

THOMAS L. HICKNER
BAY COUNTY EXECUTIVE



DEBRA RUSSELL
Director, Administrative Services Department
russelld@baycounty.net

November 24, 2015

Cindy Luczak, Bay County Clerk
515 Center Avenue
Bay City, Michigan 48708

Re: Amended Service Enhancement Requests and 2016 Budget Request

Dear Cindy:

I am in receipt of your most recent amended Service Enhancement Requests (SER). Unfortunately, the SER for the two additional full time positions you are requesting did not fully answer the questions I asked in my last correspondence. However, I am now in receipt of your Answers to Interrogatories submitted by your attorneys in the Circuit Court case. While not as detailed or expansive as I would like, those Answers do provide at least some additional information on which I can rely to make a recommendation to the Board, so I have attached copies of those interrogatory answers to your Amended SERs and will be considering them together as a packet.

I believe it is appropriate to recommend one additional full time employee in the Clerk's Office for the 2016 budget based on your assertions that there are statutory duties (for which you provided examples) that you are responsible but are unable to complete.

However, I cannot recommend the second full time employee or the part-time contractual employee. As previously pointed out, a contractual employee cannot perform all of the Concealed Pistol License (CPL) services without being in violation of the Steelworkers' contract. In addition, the County is already subsidizing from the General Fund the cost of CPL licenses that are processed through your office. As the general fund no longer gets the CPL fees directly because of the creation of the CPL fund, the County may use the monies in the CPL fund to reimburse the general fund for the subsidy it is currently providing, which will be more than is accumulated in the CPL fund. The County will continue to provide that subsidy and support to your office through your current staff and the additional staff member (should the Board approve my recommendation).

515 Center Avenue, Suite 402, Bay City, MI 48708-5125 (989) 895-4130
FAX (989) 895-7658 TDD (hearing impaired) (989) 895-4049 www.baycounty-mi.gov

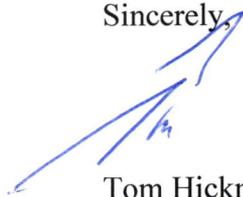
Cindy Luczak, Bay County Clerk

November 24, 2015

Page Two

Thank you for finally providing this information so that I had some of the information necessary to make a thoughtful and factually supported recommendation. Because my recommendations were due to the Board some time ago (October 1st) and prior to my receipt of your answers to Interrogatories and Amended Service Enhancement Requests, I will inform the Board of my recommendation by copying them on this correspondence.

Sincerely,

A handwritten signature in blue ink, appearing to read "TH", is written over the word "Sincerely,".

Tom Hickner
County Executive

cc: Board of Commissioners
Bob Redmond
Tim Quinn
Crystal Hebert

CLARK HILL

Joseph W. Colaianne
T 517.318.3029
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212 East Grand River Avenue
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November 17, 2015

Bay County Circuit Court
Attn: Clerk of the Court
1230 Washington Ave., Suite. 725
Bay City, Michigan 48708

Re: *Cynthia A. Luczak, Bay County Clerk, in Her Capacity as an elected official v
Thomas L. Hickner, Bay County Executive, in his capacity as an elected official,
Bay County Board of Commissioners, the governing body for the County of Bay,
and Kim Mead, Bay County Circuit Court Administrator*
Case No. 15-3583-AW

Dear Sir or Madam:

Enclosed for filing, please find an executed original Proof of Service stating that a signed copy of Plaintiff's Responses to Defendants' First Set of Interrogatories to Plaintiff were served upon opposing counsel on today's date in the above-referenced matter.

The Judge's copy was sent to Chief Judge, Paul H. Chamberlain at his Mt. Pleasant address.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

CLARK HILL PLC



Joseph W. Colaianne

JWC:kmt
Enclosure

cc: Hon. Paul H. Chamberlain [w/Enclosure]
Client [w/Enclosure]
Mr. Alexander D. Bommarito [w/Enclosure]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR BAY COUNTY

CYNTHIA A. LUCZAK, BAY COUNTY
CLERK in her capacity as an elected official,

15-3583-AW (KS)

Hon. Paul H. Chamberlain

Plaintiff,

v

PROOF OF SERVICE

THOMAS L. HICKNER, BAY COUNTY
EXECUTIVE, in his capacity as an elected
official, BAY COUNTY BOARD OF
COMMISSIONERS, the governing body for
the County of Bay, 18TH JUDICIAL CIRCUIT
COURT, and KIM MEAD, Bay County
Circuit Court Administrator,

Defendants.

