Bryan F. "Rusty" Russ, Jr., Mr. Russ advised Mayor Ruben Gomez to start voting in order to create a 3-3 deadlock on the council.
3. On or about August 1, 2014, various citizens of Hearne presented a petition to recall council member Maxine Vaughn, but she, Mayor Gomez and council member Michael Werlinger repeatedly blocked the Relators' efforts to schedule a recall election.
4. On or about August 19, 2014, the Hearne Citizens Oversight Committee sued the City of Hearne in Cause No. 14-08-19,607, 82<sup>nd</sup> District Court of Robertson County. The plaintiffs asked the district court to order the City of Hearne to schedule a recall election for Councilwoman Vaughn.
5. On or about October 17, 2014, Mr. Russ filed an answer in the foregoing case, and he asserted a counter-claim on behalf of the City of Hearne. Mr. Russ did not consult with the Hearne City Council before filing the answer and counter-claim, and he did not obtain the council's approval to answer or file the counter-claim.
6. On or about November 17, 2014, Mr. Russ and his son, Bryan F. "Trey" Russ, III, filed an amended counter-claim in Cause No. 14-08-19,607, purportedly on behalf of the Hearne City Council. Neither of the Russes consulted with the Hearne City Council before filing the counter-claim, and neither of them obtained the council's approval to file it.
7. On or about November 18, 2014, Mr. Russ and his son, Bryan F. "Trey" Russ, III, filed an amended counter-claim in Cause No. 14-08-19,607, purportedly on behalf of the Hearne City Council. Neither of the Russes consulted with the Hearne City Council before filing the counter-claim, and neither of them obtained the council's approval to file it.
8. After filing the answer and counter-claims Cause No. 14-08-19,607, the Russes sought payment from the City of Hearne for their unauthorized services in that case.

9. I can only conclude that the Russes filed the answer and the counter-claims without seeking the council's approval because they knew that any such request would be denied on a 3-3 vote. Likewise, I can only conclude that the Russes are pursuing the unauthorized claims because Rusty Russ wants to preserve his job as city attorney. That is so because the Relators have publicly stated their intention to terminate Mr. Russ as city attorney if they gain a working majority on the city council, *i.e.*, if Councilwoman Vaughn is recalled.

10. Exhibit 8 is a true and correct copy of a statement that was signed by the Relators and distributed at special meeting of the Hearne City Council on December 19, 2014. I attempted to read the statement publicly at the meeting, but Mayor Gomez prevented me from reading it aloud.

11. Through our attorney and our own direct statements, the Relators have repeatedly warned the Russes that they are acting without authority in Cause No. 14-08-19,607 and contrary to the official position of the City of Hearne. Nonetheless, the Russes will not cease and desist.

THE AFFIANT SAYS NOTHING FURTHER.

---

Hazel Embra

#### VERIFICATION

On this \_\_\_\_\_ day of December, 2014, Hazel Embra appeared before me and attested under oath that the foregoing affidavit was true and correct, based on her own personal knowledge, as witnessed by my signature and seal below.

---

NOTARY PUBLIC

## Exhibit 6



## AFFIDAVIT

My name is Joyce Rattler, I am greater than 18 years of age and competent to testify, and I do testify as follows based on my own personal knowledge and under penalty of perjury, as witnessed by my signature below:

1. I am a member of the Hearne City Council, and I was elected to the city council in May of 2014 along with council members Hazel Embra and Lashunda White. We are three of the four relators in *In re Milton Johnson, et al.*, Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas, and hereinafter I will refer to the three of us as the "Relators."
2. The Hearne City Council has five members, plus the mayor, who serves as the presiding officer. Prior to our election, the mayor did not vote in council meetings unless there was a tie. After our election, when we began opposing some of the initiatives of Hearne City Attorney Bryan F. "Rusty" Russ, Jr., Mr. Russ advised Mayor Ruben Gomez to start voting in order to create a 3-3 deadlock on the council.
3. On or about August 1, 2014, various citizens of Hearne presented a petition to recall council member Maxine Vaughn, but she, Mayor Gomez and council member Michael Werlinger repeatedly blocked the Relators' efforts to schedule a recall election.
4. On or about August 19, 2014, the Hearne Citizens Oversight Committee sued the City of Hearne in Cause No. 14-08-19,607, 82<sup>nd</sup> District Court of Robertson County. The plaintiffs asked the district court to order the City of Hearne to schedule a recall election for Councilwoman Vaughn.
5. On or about October 17, 2014, Mr. Russ filed an answer in the foregoing case, and he asserted a counter-claim on behalf of the City of Hearne. Mr. Russ did not consult with the Hearne City Council before filing the answer and counter-claim, and he did not obtain the council's approval to answer or file the counter-claim.
6. On or about November 17, 2014, Mr. Russ and his son, Bryan F. "Trey" Russ, III, filed an amended counter-claim in Cause No. 14-08-19,607, purportedly on behalf of the Hearne City Council. Neither of the Russes consulted with the Hearne City Council before filing the counter-claim, and neither of them obtained the council's approval to file it.
7. On or about November 18, 2014, Mr. Russ and his son, Bryan F. "Trey" Russ, III, filed an amended counter-claim in Cause No. 14-08-19,607, purportedly on behalf of the Hearne City Council. Neither of the Russes consulted with the Hearne City Council before filing the counter-claim, and neither of them obtained the council's approval to file it.
8. After filing the answer and counter-claims Cause No. 14-08-19,607, the Russes sought payment from the City of Hearne for their unauthorized services in that case.

