



To all recipients of this document including those cc'd: I respectfully request that if you are represented by counsel in matters pertaining to the Post Oak Savannah Groundwater Conservation District, or are represented by counsel in this specific matter, that you forward the correspondence to counsel and that you or your counsel inform me that you are so represented.

April 13, 2020

Post Oak Savannah Groundwater Conservation District
c/o Barbara Boulware-Wells, Esq., Counsel to the Board
The Knight Law Firm LLP
223 W Anderson Ln Ste A105
Austin, TX 78752

Via Email bbw@cityattorneytexas.com

Dear Ms. Boulware-Wells,

I am counsel for Ms. Judith McGeary, and on her behalf I am providing this letter as a written objection, and request for amendment, to the draft minutes of the Post Oak Savannah Groundwater Conservation District's ("District") February 13, 2020 meeting. I respectfully request that you communicate this written objection to the Board for their consideration as they vote on whether or not to accept the minutes in their draft form. I have provided a courtesy copy of this letter to counsel of record who were reported present in the meeting minutes as well as the interested County Judges. You are welcome to distribute this letter to any interested party I am unaware of.

OBJECTIONS

I object to the draft minutes' discussion in paragraph 3 of Mr. Paul Terrill's allegations in support of his motion. I further object to the identification of Ms. McGeary by name in paragraph 8, as they connect her with Mr. Terrill's inaccurate statements.

BASIS FOR OBJECTIONS

Mr. Terrill's statements, recorded in paragraph 3, contain legal inaccuracies

During the February 2020 District meeting, Mr. Paul Terrill said that there had been a letter and reports emailed to the board members, and he asked that those reports be stricken from the record. Mr. Terrill moved to strike the information on the basis that he had not received the information,

and further stated that sending of the information was “ethically not correct protocol” since the individual who provided the information was a “licensed attorney,” and “obligated to serve the other attorney any information submitted.” Although not explicitly stated in the minutes,

Mr. Terrill’s statements in paragraph 3 were directed at information provided to the Board by my client, Ms. McGeary, even though Ms. McGeary was acting only in her personal capacity as a citizen of Milam County and member of the public. Ms. McGeary was not serving as an attorney or advocate on behalf of a client, and consequently, she was not subject to the attorney ethics rules Mr. Terrill discussed.

Attorneys in Texas are regulated and admitted to practice under the authority of the Supreme Court of Texas. The Supreme Court has adopted the Texas Disciplinary Rules of Professional Conduct to govern the conduct of lawyers. From the best I can tell from the context of the minutes, Mr. Terrill’s intimation that Ms. McGeary acted unethically was possibly a reference to Texas Disciplinary Rule of Professional Conduct (“TDRPC”), Chapter III - Advocate, Section 3.05(b). This chapter, as indicated in its own title, regulates attorneys acting as *advocates* on behalf of clients. This chapter in particular does not purport to regulate attorneys acting in their personal capacity as private citizens.

Even if we were to assume, purely for the sake of argument, that Ms. McGeary was subject to the rule in question, she did not violate the rule under the circumstances in this case. TDRPC, Section 3.05(b) states, in part that a lawyer shall not, “except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing that entity or person concerning a pending matter...” Comment 4 to this section of the TDRPC recognizes that many proceedings are unique, and not like traditional court proceedings, stating:

There are certain types of adjudicatory proceedings, however, which have permitted pending issues to be discussed ex parte with a tribunal. Certain classes of zoning questions, for example, are frequently handled in that way. As long as such contacts are not prohibited by law or applicable rules of practice or procedure, and as long as paragraph (a) of this Rule is adhered to, such ex parte contacts will not serve as a basis for discipline.

The present case presents a unique set of circumstances, much like the zoning boards referenced in Comment 4, above, where ex parte contacts – even for an attorney advocating for a client – would not serve as a basis for discipline.

First, the rules regarding presentation of information to groundwater conservation districts in an uncontested matter such as this one are not well developed, and do not specifically prohibit direct presentation to a board.

Second, on January 14, 2020, immediately following the District's Board meeting, the counsel to the Board stopped Ms. McGeary as she was leaving the meeting and told her that, if she had things she wanted the Board to consider in evaluating Vista Ridge's permit application, that she should send a letter to the General Manager or to a Board member. Counsel for the Board did not indicate that the letter must be sent to any other parties.