CLARK HILL PLC
By: Matthew T. Smith (P46754)
Joseph W. Colaianne (P47404)
Attorneys for Plaintiff
212 E. Grand River Ave.
Lansing, MI 48906
(517) 318-3100

BOMMARITO LAW OFFICES, PLLC
By: Alexander D. Bommarito (P62704)
Attorney for Defendants
180 E. Washington Road
PO Box 189
Freeland, MI 48623
(989) 573-5300

PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

Kinneitha M. Thomas, being duly sworn, depose and say that on November 17, 2015, I served a signed copy of *Plaintiff's Responses to Defendants' First Set of Interrogatories to Plaintiff*, along a copy of this Proof of Service upon:

Mr. Alexander D. Bommarito
BOMMARITO LAW OFFICES, PLLC
180 E. Washington Road
P.O. Box 189
Freeland, Michigan 48623

Service was accomplished via First Class Mail by placing same in a United States mail depository, enclosed in an envelope bearing postage fully prepaid and addressed properly.


Kinneitha M. Thomas

Subscribed and sworn to before me
this 17th day of November, 2015.



Deborah A. Anderson, Notary Public,
Livingston County, Michigan.
Acting in Livingston County, Michigan.
My Commission Expires: 01/234/2020.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR BAY COUNTY

CYNTHIA A. LUCZAK, BAY COUNTY
CLERK in her capacity as an elected official,

Plaintiff,

15-3583-AW (KS)

Hon. Paul H. Chamberlain

v

THOMAS L. HICKNER, BAY COUNTY
EXECUTIVE, in his capacity as an elected
official, BAY COUNTY BOARD OF
COMMISSIONERS, the governing body for
the County of Bay, 18TH JUDICIAL CIRCUIT
COURT, and KIM MEAD, Bay County
Circuit Court Administrator,

Defendants.

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(989) 573-5300
Attorneys for Defendants

**PLAINTIFF'S RESPONSES TO DEFENDANTS'
FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Plaintiff Cynthia A. Luczak, Bay County Clerk, in her capacity as an elected official, by and through her attorneys Clark Hill PLC, submits the following as her response to Defendants' First Set of Interrogatories to Plaintiff.

ANSWER TO INTERROGATORIES

1. Please identify, in detail, the mandated/statutory functions which cannot be fulfilled due to the lack of serviceable funding, as alleged with Plaintiff's Complaint.

ANSWER:

Plaintiff objects to Interrogatory #1 because it is based on the faulty assumption that Plaintiff's cause of action is based on the lack of serviceable level of funding. Rather, pursuant to Plaintiff's First Amended Complaint, Plaintiff among other things, seeks an order compelling the County Executive to take immediate action to allocate and provide assistance within the existing 2014-15 county budget in order to assist Plaintiff in meeting her constitutional and statutory duties. See Plaintiff's First Amended Complaint. Without limiting the foregoing objection, the following are mandated/statutory functions that Plaintiff asserts are not being fulfilled with the current non-circuit court clerk staff that consists of the Plaintiff, her Chief Deputy, and one full-time clerical employee:

- MCL 445.1 *et seq.* (Carrying On Business Under Assumed or Fictitious Name, 1907 PA 101) requires that a "person shall not carry on, conduct, or transact business in this state under an assumed name... unless the person files ...in the office of the clerk ... certificate on a form furnished by the county clerk setting forth the name under which the business is owned is, or is to be, conducted or transacted..." and further requires the Clerk to notify business owners of the renewal of the assumed name, this mandated County Clerk activity has not been maintained since 2011.
- MCL 449.101 *et seq.* (Copartnerships, 1913 PA 1913), among other things, provides that "[N]o 2 or more persons shall hereafter be engaged in carrying on any business as copartners unless such persons shall first make and file with the county clerk of the county in which such copartnership business is or shall be located, a certificate in writing, to be signed by each, and verified by the affidavit of 1 of the members of said copartnership," and further requires the Clerk to notify "persons whose certificate will expire, renewal certificate forms, in triplicate ..." (MCL 449.101a). This mandated County Clerk activity has not been maintained since 2011.
- As Registrar of Vital Statistics, Plaintiff is the access point for Bay County residents to obtain a Concealed Pistol License (CPL). MCL 28.425a mandates that the County Clerk serve as the Clerk for the county's concealed weapons licensing board which has exclusive authority to issue, deny, revoke, or suspend a license to carry a concealed pistol. As Clerk for the Concealed Weapons Licensing Board, the Clerk is required to attend every meeting of the Concealed Weapons Licensing Board, prepare and maintain all official minutes, and ultimately issue CPLs to applicants that are approved. The detailed and permanent minutes of the Concealed Weapons Licensing Board from November 2014, April 2015, May 2015, June 2015, July 2015, and August 2015, have not been completed. In addition, the Clerk is also responsible for timely notifying permit holders when a permit has been revoked or suspended but has not been able to issue timely notifications because of the lack of available time and resources. Many notifications have yet to be sent notifying applicants of their permit status. It should be noted, that effective December 1, 2015 the Concealed Weapons Licensing Board will be eliminated and a new process and forms for the issuance of concealed weapon permits must be in place in order to comply with new requirements pursuant to Michigan Public Act 3 of the Public Acts of 2015. The Clerk will be responsible for: storing and maintaining all records related to the