9. I can only conclude that the Russes filed the answer and the counter-claims without seeking the council's approval because they knew that any such request would be denied on a 3-3 vote. Likewise, I can only conclude that the Russes are pursuing the unauthorized claims because Rusty Russ wants to preserve his job as city attorney. That is so because the Relators have publicly stated their intention to terminate Mr. Russ as city attorney if they gain a working majority on the city council, *i.e.*, if Councilwoman Vaughn is recalled.

10. Exhibit 8 is a true and correct copy of a statement that was signed by the Relators and distributed at special meeting of the Hearne City Council on December 19, 2014. Hazel Embra attempted to read the statement publicly at the meeting, but Mayor Gomez prevented her from reading it aloud.

11. Through our attorney and our own direct statements, the Relators have repeatedly warned the Russes that they are acting without authority in Cause No. 14-08-19,607 and contrary to the official position of the City of Hearne. Nonetheless, the Russes will not cease and desist.

THE AFFIANT SAYS NOTHING FURTHER.

---

Joyce Rattler

#### VERIFICATION

On this \_\_\_\_\_ day of December, 2014, Joyce Rattler appeared before me and attested under oath that the foregoing affidavit was true and correct, based on her own personal knowledge, as witnessed by my signature and seal below.

---

NOTARY PUBLIC

## Exhibit 7

## AFFIDAVIT

My name is Lashunda White, I am greater than 18 years of age and competent to testify, and I do testify as follows based on my own personal knowledge and under penalty of perjury, as witnessed by my signature below:

1. I am a member of the Hearne City Council, and I was elected to the city council in May of 2014 along with council members Hazel Embra and Joyce Rattler. We are three of the four relators in *In re Milton Johnson, et al.*, Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas, and hereinafter I will refer to the three of us as the "Relators."
2. The Hearne City Council has five members, plus the mayor, who serves as the presiding officer. Prior to our election, the mayor did not vote in council meetings unless there was a tie. After our election, when we began opposing some of the initiatives of Hearne City Attorney Bryan F. "Rusty" Russ, Jr., Mr. Russ advised Mayor Ruben Gomez to start voting in order to create a 3-3 deadlock on the council.
3. On or about August 1, 2014, various citizens of Hearne presented a petition to recall council member Maxine Vaughn, but she, Mayor Gomez and council member Michael Werlinger repeatedly blocked the Relators' efforts to schedule a recall election.
4. On or about August 19, 2014, the Hearne Citizens Oversight Committee sued the City of Hearne in Cause No. 14-08-19,607, 82<sup>nd</sup> District Court of Robertson County. The plaintiffs asked the district court to order the City of Hearne to schedule a recall election for Councilwoman Vaughn.
5. On or about October 17, 2014, Mr. Russ filed an answer in the foregoing case, and he asserted a counter-claim on behalf of the City of Hearne. Mr. Russ did not consult with the Hearne City Council before filing the answer and counter-claim, and he did not obtain the council's approval to answer or file the counter-claim.
6. On or about November 17, 2014, Mr. Russ and his son, Bryan F. "Trey" Russ, III, filed an amended counter-claim in Cause No. 14-08-19,607, purportedly on behalf of the Hearne City Council. Neither of the Russes consulted with the Hearne City Council before filing the counter-claim, and neither of them obtained the council's approval to file it.
7. On or about November 18, 2014, Mr. Russ and his son, Bryan F. "Trey" Russ, III, filed an amended counter-claim in Cause No. 14-08-19,607, purportedly on behalf of the Hearne City Council. Neither of the Russes consulted with the Hearne City Council before filing the counter-claim, and neither of them obtained the council's approval to file it.
8. After filing the answer and counter-claims Cause No. 14-08-19,607, the Russes sought payment from the City of Hearne for their unauthorized services in that case.

9. I can only conclude that the Russes filed the answer and the counter-claims without seeking the council's approval because they knew that any such request would be denied on a 3-3 vote. Likewise, I can only conclude that the Russes are pursuing the unauthorized claims because Rusty Russ wants to preserve his job as city attorney. That is so because the Relators have publicly stated their intention to terminate Mr. Russ as city attorney if they gain a working majority on the city council, *i.e.*, if Councilwoman Vaughn is recalled.

