

To: Jayson Hoppe[HoppeJ@baycounty.net]
From: Tom Hickner
Sent: Wed 7/22/2015 2:25:36 PM
Importance: Normal
Subject: Fwd: Bay County Clerk
Received: Wed 7/22/2015 2:25:37 PM
Sent from my iPad

Begin forwarded message:

From: Amber Johnson <JohnsonA@baycounty.net>
Date: July 21, 2015 at 6:31:26 PM EDT
To: "Smith, Matthew T." <MSmith@ClarkHill.com>
Cc: Deanne Berger <BergerD@baycounty.net>, Tom Hickner <HicknerT@baycounty.net>
Subject: RE: Bay County Clerk

Matthew:

Thank you for that abbreviated response. It would be helpful if the information you intend to include in the affidavit were actually provided to my office so the County could consider those issues (and even potentially resolve this matter) without the necessity of a lawsuit. It would also be helpful if any information were a bit more detailed. For instance - on how many occasions has the Clerk been required to work until Midnight (or substantially later than close of office) to handle clerical duties? What type of clerical duties? I don't believe that anyone is arguing the Clerk should consistently be required to work until Midnight, so this information would in fact be quite helpful to me. Your e-mail is the first indication I have had that the Clerk is working until midnight (outside of elections, of course, when it is anticipated that would be necessary). I am sure that you would acknowledge your very brief e-mail response below does not provide me or the County Board with sufficient information to make an informed decision.

Specifically, what mandated "elected official duties" is the Clerk unable to perform at a serviceable level due to her either handling these clerical duties or due to these staffing issues? The fact that additional staffing requests have not been granted, standing alone, does not equate to a failure to fund the office at a serviceable level, in part because many of the non-mandated duties once performed by the office are no longer offered. While I understand that the Clerk made a decision to no longer provide some non-mandated services because of her staffing level (which is an issue separate from the serviceable funding issue), the focus for purposes of this dispute remains on what mandated duties she is unable to perform serviceably. Budget and staffing decisions are not made in a vacuum - information is needed from the Clerk - actual data, actual instances of her inability to perform a mandated service, instances where mandated services have been substantially delayed, actual "extra" hours that she is required to work on a consistent basis. This is information known to the Clerk but that has not been shared with my

office, the Board, or the County Executive. I am, once again, asking for that information to consider and evaluate her request. It is imperative that the Clerk share with the County exactly how the level of funding is prohibiting her from performing those mandated duties at a serviceable level.

You have indicated on several occasions that the Clerk would like to resolve this issue short of litigation. I too am hopeful that she does not want to expend unnecessary public funds on litigation if it can be avoided. I am once again offering to consider all information that the Clerk is willing to provide. I am once again requesting that the Clerk speak directly with me to provide me with that information.

Regards,

Amber L. Davis-Johnson, Attorney (P52811)
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-----Original Message-----

From: Smith, Matthew T. [<mailto:MSmith@ClarkHill.com>]
Sent: Tuesday, July 21, 2015 5:00 PM
To: Amber Johnson
Cc: Colaianne, Joseph W.
Subject: RE: Bay County Clerk

Good Afternoon Amber:

The Elected Clerk mans the counter, works until midnight handing clerical duties rather than her elected official duties. She has herself, her deputy and a temp at this time and that is it.

What employees does she have to man the counter besides her Deputy and a temp? Not once has her staffing requests nor budget increase been granted in the entire time she has been in elected office. An affidavit will be attached to the Complaint.

Matthew Tolbert Smith
CLARK HILL PLC

212 East Grand River Avenue | Lansing, Michigan 48906
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www.clarkhill.com

-----Original Message-----

From: Amber Johnson [<mailto:JohnsonA@baycounty.net>]

Sent: Monday, July 20, 2015 8:47 PM

To: Smith, Matthew T.

Cc: Tom Hickner; Deanne Berger

Subject: RE: Bay County Clerk

Dear Matthew:

Thank you for your suggestion. However, pursuant to civil counsel guidelines, I cannot authorize the retention of your firm because I have absolutely no basis to conclude that the Clerk cannot perform her duties at a "serviceable" level. I would appreciate the receipt of information - any information at all - from the Clerk identifying at least one area where she cannot perform her mandated duties at a serviceable level. I am not claiming that none exist or that many exist - I simply have been provided no information whatsoever to make such a determination, nor have I been provided with any information that her alleged inability to perform any mandated duties at a serviceable level is related to any budget adjustment or action relating to the enforcement or administration of the budget within the last 60 days. Perhaps rather than spending money on attorney fees in filing suit, the Clerk could provide me with some basis - any basis - to support the contention that she cannot perform her job duties at a serviceable level. For instance:

Which statutorily mandated function is she unable to perform at a serviceable level? What is the wait time? What is the back log? What if any mandated (NOT discretionary) function has been eliminated as a result of the County Board's failure to fund the Clerk? Is there an emergency immediately threatening the existence of any mandated function as a result of the Clerk's funding level? What budget adjustment or administrative action regarding the budget has occurred within the last 60 days that has made the Clerk unable to perform mandated duties at a less than serviceable level? Any information whatsoever would be most welcomed. I cannot justify the retention of outside counsel as "reasonable and necessary" when the matter could potentially be resolved by the Clerk simply providing information to my office. I also do not believe that the matter can be considered an exceptional or pressing emergency situation which would necessitate the retention of outside counsel when I immediately responded to the Clerk's stated concern with a request for information, which was denied.

I am totally committed to assisting the Clerk as well as the County Board in ensuring that the Clerk's office has a serviceable level of funding. If information is provided that establishes the Clerk is unable to complete her mandated duties at a serviceable level, I would inform the Board that they have a duty to increase her funding. However I cannot

make any recommendation without the necessary information. I would again encourage you and the Clerk to provide that information to my office as soon as possible.

Regards,

Amber L. Davis-Johnson, Attorney (P52811)
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-----Original Message-----

From: Smith, Matthew T. [<mailto:MSmith@ClarkHill.com>]
Sent: Monday, July 20, 2015 3:48 PM
To: Amber Johnson
Cc: Colaianne, Joseph W.
Subject: RE: Bay County Clerk

Good Afternoon Amber:

I would suggest that instead of spending money on outside consultant; the County first could allocate those funds to pay Clark Hill and we can work together to resolve this without litigation. I have been through a few of these and think a meeting between the parties and counsel could result in settlement, and if needed with a mediator for a morning. However, if you are not going to allocate any funds to pay Clark Hill PLC, I will have to file suit to get a court order. The Courts have always appointed us as counsel in these cases. Therefore, you could end up spending money on outside consultant than then for attorney in litigation.

If you are not going to fund an attorney for the County Clerk to try and resolve this dispute, I need to file suit right away. Your written letter was clear you will not pay for the Clerk's attorney regarding official business.

Matthew Tolbert Smith
CLARK HILL PLC

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