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Re: Resolution with Exhibits <paul@paulmartinpc.com>

Re: Resolution with Exhibits

1 message

Paul Martin <paul@paulmartinpc.com>

Wed, Feb 20, 2013 at 6:57 AM

To: Roze Acup <racup@sbcglobal.net>

Cc: Kate Demeter <kate@ellisville.mo.us>, Adam Paul <quintage21@aol.com>, Adam Paul <Adam.Paul@amdocs.com>, Anglins <anglinz@charter.net>, Matt Pirrello <pirrello@charter.net>, Linda Reel <reelones@yahoo.com>, Troy Pieper <troy.pieper.l01m@statefarm.com>, "troy@troypieper.com" <troy@troypieper.com>, Shelly Murray <shellymurray@sbcglobal.net>, Kevin Bookout <kbookout@ellisville.mo.us>

Privileged Attorney-Client Communication

To follow up on last night's e-mail

Section 3.6 of the Charter provides that the Council "shall be the judge of all questions" pertaining to the qualifications of all council members "and of the sufficiency of the grounds for forfeiture of their office." To proceed under Section 3.6, the Council "shall adopt by an affirmative vote of a majority of the unaffected members a preliminary resolution stating the reasons a member . . . has forfeited office".

The charged member may file a written request for a public hearing within five days of the delivery of the resolution. If so requested, the hearing must be held "not earlier than fifteen days nor later than 30 days" after the request is filed. After the hearing, a final resolution must be adopted for removal, with decisions to be reviewed by the St. Louis County Circuit Court.

The standard that must be met for a court to uphold the removal of an elected official in Missouri is "misfeasance, malfeasance, or nonfeasance" in office. Misfeasance is the improper performance of some act which may lawfully be done. Malfeasance is the commission of some act wholly beyond the actor's authority. Nonfeasance is the failure to perform a required duty.

Before the Council chooses to proceed with a preliminary resolution, be advised that I will not be able to participate in any hearing, either as the prosecutor of the charges or as attorney for the Council, as I anticipate that I will be a witness at the hearing, should it come to pass. My disqualification would not be effective until the Council passed the preliminary resolution for removal, so I may assist in its preparation.

Because of my disqualification, the City would need to hire a special prosecutor to present the charges at the removal hearing and another attorney to advise the Council throughout the 3.6 process. In that the special prosecutor will need to be engaged immediately to adequately present the charges given the Charter's time frame for a hearing, and in that the Council will need a legal advisor after the adoption of the preliminary resolution (due to my disqualification), I recommend that the resolution also authorize the hiring of counsel. If the council chooses to proceed with the drafting of a preliminary resolution, I'll suggest two attorneys/firms to fill this role.

Also, while under the Charter the mayor *may* request a public hearing (assuming the adoption of a preliminary resolution), he is not obligated to do so. I am concerned that constitutional due process may not be served if the mayor fails to request a hearing. In other words, the constitution may *require* a hearing, even if the mayor doesn't request one, to enable the Council to exercise its authority to remove him from office. The Council should also consider that it will have to meet again to schedule a hearing, assuming the mayor requests one, and that any delay in setting a hearing date may impinge on the time limits established by the charter. I'd recommend any preliminary resolution include a date for hearing the charges, to ensure that (a) the mayor is afforded all process due by law, (b) the Council is not forced to reconvene to schedule a hearing, and (c) a hearing may be scheduled as expeditiously as possible within the time frame required by the Charter. That date can be determined at the time the resolution is considered.

Finally, in that City staff, myself included, have knowledge of some of the acts that may be deemed by the Council to constitute misfeasance, malfeasance, or nonfeasance in office, the resolution should authorize and direct the staff to participate fully in the preparation of the preliminary resolution and the 3.06 proceeding.

Martin Production 0064

regardless of whether staff's knowledge consists of information that might be deemed "closed" under the Sunshine Law.

This is all I can think of at this time. The council can discuss the matter further at tonight's closed session.

