

State Commission on Judicial Conduct

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For SCJC use only.

Complaint Form

- If you are filing a complaint about more than one judge, please use a separate form for each judge.
You may complete this form online before printing.
Send the completed form and any additional pages or related documents to SCJC.

\* Indicates required fields. Please note that faxed complaints will NOT be accepted.

\*Your name: Marc Sewell \*Judge: Allan Garrett
\*Mailing Address: 108 Summit \*Court Number: 33rd Judicial District Court
\*City, State Zip: Llano, TX 78643 \*City and County: Llano, Llano County
\*Date of Birth: 02/07/1949
Your Phones: Day ( 325 ) 247-2508 Evening ( )
Cell/Other ( 770 ) 656-0515 Best time to call you: anytime [X] A.M. [X] P.M.

If your complaint involves a court case, please provide the following information:
Cause Number: 18504 Status of your case: [X] Pending [ ] Concluded [ ] On appeal
Your attorney: pro se Marc Sewell Opposing Attorney: Carey Bovey
Address: 108 Summit Address: 2251 Double Creek Dr., Suite 204
City/Zip: Llano/78643 City/Zip: Round Rock, TX 78664
Phone Number(s): 325-247-2508 Phone Number(s): (512) 904-9441

PLEASE FILL IN ALL INFORMATION AVAILABLE FOR ANY WITNESSES (attach additional pages as needed)

Name: Joyce Gillow Name:
Address: 832 Ford Street, Llano TX Address:
Phone Number(s): 325-247-5036 Phone Number(s):
What did this person witness?
The hearing testimony after record closed. Also, her statement at the end of the hearing
What did this person witness?

If you are submitting documents, please provide copies, not originals.

I understand that as part of the Commission's investigation the judge may be provided a copy of this complaint. Please note - the Commission will do its best to maintain your confidentiality, if you so request. However, it may not be possible for us to pursue our investigation without revealing your identity at some point. If it is necessary to reveal your identity directly to the judge, we will advise you before proceeding.

\*I request that my identity be kept confidential. [ ] Yes [X] No

\*Signature: \*Date:

How did you hear about the State Commission on Judicial Conduct? (please select one) [ ] State Bar of Texas
[ ] Another State agency [ ] News media [X] Attorney [ ] Friend [ ] Other:

Revised 07/13/2009

## Details of Complaint

Please type or print the factual details of your complaint in the space provided below. Please include the date(s) of the alleged misconduct. If more space is needed, attach additional sheets. Please sign and date each additional sheet. Your complaint should be as specific as possible, PLEASE DO NOT CITE CASE LAW IN YOUR COMPLAINT.

\*Date(s) of Alleged Misconduct of Judge: 6/18/13-present

\*Factual Details of your complaint against Judge:

Please see attached document for complete complaint.

Or for an online copy of this complaint with links that might be preferable to paper, please see <http://llanowatch.org/llanowatch/documents/legal/garrettmisconduct.pdf>

\*Printed Name: Marc Sewell

\*Signature: \_\_\_\_\_

\*Date: \_\_\_\_\_

Revised 07/13/2009

# Judicial Misconduct Complaint against Llano District Judge Allan Garrett

## Submitted to the Texas State Commission on Judicial Conduct

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## **Judge Allan Garrett's Willful Misconduct**

I assert that Llano County District Judge Allan Garrett colluded with City Attorney Carey Bovey to deny my access to a judicial review as defined by Texas Zoning Statute 211.011 for which the outcome was clear and malfeasance was the only option to shield the City of Llano. I also assert that Judge Garrett knowingly misrepresented the law and proper procedure in order to allow City Attorney Carey Bovey and the City of Llano to avoid answering the judicial review petition.

I assert that through his actions on Llano District Court Cause 18504, Judge Allan Garrett:

### **A. Willfully Violated the Texas Code of Judicial Conduct**

1. In violation of Canon 3B(8), Judge Garrett had ex parte discussions with opposing attorney, Mr. Bovey, to establish an approach to prevent a judicial review of obvious zoning violations by the City of Llano. His actions to-date and court transcript verify that the approach was executed.
2. In violation of Canon 2A and 3B(2), Judge Garrett did not comply with Texas Laws described in section "*Willfully Violated Texas Statutes*", section "*Willfully Texas Rules of Civil Procedure*," and section "*Willfully Violated US and Texas Constitutions*" below.
3. In violation of Canon 3B(9) and 3C(1), Judge Garrett failed to dispose of all judicial matters promptly, efficiently, and fairly by denying a writ of certiorari; erroneously stating the cause was disposed when a lengthy appeal showed it was not; altering petitioner's case style; forcing unnecessary proofs of service; terminating court record prematurely; changing an order of the court; ignoring motions and requests for hearings; and the ruse of an illegal order with no opportunity for refuting.
4. In violation of Canon 3B(5) Judge Garrett's actions demonstrated a bias toward a government entity over an individual citizen. Otherwise, this unethical conduct would not have occurred.
5. In violation of Preamble and Canon 2A, Judge Garrett's behavior in a highly visible zoning issue diminished the public's confidence in the integrity and impartiality of the judiciary.

### **B. Willfully Violated Texas Statutes**

1. In violation of Texas Local Government code § 211.011, Judge Garrett required notification of specific parties which is specifically not required by that statute and substantiated by the Texas Supreme Court.
2. In violation of Texas Government Codes § 37.10(a)(1), § 37.10(a)(2), § 37.10(a)(3), § 37.10(a)(5), § 37.13(a)(1), § 37.13(a)(2), § 33.001(b), § 33.001(b)(2), Judge Garrett terminated the court record halfway through the proceeding, never turning it back on so that important information and the ultimate court order were not recorded. In later correspondence, the Judge misrepresented that unrecorded order and used that order to stalemate future activity on the cause. Also, exhibits presented in court were not included in the record. Also, Judge Garrett altered petitioner's case style in issuing an order.