Finally, Ms. McGeary has sent information in a similar manner in the past to members of the Board for their consideration; she had never been told this practice was wrong and she had never been asked to modify her practice, or otherwise had her practice questioned until Mr. Terrill spoke in the last meeting.¹

In sending her letter to the Board, Ms. McGeary was acting in good faith based on both her own past practice and on what the District's counsel had said. Therefore even if she was acting as an advocate for a client (which she was not), she did not run afoul of any attorney ethics rules.

Mr. Terrill's statements that Ms. McGeary acted unethically injure her reputation

The laws of governing attorney ethics are complex, and often difficult to understand. On reviewing the draft minutes, it appears the members of the Board took Mr. Terrill's assertions that Ms. McGeary acted unethically at face value. His assertions were not only incorrect, but they harm the reputation of Ms. McGeary. My client is passionate about important causes, and she works hard to make her voice count as a citizen. When she speaks on behalf of herself, Ms. McGeary should not have to withstand having her reputation as an attorney and a member of the community called into question simply for exercising her individual right to petition the government. Because her reputation was called into question, we believe some redress is necessary, as set forth below.

PROPOSED CHANGES TO THE MINUTES

On Ms. McGeary's behalf, I propose the following changes to the minutes. These changes will still accurately reflect the meeting as required by the Open Meetings Act, without permanently recording the statements by Mr. Terrill that injure Ms. McGeary's reputation. The changes to paragraph 8 are needed to remove the identification of Ms. McGeary in connection with Mr. Terrill's motion.

¹ In a statement not captured in the minutes, Mr. Terrill stated in the February meeting that "this has happened on previous permit applications" and that he had "called it out before." Ms. McGeary did send a letter to the Board on April 4, 2017, regarding an earlier permit amendment application by Vista Ridge. She also sent a letter to the Board on October 3, 2019, on this permit amendment application. At no time did anyone representing the District or Vista Ridge tell Ms. McGeary that they thought either of these letters were improper ex parte communications. Presumably, that was because everyone knew that Ms. McGeary was acting as a citizen, not as legal counsel for anyone, and that there was therefore nothing improper about her communications.

Proposed changes to the objected-to portion of paragraph 3 (additions in bold/red):

*Paul Terrill, attorney for the Applicant, requested to open items 3 & 4 simultaneously. Presiding Officer Youngblood denied the request to open 3 & 4 simultaneously. Presiding Officer Youngblood recognized Applicant for a motion. Applicant moved to have a letter and reports attached recently e-mailed to the Board members stricken from the record. ~~He stated that the information emailed to the Board had not been e-mailed to him prior to the hearing by the individual and that this was ethically not correct protocol for submission. He stated that any licensed attorney, which the individual is, is obligated to serve the other attorney any information submitted and it should have been known this circumvented the hearing process by incorrectly attempting to introduce evidence.~~ Applicant **made a protocol-based argument, and** argued further that the reports included were reports that could have been presented by either Dr. Chubb or Mr. Zgabay were they still parties, but since they weren't that opportunity was closed. President Sidney Youngblood granted his motion to have the information e-mailed to the Board members stricken from the record and instructed that it was not to be considered.*

Proposed changes to the objected-to portion of paragraph 8:

*A request was made **by an attendee** ~~by Judith McGeary~~ to address the Board concerning the statements/comments made by Mr. Terrill during his motion. Presiding Officer Youngblood denied the request citing that the public comment section of the Hearing had already passed.*

CONCLUSION

Thank you for considering this objection to the minutes of the February 2020 meeting. If any recipient of this has questions or comments, they may contact me by phone or email to the information on my letterhead.

Sincerely,

/s/ Ernst M. Martzen

Ernst M. "Mitch" Martzen

Attorney at Law

cc:

Mr. Paul Terrill, Esq., Terrill & Waldrop, via email pterrill@terrillwaldrop.com

Mr. James Bene, R.W. Hardin & Associates *Solutions@rwharden.com*

Hon. Judge Steve Young (Milam County) *via email syoung@milamcounty.net*

Hon. Judge Keith Schroeder (Burleson County) *via fax (979) 567-2372*