On Tue, Feb 19, 2013 at 9:45 PM, Roze Acup <racup@sbcglobal.net> wrote:

As I'm reading the CEC recommendation I only see one issue addressed (giving a direct order to police officers) although Katie has listed other violations in the last paragraph. In addition there have been instances such as discussing with petitioners outside of a public meeting, specifically Ruby's Guns and the Walmart relocation specialist. Will these occurrences be addressed?

From: Kate Demeter <kate@ellisville.mo.us>

To: 'Adam Paul' <quintage21@aol.com>; 'Adam Paul' <Adam.Paul@amdocs.com>; 'Anglins' <anglinz@charter.net>; 'Matt Pirrello' <pirrello@charter.net>; 'Linda Reel' <reelones@yahoo.com>; 'Troy Pieper' <troy.pieper.lo1m@statefarm.com>; troy@troypieper.com; 'Shelly Murray' <shellymurray@sbcglobal.net>; 'Roze Acup' <racup@sbcglobal.net>

Cc: Kevin Bookout <kbookout@ellisville.mo.us>; 'Paul Martin' <paul@paulmartinpc.com>

Sent: Tuesday, February 19, 2013 8:29 AM

Subject: Resolution with Exhibits

I did not attach exhibits earlier. Please see the attached.

Kate

THIS IS A CONFIDENTIAL COMMUNICATION FROM THE LAW FIRM OF:

Paul Martin, P.C.
9322 Manchester Road
St. Louis, Missouri 63119
(314) 961-0097 x. 12 (Office)
(314) 805-8800 (Direct)
(314) 961-0667 (Fax)

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Paul Martin <paul@paulmartinpc.com>

Re: Question

Paul Martin <paul@paulmartinpc.com>

Fri, Nov 9, 2012 at 10:54 AM

To: Anglins <anglinz@charter.net>

Good. You, too!

On Fri, Nov 9, 2012 at 10:36 AM, Anglins <anglinz@charter.net> wrote:
Thank you it most certainly does help. I appreciate it greatly.
Have a wonderful weekend.
Dawn

On Fri, Nov 9, 2012 at 10:22 AM, Paul Martin wrote:

Hi Dawn!

AP does not call me.

I'm attaching what I think to be the final version of Kevin's contract, before any amendment. You should probably verify this with Kate or Kevin, but I'm pretty sure it's correct.

You can see that it does indeed define cause, fairly liberally in favor of the council's discretion. This was the result of the difficulties faced with Brent's contract, which defined cause very narrowly--I think it was pretty much commission of a felony or a crime of the ambiguous "moral turpitude". Brent obviously ran into some significant problems, but his "for cause" provision was so narrowly defined that the council agreed to pay him his full severance, which I think was 9 months.

The reduction from 9 to 6 months is in Kevin's original agreement, and I'd interpret it as the result of the council feeling burned over Brent's contract. I recall the idea being that he would have 9 months severance to cover him for the initial 2 years, when a firing was most likely to occur, with a reduction to 6 thereafter, when the ship of state presumably would be more stable.

I don't know where or why the request for an extension was made, but with the behavior exhibited by AP, and with the possibility of a completely new board come April, I don't blame Kevin one whit for trying to get something more. The funny thing is that the severance is tied to length of performance. Right now he's at 6 years, 6 months, with an increase going forward at one

month per year. Even if AP carries the day in April and fires Kevin in May, Kevin would only get one additional month, at best.

As for what's standard, I really don't know across the board, but this is what I do know:

In Olivette, it was 12 months the first 2 years, 9 months during the 3rd year, and 6 months thereafter;

In U. City, it's 2 years for the first 18 months, 9 months for the 3rd and 4th years, and 6 months thereafter;

In Rock Hill, it's 10 months flat; and

In Maryland Heights, it's 12 months flat.

I *think* the old school way was to have a flat severance, generally in the range of 9 to 12 months, but I really can't say for sure.

I don't think it's unreasonable to increase Kevin's severance, in light of the future's political uncertainty, as a means to encourage him to stay with Ellisville rather than look for a new job right now. I know of at least one opportunity he could pursue locally, and there may be others. But the curious thing is that the proposal on the table doesn't give him that much more security if things fall apart in April.

Hope this helps.

