

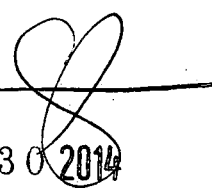
State Commission on Judicial Conduct

PO Box 12265
Austin, TX 78711-2265
Tel. (512) 463-5533 · Toll Free: (877) 228-5750

Complaint Form

- If you are filing a complaint about more than one judge, please use a separate form for each judge.
- You may complete this form online before printing.
- Send the completed form and any additional pages or related documents to SCJC.

For SCJC use only.

Received by 

APR 30 2014

STATE COMMISSION
ON JUDICIAL CONDUCT

* Indicates required fields. Please note that faxed complaints will NOT be accepted.

*Your name: George Donald Haslam, Jr.

*Judge: Eric Clifford

*Mailing Address: 3140 Clark Lane

*Court Number: 6th D.Ct.

*City, State Zip: Paris, TX 75460

*City and County: Paris/Lamar

*Date of Birth: 11/05/1959

Your Phones: Day (903) 739-9221

Evening (903) 784-7187

Cell/Other (_____) _____

Best time to call you: after 3:00 A.M. P.M.

If your complaint involves a court case, please provide the following information:

Cause Number: numerous [please see attached] Status of your case: Pending Concluded On appeal

Your attorney: myself, others Opposing Attorney: numerous, please see attached

Address: [see above] Address: _____

City/Zip: _____ City/Zip: _____

Phone Number(s): _____ Phone Number(s): _____

PLEASE FILL IN ALL INFORMATION AVAILABLE FOR ANY WITNESSES (attach additional pages as needed)

Name: Michael Mosher

Name: Gary Young

Address: 500 N. Main Street, Paris, TX 75460

Address: 119 N. Main Street, Paris, TX 75460

Phone Number(s): 903-785-4721

Phone Number(s): 903-737-2413

What did this person witness?

What did this person witness?

Mr. Mosher is an attorney and has observed Clifford's refusal to adhere to the law in re taxing attorney fees to indigent defendants and his ex parte communications with parties and attorneys.

Mr. Young is Lamar County District Attorney. He has observed Clifford ex parte communications and his refusal to adhere to the law in re taxing attorney fees to indigent defendants.

If you are submitting documents, please provide copies, not originals.

I understand that as part of the Commission's investigation the judge may be provided a copy of this complaint. Please note - the Commission will do its best to maintain your confidentiality, if you so request. However, it may not be possible for us to pursue our investigation without revealing your identity at some point. If it is necessary to reveal your identity directly to the judge, we will advise you before proceeding.

*I request that my identity be kept confidential. Yes No

*Signature: 

*Date: 4-27-14

How did you hear about the State Commission on Judicial Conduct? (please select one) State Bar of Texas

Another State agency News media Attorney Friend Other: _____

Details of Complaint

Please type or print the factual details of your complaint in the space provided below. **Please include the date(s) of the alleged misconduct.** If more space is needed, attach additional sheets. Please sign and date each additional sheet. Your complaint should be as specific as possible, PLEASE DO NOT CITE CASE LAW IN YOUR COMPLAINT.

*Date(s) of Alleged Misconduct of Judge: Various

***Factual Details of your complaint against Judge:**

1. State v. Stanley Maggard [Lamar][24923]

Clifford appointed me to defend Mr. Maggard in this case. Please see attached Motion for Recusal of Trial Judge and Notice of Presentment [the "Motion", Exhibit "A"]. The Motion is over my signature and details three [3] issues for the Commission's consideration: [i] Clifford's ex parte communication with fact witnesses in the Maggard matter, [ii] Clifford's order to pay a lay witness an hourly fee and taxing that fee to the Defendant in the Maggard matter, and [iii] his ex parte communication with a fact witness in a probation hearing [State v. Jason Ladd Baker, see 2 below].

2. State v. Jason Ladd Baker [Lamar][23067]

Clifford appointed me to defend Mr. Baker in this case. Please see the Motion at Exhibit "A" and look further to its included Exhibit "D" for details of Clifford's ex parte communication with a fact witness in this probation revocation matter.