### **C. Willfully Violated Texas Rules of Civil Procedure**

1. In violation of Texas Rules of Civil Procedure 3a, Judge Garrett introduced a local rule to require notification and citation that was applied to determine the merits of the cause and that was not

a properly approved local rule by the Texas Supreme Court and published. This notification and citation does not exist in §211.011, TCRP, or Llano District Court Local Rules.

2. In Violation of Texas Rules of Civil Procedure Rule 33, Judge Garrett required names of specific defendants where naming the incorporated city is required and sufficient.
3. In violation of Texas Rules of Civil Procedure Rule 166 and Rule 63, Judge Garrett personally introduced issues that were not pending while ignoring the pending, properly introduced issues.
4. In violation of Texas Rules of Civil Procedure Rule 296 and Rule 297, Judge Garrett ignored requests for "Finding of Fact and Conclusion."

#### **D. Willfully Violated the US and Texas Constitutions**

1. Article V, §1-a(6)A of the Texas Constitution states that a judge may be disciplined or removed from office for willful or persistent conduct that casts public discredit upon the judiciary or administration of justice.
2. In Violation of Texas Constitutions Article I sections 13, 19 and 27, Judge Garrett blocked my entry into the zoning judicial review process, and thus I was denied Open Access to the Courts and Due Process of Law.
3. In violation of the 1<sup>st</sup>, 5<sup>th</sup> and 14<sup>th</sup> amendments to the US Constitution, Judge Garrett denied my rights of Due Process of Law, and denied my right to petition government for redress of grievances.

## Facts

### **A. Judge Garrett Erroneously Disposed of Judicial Review due to Notification Issue**

Briefly, I submitted a Petition for Judicial Review<sup>1</sup> under Texas Local Government Code §211.011. Judge Garrett prematurely disposed of my petition saying that I did not notify opposing sides – called *notification* issue in the documentation. The process in which I filed the petition, Local Government Code §211.011, specifically does not require *notification* as proven in my Appeal Brief<sup>2</sup>. Local Government Code §211.011(c) states that the court does the notifying.

The complete text of the [Appeal Brief](#)<sup>3</sup> will provide the history and supporting documents of the petition for judicial review that initiated cause 18504. The brief will also show details of Judge Garrett’s violations caused by his insistence on notification and alteration of the case style.

Thus, Judge Garrett was incorrect in requiring *notification* of parties but, even so, should have accepted my notification once I, unnecessarily, complied before he issued the denial order.

### **B. District Court Said Cause Was Completely Disposed but 3<sup>rd</sup> Court of Appeals Disagreed**

Judge Garrett prematurely disposed of the judicial review and refused a hearing or any other action to challenge that disposal – even after I complied with his *notification* requirement. As a pro se with no legal training or experience, my understanding of Judge Garrett’s “completely disposed” was reasonable and was adequately presented to the 3<sup>rd</sup> Court of Appeals, which disagreed with Judge Garrett.

My issue with Judge Garrett in the appeal brief was that he disposed of my judicial review erroneously – the primary reason being his requirement for *notification*. The 3<sup>rd</sup> Court of Appeals never addressed the *notification* issue because Judge Garrett did not properly, completely, dispose of my cause and thus the 3<sup>rd</sup> Court of Appeals had no jurisdiction. This ruling allowed me to go back to Judge Garrett and request a hearing<sup>4</sup> to continue my cause. The hearing occurred on May 14, 2014.

Thus, Judge Garrett’s refusal to a hearing before and after his dismissal order was contrary to proper procedure and the appeals court allowed for a hearing to occur.

### **C. Notification Issue Morphed into Respondent Issue via Ex Parte Communication**

Judge Garrett’s Order denying a writ of certiorari<sup>5</sup> was specifically due to the *notification* issue as shown in Fact A above. This *notification* issue was my #1 issue in my appeal brief to the 3<sup>rd</sup> Court of Appeals. This *notification* issue was the #1 issue in my request for a District Court hearing<sup>6</sup> following the appeal. The issue is about whether notification is required by §211.011.

The court record shows that no other issues or requests were raised by the City Attorney Bovey to Judge Garrett (or by Judge Garrett in the order) prior to the status hearing.

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<sup>1</sup> Attachment #2 - [Judicial Review Petition](#) filed at Llano District Court

<sup>2</sup> Attachment #3 - 3<sup>rd</sup> Court of Appeals [Appellant Brief](#) pages 12-15.

<sup>3</sup> Attachment #3 - 3<sup>rd</sup> Court of Appeals [Appellant Brief](#)

<sup>4</sup> Appendix B – Request for Hearing after Appeals Court Decision

<sup>5</sup> Appendix D – Judge Garrett Order Denying Writ of Certiorari

<sup>6</sup> Appendix B – Request for Hearing after Appeals Court Decision highlighted in red

Yet, in Judge Garrett’s first statement<sup>7</sup> at the Status Hearing<sup>8</sup> after announcements, he introduced a new request, “clarification request”, attributed to Bovey regarding the naming of specific respondents and issuing citations to them – this issue will be called *respondent* issue in this document.

Where and when was this “clarification request” presented to Judge Garrett? The City Attorney did not copy me on any communication regarding a “clarification request” prior to the status hearing. The order for the hearing did not contain a “clarification request”. The *clarification* request was a surprise to me.

Both Texas Rules of Civil Procedure Rule 166 and Rule 63 would require that I be notified of any new issues or requests to be addressed at the hearing. This did not happen and was a surprise to me.

Also, how would Judge Garrett know that the “clarification request” would “help Mr. Sewell as well<sup>9</sup>” if Judge Garrett hadn’t received more detail on the request prior to the hearing? This familiarity with the “clarification request” demonstrates *ex parte* communication.

Thus, *ex parte* communication between Judge Garrett and City Attorney is the only explanation for the introduction of a previously undisclosed “clarification request” at the start of the status hearing.

