

**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)	File No. WM-2020-0387
for a Transfer of Assets to the Carriage Oaks)	
Estates Homeowners Association)	

SUGGESTIONS IN OPPOSITION TO STAFF COUNSEL’S
OBJECTION TO INTERVENORS’ COUNSEL

COME NOW, Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and David Lott (“Intervenors”), and in opposition to Staff Counsel’s objection, states as follows:

On June 12, 2020, and pursuant to the Commission’s *Order* dated June 1, 2020, Intervenors filed their application to participate in the above-captioned case. On June 22, 2020, Staff Counsel filed its objection against the participation of Intervenors’ counsel, Hampton Williams, alleging that such participation would violate the Missouri Rules of Professional Conduct (“MPRC”), because of Mr. Williams activities in a prior case, WC-2017-0037. Staff Counsel’s analysis misidentifies the Commission’s authority to exclude licensed attorneys, misinterprets the MPRC 4-1.11 and misapplies relevant facts. Accordingly, the Commission should approve Intervenors’ application and overrule Staff Counsel’s objection.

A. The Commission Lacks Authority to Interpret and Apply the Missouri Rules of Professional Conduct

The Commission’s jurisdiction “is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the Statutes and powers reasonably incidental thereto.” *State ex rel. Cass Cty. v. Pub. Serv. Comm’n*, 259 S.W.3d 544, 547–48 (Mo. Ct.

App. 2008) (Internal citation omitted). The Commission's general jurisdiction articulated in § 386.250, R.S.Mo., does not contemplate the adjudication or interpretation of the MPRC. In its objection, Staff Counsel asks the Commission to interpret and apply MPRC 4-1.11 to exclude Mr. Williams participation in the above captioned case. As the Commission is without authority to either interpret or apply the MPRC, Staff Counsel's request asks the Commission to act beyond the Commission's authority and in a manner not supported by law.

Through its rulemaking authority, the Commission has promulgated specific rules pertaining to the practice of attorneys before the Commission in 20 CSR 4240-2.040(3)(A), *inter alia*, permitting an attorney licensed in Missouri in good standing for admission. That regulation is the only authority the Commission may enforce regarding the appearance of attorneys before the Commission. Staff Counsel's objection does not allege Mr. Williams is not licensed to practice in Missouri. Staff Counsel's objection does not allege Mr. Williams is not in good standing with the Missouri Bar. Rather, Staff Counsel requests that the Commission apply a separate corpus of regulation instead of the Commission's Rules to exclude Mr. Williams' participation in this case.

As the Commission lacks jurisdiction to consider the objection on the grounds Staff Counsel raised, and that Staff Counsel failed to allege any violation of the relevant Commission Rules regarding the practice of attorneys, the Commission is without a basis to sustain Staff Counsel's objection. Staff Counsel's objection should be overruled.

B. Staff Counsel's Objection Omits Relevant Considerations in Applying MPRC 4-1.11

Staff Counsel supports its objection by selectively quoting MPRC commentary that suggest contrary to its motion. Specifically, in quoting comment 4, Staff Counsel omits the countervailing consideration to be weighed by the rule, being “rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government.” In context, comment 4 functions to limit disqualification under MPRC 4-1.11(b) to *particular* matters. Read in conjunction with the plain language of 4-1.11(a)(2) “in connection with **a matter** in which the lawyer personally and substantially” participated in shows the rules intent to limit the application to a single circumstance.

This is also observed in MPRC Comment 10, which specifically defines “matter” *as continuing in another form* for the purposes of the obligations lawyers holding public office. Were the term “matter” already defined so, as proposed by Staff Counsel, the additional explanation and explicit limitation to MRPC 4.1-11(e) would be unnecessary. Mr. Williams does not hold public office, yet. Given the benefit of the commentary provided by the MPRC, it is apparent that Staff Counsel’s interpretation seeks a broader and more rigid application than the rule itself contemplates.