issuance of concealed weapon licenses; the issuance of licenses to carry concealed pistol; the issuance of notices of statutory disqualification, notices of suspensions, notices of denials, and notices of revocations; the issuance of emergency licenses in the event that an individual has obtained a personal protection order; and the retention and destruction of concealed pistol records at the direction of the Michigan State Police. See MCL 28.425a, and 28.425b, as amended by Michigan Public Act 3 of the Public Acts of 2015. The Clerk maintains there is an immediate concern she will not be able to comply with Act 3 with the current non-circuit court staff absent assistance from Defendants.

- Pursuant to the Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 *et seq.*, among other things, requires candidates for local political office to file with the County Clerk (*i.e.* filing official, MCL 169.207), quarterly campaign finance disclosure statements, in addition to pre-primary election, post primary election, pre general election and post general election reports, the failure of which results in fines to a candidate. MCL 169.217; 169.236. The County Clerk is required to notify candidates for local political office when a candidate fails to file the required report, and impose and collect fines under Michigan election law. As a result of not implementing the campaign finance indexing and reporting computer software system, along with the lack of available time due to daily operations and administration of her office, the Clerk has been unable to notify candidates for local political office regarding the July 2015 filing of quarterly campaign finance disclosure statements in accordance with her mandated responsibilities pursuant to the Michigan Campaign Finance Act.
- MCL 168.23 mandates that the County Clerk serve as secretary to the County Election Commission which, among other things, presides over appointments of certain county officials when there is a vacancy. In 2014, the Election Commission presided over the appointment of County Register of Deeds following the retirement of the former county Register of Deeds. The Election Commission held approximately five (5) sessions over the course of a couple of months. The minutes from the sessions have not been completed. In addition, the Clerk also presided over the recall of Bangor Township supervisor in May 2015. The Election Commission held at least three (3) sessions. The permanent minutes have yet to be completed.
- Pursuant to MCL 333.2889; 333.2890 [Public Health Code, 1978 PA 368, as amended], the County Clerk is required to “flag” missing person vital records with immediate action in the event a child is kidnapped and there is an attempt to obtain an unauthorized record, but due to limited staff, this action has not been addressed since June 2015.
- MCL 333.2864 [Public Health Code, 1978 PA 368, as amended], mandates that before the 5th day of each month, Clerk of the Circuit Court is required to file with the state registrar a report of divorce proceedings in the court for the preceding month. When a divorce is granted the Clerk shall sign and file with the state registrar together with monthly reports. The 18th Circuit Court generates a report that the Clerk receives usually in February of each year. This report should be reviewed and vital statistical data compiled, but has not been completed for over a five-year period.