#### **D. Ex Parte Communication & Collusion between Judge Garrett and City Attorney Bovey**

So, based on Fact C above, I assert that Judge Garrett and City Attorney Bovey had *ex parte* communication in order to introduce a new request into the status hearing. I will show that the *ex parte* communication went much further and actually was collusion between Judge Garrett and City Attorney Bovey to develop and implement a strategy to deny my judicial review. The following substantiates that collusion:

- a. Judge Garrett violated standard court procedure by not allowing the petitioner to speak first at the hearing regarding my requested issues that were the subject of the hearing. Instead, Judge Garrett chose an issue not on the agenda and allowed the defendant to speak first on that surprise issue. I objected<sup>10</sup> but my objection was not even heard.
- b. The status hearing transcript analysis in Appendix C shows that this new, *ex parte*, *respondent* issue dominated the status hearing and precluded any discussion of my *notification* issue that I specified in my letter requesting the hearing.
- c. The status hearing transcript analysis in Appendix C shows that Judge Garrett spoke 15 times to promote the *respondent* strategy. He did not once reference Texas Statutes, Rules, or case law. He did not once address the Texas Statutes, Rules, or case law that I presented to refute the *notification* and *respondent* issues.
- d. The status hearing transcript analysis in Appendix C shows that City Attorney Carey Bovey spoke 10 times to support the *respondent* strategy without ever stating the legal basis for the *respondent* strategy. He did not once reference Texas Statutes, Rules, or case law.

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<sup>7</sup> Page 4 lines 15-17 in transcript of the District Court Status Hearing (Attachment #1)

<sup>8</sup> Full transcript of the District Court Status Hearing for Cause 18504 can be accessed [here](#) as well as Attachment #1

<sup>9</sup> Page 4 line 17 in transcript of the District Court Status Hearing (Attachment #1)

<sup>10</sup> Page 5 line 9 in transcript of the District Court Status Hearing (Attachment #1)

- e. The status hearing transcript analysis in Appendix C shows that I spoke 8 times with Texas Statute, Rules, and case law references showing that the *respondent* strategy was invalid, illegal, and not required. Neither Judge Garrett nor City Attorney Bovey addressed any of my legal references.
- f. City Attorney Bovey's "to-be-clarified respondents" seemingly innocuous announcement, which does not make any requests or claim any issues, combined with Judge Garrett's opening statement stating that there is a "clarification request" show that both were informed of the *respondent* strategy before the hearing and thus confirms collusion.
- g. At this 1 year+ point in the petition process, there was no need or legal requirement for a change to the case style. The cause was established and all "required" participants were identified and notified. Despite Judge Garret's assertions, the court knew where to send orders and did. The City Attorney Bovey knew who he was representing and had sent them \$18,000 worth of invoices which were paid. The *respondent* issue was manufactured prior to the status hearing.
- h. Judge Garrett again states the *respondent* issue and announces<sup>11</sup> that, following my compliance, his intent of the next hearing and yet there isn't a hearing specified in §211.011 until after the city responds to my judicial review complaint. This shows the expected path of the *respondent* strategy is a traditional trial and not a judicial review.
- i. When I thwarted the *respondent* strategy by refusal to state specific respondents, Judge Garrett terminates the recording of hearing saying "We don't need a record<sup>12</sup>."
- j. The hearing proceeds, off the record, with more discussion with intent to cause me to succumb to the *respondent* strategy. The hearing concludes by my agreeing to the Judge's order to add "The City of Llano" to the case style and Joyce Gillow, District Clerk, spoke to amend the Judge's order by saying it must be in writing. Also, I sent a letter<sup>13</sup> after the hearing restating the order from the hearing.
- k. Despite the hearing order to add City of Llano to my case style, which the district clerk can verify, Judge Garrett's subsequent written order reverts back to the *respondent* strategy.
- l. An appropriate way to resolve the *notification* and *respondent* issues was my [Motion for Interlocutory Appeal](#)<sup>14</sup>. Judge Garrett refused to schedule the motion hearing before I complied with the *respondent* issue. This creates a Catch-22 and stalemates the cause.
- m. Motion for setting is not usually required in Llano and furthers Catch-22.
- n. Ignoring TCRP Rule 296/297 "Finding of Fact and Conclusion" which would have provided information to allow me to comply with the order should it have truly been legal – which it is not.

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<sup>11</sup> Page 8 lines 13-15 in transcript of the District Court Status Hearing (Attachment #1)

<sup>12</sup> Page 19 lines 22-23 in transcript of the District Court Status Hearing (Attachment #1)

<sup>13</sup> Appendix F – Letter to Judge Garrett following Status Hearing

<sup>14</sup> Attachment #4 Motion for Interlocutory Appeal



Thus, I assert that the transcript of the Status Hearing unambiguously shows that Judge Garrett and City Attorney Bovey participated in ex parte communication and colluded to establish a *respondent* strategy in order to deny my petition for judicial review of City of Llano zoning violations.

#### **E. Garrett/Bovey Collusion Strategy to Deny Judicial Review**

The Garrett/Bovey *respondent* strategy was to convince me to change my case style from the Texas Supreme Court acceptable case style to one that named specific participants and then issue citations on those participants.

I speculate that the reason for this change in case style was to restart the cause from a judicial review based on §211.011 to a traditional trial with motions and hearings where answering my initial complaint could be avoided. The judicial review would have had the city answer my complaint first<sup>15</sup> and then provide any process objections at a subsequent hearing should the judge determine testimony is required.

But for whatever reason, the *respondent* strategy is based on fabricated law or local rules which neither Judge Garrett nor City Attorney Bovey has ever substantiated.

What is clear is that, contrary to Judge Garrett's assertion, he knew where to send the order and the hearing notice and City Attorney Bovey knew where to send the bill for his time on this cause. The respondent issue is bogus but was successful in that it created an illegal stalemate.

Notification of specific participants are not required by law and do not inhibit the progress of the judicial review. The writ of certiorari should have been sent and any objections included in the response.

