

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MURRAY WATER)	CASE NO.
DISTRICT #2 FOR AN ORDER APPROVING A)	2019-00413
TRANSFER OF OWNERSHIP AND CONTROL)	
TO THE CITY OF MURRAY)	

ORDER

This matter arises from a joint application in which both parties are represented by the same attorney and from a response to a request for information filed on behalf of both parties by an engineer.

On November 13, 2019, Murray Water District #2 (Murray District #2) and the city of Murray filed a joint application requesting Commission approval to transfer ownership and control of Murray District #2 to the city of Murray. According to the joint application, both parties are represented by the same attorney, Warren K. Hopkins. Because joint representation may threaten the exercise of an attorney's independent professional judgment,¹ joint representation should be undertaken only after full disclosure and informed consent of both parties. However, pursuant to the Kentucky Rules of Professional Conduct, a lawyer may represent a client under these circumstances if, among other things, each affected client gives informed consent, confirmed in writing.²

¹ SCR 3.130(1.7) Conflict of interests: current clients, prohibits lawyers from representing a client if the representation involves a concurrent conflict of interest, which exists if the representation of one client will be directly adverse to another client or there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client.

² SCR 3.130(1.7)(b)(4).

Therefore, the Commission finds that Murray District #2 and the city of Murray should file a copy of their written informed consent to joint representation into the record of this proceeding.

Additionally, on January 9, 2020, Murray District #2 and the city of Murray filed a joint response (Response) to Commission Staff's First Request for Information. The Response was sponsored and made under oath by Marty Futrell, representative of Murray District #2. However, the Response was not filed by counsel, Mr. Hopkins, but by Donald Elias, Project Coordinator for Bacon/Farmer/Workman Engineering & Testing, Inc., who was hired by Murray District #2 and the city of Murray to assist in the transfer.³ 807 KAR 5:001, Section 4(4), states that a person shall not file a paper, such as a response to a request for information, on behalf of another person or otherwise represent another person before the Commission unless the person is an attorney licensed to practice law in Kentucky. Upon review of a database of lawyers licensed to practice law in Kentucky,⁴ it appears that Mr. Elias is not licensed as an attorney eligible to practice law in Kentucky. The Commission finds that the Response should be rejected for filing and that counsel for Murray #2 and the city of Murray should refile the Response within seven days of the date of this Order. The Commission further finds that all such future filings should be made by counsel representing the parties, in compliance with 807 KAR 5:001, Section 4(4).

³ Letter Filing Response (filed Jan. 9, 2019).

⁴ Kentucky Bar Association, Lawyer Locator, <https://www.kybar.org/search/custom.asp?id=2947>.

IT THIS THEREFORE ORDERED that:

1. Murray District #2 and the city of Murray shall file a copy of their respective written informed consent to joint representation by Mr. Hopkins within seven days of the date of this Order.
2. Murray District #2 and the city of Murray's Response is rejected for filing.
3. Within seven days of the date of this Order, counsel for Murray District #2 and the city of Murray shall file the Response in compliance with 807 KAR 5:001, Section 4(4).

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By the Commission

ENTERED
JAN 27 2020
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*for
Cynthia R. Pinson*

Case No. 2019-00413

*Murray #2 Water District
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