- As record keeping has become more automated with loads of information needing to be imputed and stored electronically, the Clerk and her non-circuit court staff, when not responding to requests for vital statistical information and court information (e.g. civil judgments, divorce decrees, conviction records) must also verify information imputed and stored electronically to ensure it accurately reflects the written records on file. However, since 2004 the County Clerk's staff has been unable to comply with the mandated State of Michigan record retention requirements (MCL 600.1428; MCR 8.119(D); and 8.119(K); General Records Retention and Disposal Schedule #16 – Michigan Trial Courts, approved November 8, 2006) by reviewing, verifying, organizing and filing Circuit Court microfilm images of circuit court proceedings and orders, and as a result of a backlog of 10 years of records that are required to be indexed and filed, remain in an indeterminate state and not readily accessible.
 - As Registrar of Vital Statistics, the County Clerk is responsible for recording and maintaining all vital statistics occurring in Bay County which includes, birth certificates, death certificates, marriage certificates, notary public licenses, veterans' discharge licenses, assumed name certificates for businesses, and business co-partnership filings. Due to the extensive and diverse functions required of the County Clerk and her staff, each working day can and often presents different and multiple tasks, with limited time available to meet the demands from the public, courts (in and outside of Bay County), federal, state and local governments, and law enforcement agencies. For example requests for birth, death and marriage certificates, certification of convictions, expungement, civil judgments, indexing and filing circuit court documents that come not only from the public, but from law enforcement agencies, court systems and other governmental agencies (e.g. Michigan Department of Community Health), in and outside of Bay County. Responding to requests for birth, death and marriage certificates, certification of convictions, expungement, civil judgments, indexing and filing circuit court documents, requires time for the research, verification and retrieval of information depending on the request. Despite the Plaintiff implementing cost saving measures by offering to the public the ability to order birth, death and marriage certificates online through the county's website, due to the loss of two full time employees in 2011, as well as the daily operations and demands of the workload placed on the two remaining non-circuit court employees, Plaintiff is the sole person responding and completing the online orders. Absent Plaintiff personally working 10-12 hour days, often coming in before the office is open and/or staying as late 11:00 p.m., filling online orders would not get done. Even, then her response(s) to requests from the public and public agencies is delayed.
2. Please identify specific instances where in the mandated functions that could not be fulfilled due to the lack of serviceable funding, as identified in answer to Interrogatory No. 1, stating which service was not provided, the dates the service was not provided, the amount of any backlog to provide the service and the cause for not providing said services for the last twelve (12) months.

ANSWER:

Plaintiff objects to Interrogatory #2 because it is based on the faulty assumption that Plaintiff's cause of action is based on the lack of serviceable level of funding or a request for an increase in the Clerk's 2014-15 budget. Rather, pursuant to Plaintiff's First Amended Complaint, Plaintiff, among other things, seeks an order compelling the County Executive to take immediate action to allocate and provide assistance within the existing County 2014-15 budget in order to assist Plaintiff in meeting her constitutional and statutory duties. See Plaintiff's First Amended Complaint. Without limiting the foregoing objection, please see Plaintiff's Answer to Interrogatory #1.

3. Please identify those duties of your office which you allege are being impaired and/or infringed by the County Executive and/or Board, as alleged within your Complaint.

ANSWER:

Please see Plaintiff's Answer to Interrogatories #1 and #2. In addition, due to insufficient assistance from Defendants County Executive and/or Board, Plaintiff's management of her office has been impaired. For example, the Clerk has been forced to close the office from Noon to 1:00 pm each day to provide a lunch break for staff as there is insufficient staff available to alternate during that time period. Moreover, due to the volume of service requests, the Clerk has personally worked the counter of the County Clerk's office assisting with service requests from taxpayers, and working before and after business hours, sometimes 10-12 hour days in order to meet her statutory duties. This leaves her insufficient time to complete or administer other statutory duties (see Plaintiff's Answer #1). The Clerk has been forced to juggle days off with little or no staffing to operate the Clerk's office, and has been unable or has found it exceedingly difficult to find additional time to close out financials, general management of her office, attend County board sessions and/or attend the Concealed Weapons Licensing Board meetings. Due to lack of assistance from Defendants, notarization of documents was eliminated, as well as passport processing in 2011 (over 500 passports per year were processed at a cost of \$25 each). The daily "counter functions" of the Clerk's office takes away time necessary for record review, verification and recording that must be completed as required by state law.

In an effort to assist with her responsibilities under the Michigan Finance Act and record retention, the County Executive and/or Board refused to approve campaign finance software requested in November 2014 and record retention system software. The campaign finance indexing and reporting computer software system and the record retention system software were accounted for in the Clerk's 2015 budget and thus, did not require a budget amendment. However, the Board of Commissioners failed to approve this request impairing Plaintiff's ability to comply with her statutory duties.

Plaintiff maintains that her purchase requests for goods and/or services to the County Executive and Board of Commissioners are unusually delayed and/or funding withheld as compared to other county-wide elected officials and county departments even though she has provided sufficient information to the County Executive and Board. For example, in February 2015 she submitted purchase requests for the programming services and ballot printing for the May 2015 election. This

process takes weeks to prepare and involves the coordination between a number of people, including her office and the State of Michigan. However, despite the fact that the State of Michigan would be reimbursing the County for the full cost of the May 2015 election, the County Executive staff refused to process her purchasing requests insisting that she submit a sole source letter or new bid request even though since 2005, Bay County has utilized the same vendor and the only vendor, who could service the election equipment and had, just a year before, approved the vendor used for the printing of ballots. Plaintiff maintains that she has experienced unusual delays in the processing of purchasing requests necessary for the elections by the County Executive staff.