This respondent strategy was used to allow the City of Llano to avoid admitting the 3 violations stated in my judicial review complaint. Please see the latest articles on the zoning violations<sup>16</sup> for a description of the unambiguous nature of my zoning violation complaint and why the only course of "defense" for Bovey is to actually avoid answering the judicial review.

I believe that had I followed the order<sup>17</sup> to specify and certify named respondents, it would have terminated my judicial review petition and made it a normal case where the City Attorney would spew his jurisdiction-type objections and further avoid answering the complaint. Filing dates violations might have arisen, and who knows what other objections raised, in order to delay answering the judicial review complaint.

Thus, I have proven ex parte communication which created a strategy that was used to deny my judicial review, which would have shown the City of Llano violated 3 zoning laws. Thus, collusion is proven.

#### **F. Halting Hearing Recording**

As shown in Facts D and E above, my contention is that Judge Garrett was making an issue of *respondents* in order to change the nature of the cause from a judicial review to a traditional lawsuit. To

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<sup>15</sup> §211.011 (d) "must concisely state any pertinent and material facts that show the grounds of the decision"

<sup>16</sup> LlanoWatch articles [here](#) and [here](#) or at <http://llanowatch.org/llanowatch/zoningviolation.aspx>.

<sup>17</sup> Attachment #5 [Order for Service by Citation](#)

accomplish this he and City Attorney Bovey conspired to use the Status Hearing to force me to name specific city officials in my case style instead of the Texas Supreme Court-approved method I had used.

As shown in the transcript of the Status Hearing<sup>18</sup>, Judge Garrett understands that I will not change the case style to specific individuals but would specifically state *City of Llano*. This, of course, does not satisfy their *respondent* strategy so Judge Garrett ordered the clerk to stop recording the hearing<sup>19</sup> saying “*We don't need a record.*”

Thus, I assert Judge Garrett violated standard court procedure of recording a hearing in order to badger me into complying with his *respondent* strategy off the record.

#### **G. Altering Petitioner's Case Style in a Court Order**

In Judge Garrett's order denying a writ of certiorari<sup>20</sup>, Judge Garrett arbitrarily changed the case style on my petition for judicial review<sup>21</sup> from my proper, Supreme Court -approved, case style to one that included names not in the original case style but referenced in the text of the judicial review complaint. This was, presumably, to support his erroneous notification reason for the denial.

The order for the status hearing changed the case style back to a proper “petition for judicial review” but the following order for service of citation reverts to Judge Garrett's erroneous case style.

#### **H. Not Including Exhibits in the Record of Hearing**

An exhibit presented by Bovey (Status Hearing page 5 line 7) is not included in the record. An exhibit presented by Sewell (page 15 line 1) was also not included in the record, even after a letter was written after the hearing.

My omitted exhibit showed the legal references I used to justify my position that *notification* and *respondents* are explicitly not required by law and substantiated by Texas Supreme Court opinion.

Thus, terminating the hearing recording and omitting exhibits were an attempt by Judge Garrett to eliminate record of true legal arguments against his strategy which had no basis in law.

#### **I. Misrepresenting Order Given Off the Record**

As I have shown in Fact C above, Judge Garrett's first substantive statement<sup>22</sup> at the status hearing introduces the “clarification request” which begins the Garrett/Bovey respondent strategy.

Yet in Judge Garret's order<sup>23</sup> to comply with the strategy, Judge Garrett states that “During the status hearing, it became apparent that Plaintiff had not properly served...” This is absolutely a knowingly false statement as the transcript shows. It did not “become apparent” “During ...” since it was asserted by Judge Garrett from the onset of the hearing. This is a misrepresentation of the hearing facts.

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<sup>18</sup> Attachment #1 [Status Hearing Transcript](#), page 19 line 19

<sup>19</sup> Attachment #1 [Status Hearing Transcript](#), page 19 line 22

<sup>20</sup> Appendix D – Judge Garrett Order Denying Writ of Certiorari

<sup>21</sup> Appendix E - Verified Petition for Judicial Review

<sup>22</sup> Page 4 lines 15-17 in transcript of the District Court Status Hearing (Attachment III)

<sup>23</sup> Attachment #5 [Order for Service by Citation](#)

Another misstatement in Judge Garrett's order is that "even though a prospective Defendant made a special appearance." The "prospective Defendant" was actually the City Attorney who made a mandatory appearance because a cause against the city had a hearing. The words "prospective Defendant" and "special appearance" were incorrect with the intention of furthering the *respondent* agenda. Aside from being a violation of Code of Judicial Conduct and statutes, it is pretty incredulous.

Also, calling me a Plaintiff instead of a Petitioner in the order is further demonstration of Judge Garret's desire to treat my judicial review as a traditional trial.

Thus Facts F, G, H, and I further substantiate an ongoing Garrett/Bovey collusion as well as violations of several sections of the Texas Penal Code Texas Penal Code §37.10 & § 37.13<sup>24</sup>.

#### **J. Ignoring Motion for Interlocutory Appeal**

So, I am stalemated by Judge Garrett's *respondent*/citation requirement, which is specifically not required by law, and would, I believe, change this cause from a petition for judicial review to a traditional lawsuit.

The proper response to this stalemate seemed to me to be a motion for interlocutory appeal where *a controlling question of law as to which there is a substantial ground for difference of opinion* may be appealed. I filed a motion for interlocutory appeal<sup>25</sup> and a motion for setting<sup>26</sup> in order to resolve the stalemate.

These motions and a follow-up letter<sup>27</sup> were ignored. Rather, Judge Garrett issued an order to perform the "controlling question of law" before any hearings or motions. Thus, I was ordered to do the controlling question of law before I could get a hearing to argue the legality of the "controlling question of law". This creates a Catch-22 stalemate.

Also, the controlling question of law was contrary to the order Judge Garrett gave during the Status Hearing which should further justify the motion hearing.