Paul

On Fri, Nov 9, 2012 at 8:18 AM, Anglins <anglinz@charter.net> wrote:
Paul,

I need to get some information for a resident that called me after our last meeting. I am guessing you are the one to ask, and I also assume AP has already asked so hopefully you already have the answers.

When and why did Kevin's contract change from 9 months severance to 6? What is the standard severance for other city administrators? Is cause clearly spelled out in his contract? If so, what is the verbiage?

Thanks,

Dawn Anglin

Ellisville

--

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St. Louis, Missouri 63119
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Paul Martin <paul@paulmartinpc.com>

Re: Adam Paul Removal Resolution

11:00 AM

Paul Martin <paul@paulmartinpc.com>
 To: Kate Demeter <kate@ellisville.mo.us>

Mon, Feb 25, 2013 at 9:21 AM

Kate—I had to get the thing finished. I dont think there is anything in the doc that is incorrect, but I'd still like you to review it and inform me of any concerns. On the dates, please just change those on the original prior to attaching to the meeting agenda. Thank you. Paul

On Mon, Feb 25, 2013 at 7:43 AM, Kate Demeter <kate@ellisville.mo.us> wrote:

- The April 18th date on pages 6 and 8 should be May 2, 2012. Katie James was correct about the dates.
- I just started to review it and am not finished.

From: Paul Martin [mailto:paul@paulmartinpc.com]

Sent: Saturday, February 23, 2013 2:15 PM

To: Kate Demeter

Cc: Adam Paul; Dawn Anglin; Linda Reel; Matt Pirrello; Roze Acup; Shelly Murray; Troy Pieper; Kevin Bookout

Subject: Adam Paul Removal Resolution

Kate:

As directed by the Council, I am attaching a removal resolution pursuant to Section 3.6 of the Charter. The lawyers/firms noted in the resolution have served the city in special capacities in the past, and they have agreed to do so again. I will be preparing engagement letters for them to attache as Exhibits A and B to the resolution.

Paul

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Martin Production 0069

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Paul Martin <paul@paulmartinpc.com>

Attorney Letter Agreements

1 message

Paul Martin <paul@paulmartinpc.com>
To: Kevin Bookout <kbookout@ellisville.mo.us>
Cc: Kate Demeter <kate@ellisville.mo.us>

Sun, Feb 24, 2013 at 4:29 PM

Kevin—I kept them short and simple. Of course, put them on city letterhead and date them. Paul

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Paul Martin, P.C.
9322 Manchester Road
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2 attachments

 **Cheung.docx**
79K

 **Maupin.docx**
78K



Paul Martin <paul@paulmartinpc.com>

Fwd: AP

1 message

Paul Martin <paul@paulmartinpc.com>
To: Matt Pirrello <pirrello@charter.net>

Sat, Feb 23, 2013 at 6:17 PM

Paul Martin, PC
9322 Manchester Road
Saint Louis, Mo 63119
(314) 961-0097 x. 12
(314) 805-8800 (direct)
(314) 961-0668 (fax)


Begin forwarded message:

From: Paul Martin <paul@paulmartinpc.com>
To: Paul Martin <Paul@paulmartinpc.com>
Subject: AP

—
THIS IS A CONFIDENTIAL COMMUNICATION FROM THE LAW FIRM OF:

Paul Martin, P.C.
9322 Manchester Road
St. Louis, Missouri 63119
(314) 961-0097 x. 12 (Office)
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 **Impeachment Resolution.2.23.REV.docx**
157K



Paul Martin <paul@paulmartinpc.com>

Attached

1 message

Paul Martin <paul@paulmartinpc.com>

Fri, Feb 22, 2013 at 3:35 PM


To: Keith Cheung <kcheung@lawfirmemail.com>

Here is the draft preliminary ordinance. Please call me with any questions or concerns.

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 **Impeachment Resolution.2.22.REV.docx**
163K



Paul Martin <paul@paulmartinpc.com>

Re: Attached

10:00 AM

Paul Martin <paul@paulmartinpc.com>
 To: Keith Cheung <KCheung@lawfirmemail.com>

Fri, Feb 22, 2013 at 4:10 PM

No problem. Use this one though, reorganized a bit. Might refine more by attaching e-mail evidence of the various charges.

