

CIVIL CAUSE No. 19243

IN THE LLANO COUNTY DISTRICT COURT

OF THE STATE of TEXAS

IN RE: PETITION to District Court for Writ of Mandamus

Marc Sewell

Pro Se Petitioner

Vs.

The City Of Llano Texas

Respondent

JOYCE GILLOW
CLERK DISTRICT COURT, LLANO COUNTY, TEXAS
FILED

APR 27 2015
AT 2:43 O'CLOCK P M
BY W Beck DEPUTY

MOTION TO RECUSE

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I request that Judge Evan Stubbs be recused from Cause 19243 based on Texas Rules of Civil Procedure Rules 18a and 18b.

(I) Rule 18a(a)(1) Verification

I, Marc Sewell, am the petitioner in this proceeding. I have read the foregoing motion and know its contents. The facts stated therein are true and are within my personal knowledge.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

(signed) M - Sewell

Marc Sewell, Petitioner

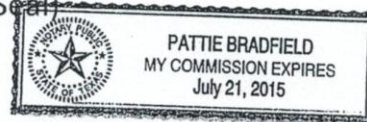
108 Summit

Llano, TX 78643

325-247-2508

Sworn to and subscribed before me this 27th day of April, 2015

Pattie Bradfield Notary Public (Seal)



(II) Rule 18a(a)(2) Rule 18b Grounds

1. Texas Rules of Civil Procedure Rule 18b(b)(1) the judge's impartiality might reasonably be questioned.
2. Texas Rules of Civil Procedure Rule 18b(b)(2) the judge has a personal bias or prejudice concerning the subject matter or a party.

(III) Rule 18a(a)(2) Additional Grounds

1. Texas Rules of Judicial Conduct Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities
 - (A). A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
2. Texas Rules of Judicial Conduct Canon 3: Performing the Duties of Judicial Office Impartially and Diligently:
 - (2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
 - (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.
 - (5) A judge shall perform judicial duties without bias or prejudice.
 - (6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age,

sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

3. Texas Rules of Judicial Conduct Preamble: Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

(IV) Rule 18a(a)(3) Basis

The motion for recusal is not based on the ruling of the judge but rather on his statements and behavior in the hearing on 4/21/15 as documented in the transcript.

(V) Rule 18a(a)(4) Detail and Particularity Facts

(A) The facts are within my personal knowledge because I participated in the hearing.

(B) The transcript of the hearing is admissible in evidence.

(C) If proven, these facts would be sufficient to justify recusal based upon the grounds I specified in ¶(II) and ¶(III) of this document.

Fact #1. Judge Stubbs' first substantive statement¹ and my response demonstrate his personal bias against citizens redressing grievances:

THE COURT: Well, you understand why they don't want to set a precedent of any time someone complains and they file a writ having to go back and undo and redo stuff, though? I mean, you understand that, don't you?

¹ Hearing transcript Page 10 lines 2-8

MR. SEWELL: No, not at all. If the City makes a mistake they should be forthcoming and fix the mistake as quickly as possible.

First, Judge Stubbs opinion on citizen involvement is contrary to the philosophy of Open Government under which I filed my writ request:

Texas Code Sec 552.001 ... government is the servant and not the master of the people. The people insist on remaining informed so that they may retain control over the instruments they have created. It is the law.

Second, Judge Stubbs ignored my statement that I had asked that the city's error be rectified before filing the writ, before the city had filed the grant application, and before the deadline for filing. No harm would have come from the City redoing the notice and vote.

Third, Judge Stubbs' condescending and disdainful presentation, here and permeating the hearing, shows a bias against pro se citizens acting against city government.

Fact #2. Judge Stubbs acted arbitrarily and without any reference to relevant law or rules. Twelve times I referenced rules, statutes, and Attorney General Opinions which referenced case law. At no time did City Attorney Bovey or Judge Stubbs reference ANY rules, statutes, case law, or Attorney General Opinions.

Thus, Judge Stubbs statements and order had no basis in law and thus was abuse of discretion. Particularly, his assertion that "included by reference" and "following activities are available" have no legal basis in this case and are

contrary to the Open Meetings Act and several Attorney General Opinions presented at the hearing.