Since the court record had been turned off; the order from the hearing was changed when sent on paper; and the motion for interlocutory appeal was ignored, the only way I had to understand the requirement of the court was TCRP Rule 296<sup>28</sup> which was properly filed within 20 days of the order that effectively terminated the cause. Proper follow-ups based on TCRP Rule 297 were also ignored.

This stalemate was purposely orchestrated by Judge Garrett to terminate the judicial review petition and deny a citizen's rights. There was no attempt by Judge Garrett to respect the law or a citizen's attempt to rectify a city's violations of the law.

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<sup>24</sup> Appendix G – Tampering with Governmental Record §37.10 & § 37.13

<sup>25</sup> Attachment #4 - [District Court Motion for Interlocutory Appeal](#)

<sup>26</sup> [District Court Motion for Hearing for District Court Motion for Interlocutory Appeal](#)

<sup>27</sup> Appendix F - [Follow-up letter to Judge Garrett describing the stalemate and requesting the hearing](#)

<sup>28</sup> [Request for Findings of Fact and Conclusions link](#), [Notic9e of Past Due link](#), and [Notice of Violation](#)

### **K. Not Proceeding in a Timely Manner**

Judge Garrett's behavior in Cause 18504 specifically delayed, and continues to delay, the completion of the petitioned judicial review as demonstrated by:

- 1) Had Judge Garrett not erroneously disposed of the judicial review petition and issued the writ of certiorari, this cause would have ended in 2013.
- 2) Had Judge Garrett not erroneously disposed of the judicial review petition and issued the writ of certiorari, there would not have been an appeal and a cost of \$18,000 to citizens.
- 3) Had Judge Garrett not had ex parte communication to set the agenda of the status hearing, he might have listened to my arguments and instructed the City to respond to the judicial review complaint.
- 4) Had Judge Garrett scheduled the motion for interlocutory appeal, the cause would be in appeal and progressing.
- 5) Had Judge Garrett not colluded with City Attorney Bovey in creating a bogus issue and order, the cause would not be stalled and waiting for this grievance to be processed.

Thus, 1.5 years have passed for a relatively simple judicial complaint on 3 unambiguous statutes. The citizens of Llano now have reason to question whether their property rights can be protected.

### **L. Not Competent in the Law (or knowingly ignores the law)**

During the first month after my filing of the judicial review, I believe Judge Garrett did not understand the uniqueness of the judicial review process and persisted in his treatment of the cause as a traditional trial with his demand for notification of parties. This, even though I referenced the law and showed that notification was not necessary, he persisted.

### **M. Constitutional Issue**

Judge Garrett's abuse of discretion denied my access to the judicial review process. This, however, is more than just abuse of discretion, this is a constitutional violation. By denying a judicial review, Judge Garrett denied my open access to the courts, due process, and the opportunity to redress grievances.

### **N. Diminished Public Confidence in the Integrity and Impartiality of the Judiciary**

Judge Garrett's bad behavior is highly visible in Llano and Burnet County through numerous articles in the local newspapers<sup>29</sup> and through the LlanoWatch.org website where the entire episode is chronicled.

The issue will repeat itself in 2015 when the City of Llano will violate the same laws as the judicial review reports, by a complete overhaul of the zoning ordinance – thus affecting not just the 79 property owners violated here but ALL of the property owners in Llano. At this scale, it will get more widespread exposure.

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<sup>29</sup> See "non-court Papers and Documents at <http://llanowatch.org/llanowatch/zoningviolation.aspx> as well as numerous articles at LlanoWatch.org.

The impression we citizens are observing by just this one case is that the laws governing Texas local governments can be willfully ignored because the Texas legal system will circle the wagons to protect government and government will spend anything to protect themselves.

## Conclusion

The total devotion to the Garrett/Bovey *respondent* strategy combined with the total avoidance of the legal issues that I presented in transcript of the status hearing show unambiguously that Judge Garrett and City Attorney Bovey colluded, through ex parte communication, to deny a judicial review contrary to the law.

At no point in the entire 1.5 years judicial review saga did Judge Garrett ever try to explain his requirement for notification, a different case style, or specifying respondents. He never once justified his requirements by referencing Texas Statutes, Rules, or case law. He avoided my requests for an explanation by:

1. Claiming the cause was disposed and refusing a hearing. It took an appeal to get this reversed.
2. Monopolizing a status hearing with his/Bovey's respondent agenda and ignoring all my requests to discuss the law.
3. Ignoring letters to Judge Garrett with the court office saying that the Judge is not allowed to read letters because of ex parte violation even though letters were copied to Bovey.
4. Requiring a Motion for Setting which is not usually required in Llano courts and then not scheduling the hearing.
5. Ignoring a Motion for Interlocutory Appeal.
6. Ignoring Finding of Facts and Conclusion requests.

I believe I have demonstrated Judge Garrett's judicial misconduct because:

1. He had ex parte discussions with opposing attorney, Mr. Bovey, to establish an approach to prevent a judicial review of obvious zoning violations by the City of Llano. His actions to-date and court transcript verify that the approach was executed.
2. He used improper procedure to deny a judicial review.
3. He misrepresented the law and court record to deny a judicial review.
4. He willfully violated Texas statutes, willfully violated the Texas Rules of Civil Procedure, and willfully violated the US and Texas Constitutions.
5. He failed to dispose of all judicial matters promptly, efficiently, and fairly.
6. His actions demonstrated a bias toward a government entity over an individual citizen.
7. His behavior in a highly visible zoning issue diminished the public's confidence in the integrity and impartiality of the judiciary.

The 211.011 statute provides a constitutional protection for a citizen to redress government. It seems intended to be used by citizens to protect their property rights. A petition for judicial review can be initiated by any taxpayer with minimal process or legal knowledge. The process is specifically specified in the statute.

This petition for judicial review is important because Mayor Virdell, the Planning and Zoning Commission, and the Llano City Council are pushing forward with a [complete rewrite/overhaul of the](#)

[entire zoning ordinance](#)<sup>30</sup> that, among other changes, will change South Ford Street from residential to commercial zoning. This will impact not just the 79 property owners already violated but every property owner in Llano. The city will be violating some of the laws that were in my judicial review petition.

