



City of Elkins

Special Call Sanitary Board Meeting

September 28, 2023

10:00 AM

401 Davis Avenue
Council Chamber, 2nd Floor

Special Call Meeting-One Time Event

AGENDA

1. **Call to order and roll call**
2. **Public comment**
3. **New business**
 - a. Discussion of Steptoe & Johnson's (Armando Benincasa) Proposed Engagement Letter for Legal Services Regarding Consent Decree
4. **Announcements**
5. **Adjournment**



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	September 28, 2023
Section:	New business
Category:	Presentation
Agenda Item Name:	Discussion of Steptoe & Johnson's (Armando Benincasa) Proposed Engagement Letter for Legal Services Regarding Consent Decree
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. Engagement Letter - Elkins Sanitary Board

September 21, 2023

Via Electronic Mail Only

The Honorable Jarry A. Marco, Chairman
Elkins Sanitary Board
401 Davis Avenue
Elkins, WV 26241

Re: Representation by Steptoe & Johnson PLLC

The Honorable Jerry A. Marco:

Thank you for selecting Steptoe & Johnson PLLC [Steptoe] to represent you in connection with matters related to compliance with the terms and conditions of that certain Consent Decree entered in that certain civil action in the United States District Court for the Northern District of West Virginia, Civil Action No. 2:11cv61 and such other related matters as agreed to by the parties. This letter ("Engagement Letter"), when returned to our office, will constitute the terms of engagement for this matter along with the Cost Information Sheet which is attached hereto with our firm for the matter[s] addressed.

1. IDENTITY OF CLIENT

For the purpose of this representation, we understand that our client is the City of Elkins Sanitary Board ("Board"). We are not representing any other entities or individuals whose interest may be affected by this matter and such individual persons or other entities are expressly excluded from the scope of our representation. References in this Agreement to "you" or "your" will mean the client identified in this paragraph.

2. SCOPE OF WORK

You are hiring us as your attorneys to represent you in the following matter:

Steptoe will be assisting the Board with regard to matters related to compliance with the terms and conditions of that certain Consent Decree entered in that certain civil action in the United States District Court for the Northern District of West Virginia, Civil Action No.

2:11cv61 and such other related matters as agreed to by the parties.

In addition to the representation referenced specifically above, the parties agree that the Board may request representation related to other similar matters and such other matters related to the regulation of its business and business activities. Such additional representation is subject to future conflicts checks by Steptoe and agreement of the parties.

We will provide those legal services necessary to represent you in the above matter[s] and we will take reasonable steps to keep you informed of progress and to respond to your inquiries. Our representation will conclude when this matter is completed. If Steptoe & Johnson PLLC is asked to perform additional work for you in the future, the terms of this letter will apply unless a different arrangement is agreed upon.

3. MINIMUM FEE/DEPOSIT

No retainer is required in this matter.

4. STAFFING, LEGAL FEES, BILLING PRACTICES

I will be the point of contact for communications related to the representation and will be the attorney primarily responsible for the work we will perform for you related to the specific matter referenced above. We may utilize the services of other attorneys, law clerks and legal assistants to assist as necessary to efficiently handle your work and to meet time deadlines.

You agree to pay by the hour at our prevailing rates for time spent on your matter by our legal personnel. Our billing rates vary with the experience and skill of the attorney or legal personnel rendering the service. The present rates of our members, who may work on your matters, vary from \$400 to \$800 per hour, our of counsel rates vary from \$380 to \$600 per hour, our associates' rates vary from \$225 to \$400 per hour, and our paralegal rate is \$195 to \$200 per hour. My current rate is \$590 per hour.

Additionally, if it becomes appropriate and you agree, we may utilize other lawyers in our firm in certain specialized practice areas like federal and state taxation, ERISA and other benefits law, appellate litigation, environmental law, cyber law, and other niche practices. In these instances, our rates for these lawyers may be higher than quoted above.

We charge for our time in minimum units of 1/4 hours, unless otherwise agreed. We will charge you for the time we spend on telephone calls relating to your matter, including calls with you, opposing counsel or court personnel. The legal personnel assigned to your matter may confer among themselves on the matter, as required. When they do confer, each person will charge for the time expended. We will charge for waiting time, in court and elsewhere, and for travel time, both local and out of town.

We normally adjust our billing rates annually on or about January 1, and we reserve the right to annually adjust our billing rates if this matter continues into another calendar year.