While Mr. Williams did, in 2016 through February 2017, participate in WC-2017-0037, that case closed on August 7, 2018. Since then, another case regarding the operation of the regulated water corporation at issue in WA-2018-0370 among the same intervenors, staff, and the applicant in this matter took place. Mr. Williams was not a part of that proceeding. WA-2018-0370 closed on January 7, 2020. At the time of Mr. Mills initiation of this action, Mr. Williams was not employed by any other party to this case. Staff

Counsel's argument that Mr. Williams' involvement in the 2017 case constitutes personal and substantial participation in *this* particular matter ignores the procedural history among the parties and the intervening case. As Staff Counsel's objection exceeds the guidance provided in the MPRC and the limitations of the scope of applicability matters, the Commission is without a basis to exclude Mr. Williams from *this* case.

C. Staff Counsel's Objection Overlooks Relevant Facts in Applying 4-1.11(b)

In addition to the interim case, WA-2018-070, a review of the 2017 case and this application show that the matters are materially different. In the 2017 case, the Commission, upon a complaint, determined whether it had jurisdiction over the water system serving Carriage Oaks subdivision in Stone County, Missouri. In this case, the Commission's jurisdiction is not in question. The question before the Commission is different, in that the movant is Carl Mills, and the request is to transfer a water system from a regulated entity to a potentially non-regulated entity. The Commission's consideration, particularly for the wellbeing of utility customers who may be discharged from the supervision of the Commission, in this application is a different as compared to the factual determination as to whether water utility service offered to the public is regulated it considered in the 2017 case. Because the underlying relief sought from the Commission from the claims are distinct, the matters are not connected to each other.

In addition, the entities in possession of the water utility assets in the 2017 case are different from the current owner of the system. At the point in time Mr. Williams was involved in the 2017 case, the owner of the utility asset was an organization called Caring Americans Foundation. Caring Americans Foundation is not a party to this case. While

Carl Mills was, in his personal capacity, named in the 2017 complaint, the Commission did not determine that he individually would act was the utility until the 2018 case.

Additionally, nearly three and half years have passed since Mr. Williams worked on the 2017 case, or for the Commission in any capacity. Mr. Williams has not had access to privileged information concerning these parties or this system for over 40 months. Any confidential information from the 2017 case to which he was privy is stale, particularly given the intervening 2018 CCN case.

Finally, Carl Mills initiated this proceeding. The Intervenors are without the ability to compel the action sought by Mr. Mills. To the extent that 4-1.11(b) determines multiple matters to be connected, the voluntary application by Carl Mills for relief unrelated to any requirement or mandate arising from the 2017 and 2018 cases create a distinct action.

D. Staff Counsel's Rationale Would Preclude Mr. Williams from Appearing in a Vast Number of PSC Cases

After leaving the employ of the Commission, Mr. Williams served as Public Counsel from February 2017 to October 2018. Following Staff Counsel's rationale from their objection, Mr. Williams would be precluded from appearing in any case involving Staff, OPC, Ameren Missouri, Evergy, Liberty Utilities, MAWC, and literally every regulated utility, as Mr. Williams represented both Staff and OPC in a wide variety of cases during his tenure in both offices. The effect would greatly impair Mr. Williams' ability to practice law. Mr. Williams is unaware of any such similar posture the Commission has taken towards former staff or public counsel attorneys. As Mr. Williams otherwise meets all qualifications to practice before of the Commission, his exclusion would be

discriminatory. As Staff Counsel's interpretation appears aimed at, or otherwise have the effect of, prohibiting Mr. Williams from generally practicing law before the Commission, the Commission should overrule Staff Counsel's objection.

WHEREFORE, Intervenor's offer the foregoing for the Commission's consideration and respectfully request the Commission APPROVE Intervenor's application and OVERRULE Staff Counsel's objection.

Respectfully submitted,

SCHENEWERK & FINKENBINDER,
ATTORNEYS AT LAW, LLC

By: /s/ Hampton Williams

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COUNSEL FOR INTERVENORS

CERTIFICATE OF SERVICE

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to all counsel of record via email on July 1, 2020, to the following email addresses:

Mark Johnson [Mark.Johnson@psc.mo.gov];
Jamie Myers [Jamie.Myers@psc.mo.gov];
Missouri Public Service Commission [staffcounsel@psc.mo.gov];
Office of the Public Counsel [opcservice@opc.mo.gov];
Carl Richard Mills [mrrsykes@aol.com].

The above was also served via U.S. Mail, postage prepaid to the following interested parties on July 1, 2020:

Carriage Oaks Estates Homeowners Association
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/s/ *Hampton Williams*
Hampton Williams