As the Motion details, LCDA Gary Young advised me of this ex parte communication as we agreed to resolve the Baker matter in a manner that satisfied both parties without an evidentiary hearing. Nonetheless, as is a trial court's legal right, Clifford rejected the plea bargain when the matter was called for hearing. What is striking is what followed. The prosecutor at that hearing, ADA Jill Drake, privy as she was to the ex parte issue, then announced the State would dismiss the matter. Clifford refused the dismissal. Ms. Drake then announced the State would call no witnesses. Clifford responded he would call witnesses sui sponte and examine them himself.

At this point, it was clear there was no way to avoid confronting the Court with the ex parte concern Mr. Young had revealed to me. In open court, in the presence of many attorneys, Clifford announced from the bench that he didn't "... give a Damn..." about my concerns about ex parte communications, that he denied any ex parte communications took place, and that he would conduct the hearing over my objection.

Clifford called a probation officer and examined him. On cross, that probation officer contradicted Clifford's denial that he took a phone call directly from Clifford instructing him to take steps to revoke Mr. Baker's probation. Clifford granted the motion to revoke.

I filed a motion for new trial and a motion to recuse Clifford. Clifford refused to recuse himself and the Hon. John Ovard, Presiding Administrative Judge for this Judicial District elected to preside over the subsequent evidentiary hearing personally. I subpoenaed Clifford to the hearing; however, Clifford failed to appear for the hearing and cited medical reasons. Judge Ovard elicited Clifford's agreement to withdraw and appointed a visiting judge to preside over the new trial. Mr. Baker was sentenced to the original negotiated plea.

LCDA Gary Young attended the conference with Ovard and myself on the day of the evidentiary hearing and is, along with Ms. Drake, witness to these events. Indeed, Mr. Young directly complained to Judge Ovard in this conference about Clifford's routine ex parte communications and his fruitless efforts to dissuade the practice.

[continued]

*Printed Name: _____

*Signature: _____

*Date: _____

4-27-14

[Cont. from SCJC two-page complaint form]

3. *Ali Burress v. Blake, Hundley and John Doe* [Lamar][83035, removed to NDTX 4:14-cv-00035-RAS-DDB, Plano][filed December 13, 2013]

This civil rights action names a Paris Police Department officer, its chief and an unnamed judge since determined to be Clifford for the warrantless strip search ordered by Clifford of a witness in a trial. See attached four [4] page *Plaintiff's Original Petition*, the "*Petition*". Judge Clifford subsequently explained in an early January 2014 *Paris News* story [See attached Exhibit "B" for both the *Petition* and the news story] about the *Petition* that he ordered the warrantless strip search because she mouthed the words, "I love you," to the Defendant in response to his mouthing the same words to her during a lull in her cross-examination. She testified as a witness for the State. The Defendant in that trial is the father of her child.

4. Numerous Lamar County felony matters.

From the time I began accepting appointments in felony matters in the 6th District Court in the Fall of 2011, I have observed Judge Clifford ignore the law regarding the taxing of attorney fees to indigent defendants. Notwithstanding my bringing this to his attention – and objecting on the record and in plea papers - innumerable times, Judge Clifford persisted in the following practice.

On felony arraignment, Judge Clifford learns an out-of-custody defendant is unable to afford counsel and inquires if she can afford anywhere from \$100 to \$200/month towards payment of appointed counsel. Where the defendant advises she cannot, Judge Clifford advises she can either find a way to pay or he will "...find a place for you over there..." where in-custody defendants are detained for arraignment. Confronted with this information, many accede to the bargain and pay; those who cannot, however, have their bond raised to an amount they cannot make and are put into custody, an event that of course results in forfeiture of the money they've already paid to a bondsman.