This abuse of discretion, I assert, stems from his bias against the pro se citizen and subject as well as bias for the City.

Fact #3. Judge Stubbs lack of preparation and lack of knowledge of this case and the law demonstrate his bias against the subject matter and petitioner since the lack of preparation shows a predetermination of a result desired. Examples are:

THE COURT²: This is an area of the law that I'll be honest with you I had never seen before you filed this.

THE COURT³: And just what does that writ do?

THE COURT⁴: Well, I mean, it seems like, just from reading the writ -- and I'll be honest with you, that was several weeks ago,

THE COURT⁵: But an injunction -- I mean, just generally speaking, an injunction is asking someone to stop something, not to undo something.

MR. SEWELL: Well, that's why I said mandamus.

Fact #4. Judge Stubbs' continual support of City Attorney Bovey, without basis of law, while not supporting any of my rebuttals, based in law, shows a bias. Judge Stubbs even stated that my discussion would not influence his decision. This example shows Judge Stubbs assertion that the referenced ordinance should be considered as part of the notice subject which is incorrect and unsupported by

² Hearing transcript page 28 Lines 6-7

³ Hearing transcript page 8 line 6

⁴ Hearing transcript page 8 lines 24-25, page 9 line 1

⁵ Hearing transcript lines 4-15

law, case law, or Attorney General opinions, nor is his articulated list identifiable as a Comprehensive Plan:

THE COURT⁶: I'll let you continue briefly, but I'm not hearing -- your argument is not making sense to me. So if you'd like to continue, you can continue. I'm going to listen to you, but at this point in the game it seems to me that it says "discuss and consider action on the approval of the resolution", and the resolution appears to be pretty clear to me. It does not use the term "comprehensive plan", but it seems real obvious to me that that's what this is talking about. When you're saying "certifications, presentations, reports and publications, mapping, land use, housing, population, street conditions, wastewater study, capital improvement programs, parks and recreation, and digitized-based map" that is comprehensive plan in my mind. I mean I don't what else you would call it.

Fact #5. The transcript of the hearing does not represent the entire dialog of the hearing. At the least, it does not show my request to provide an exhibit, approach to present it, and dialog surrounding that event. This is provable since the exhibit was referenced several times in the transcript and I wouldn't have presented it to the judge without comment or permission.

Fact #6. The audio transcript of the hearing will prove fact #5 and that Judge Stubbs' ongoing attitude toward the pro se petitioner was condescending and disparaging, showing a bias. An audio comparison of the attitudes of the preceding divorce hearings and mine would reinforce this.

⁶ Hearing transcript page 21 lines 13-25, page 22 line 1

(VI) Rule 18a(b)(1)

Rule 18a(b)(1) (A) The hearing where Judge Stubbs' bias was discovered was 4/21/15. The same day as the hearing, I began the process of finding the process for and obtaining the transcript of the hearing which is the evidence of the statements and behavior. The transcript was received from the court recorder on 4/27/15. The motion was filed on 4/27/15. The motion was dependant on receiving the hearing transcript and thus 4/27/15 was as soon as practicable.

Rule 18a(b)(1) (B) There were no hearings or trials set on this cause at the time of filing this motion.

(VII) Prayer

Thus, I assert that I have proven that Judge Evan Stubbs demonstrated personal bias & prejudice by:

1. Personal statements in the transcript
2. Acting arbitrarily and without any reference to relevant law or rules
3. Abuse of discretion
4. Disrespectful and condescending attitude toward pro se petitioner
5. Poor preparation and knowledge of relevant law
6. Behaved in a manner inconsistent with that which is needed for full, fair, impartial hearings as well as not promoting public confidence

I there request that Judge Stubbs:

1. Be recused from cause 19243.
2. Be sanctioned based on Rule 18a((h) and reimburse the City of Llano for attorney fees and expenses.
3. Be sanctioned based on Rule 18a((h) and reimburse petitioner for verification fee and transcript fee.

Marc T. Sewell

(VIII) Certificate of Service

Certificate of Service

I certify that I have served this Motion to Recuse on all other parties—which are listed below—on 4/27/15 as follows:

1. Llano City Attorney Carey Bovey **via email**
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2. Llano City Secretary Toni Milan **in person**
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