10. Exhibit 8 is a true and correct copy of a statement that was signed by the Relators and distributed at special meeting of the Hearne City Council on December 19, 2014. Hazel Embra attempted to read the statement publicly at the meeting, but Mayor Gomez prevented her from reading it aloud.

11. Through our attorney and our own direct statements, the Relators have repeatedly warned the Russes that they are acting without authority in Cause No. 14-08-19,607 and contrary to the official position of the City of Hearne. Nonetheless, the Russes will not cease and desist.

THE AFFIANT SAYS NOTHING FURTHER.

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Lashunda White

#### VERIFICATION

On this \_\_\_\_\_ day of December, 2014, Lashunda White appeared before me and attested under oath that the foregoing affidavit was true and correct, based on her own personal knowledge, as witnessed by my signature and seal below.

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NOTARY PUBLIC

## Exhibit 8

STATEMENT ON BEHALF OF HAZEL EMBRA,  
JOYCE RATTLER, AND LASHUNDA WHITE

I would like to read a written statement on behalf of myself and council members Joyce Rattler and Lashunda White. As you know, we have sued other members of this council in the Tenth Court of Appeals in an attempt to force the council to schedule a recall election for Councilwoman Maxine Vaughn. A related case is pending in the 82<sup>nd</sup> District Court of Robertson County. We have learned that Hearne City Attorney Bryan F. "Rusty" Russ, Jr. entered appearances and filed claims on behalf of the City of Hearne without notifying the city council, much less getting the council's approval. On December 16, 2014, our attorney asked Robertson County District Attorney Coty Siegert to initiate a criminal investigation, because there is overwhelming evidence that Mr. Russ violated Section 38.12 of the Texas Penal Code, which prohibits lawyers from filing claims without authorization. Any such violation is a third-degree felony. Our attorney also filed a bar grievance against Mr. Russ.

I encourage everyone on the council to read the December 16 letter to Mr. Siegert, as well as all of the correspondence between our attorney, Ty Clevenger, and Mr. Russ. Mr. Clevenger had previously warned Mr. Russ that state law requires authorization by majority vote of the city council before Mr. Russ claims to act on behalf of the city in court. Yet Mr. Russ has repeatedly purported to represent the city without informing the city council, much less obtaining the council's approval. Likewise, Mr. Russ and the attorneys at his law firm have repeatedly represented private clients in court *against* the City of Hearne, but without informing the city council, much less obtaining a waiver of their conflicts of interest.

Mr. Clevenger has already explained in writing that Mr. Russ has numerous conflicts of interest, further explaining that the rules governing lawyers restrict Mr. Russ and his law partner, James H. McCullough, from giving us any advice about the legality and propriety of Mr. Russ's actions. Instead, the Texas Disciplinary Rules of Professional Conduct obligate Mr. McCullough to recommend that we obtain *independent* legal advice about Mr. Russ's actions.

On today's agenda, Mr. McCullough seeks to speak with the city council in closed session regarding Mr. Russ's actions in *Hearne Citizens Oversight Committee v. Hearne City Council*, one of the cases where Mr. Russ was acting without authorization from the council. Apparently Mr. McCullough wants to convince us that Mr. Russ's actions were legal, and that we should approve of what Mr. Russ has done. We believe this discussion should be conducted in public rather than closed session, and our attorney has informed us that any discussion in closed session may violate the Texas Open Meetings Act. For that reason, we will not attend any such closed meeting.

Effective today, we are announcing the end of business as usual. As soon as we have a working majority on the council, we intend to terminate Mr. Russ as city attorney. We also plan to seek an outside audit of the city's finances, because we are aware of numerous instances where the council has awarded taxpayer funds to companies or projects owned by council members or their relatives, as well as a company owned by Mr. Russ and Mr. McCullough. That is why we intend to vote against Agenda Item 7 until we have more information about the project, because the project is owned by a council member and his mother. We will not approve any more expenditures on behalf of Mr. Russ's unauthorized litigation activities, and if necessary we will block approval of all accounts payable until those items are removed.

If Mr. Russ does not withdraw the unauthorized pleadings that he filed in the Tenth Court of Appeals and the 82<sup>nd</sup> District Court by noon on Monday, December 22, 2014, we have authorized our

attorney to file motions to sanction Mr. Russ, strike his pleadings, and disqualify him from appearing on behalf of the city. We may also ask the district court to enjoin Mr. Russ from purporting to represent the city in court without first seeking approval from the city council. Finally, we have read in local newspapers that Mr. Russ settled a case filed by Saad Querishi against former Hearne PD Officer Stephen Stem in September, but thus far Mr. Russ has not allowed us to see the settlement. That settlement is void until it is approved by the city council, and if Mr. Russ does not allow us to see that settlement within ten business days, we may take the matter to court.

Date: December 19, 2014

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Hazel Embra

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Joyce Rattler

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Lashunda White