On Fri, Feb 22, 2013 at 4:08 PM, Keith Cheung <KCheung@lawfirmemail.com> wrote:

OK. Im going to forward a copy to Kevin to get his input unless you rather me not.

Keith K. Cheung

THIS IS A CONFIDENTIAL COMMUNICATION FROM THE LAW FIRM OF:

Curtis, Heinz, Garrett & O'Keefe, P.C.
 130 South Bemiston, Suite 200
 Clayton, Missouri 63105
 (314) 725-8788
 (314) 725-8789 Fax

TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT THIS WRITTEN ADVICE WAS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE.

We are currently required to obtain client consent to communication by E-mail. We are required to disclose that there is a risk that such communications may be intercepted as they travel through the Internet or any network to which you are connected, or from your own computer. Communications could be randomly intercepted by a disinterested person or intentionally intercepted by an interested person. It is our understanding that you consent to our communication with you by E-mail. If our understanding is now or later becomes incorrect, please advise us immediately.

From: Paul Martin [mailto:paul@paulmartinpc.com]
Sent: Friday, February 22, 2013 3:35 PM
To: Keith Cheung
Subject: Attached

Here is the draft preliminary ordinance. Please call me with any questions or concerns.

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Paul Martin, P.C.
 9322 Manchester Road
 St. Louis, Missouri 63119
 (314) 961-0097 x. 12 (Office)
 (314) 805-8800 (Direct)

Martin Production 0074


(314) 961-0667 (Fax)

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159K



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OK. Im going to forward a copy to Kevin to get his input unless you rather me not.

Keith K. Cheung

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130 South Bemiston, Suite 200

Clayton, Missouri 63105

(314) 725-8788

(314) 725-8789 Fax

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From: Paul Martin [mailto:paul@paulmartinpc.com]

Sent: Friday, February 22, 2013 3:35 PM

To: Keith Cheung

Subject: Attached

Here is the draft preliminary ordinance. Please call me with any questions or concerns.

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Paul Martin, P.C.

9322 Manchester Road

St. Louis, Missouri 63119

(314) 961-0097 x. 12 (Office)

(314) 805-8800 (Direct)

Martin Production 0076


(314) 961-0667 (Fax)

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Paul Martin <paul@paulmartinpc.com>

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To: Keith Cheung <kcheung@lawfirmemail.com>


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163K



Paul Martin <paul@paulmartinpc.com>

Re: Impeachment Resolution KB RVSD

1 message

Paul Martin <paul@paulmartinpc.com>

Fri, Feb 22, 2013 at 12:25 PM

To: kbookout@ellisville.mo.us

Thanks Kevin.

On Fri, Feb 22, 2013 at 10:40 AM, Kevin Bookout <kbookout@ellisville.mo.us> wrote:

Paul,

This is my first review. The Chief sent me his changes and I've included them in this attachment.

I'm still going through it.

Thanks,

Kevin

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Paul Martin <paul@paulmartinpc.com>

Attached**Paul Martin** <paul@paulmartinpc.com>

Thu, Feb 21, 2013 at 10:47 AM

To: Kevin Bookout <kbookout@ellisville.mo.us>, Kate Demeter <kate@ellisville.mo.us>, Matt Pirrello <pirrello@charter.net>, Dawn Anglin <anglinz@charter.net>, Tom Felgate <tfelgate@ellisville.mo.us>

This is the draft removal resolution. I am sending it to each of you so that each of you can verify those facts of which you are aware. In other words, if I misrepresent something, you **MUST** let me know. If you are aware of anything I have missed, like the Ruby's Guns thing, which I don't know about, **LET ME KNOW**.


It is critical that the facts alleged be accurate, and it is also critical that each of you are able and willing to testify to those facts of which you are aware. Please understand the importance of this. You must be absolutely comfortable with the facts noted, because you will very likely be subjected to cross-examination by Mr. Pleban on those facts.

Please review the attached thoroughly and critically, and respond with your comments or concurrence as quickly as possible. Please send this to Kelly Murray as well so that he may do the same.