During the course of the pendency of the litigation, the out-of-custody defendants who manage to remain on bond are ordered to attend "pretrial supervision" by the Lamar County Probation Office ["LCPO"] for which duty they are further obligated to pay a monthly supervision fee. Failure to attend and comport with what other terms may be imposed by LCPO may still result in bond forfeiture and confinement.

On disposition, both those who have been out-of-custody and in-custody have been - until I finally managed to persuade the District Clerk in approximately late Fall 2013 that denial of a Bill of Costs at sentencing is unlawful - taxed whatever remaining costs of appointed counsel exist without an opportunity to inspect the amount for accuracy or reasonableness. Further, there is *never* a statutory hearing on whether the indigent defendants' financial circumstances have changed during the pendency of the litigation such that appointed counsel fees may be lawfully taxed to one previously adjudicated indigent. And to be very clear, this has been the procedure

even where such defendants have been in custody at all times since the original indigency determination by Judge Clifford.

Finally – and perhaps most troubling – the foregoing events occur in the context of an exceedingly close relationship between Judge Clifford and local bondsman Keith Flowers of Dollins Bail Bonds, Paris, TX [903] 785-4228. Because I returned to my hometown of Paris to actually practice only in 2011, my understanding of this relationship is premised on information and belief. However, more long-standing local practitioners appear to be acutely aware of a relationship between the bench and Flowers that merits scrutiny. I understand Judge Clifford and Flowers lunch almost daily and share business interests of some kind. I hear from clients and their families that they encounter and are confronted about the merits of their cases by Judge Clifford at Dollins offices.

I was so concerned about this practice that I sought the assistance of the Texas Fair Defense Project, an organization that litigates this issue in Texas. Staff Attorney Susan Pringle [listed above] attended a felony docket before Judge Clifford about a year ago to observe. As a result, she has attempted to obtain records and data from various Lamar County officials to track the collection of and accounting for the attorney fees so ordered by Judge Clifford. I encourage the Commission to consult her as well as other, more local attorneys vis-à-vis this issue.

This practice is in direct contravention of the law, and I have made Judge Clifford, the District Attorney, the LCPO and the District Clerk aware of the law in this regard. While it appears that a Bill of Costs is now tendered timely to defendants, it appears that Judge Clifford continues to tax the attorney fees unlawfully where he is not scrutinized.

Finally, I will observe that I discussed this issue early-on with newly elected Judge Will Biard, 62nd District Court, in about February 2012. Biard copied me a presentation offered in College Station in December 2011 by the Administrative Office of the Courts. This PowerPoint presentation made patently clear that the law requires a Bill of Costs at sentencing and I think it made clear the circumstances under which attorney fees may be lawfully imposed on indigents. Various local officials attended this presentation. Nonetheless, the practice *supra* persisted.

5. *Lamar County, et al v. Eric S. Judge Clifford, et al* [Lamar][82516]

This lawsuit names Judge Clifford in an effort to recover delinquent *ad valorem* taxes due to three [3] local authorities for tax years 2010, 2011, and 2012. [See attached Exhibit C].

6. During Judge Clifford's first campaign in approximately 2007, his opponent, local attorney Dave Turner, exposed Judge Clifford's *cerca* 1995 guilty plea to a solicitation charge in Austin, TX. Press accounts indicate Judge Clifford successfully discharged his deferred adjudication on this charge.

I have observed Judge Clifford's work only since 2011, late in his first term and now into the second year of the second term, but it is evident that Turner is allocated a significant proportion of court appointments by Judge Clifford. According to local practitioners who are watching this more closely than am I, Turner may be paid more handily than others appointed by Judge Clifford, as well. There is a growing local concern that the appointments and reimbursement are disproportionately allocated. I have filed an Open Records Request for these records with the Lamar County Auditor but it appears the records will be very expensive to collect in this way.

It is unclear why Judge Clifford would apportion a greater fraction of funds to a former opponent who revealed the arrest. What is clear is that Turner was found ineffective as counsel by Fannin County Judge Laurine J. Blake before he reentered his practice in Lamar County. To be very clear, I do not offer anything in the way of evidence of disproportionality except my observation that Turner does appear to enjoy a great deal of work from Judge Clifford. I have not seen any evidence of disproportionate pay because I elected not to finance the copying of the records of these matters from the Lamar County Auditor. However, I do hear this complaint from others, not least of whom is LCDA Gary Young.

