

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application Carl)
Richard Mills d/b/a Carl R. Mills Water)
Service for a Transfer of Assets to the)
Carriage Oaks Estates Homeowners)
Association)

File No. WM-2020-0387

OBJECTION TO THE APPLICATION TO INTERVENE

COMES NOW the Staff of the Missouri Public Service Commission and for its *Objection to the Application to Intervene*, states as follows:

1. On June 1, 2020, Carl Richard Mills d/b/a Carl R. Mills Water Service filed an application to gift the water system to Carriage Oaks Estates Homeowners Association. That same day, the Commission directed notice of the application and requested that any motion for intervention is due no later than June 16, 2020.

2. Derald Morgan, Rick and Cindy Garver, William and Gloria Phipps, and Davie Lott ("Intervenors") filed their *Application to Intervene*, by and through their undersigned counsel Karl Finkenbinder, Mo. Bar No. 59425 and Hampton Williams, Mo. Bar No. 65633, on June 12, 2020 pursuant to Commission Rule 20 CSR 4240-2.075, and therein asserted:

A. Intervenors Derald Morgan, Rick and Cindy Garver, William and Gloria Phipps, and David Lott are natural persons residing in the Carriage Oaks Subdivision in Stone County, Missouri.

B. Correspondence, communications, orders, and decisions may be sent to Intervenors' attorney at the following address:

Hampton Williams
Schenewerk & Finkenbinder, Attorneys at Law, LLC
100 Prairie Dunes Dr., Ste. 200
Branson, MO 65616
Phone: 417-334-7922
Fax: 417-334-7923
email: hampton@sfalwfirm.com

C. Intervenor seek to intervene in this case because they have an interest in the water services provided by the Carl Richard Mills in that they receive water services provided by the Carl Richard Mills.

D. Because Intervenor receive water services from the Carl Richard Mills, they have an interest in this matter that is different from those of the general public and could be adversely affected by the Commission's order in this case.

E. Intervenor seek to intervene in order to oppose the application.

F. Intervenor seek to provide information to the Commission regarding the alleged agreement of Carriage Oaks Estates Homeowners Association to receive the water utility, and furthermore inform the Commission that the proposed recipient homeowners' association would not be excused as per operations of terms of its *Declaration and Restrictive Covenants*, and thus would remain subject to the Commission's jurisdiction.

G. It will serve the public interest for the Public Service Commission to grant this application to intervene.

H. Intervenor oppose the approval for the Carl Richard Mills Trust application for a transfer of assets.

3. Counsel for the Intevenors also filed on June 12, 2020, on behalf of the Intervenors, a Motion to Strike the application filed by Carl Richard Mills, and a Motion to Dismiss the application of Carl Richard Mills.

4. In response to the *Application to Intervene*, Staff states:

A. On August 4, 2016, Derald Morgan, Rick and Cindy Garver, William and Gloria Phipps, and David Lott filed a complaint with the Missouri Public Service Commission against Carl Richard Mills, Carriage Oaks Estate Homeowners Association, Distinctive Designs, Ltd, and Caring Americans Trust Foundation, Inc., File No. WC-2017-0037. At that time, Hampton Williams was employed at the Missouri Public Service Commission, as the attorney on record for Staff, submitted discovery (data requests) to Carl Richard Mills' legal counsel (see attached Exhibit A), and prepared and filed the *Staff Report and Motion for Mediation* (see attached Exhibit B). Mr. Hampton Williams remained the Staff attorney assigned to the matter until his resignation of his position with the Commission's Staff's Office, effective February 6, 2017 (see attached Exhibit C).

B. Staff has reason to believe that Intervenors in this current matter, File No. WM-2020-0387, are the same Derald Morgan, Rick and Cindy Garver, William and Gloria Phipps, and David Lott who filed the Complaint, in File WC-2017-0037, against Carl Richard Mills.

5. Staff objects to Mr. Williams' representation of the Intervenors in this matter, in so much as Mr. Williams' representation of the Intervenors is a violation of Missouri Supreme Court Rule 4-1.11(a). Staff further objects to the representation of the Intervenors in this matter by a firm with which Mr. Williams is associated because

Mr. Williams was not timely screened from any participation in the matter, in so much as such representation would be a violation of Rule 4-1.11(b).

6. Rule 4-1.11(a) states:

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

1. is subject to Rule 4-1.9(c); and

2. shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, in writing, to the representation.