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Paul Martin <paul@paulmartinpc.com>

Re: Resolution with Exhibits

1. 1/19/2013

Paul Martin <paul@paulmartinpc.com>
 To: Matt Pirrello <pirrello@charter.net>

Wed, Feb 20, 2013 at 9:08 AM

On request only.

Paul Martin, PC
 9322 Manchester Road
 Saint Louis, Mo 63119
 (314) 961-0097 x. 12
 (314) 805-8800 (direct)
 (314) 961-0668 (fax)

On Feb 20, 2013, at 8:45 AM, Matt Pirrello <pirrello@charter.net> wrote:

Does the last sentence of the third paragraph mean that our decision is required to be reviewed by the courts or is subject to review by the courts upon request?

From: Paul Martin [mailto:paul@paulmartinpc.com]
Sent: Wednesday, February 20, 2013 6:58 AM
To: Roze Acup
Cc: Kate Demeter; Adam Paul; Adam Paul; Anglins; Matt Pirrello; Linda Reel; Troy Pieper; troy@troypieper.com; Shelly Murray; Kevin Bookout
Subject: Re: Resolution with Exhibits

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Circuit Court.

The standard that must be met for a court to uphold the removal of an elected official in Missouri is "misfeasance, malfeasance, or nonfeasance" in office. Misfeasance is the improper performance of some act which may lawfully be done. Malfeasance is the commission of some act wholly beyond the actor's authority. Nonfeasance is the failure to perform a required duty.

Before the Council chooses to proceed with a preliminary resolution, be advised that I will not be able to participate in any hearing, either as the prosecutor of the charges or as attorney for the Council, as I anticipate that I will be a witness at the hearing, should it come to pass. My disqualification would not be effective until the Council passed the preliminary resolution for removal, so I may assist in its preparation.

Because of my disqualification, the City would need to hire a special prosecutor to present the charges at the removal hearing and another attorney to advise the Council throughout the 3.6 process. In that the special prosecutor will need to be engaged immediately to adequately present the charges given the Charter's time frame for a hearing, and in that the Council will need a legal advisor after the adoption of the preliminary resolution (due to my disqualification), I recommend that the resolution also authorize the hiring of counsel. If the council chooses to proceed with the drafting of a preliminary resolution, I'll suggest two attorneys/firms to fill this role.

Also, while under the Charter the mayor *may* request a public hearing (assuming the adoption of a preliminary resolution), he is not obligated to do so. I am concerned that constitutional due process may not be served if the mayor fails to request a hearing. In other words, the constitution may *require* a hearing, even if the mayor doesn't request one, to enable the Council to exercise its authority to remove him from office. The Council should also consider that it will have to meet again to schedule a hearing, assuming the mayor requests one, and that any delay in setting a hearing date may impinge on the time limits established by the charter. I'd recommend any preliminary resolution include a date for hearing the charges, to ensure that (a) the mayor is afforded all process due by law, (b) the Council is not forced to reconvene to schedule a hearing, and (c) a hearing may be scheduled as expeditiously as possible within the time frame required by the Charter. That date can be determined at the time the resolution is considered.

Finally, in that City staff, myself included, have knowledge of some of the acts that may be deemed by the Council to constitute misfeasance, malfeasance, or nonfeasance in office, the resolution should authorize and direct the staff to participate fully in the preparation of the preliminary resolution and the 3.06 proceeding, regardless of whether staff's knowledge consists of information that might be deemed "closed" under the Sunshine Law.

This is all I can think of at this time. The council can discuss the matter further at tonight's closed session.

On Tue, Feb 19, 2013 at 9:45 PM, Roze Acup <racup@sbcglobal.net> wrote:

As I'm reading the CEC recommendation I only see one issue addressed (giving a direct order to police officers) although Katie has listed other violations in the last paragraph. In addition there have been instances such as discussing with petitioners outside of a public meeting, specifically Ruby's Guns and the Walmart relocation specialist. Will these occurrences be addressed?