7. *State v. David Charles Neeley* [Lamar][25514]

Mr. Neeley was arrested in June 2013. He was charged with possession. [See attached pleadings at Exhibit "D"].

Mr. Neeley is a close associate of Judge Clifford. On information and belief, he has recently lived in Judge Clifford's hangar at the local airport, but it is certain that he does various manual labor tasks for Judge Clifford and is seen frequently with Judge Clifford at the offices of Dollins Bail Bonds.

According to LCDA Gary Young, Mr. Neeley was arrested in Cause 25514 while riding a scooter belonging to Judge Clifford. Judge Clifford intervened in the normally random assignment of court-appointed counsel by e-mailing the Court Clerk to assign Dave Turner to Mr. Neeley's matter. Further, Judge Clifford presided over the disposition of Mr. Neeley's matter. Still further, Mr. Neeley was sentenced to a probated sentence, contrary to the local convention of sentencing individuals to prison where they have any criminal history at all, much less the lengthy history of Mr. Neeley.

8. *Crostley et al v. Lamar County, TX, Chris Brooks et al* [EDTX, Texarkana][5:10-cv-17]

During a deposition of Defendant Chris Brooks ["Brooks"], the investigator for the Lamar County District Attorney, Brooks testified under oath he appears in Judge Clifford's chambers frequently and has discussed numerous cases with him. [See attached deposition pages 1-6 at Exhibit "E"].

ADDITIONAL WITNESSES

1. Susanne Pringle, Staff Attorney, Texas Fair Defense Project, 510 South Congress, Ste. 208, Austin TX 78704 Ms. Pringle attended a docket on April 16, 2013 over which Judge Eric Clifford presided. Ms. Pringle can testify to the fact that she observed Judge Clifford appoint attorneys to defendants who stated that they could not afford to hire an attorney and then order those defendants to make attorney fee payments during the pendency of their charges without considering evidence of the defendants' "financial resources" as required under Tex. Code of Crim. Proc. art. 26.05(g). She can also testify to the fact that, in ordering these payments, Judge Clifford failed to limit the required payments to ensure that defendants would not pay more in attorney fees than the county actually paid the appointed attorney in a given case.
2. Jacob Davis 936-569-3644 Gallery member who observed Judge Clifford's ex parte, pretrial assertions about the guilt and punishment of Stanley Maggard, a matter over which Judge Clifford presided before recusal. [See generally Exhibit "A"].
3. Meridith Brown 469-774-0763 Gallery member who observed Judge Clifford's ex parte, pretrial assertions about the guilt and punishment of Stanley Maggard, a matter over which Judge Clifford presided before recusal. [See generally Exhibit "A"].
4. Rod and Greta Wright 903-639-2684 Gallery members who observed Judge Clifford's ex parte, pretrial assertions about the guilt and punishment of Stanley Maggard, a matter over which Judge Clifford presided before recusal. [See generally Exhibit "A"].
5. Rustin Wright, 469-569-2435 Gallery member who observed Judge Clifford's ex parte, pretrial assertions about the guilt and punishment of Stanley Maggard, a matter over which Judge Clifford presided before recusal. [See generally Exhibit "A"].
6. Julie Wolfe, Esq. 214-696-1124 Ms. Wolfe is an attorney. She was in the courtroom when Judge Clifford repeatedly uttered the remarks that resulted in his recusal in the *Maggard* matter.

EXHIBIT A

THE STATE OF TEXAS

§
§
§
§
§

IN THE 6th DISTRICT COURT

V.