The judicial review process must work properly so that the property owners of Llano have a judicial avenue and confidence in the judicial system.

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<sup>30</sup> <http://llanowatch.org/llanowatch/dyk-overhaul.aspx>

## Appendix A – Status Hearing Petitioner’s Exhibit #1

### Status Hearing – Cause No. 18504 – 5/14/14 @ 10:30AM – Petitioner’s Exhibit #1

#### Status

- 6/25/13 – Zoning judicial review petition filed for opinion of 3 zoning ordinance violations
- 7/23/13 – Order denying writ of certiorari sent by district court
- 8/1/13 – Emails from district court saying disposed due to not notifying City
- 8/15/13 – Appeal to Third Court of Appeals filed regarding notification
- 1/29/19 – Third Court of Appeals order stating appeals court did not have jurisdiction to resolve notification issue because “the trial court’s one-sentence order does not constitute a ruling on the merits” and the order denying a writ of certiorari did not “dispose of all pending claims.”
- 4/6/14 – request for hearing to district court based on appeals court decision
- 4/7/14 to 4/16/14 – Latest settlement offer rejected by city attorney

#### Outstanding Issues

1. Notification – Notification was not required because:
  - a. According to Texas Supreme Court as stated in *Tellez v. City of Socorro*: A zoning judicial review is unique, should follow §211.011 process, and is initiated by writ of certiorari.
  - b. §211.011 does not require notification by petitioner, it is done in step (c) by court.
  - c. §2001.176 is the general law in Texas for judicial review and it does require notification but also states “unless provided by statute which, for zoning, is §211.011.
  - d. The Texas Rules of Appellate Procedure and local rules do not address judicial review.
2. Completely “dispose of all pending claims” by “ruling on the merits.”

#### Requested Resolution

A. Rescind order denying writ, issue writ, and proceed with §211.011 process

- OR -

B. Another approach to “dispose of all pending claims” and “ruling on the merits.”

#### Summary

It has been a year since I recognized that the city acted illegally and despite hundreds of pages of argument and thousands of dollars of legal and court fees, the three violated laws have not been addressed by the city attorney or the courts. Instead, the focus has been on ambiguous language that requires a lawyer’s knowledge of case law. I believe I have successfully addressed all areas of ambiguity.



An ambiguous contract term is usually resolved in favor of those who did not prepare the contract and create the ambiguity. Thus, my state and federal constitutional right to redress government and my citizen's understanding of the law should prevail.

Two attachments:

Appendix A - Local Government Code Sec 211.011. Judicial Review

Appendix B - TELLEZ v. CITY OF SOCORRO

## Appendix B – Request for Hearing after Appeals Court Decision

This is the letter from Sewell requesting a hearing after the 3<sup>rd</sup> Court of Appeals ruled that the cause was not disposed as Judge Garrett has said. The request for hearing has two topics.

Marc Sewell  
108 Summit  
Llano, TX 78643

April 6, 2014

Judge Allan Garrett  
108 E. Polk, Suite 74,  
Burnett, TX 78611

Subject: Cause 18504

Judge Garrett,

As you are aware, I filed an appeal, 03-13-00580-CV, of your order on my petition for judicial review, cause 18504. The Third Court of Appeals has ruled that, despite your emails to the contrary, you did not completely dispose of my cause. “The trial court’s denial of a writ of certiorari does not end a suit for judicial review brought pursuant to section 211.011.”

Thus, this cause is still open in your court and your previous denial of a hearing was overruled. I, therefore, request a hearing to discuss your notification concern and complete disposition of my petition. Alternately, I request the writ of certiorari be issued pursuant to section 211.011(c).

The City of Llano has spent over \$18,000 on this issue to-date. A hearing would surely cause more to be spent. I respectfully suggest that an economical and expedient course of action would be to simply ask the city to respond to my complaint and avoid a hearing. There is no cost to the city regardless of the outcome except more wasted legal fees.

I hope that you will consider what is in the best interest of the citizens of Llano. They deserve to see that their city government can be held accountable for their actions and that their property rights can be protected.

Marc Sewell

cc City Attorney Carey Bovey

cc City Mayor Mike Virdell

## Appendix C – Status Hearing Transcript Analysis Showing Collusion

[Status Hearing Transcript link](#),

In this analysis, AGENDA refers to the spurious *respondent* strategy to deny a judicial review and replace it with a traditional lawsuit.

Since there are no documents in the court record of Cause 18504 that 1) discuss a “clarification request” or the need to have respondents specifically specified in the case style or 2) mention that “citation was an issue,” Judge Garrett’s initial statement (transcript page 4 lines 15-18) asking about a “citation request” proves that Judge Garrett and City Attorney Bovey had ex parte communication and had colluded to create and execute the AGENDA.

The analysis below demonstrates the Garrett/Bovey collusion by showing that the AGENDA dominated the hearing and precluded any discussion of the pertinent law. It shows that Judge Garrett spoke 15 times to promote the AGENDA and City Attorney Carey Bovey spoke 10 times to support the AGENDA without ever stating the legal basis for the AGENDA while I spoke 8 times with statute and case law references showing the AGENDA was invalid, illegal, and not required. I also presented an exhibit that documented my legal assertions.

It is also clear from the analysis below that the only intent of the Status Hearing was to force my acceptance of the AGENDA ,and when I used the law to justify not following the AGENDA, Judge Garrett stopped recording the record. There was no attempt to address the 2 issues I presented in the request for the hearing.

