

# CLARK HILL

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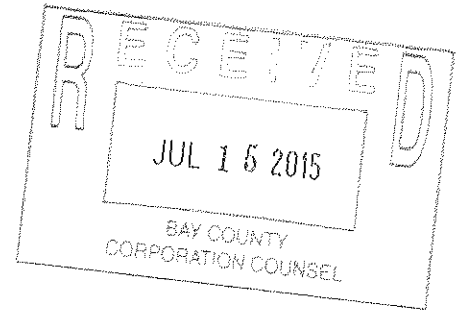
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July 13, 2015

Ms. Amber Davis-Johnson, Esq.  
Bay County Corporation Counsel  
515 Center Avenue, Suite 402  
Bay City, MI 48708-5941

Re: Legal Representation – Bay County Clerk  
Litigation - Hold



Dear Ms. Davis-Johnson:

Please be advised that Cynthia Luczak, Bay County Clerk has retained Clark Hill, PLC to assist her in defining the legal issues involved, negotiating a resolution of these legal issues, or if necessary bringing suit to declare the rights of her office and to protect the constitutional and statutory duties of her office. Ms. Luczak forwarded your most recent letter to my attention concerning the above referenced matter.

Your decision to delay Ms. Luczak's request for the retention of legal counsel pending the receipt of an "independent legal opinion" on whether there is a non-frivolous, legal basis for her to proceed with legal action is not appropriate given the reasons articulated in her previous correspondence to you. As you know the attorney-client relationship demands fidelity between attorney and client, including upholding the privilege of attorney-client communications. You have asked Ms. Luczak to consult with a law firm of your choosing, while informing her that her communications would not be subject to this important privilege. This is not acceptable. We maintain that Ms. Luczak, as a constitutional officer, has an absolute right to retain counsel of her choosing.

Secondly, engaging an expert consultant to conduct an independent analysis of her office work flow, exemplifies the unreasonable hurdles and disparate treatment by the County Executive and the County Board of Commissioners ("Board") continue to impose on her official position and the Bay County Clerk's office. One need only review of the minutes and resolutions of the Board, and county budgets dating back over the last 10 years, and you will find no other department or agency, including the offices of the Sheriff, Register of Deeds, Treasurer or County Executive that have had to go through more barriers in order to receive the approval for the hiring additional personnel or budget amendments. Indeed, nearly every request Ms. Luczak has made to the Board for additional assistance or other requests have either been denied, delayed or diminished.

Ms. Luczak has indicated that she would prefer to find an amicable resolution to this matter without the necessity of litigation. To this end, we are willing to work with you, independent counsel, and/or the expert consultant in negotiating her staffing and other needs that are necessary and appropriate for her office.

Please contact me to discuss. If I do not hear from you within the next five (5) days, I will assume that we are at an impasse and will take appropriate legal action.

### **Litigation Hold**

In connection with matter, the parties involved are required to preserve documents and materials, regardless of medium or storage location, that may be relevant to the claims asserted by the County Clerk. This litigation hold notice ("Litigation Hold") outlines the steps that you must take immediately. Until further notice, it is critical that all documents relevant to this matter be preserved. If you have any questions or concerns about the requirements set forth in this Litigation Hold, please direct them to me at the number and email address listed above.

### **Subject Matter of Documents to Preserve**

The subject matter of the County Clerk's claim(s) involve the acts and omissions of each County Commissioner, the County Executive, County Departments, and Circuit Court administration relating to the hiring of county staff including but not limited to, the hiring of staff of the Sheriff, Register of Deeds, Treasurer, and County Executive; approving or modifying county budgets of the County Clerk, Sheriff, Register of Deeds, Treasurer, and County Executive and county departments; and information and documentation relevant to Ms. Luczak claim of disparate treatment by members of the County Board of Commissioners and the County Executive.

### **Types of Documents to Preserve**

The obligation to preserve documents and materials applies to tangible information of any kind, whether in hard copy or electronically stored.

Hard-copy documents and materials include, but are not limited to, letters, memoranda, notes, plans, surveys, models, drawings, designs, calendars, diaries, reports, studies, statistical or informational accumulations, analyses, tabulations, records of meetings, records of conversations (including tape recordings), manuals, charts, and graphs.

Electronically stored information includes, but is not limited to, digital communications such as e-mail and attachments, voice mail and instant messaging, word-processing documents, spreadsheets, databases, calendar entries (such as Outlook), computer drawings, computer plans and surveys, network access, internet usage files, presentations (such as PowerPoint), or any other documents or files created or stored on the company's computer or other information systems, including backup and archival files.

Please keep in mind that you can have both a hard copy and an electronic copy of the same document or information. You are obligated to preserve both. Further, this obligation to preserve applies to any copy or draft of a document or tangible thing that is not an identical duplicate of the original document or tangible thing.

**Suspension of all Ordinary-Course Deletion of Electronic Documents**

Effective immediately, it is critical that you and all relevant individuals do NOT delete, over-write, or otherwise alter or destroy any documents, files or information (paper copy or electronic, including backup) which may be relevant to this case and subject to this Litigation Hold and that you take those steps necessary to guard against such deletion.

**Documents to be Retained**

All documents (including hard-copy documents, electronic documents, and e-mail messages) that refer or relate to the Cynthia Luczak, County Clerk and the County Clerk Office, county appropriations, hiring of county staff (including but not limited to, the hiring of staff of the Sheriff, Register of Deeds, Treasurer, and County Executive), and/or the disparate treatment by members of the County Board of Commissioners and the County Executive must be retained no matter how old the documents may be. If you are uncertain as to whether to retain a document, please err on the side of retention. As indicated above, please direct any questions regarding retention to me. The topics of information subject to this Litigation Hold may change and we will keep you informed of any such changes.

**Summary**

In summary, you should take all steps necessary, including instructing other employees under your supervision, to retain paper documents and materials and electronically stored documents and information that relate in any manner to the subjects relevant to this Litigation Hold. Please immediately review where you might have any such relevant documents, materials and information, including any personal electronic devices, so that you can ensure that any such documents, materials, and information are not accidentally deleted or altered. Please circulate this Litigation Hold to all necessary past and present agents, representatives, counsel and employees of the County to ensure that all potentially relevant evidence and information is adequately preserved.

Sincerely,

CLARK HILL PLC

Matthew T. Smith

cc: Cynthia Luczak