OF

STANLEY WAYNE MAGGARD

LAMAR COUNTY, TEXAS

FILED FOR RECORD
LAMAR COUNTY, TEXAS
2013 JUN 13 P 1:35
HARVIN ANN PATTERSON
DISTRICT CLERK
BY SHANNON GORDON

MOTION FOR RECUSAL OF TRIAL JUDGE AND NOTICE OF PRESENTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Defendant in the above-styled and numbered cause by and through his attorney of record, and moves for the recusal of the Honorable Trial Judge in this case; and in support thereof would show as follows:

I.

Tex.R.Civ.P. 18b.[2] states the situations in which a trial judge should be recused from presiding over a particular case.

II.

In this case the trial judge, the Hon. ERIC CLIFFORD ["Clifford"], should be recused from presiding over this case because: the trial judge's impartiality is reasonably in doubt, and the trial judge has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. Specifically, the trial judge has conducted *ex parte* communications with at least four [4] witnesses herein, and the trial judge has expressed an opinion about the merits and disposition of the case and sentencing in open court.

FACTUAL BASIS FOR THIS MOTION

The *ex parte* Communications with Witnesses

On March 1, 2013, an evidentiary hearing was conducted herein on the Defendant's *MOTION FOR HEARING ON COMPLIANCE W/ORDER ON COUNSELING RECORDS PRODUCTION*. This motion was urged because the various providers of counseling services to the alleged child victim herein and her sister were not producing therapy notes as ordered by the trial court. The children were engaged in this therapy after the August 2013 alleged anal rape of the younger sister by the Defendant, so the notes were likely to memorialize relevant statements of fact by the patients [and - after their eventual production - it is clear that they do].

After unsuccessful efforts to elicit cooperation from these vendors for their compliance with the order for therapy note production, however, counsel issued and served subpoena *duces tecums* to the three private vendors of

such services – Roni Kaye Rusac, Beth Gilmore and Kim Jones – as well as a representative of the local CPS office, Cindy Whatley [the “Witnesses”] to appear with their therapy notes at the March 1, 2013 hearing to compel [the “Hearing”].

The four witnesses appeared at the Hearing. Prior to the Hearing, as the Court called various other matters, Ms. Rusac ascended the bench while Clifford conducted the docket. Rusac stood next to the bench as Clifford conducted the docket from the bench for approximately ten minutes and quietly conversed with him. As this was occurring, Rusac pointed in the general direction of the two other counselors subpoenaed to the hearing, Gilmore and Jones. Eventually, the Hearing was called and testimony taken from all four witnesses. The Witnesses generally testified about the therapy of the two children and the notes they maintained of this therapy. [See transcript of the Hearing]. The notes were produced at the Hearing by the therapists.

Remarkably, Clifford also granted the request of the three counselors – Rusac, Gilmore and Jones – that they be paid an hourly fee for their preparation and attendance at this hearing. The Defendant did not file a *Ake* motion requesting their testimony as experts or, because he is indigent, that the Court fund their testimony as experts. The Defendant did not attempt to qualify the witnesses as experts at the Hearing. The Defendant did not attempt to elicit expert opinion testimony at the Hearing. Nonetheless, the Court paid their requested fees and taxed the fees as costs to the case, which of course would normally result in the Defendant paying the fees should he be convicted. The Defendant filed a written objection to this order. [See attached Exhibit “A”].

After the Hearing, it came to the attention of the undersigned that the Witnesses were headed in the direction of Clifford’s chambers as he left the bench. After confirming the Witnesses were indeed going into chambers with Clifford, Defendant’s counsel [“Haslam”] advised the prosecutor, Jill Drake, [“Drake”] of these events and that he requested her to accompany him to inquire about the nature of what appeared to be an *ex parte* conference with the Witnesses.