5. BILLING STATEMENTS

Unless otherwise agreed to in writing, we will send you monthly statements for fees and costs incurred. Each statement will be due within thirty (30) days of its receipt. Any statement which is not contested within thirty (30) days of receipt will be deemed to be incontestable. If fees are collected at a settlement or the closing of a transaction, any additional time for post-closing matters will be either billed on a subsequent statement or estimated and collected at the settlement or closing.

6. DISCLAIMER OF GUARANTEE

Nothing in this Agreement and nothing in our reports or statements to you should be construed as a promise or guarantee about the outcome of your matter. We make no such promises or guarantees. Our comments about the expected outcome of your matter are expressions of our opinion only based on the presently known facts and circumstances.

7. DISCLOSURE OF REPRESENTATION

From time to time, it is useful for us to advise prospective clients of the identity of other clients for whom we have been asked to perform legal services. In addition to helping potential clients to evaluate the potential for our firm to serve their needs, such disclosures also help us make early determinations of potential conflicts. Unless you advise us otherwise, we reserve the right to include the fact of our representation of you in such disclosures and in our promotional materials. In no case do we disclose any details of any work that we perform for any client in our disclosures, and if you prefer that we not disclose our representation of you, please advise us and we will not do so.

8. WAIVER OF CONFLICTS

As you are aware, our firm represents many other companies and individuals. It is possible that during the time that we are representing you, some of our present or future clients may have disputes or transactions with you. You hereby agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse to you. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

9. PRESERVATION OF DOCUMENTS AND ELECTRONICALLY STORED INFORMATION

Developments in the law regarding document and data preservation now require parties to a lawsuit to take affirmative and documented steps to preserve records related to litigation. Courts have become increasingly vigilant in demanding that records, especially electronic files, e-mail and similar communications, be preserved. Preservation obligations arise once litigation is reasonably anticipated. In this case litigation has commenced.

To meet the duty to preserve, a number of steps should be taken at the outset of any lawsuit. These acts can be time consuming but are critical if a party is going to adequately respond to discovery requests and demonstrate its good faith efforts regarding preservation. Because of the nature of electronic record keeping, claims of spoliation or intentional destruction of discoverable evidence are becoming more commonplace. In this context, what a party does to preserve relevant records is coming under increasing scrutiny.

We anticipate working with you closely regarding document and data preservation. As an initial matter, please give consideration to and be prepared to discuss with us the scope of potentially relevant information, the possible types of records that may contain it, and all persons who may have relevant materials. If any potentially relevant information is maintained or stored electronically, immediately consult with your system administrator to determine what records exist and how they can be safeguarded. This is commonly referred to as placing a "Litigation Hold" on records. Options include the immediate suspension of relevant document/record deletion programs, copying or downloading of potentially relevant records, and creating hard copies of computerized records.

10. CONFIDENTIAL COMMUNICATIONS

Lawyers are required by the Rules of Professional Conduct to maintain as confidential information relating to representation of, and communications with, clients, subject to certain

limited exceptions. This requirement of strict confidentiality extends to electronic communications and electronically maintained files of course.

We all realize that in today's world, the danger of "hacking", or other means of third party "bad actors" gaining access to electronically-stored confidential information or electronic communications, is high. Our firm has invested and will continue to invest in technology designed to prevent unwanted and unauthorized access to your confidential information and communications. We cannot guarantee, however, that our efforts will be foolproof. We will advise you of any breach that may occur of which we become aware.

We will communicate with you in the manner, including text-messaging, that you choose, but we must advise you that "texting" is considered a high risk means of communication and that if you choose to communicate with us in that manner, you do so at your own risk of unauthorized access.

11. EFFECTIVE DATE

The effective date of this Agreement will be retroactive to the date we first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, you will be obligated to pay us the reasonable value of any services we may have performed for you and any reasonable costs incurred.

We look forward to working with you. If these terms are acceptable to you, please sign the enclosed duplicate original of this letter and return it to me. If you have any questions about this letter or our representation, please call or write me.

Very truly yours,

STEPTOE & JOHNSON PLLC

By:



Armando Benincasa
Member

Agreed to this _____ day of _____, 2023.

The Honorable Jerry A. Marco, Chairman
Elkins Sanitary Board

Enclosures: Cost Sheet

STEPTOE & JOHNSON PLLC

COST INFORMATION SHEET

- (a) Copies - \$0.25 per page
- (b) In-house scanning - \$0.10 per page
- (c) In-house couriers - based on time, plus mileage
- (d) Legal research - based on inquiry complexity
- (e) Auto travel - IRS business mileage rate (\$0.655 per mile)