From: Kate Demeter <kate@ellisville.mo.us>
To: 'Adam Paul' <quintage21@aol.com>; 'Adam Paul' <Adam.Paul@amdocs.com>; 'Anglins' <anglinz@charter.net>; 'Matt Pirrello' <pirrello@charter.net>; 'Linda Reel' <reelones@yahoo.com>; 'Troy Pieper' <troy.pieper.lo1m@statefarm.com>; troy@troypieper.com; 'Shelly Murray' <shellymurray@sbcglobal.net>; 'Roze Acup' <racup@sbcglobal.net>
Cc: Kevin Bookout <kbookout@ellisville.mo.us>; 'Paul Martin' <paul@paulmartinpc.com>
Sent: Tuesday, February 19, 2013 8:29 AM
Subject: Resolution with Exhibits

I did not attach exhibits earlier. Please see the attached.

Kate

THIS IS A CONFIDENTIAL COMMUNICATION FROM THE LAW FIRM OF:

Paul Martin, P.C.
9322 Manchester Road
St. Louis, Missouri 63119
(314) 961-0097 x. 12 (Office)
(314) 805-8800 (Direct)
(314) 961-0667 (Fax)

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Communications could be randomly intercepted by a disinterested person or intentionally intercepted by an interested person. We understand that you consent to communication by E-mail. If this is incorrect, please let us know immediately.



Paul Martin <paul@paulmartinpc.com>

Re: Resolution with Exhibits

Paul Martin <paul@paulmartinpc.com>

Tue, Feb 19, 2013 at 10:52 PM

To: Roze Acup <racup@sbcglobal.net>

Cc: Kate Demeter <kate@ellisville.mo.us>, Adam Paul <quintage21@aol.com>, Adam Paul <Adam.Paul@amdocs.com>, Anglins <anglinz@charter.net>, Matt Pirrello <pirrello@charter.net>, Linda Reel <reelones@yahoo.com>, Troy Pieper <troy.pieper.lo1m@statefarm.com>, "troy@troypieper.com" <troy@troypieper.com>, Shelly Murray <shellymurray@sbcglobal.net>, Kevin Bookout <kbookout@ellisville.mo.us>

Katie James' other charges are too vague and do not allege a specific Charter violation, so the CEC was correct in not considering them. If the council wants to consider issues outside of the specific Katie James charges of giving orders to POs, it could be done via the council's direct action rather than through the CEC process. I'll take a look at the charter in the morning and provide more info then. If the council would like to discuss, it can be done in closed session tomorrow.

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Martin Production 0085

3/19/13

Paul Martin, P.C. Mail - Re: Resolution with Exhibits

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Paul Martin <paul@paulmartinpc.com>

(no subject)

message

Paul Martin <paul@paulmartinpc.com>
To: Matt Pirrello <pirrello@charter.net>

Wed, Feb 20, 2013 at 7:03 AM

Call me. I have an 8 a.m. appointment but can talk before then or after 8:30.

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Paul Martin <paul@paulmartinpc.com>

Re: CEC Recommendations Attached**Paul Martin** <paul@paulmartinpc.com>

Mon, Feb 18, 2013 at 2:27 PM

To: Anglins <anglinz@charter.net>

Can't really do that as a commission except by closed session, although I will be there 4:30ish to talk to Kevin and Kate.

On Mon, Feb 18, 2013 at 1:42 PM, Anglins <anglinz@charter.net> wrote:

Are we meeting early?

Dawn

On Mon, Feb 18, 2013 at 12:20 PM, Paul Martin wrote:

CEC Members:

Attached are the proposed recommendations. If you have any questions or concerns regarding these or tonight's proceedings, please call me on my cell phone, 805-8800, as my office line seems to be acting up. Also, we can always go into closed session at the start of the hearing, if necessary, but I'd rather avoid that if possible.

Paul

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Paul Martin <paul@paulmartinpc.com>

CEC Recommendations Attached

Time Sent

Paul Martin <paul@paulmartinpc.com>

Mon, Feb 18, 2013 at 12:20 PM

To: Dawn Anglin <anglinz@charter.net>, Linda Reel <reelones@yahoo.com>, Shelly Murray <Shellymurray@sbcglobal.net>

Cc: Kate Demeter <kate@ellisville.mo.us>, Kevin Bookout <kbookout@ellisville.mo.us>

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2 attachments **CEC Rec.Dismiss.docx**
119K **CEC Rec.Prosecute.docx**
119K