As Haslam and Drake neared chambers, they encountered Clifford standing at the threshold of his chambers. The Witnesses were clearly visible in chambers behind Clifford. Drake orally inquired of Clifford if this conference was something counsel needed to attend. Clifford replied that he would not receive counsel in the conference or otherwise permit the attendance of counsel during his conference with these witnesses, advised that he was going to hear from the Witnesses about their allegations of the misconduct of the court-appointed investigator herein, Ray Ball, assured Haslam his conduct was not the subject of any such allegations, turned, and closed the

door to chambers. It is unknown how long the Witnesses were in chambers, but is clear from Clifford's own explanation at the threshold of his chambers that the topic was the instant case. This clearly indicates that Clifford emerged from this *ex parte* communication with three trial witnesses with a personal knowledge of disputed evidentiary facts relating to this proceeding. Indeed, in light of Clifford's expressions of unadulterated conviction about Defendant's guilt herein [see below], one reasonably questions if this *ex parte* communication with these counselors formed the basis for this conviction.

Defendant filed his *MOTION FOR HEARING ON EX PARTE COMMUNICATIONS BY THE COURT AND OBJECTION TO FURTHER EX PARTE COMMUNICATIONS* on April 4, 2013. He filed his *FIRST AMENDED MOTION FOR EVIDENTIARY HEARING ON EX PARTE COMMUNICATIONS BY THE COURT AND OBJECTION TO FURTHER EX PARTE COMMUNICATIONS* on April 8, 2013. [See attached Exhibit "B"] The motion has not been heard.

The Expression of Impartiality, Bias and Opinion on the Merits, Disposition and Sentencing of the Case

On June 6, 2013, Clifford presided over an evidentiary hearing in *ITIO E. A. M. and W. R. M., Children* [82433][Lamar] [the "CPS Hearing"]. The CPS Hearing was conducted pursuant to Section 262.205 TFC, and characterized in the pleadings as a "full adversary hearing". In this matter, CPS arranged a placement of E. A. M. and W. R. M., the biological children of the Defendant and Mary Maggard [the "Children"], with relatives based on the Childrens' allegations of sexually inappropriate behavior of Mary Maggard. Mary Maggard confessed the allegations and voluntarily relinquished the Children to relatives. [See attached *Amended Temporary Order Following Adversary Hearing* at Exhibit "C"]. The Defendant appeared with counsel, however, and attempted to cross-examine the first witness, a CPS investigator, about the credibility of the allegations.¹ After three questions, Clifford halted the cross-examination, inquired of Mary Maggard's counsel if she were indeed confessing the motion, terminated the CPS Hearing, and pronounced that the cross-examination was a "fishing-expedition" for discovery in this [criminal] matter. Clifford explained that the mother's confession of the allegations and her agreement to the out-of-home placement of the Children were all he needed to hear to close the CPS Hearing.

¹ A transcript of the CPS Hearing was requested of the court reporter on June 7, 2013.

Immediately after the CPS Hearing, Clifford conducted an unrelated domestic relations matter. Neither Drake nor Haslam appeared in this matter. On information and belief, before, during² and after that matter was concluded Clifford remained on the bench and uttered to the courtroom several wholly unsolicited remarks relating to the CPS Hearing and Defendant. Various persons were in the courtroom, including counsel for one party in the unrelated hearing.

The remarks uttered by Clifford generally indicated Clifford's opinion that the Defendant's effort to be heard in the CPS Hearing was "unbelievable" in light of his pending criminal charges, that since he is charged with "multiple" counts of sexually assaulting his children³ "he is going away for long time", and that he has no standing to express an opinion about the placement of his children. Clifford's words expressly denoted his expectation that the Defendant will be found guilty of the instant charge.⁴ Clifford uttered these words a number of times, each wholly unsolicited, to the general courtroom at large and, in at least one instance, directly to an attendee.

Clifford's History of *ex parte* Communications

The undersigned has grappled with Clifford's inclination to *ex parte* communications before. In *State v. Jason Baker* [23067][Lamar], the undersigned moved for the recusal of Clifford for conducting an *ex parte* communication with a witness in a probation hearing and advising the witness that he would insure that Mr. Baker would be revoked. [See attached Exhibit "D"]. Clifford refused to recuse himself and the presiding judge set the matter for evidentiary hearing. Counsel successfully subpoenaed several witnesses to the hearing, including Clifford. On the day of the hearing, however, Clifford failed to appear, and advised he was taken ill. The evidentiary hearing was continued but in the meanwhile, Clifford was permitted to withdraw from that matter and recusal was mooted.