### Judge Garrett Driving the Spurious Respondent Agenda

1. Page 4 lines 15-18 First statement of hearing sets AGENDA: *let's go to your clarification request first because that will help Mr. Sewell as well depending upon what comes out of that.*
2. Page 5 lines 10-11 in response to my objection, maintains AGENDA: *Well, you'll get your turn. As soon as he's done*
3. Page 6 lines 3-5: reinforces AGENDA is *why we are here*
4. Page 6 lines 6-8: Asks if I want to respond *just to AGENDA and not anything else just AGENDA*
5. Page 8 lines 13-22: ignores my legal challenges and reverts to AGENDA. Plus, despite my TCRP Rule 166 assertion, Judge Garrett says he set the hearing for his AGENDA. Also, says that another hearing is required which is contrary to 211.011 but consistent with AGENDA to change from judicial review to traditional lawsuit.
6. Page 9 lines 6-7: Reiterates AGENDA: *At this point don't the specific respondents need to be named and served with process?*
7. Page 9 line 25 – page 10 line 1-15: Judge Garrett condescendingly asks if I understand Bovey’s statement of AGENDA
8. Page 11 lines 12-18: Judge Garrett responds to my Supreme Court case law reference and begins to say AGENDA but agrees that *boards* are also acceptable – which is what my original case style specified.
9. Page 12 lines 4-12: Judge Garrett brings discussion back to AGENDA .

10. Page 14 lines 16-23: Judge Garrett strongly gets back to AGENDA with ridiculous statements *Let's figure out who you're representing and He needs to name who the aggrieving parties are so that he can go get service against them and then you get to appear.*
11. Page 16 lines 11-15: Judge Garrett impatiently brings discussion of law back to AGENDA with ridiculous condescending statement that ignores all my statements of law - *I need you to present your claim against someone who you think did something wrong. You can't just say, "I think somebody did something wrong," have no one show up, get a court order against nobody, and then say let's go take it on appeal if you don't get it.*
12. Page 17 lines 5-7: Judge Garrett impatiently brings discussion of law back to AGENDA with emphatic bottom line AGENDA statement that ignores all my statements of law - *Here's the bottom line: You need to pick out who you're going to name as defendants, serve process upon them ...*
13. Page 18 lines 14-15: Judge Garrett gets back to AGENDA - *Well, you've got to have a client before we get to that*
14. Page 19 lines 13-15: back to the AGENDA stating that there is always someone that is being accused.
15. Page 19 lines 19-23: Judge Garrett understands my intent to name City of Llano and no individual defendants. He then goes off the record for the remainder of the hearing saying - *We don't need a record.* Well, this analysis shows that we do.

#### **City Attorney Bovey Support of the Spurious Notification/Citation Agenda**

1. Page 4 line 13 – Innocuous statement in introduction that hides AGENDA: *the to-be-clarified respondents*
2. Page 4 line 25 – page 5 lines 1-7: *-never did name any defendants, he never did serve anybody, he never had citations issued.*
3. Page 5 lines 13-25, page 6 lines 1-2: *didn't have citations issued. So that's one of the first issues that I'd like to clarify with the Court.*
4. Page 9 lines 8-24: Agrees with judge on AGENDA and says he doesn't know who he represents.
5. Page 13 lines 10-Page 14 line 6: Attempts to bring in other issues like jurisdiction
6. Page 14 line 18: Bovey agrees with AGENDA.
7. Page 14 line 21: Bovey agrees with AGENDA.
8. Page 14 line 24: Bovey agrees with AGENDA.
9. Page 18 line 2-17: Bovey misrepresents the case law I referenced and reverts back to AGENDA - *I need to know who I represent and who I'm defending against.*
10. Page 18 line 20: Bovey agrees with AGENDA.

#### **Sewell Attempts to Present the Law**

1. Page 5 line 9: I tried to object but Judge Garrett said wait until Bovey was finished.
2. Page 6 lines 9-25 and page 7 lines 1-25: I objected to adding non-pending issues to hearing (TRCP Rule 166) and violations of 211.011 process including no status hearing or notification. Explained

that 2001.176 is the general rule for judicial review which states that it can be modified by specific judicial review statutes – like 211.011. I also indicated that Supreme Court of Texas states that jurisdiction has been established at filing of petition. Neither Judge Garrett nor Bovey respond to these legal statements.

3. Page 10 line 16 to Page 11 line 8: I reference Texas Supreme Court case law which says 211.011 does not specify against whom suit should be filed, and the city or zoning board is acceptable.
4. Page 11 lines 19-Page 12 line 3 : I try to bring the issue back to notification being required.
5. Page 12 lines 13-17: I answer judge's bizarre hypothetical using case law.
6. Page 15 line2 to page 16 line 10: I answer Bovey's jurisdiction statement with case law reference and correct appeals court reference.
7. Page 17 line 19: In response to Judge Garrett's bottom line mandate to specify defendants, I specify City of Llano and quote the rule about suing a government entity and reference case law.
8. Page 19 lines 3-10: I reiterate that the law doesn't require naming defendants.

## Appendix D – Judge Garrett Order Denying Writ of Certiorari

Note the changed case style from the original, petitioner’s case style.

**NO. 18504**

**MARC T. SEWELL**

**V.**

**BRENTON LEWIS, DIANNE  
FIRESTONE, LETITIA McCASLAND,  
MARCY METHVIN, TODD KELLER,  
JEANNE PURYEAR AND  
TOM MILAM**

§ **IN THE DISTRICT COURT**  
§  
§  
§  
§  
§ **424TH JUDICIAL DISTRICT**  
§  
§  
§  
§ **LLANO COUNTY, TEXAS**

### **ORDER DENYING WRIT OF CERTIORARI**

After consideration of the Verified Petition for Judicial Review, it is hereby ordered that the Writ of Certiorari is DENIED.

SIGNED on July 23, 2013.

  
\_\_\_\_\_  
JUDGE PRESIDING

**Appendix E - Verified Petition for Judicial Review**

STATE OF Texas ) IN THE County \_\_\_\_\_ COURT  
) SS: COUNTY OF Llano ) CASE NUMBER: \_\_\_\_\_ (created by County)  
IN RE: PETITION to County Court for Judicial Review of Board Decision )

**VERIFIED PETITION UNDER Local Government Code Sec 211**

Comes now the Petitioner Marc T. Sewell and pursuant to Texas Local Government Code Section 211.011 petitions the Court for a Judicial Review of Llano City Planning and Zoning Commission and Llano City Council. Petition is attached in laymen's terms and format since Texas Local Government Code Section 211.011 says that a taxpayer may present the petition.

