

March 31, 2020

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**VIA ELECTRONIC AND REGULAR MAIL**

Kristina Nelson-Gross  
Sequim City Attorney  
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***Re: Proposed Jamestown S'Klallam Drug Treatment/Detoxification Center***

Dear Kristina:

I must regretfully respond to your March 23, 2020 letter accusing me of violations of RPC 4.2, RCW 35A.13.120, RCW 42.36.010 and RPC 1.13. I must also point out a significant legal misunderstanding on your part regarding your demand that I and my clients cease and desist from further direct communications with the Sequim City Council.

**RPC 4.2:** RPC 4.2 [5] expressly allows communication on behalf of a client who is exercising a constitutional or legal right to communicate with the government. In this case, the Constitutional right is contained in Article I Section 4, which guarantees Washington citizens the right of petition and assemblage. There are also numerous statutory rights, most notably the Growth Management Act's mandate for 'early and continuous public participation', SEPA's public commenting mandates under WAC 197-11-502 (adopted in SMC 16.04.130) and numerous subsections of Section 20.01 of your own Code. RPC 4.2[5] reads as follows:

**RPC 4.2**

**COMMUNICATION WITH PERSON REPRESENTED BY A LAWYER**

*[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities,*

*directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. (emphasis added)*

In fact, your demand that we cease and desist from further communications with the City Council in itself may well constitute a violation of the above-referenced provisions.

**RCW 35A.13.120:** In your letter, you also claim that my communication to the City Council violates RCW 35A.13.120, which prohibits Councilmembers from “meddling in administrative decisions”. First of all, we do not believe that this matter constitutes an administrative decision for reasons that you and the Council are well aware of by this point. Second, the purpose of the letter was to notify the City Council of possible ethical and legal lapses by the City’s Planning Director, whether intentional or accidental. I would agree with you that employment matters can be administrative in nature, however our concern here is that these actions deprive the citizens of Sequim of their right to a fair hearing, which is guaranteed by RCW 43.36.110. Public hearings by definition are not administrative in nature, they are quasi-judicial.

Your letter goes on to claim that the statements “super project”, “great deal of benefit” and “awesome”, written by your Planning Director months in advance of the actual application do not rise to the level of damning evidence of prejudgment and bias, because they are only a few “innocuous emails” contained in the “hundreds, if not thousands” of documents my firm has received. We respectfully disagree. These are statements indicating significant bias and prejudgment made by a person purporting to be the decisionmaker, who is legally and ethically required to remain neutral throughout this process, and to administer the Code properly and fairly, and who we believe has improperly and intentionally keeping this matter away from the City Council and public review.

**RCW 42.36.010:** Your letter next claims that we have a “gross lack of understanding of the appearance of fairness doctrine” and that our “constant barrage or written and oral communications” constitutes a violation of it. But as I imagine you know, the Appearance of Fairness Doctrine does not apply to private citizens, it applies to elected officials. In this regard, see RCW 42.36.010, quoted in full below:

**RCW 42.36.010**

***Local land use decisions.***

*Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are*

*those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.*

**RPC 1.13:** RPC 1.13 applies to attorneys representing organizations who acquire knowledge of wrongdoing by the organization that they represent. I therefore am not sure how this RPC requires me to notify you of possible wrongdoing within the organization that you represent first before notifying the City Council. I also believe that RPC 1.13 may not apply to attorneys challenging a local land use decision, but I have not researched that issue. If you have any authority on your position on this issue, I would appreciate it if you would share it with me.

Kristina, our previous dealings have been professional, courteous and substantive, and I was saddened and surprised by your defensive and accusatory response. I was simply trying to point out what we see as a potentially very serious legal problem for your clients in the hope that you would conduct an investigation and take whatever steps are necessary to ensure that this project (and the process by which it is reviewed) complies with the applicable regulatory scheme. I meant no disrespect to you, personally or professionally.

Very truly yours,

A handwritten signature in black ink, appearing to read "Spence", written in a cursive style.

Michael A. Spence

MAS: mas  
cc: Save Our Sequim