In 2015, Plaintiff was informed by the County corporation counsel that her staffing concerns would require a new study of the County Clerk's operations by the County Executive, and the Board, allocated up to \$6,000 of taxpayer dollars for said study on July 14, 2015. Plaintiff maintains that no other county-wide official has been subjected to or required to undertake a study of their respective operations before receiving assistance. Plaintiff maintains that the suggested operational study, which would be under the complete control of the County Executive, is unlikely to be objective and meaningful, and was designed to control her constitutional office.

Plaintiff, as a constitutional officer, and an important check on the other branches of government and departments, maintains that she has an inherent authority to hire independent legal counsel to assist her with defending and asserting her duties and functions of her office. In June 2015, corporation counsel effectively denied Plaintiff's request for the assistance of counsel. The county's policy regarding retention of outside legal counsel impairs and infringes on Plaintiff's authority.

4. Please identify specific instances wherein any duties of your office have been impaired or infringed by the County Executive and/or the Board, as identified in answer to Interrogatory No. 3, stating which duty was infringed or impaired, and the dates of the alleged infringement or impairment for the last twelve (12) months.

ANSWER:

Please see Plaintiff's Answer to Interrogatories #1, #2 and #3.

5. Please identify how many times you requested that you be allowed to direct the Deputy Circuit Court Clerk to perform regular County Clerk duties and were denied.

ANSWER:

Plaintiff objects to Interrogatory #5 because it is vague, ambiguous, irrelevant, and based on the faulty assumption that Plaintiff's cause of action is based on a request to be allowed to direct the Deputy Circuit Court Clerk to perform regular County Clerk duties. Plaintiff is not requesting the ability to utilize clerks assigned to the circuit court to perform "regular" county clerk duties. Please see Plaintiff's First Amended Complaint. Notwithstanding the foregoing, Plaintiff recalls speaking with the Court Administrator once in 2012 and another time in 2013 requesting assistance with circuit court related duties that were being performed by non-circuit court clerk

staff but was instructed by the Court Administrator under no uncertain terms would she be allowed to utilize the circuit court staff.

6. Please identify to whom Plaintiff requested she be allowed to direct the Deputy Circuit Court Clerk's to perform regular Clerk duties at her office and had been denied, as identified in Interrogatory No. 4.

ANSWER:

Plaintiff objects to Interrogatory #6 for the same reasons stated in Plaintiff's Answer to Interrogatory #5. Notwithstanding the foregoing, Plaintiff recalls speaking with the Court Administrator once in 2012 and another time in 2013 requesting assistance with circuit court related duties that were being performed by non-circuit court clerk staff but was instructed by the Court Administrator that under no uncertain terms would she be allowed to utilize the circuit court staff.

7. Please identify each and every time Plaintiff has been denied access to any record of the Circuit Court.

ANSWER:

Plaintiff objects to Interrogatory #7 because it is vague and ambiguous. Notwithstanding the foregoing, Plaintiff does not recall being denied access to any record of the Circuit Court.

Date: 11/17/2015

Cynthia A. Luczak
CYNTHIA A. LUCZAK

Subscribed and sworn before me

Katrena K Rappuhn

Katrena K Rappuhn

this 17th day of November 2015.

Notary Public, Saginaw County, MI
Acting in Bay County
My commission expires: 10-8-2018

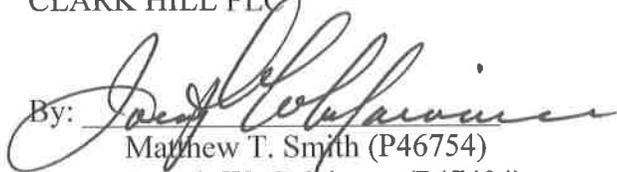
KATRENA K RAPPUHN
Notary Public, State of Michigan
County of Saginaw
My Commission Expires 10-8-2018
Acting in the County of Bay

Pursuant to MCR 2.309 (B) as to objections stated herein.

Respectfully submitted,

CLARK HILL PLC

Dated: November 17, 2015

By: 

Matthew T. Smith (P46754)

Joseph W. Colaianne (P47404)

CLARK HILL PLC

Attorneys for Petitioner, Cynthia Luczak

212 E. Grand River Ave.

Lansing, MI 48906

(517) 318-3100