**VERIFICATION**

I affirm, under the penalties for perjury, that the foregoing representations are true.

(signed) *M. Sewell*

Marc T. Sewell  
Print your name

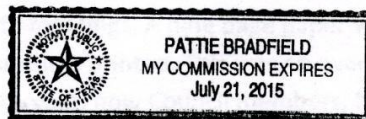
108 Summit  
Mailing Address

Llano, TX 78643  
Town, State and Zip Code

325-247-2508  
Telephone number, with area code

Sworn to and subscribed  
before me  
this 20<sup>th</sup> day of June, 2013

*Pattie Bradfield* (Seal)  
Notary Public



## Appendix F – Letter to Judge Garrett following Status Hearing

Marc Sewell  
108 Summit  
Llano, TX 78643

May 16, 2014

Judge Allan Garrett  
108 E. Polk, Suite 74,  
Burnett, TX 78611

Subject: Cause 18504 Status Hearing

Dear Judge Garrett,

During the status hearing for Cause 18504 on 5/14/14, you suggested that I change my case style to include the City of Llano so that we may proceed to a “disposal of all pending claims”. I thought I understood at the time but now do not.

The premise for this change, as I recall, is that the city attorney does not know who his clients are and the court doesn’t know where to send instructions. The city attorney has mailed \$18,000+ worth of invoices so he seems to know who his clients are. The city attorney and co-council, the mayor, the city manager, and the city secretary were present at the hearing so the court knows where to send notices. I fail to see how adding a party to the case style enhances the situation. I have requested a transcript which I will study to see what I have forgotten.

I hesitate to just amend the case style for it doesn’t seem to be benign. It was apparent in the hearing that the city attorney would deluge the court with all sorts of pleadings and motions and spend another \$18,000 of taxpayer funds to not answer my complaint - as he has done in the appeals court. The city manager and mayor do not seem to be concerned by this waste but I am.

My assertion that it is the court’s responsibility, §211.011(c), to initiate the judicial review is substantiated by the Texas Supreme Court in *Tellez v. City of Socorro*. *Tellez* also demonstrates that my case style is adequate as it stands and it may be altered later after the city has replied to my brief. Thus I contend that the ball is in the court’s court and it is the court’s current responsibility to initiate the judicial review without any action on my part.

I was surprised that a judge is not able to correct an order should I prove that an error occurred. I reported the “notification” error before your denial order was issued as well as the same day the order was issued. At that time I also satisfied the notification problem and requested a hearing to resolve. I appealed the same day you indicated “disposed.” After the final Appeals Court’s action, I immediately requested the hearing to address the error. So, it seems reasonable that the court had plenty of notice and opportunity to fix or stay the order. I am researching this.

That said, I have taken the following actions to assist:



1. I have asked again to settle.
2. I have suggested to the City Council(attached) that they answer my complaint without waiting for an order from the court as was done in *Hagood v. City of Houston*
3. I am investigating “interlocutory” which seems to bypass the need to “dispose of all claims.”

Thank you for your patience and deference in the hearing. I don't like being in the position of expending your time but I want to completely understand this judicial process for I will be back again in a few months with a more serious situation containing more violations of the same laws and would like that to go smoothly.

Marc Sewell

cc City Attorney Carey Bovey

cc City Mayor Mike Virdell

attachment: email to council

## **Attachment: Email to Llano City Council Regarding Settlement**

Council Members,

I propose an alternative to settling on my judicial review legal action: City Council instructs the city manager and P&Z chairman to answer my complaint without waiting for the court to order it. The City of Houston has done this and there is case law that demonstrates it.

This approach bypasses all the expensive legal wrangling and also demonstrates respect for citizens. At present, you are spending \$thousands to prevent from answering my complaint but will eventually have to answer. Why waste the money? Just present your position on the 3 zoning issues.

So to summarize, there are three options before you:

1. Settle with no cost or future liability. This is the best answer if Brenton has misunderstood the law. You can verify the law for free by asking the TML or the AG.
2. Answer the complaint without waiting for a court order to do so. This will cost about \$125 for the city attorney to review your answer. This is the best answer if you think I have misunderstood the law.
3. Continue on present course and spend another \$20,000 or more to delay options 1 or 2.

As a citizen of Llano, I recommend option #1 or #2. I'll bet every citizen in Llano would also.

Marc Sewell

## **Appendix G – Tampering with Governmental Record §37.10 & § 37.13**

Texas Penal Code §37.10 & § 37.13

### CHAPTER 37. PERJURY AND OTHER FALSIFICATION

#### § 37.10. TAMPERING WITH GOVERNMENTAL RECORD.

(a) A person commits an offense if he:

- (1) knowingly makes a false entry in, or false alteration of, a governmental record;
- (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
- (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
- (5) makes, presents, or uses a governmental record with knowledge of its falsity; or

#### § 37.13. RECORD OF A FRAUDULENT COURT.

(a) A person commits an offense if the person makes, presents, or uses any document or other record with:

- (1) knowledge that the document or other record is not a record of a court created under or established by the constitution or laws of this state or of the United States; and
- (2) the intent that the document or other record be given the same legal effect as a record of a court created under or established by the constitution or laws of this state or of the United States.

## Appendix H – Attachments

- Attachment 1. [Transcript of Status Hearing, 5/14/14 for Cause No. 18504](#)
- Attachment 2. [Judicial Review Petition on 6/18/13](#)
- Attachment 3. [3rd Court of Appeals Appellant Brief 9/25/13](#)
- Attachment 4. [Motion for Interlocutory Appeal 6/4/14](#)
- Attachment 5. [Order for Service by Citation 8/13/14](#)