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December 12, 2014

Mr. Bryan F. "Rusty" Russ, Jr., City Attorney
City of Hearne
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Via facsimile and email
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Mr. Bryan F. "Trey" Russ, III, Asst. City Attorney
City of Hearne
Hearne, Texas

Via facsimile and email
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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, 82nd 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