7. Rule 4-1.11(b) states:

(b) When a lawyer is disqualified from representation under Rule 4-1.11(a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

1. the disqualified lawyer is timely screen from any participation in the matter and is apportioned no part of the fee therefrom; and

2. written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

8. For purposes of Rule 4-1.11, “the term ‘matter’ includes: (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving

a specific party or parties, and (2) any other matter covered by the conflict of interest rules of the appropriate government agency.”

9. “Informed consent” means “agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the propose course of conduct.” Mo. R. Prof. Conduct 4-1.0(e).

10. “Confirmed in writing” denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. Rule 4-1.0(b). “If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.” Rule 4-1.0(e).

11. Rule 4-1.11 “represents a balancing of interests.” Rule 4-1.11 cmt. [4]. “[A] former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially.” *Id.* “The limitation of disqualification in Rule 4-1.11(a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.”

12. Finally, Rule 4-1.11(a)(1) and (d)(2) “apply regardless of whether a lawyer is adverse to a former client and are designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client.” Rule 4-1.11 cmt. [3]. “For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the

lawyer has left government service, except when authorized to do so by the government agency under Rule 4-1.11(a).” *Id.*

13. As noted above from the facts stated above and attached Exhibits, Staff believes Mr. Williams personally and substantially participated on behalf of the Staff of the Missouri Public Service Commission in the matter of the complaint filed by the Intervenor against Carl Richard Mills, File No. WC-2017-0037.

14. The current case before the Commission, File No. WM-2020-0387, involves the same requested ruling involving the same specific parties at issue in File No. WC-2017-0037. In WC-2017-0037, Complainants Morgan, Graver, Phipps and Lott asked the Commission to return operations of this water and sewer system to its home owner's association. Staff filed its recommendation in that case, through its attorney Mr. Williams, suggesting options for resolution of Staff's concerns, including the filing of a certificate of convenience and necessity, turning over control of the water and sewer systems to an appropriately organized nonprofit water and sewer entity, or turning over the water and sewer systems and operation to an existing unrelated utility capable of providing such utility service. In this case, Mr. Williams, who now seeks to represent intervenors Morgan, Graver, Phipps and Lott, opposes the transfer of the systems to the home owner association.

15. Mr. Williams did not provide advance notice to Commission Staff of his intended course of conduct of representing Intervenor in this case, nor did Mr. Williams request Commission Staff to give informed consent to that course of conduct. Staff is unaware of Mr. Williams obtaining informed consent, confirmed in writing, of that course of conduct.

16. Staff's objection to the *Application for Intervention* in this matter is limited to Staff's objection to Mr. Hampton Williams' representation of the Intervenors, and to the same extent to the representation of the Intervenors by any lawyer in a firm in which Mr. Williams is associated but has not been appropriately screened.

17. Staff has no objections to the Intervention, and to the extent a Commission ruling would affect the timing of the Intervenors' request to participate in the case, the Order should grant leave for Intervenors to find new counsel, pursuant to Commission Rule 20 CSR 4240-2.075 should said Intervenors have legal representation that is consistent with Missouri Supreme Court Rules.

WHEREFORE, Staff requests that the Commission deny the *Application the Intervene* for the reasons stated herein; and grant such other and further relief as is just in the circumstances.

Respectfully submitted.

/s/ Jamie S. Myers

Jamie S. Myers
Associate Counsel
Mo. Bar No. 68291
200 Madison St, Ste. 800
P.O. Box 360
Jefferson City, MO 65102
Phone: 573-526-6036
Fax: 573-751-9285
E-mail: jamie.myers@psc.mo.gov

/s/ Kevin A. Thompson

Kevin A. Thompson
Chief Staff Counsel
Mo. Bar No. 36288
Phone: 573-751-6514
Fax: 573-526-6969
Email: kevin.thompson@psc.mo.gov

/s/ Mark Johnson

Mark Johnson
Deputy Counsel
Mo. Bar No. 64940
Phone: 573-751-7431
Fax: 573-751-9285
E-mail: mark.johnson@psc.mo.gov

/s/ Curt Stokes

Curt Stokes
Chief Deputy Counsel
Mo. Bar No. 59836
Phone: 573-751-4227
Fax: 573-751-7431
E-mail: curtis.stokes@psc.mo.gov

Attorneys for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 22nd day of June 2020, to all counsel of record.

/s/ Jamie S. Myers