² According to one witness, the unrelated hearing vacillated on- and off-the-record.

³ Defendant is charged with one count of aggravated sexual assault of one child.

⁴ Clifford was well aware that the DPS-conducted testing for DNA evidence was returned negative for any DNA of Defendant weeks before the June 6, 2013 CPS Hearing. In point of fact, the undersigned reminded Clifford of this in his brief opportunity to be heard at the CPS Hearing. Clifford was further aware that the Defendant affirmatively requested DPS to conduct more complete DNA testing for epithelial and trace evidence, and that DPS agreed to cause such further testing to be done. This testing is expected to be completed in late August 2013, according to DPS staff. Remarkably, Clifford's on-the-record response to this reminder at the CPS Hearing was that, rather than afford Mr. Maggard the opportunity to be heard therein, he [Clifford] would advance the September 10, 2013 trial date so Mr. Maggard could first disabuse himself of the criminal charge.

It is fair and accurate to represent in this motion that Clifford has earned a reputation for *ex parte* communications among the members of the Lamar County Bar. It is unfortunate even if perhaps understandable that there exists among the Lamar County Bar members reservation about challenging this situation. To the personal knowledge of the undersigned, the only attorney that has affirmatively expressed concern to either Clifford or an authority is the District Attorney, Gary Young, and even this concern was articulated only in the confines of the off-the-record argument of counsel in the *Baker* matter. During this argument, Presiding Judge John Ovard heard directly from Mr. Young about his frustration with Clifford's routine *ex parte* communications with opposing counsel.

THE LAW RELATING TO THIS MOTION

In pertinent part, the law relating to recusal of judges is:

... (2) Recusal

A judge shall recuse himself in any proceeding in which:

- (a) his impartiality might reasonably be questioned;
- (b) he has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (c) he or a lawyer with whom he previously practiced law has been a material witness concerning it;
- (d) he participated as counsel, adviser or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;
- (e) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (f) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - (iii) is to the judge's knowledge likely to be a material witness in the proceeding.
- (g) he or his spouse, or a person within the first degree of relationship to either of them, or the spouse of such person, is acting as a lawyer in the proceeding.

Tex. R. Civ. Pro. 18b. Grounds for Disqualification and Recusal of Judges [emphasis added].

Rule 18b(2) of the Texas Rules of Civil Procedure sets out the law concerning recusal and includes instances in which a judge must step down from hearing a case for reasons other than the disqualifying grounds listed in the constitution. Rule 18b(2) states, in relevant part, that "A judge shall recuse himself in any proceeding in which: (a) his impartiality might reasonably be questioned; [or] (b) he has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]" *Gaal v. State*, 332 S.W.3d 448 (Tex.Cr.App. 2011).

Once a sufficient motion to recuse has been filed, before proceeding further in the case, the judge must either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear the motion under *Tex. Gov't Code* §74.059(c)(3). *Sanchez v. State*, 926 S.W.2d 391 (Tex.App.—El Paso 1996, *pet. ref'd*).

Once a sufficient motion to recuse has been filed, before proceeding further in the case, the judge must either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear the motion under *Tex. Gov't Code* §74.059(c)(3). *Sanchez*.

APPLICATION

Application of the law of recusal of trial judges to the facts of this motion must result in recusal. The Defendant is facing a first degree felony in a matter in which the trial judge must be expected to marshal the likelihood that prospective jurors and jurors selected will experience visceral prejudice against the Defendant by virtue of the mere fact he is so charged. Every single potential juror must be honestly, thoroughly voir dired for evidence of bias and prejudice in any aspect of the law, whether substantive, procedural or sentencing. There will be evidentiary decisions that can make or break the defense of this charge.

Entrusted as he is with these obligations, we consider that Clifford has evidenced an undeniable indifference to the prohibitions against *ex parte* communications with witnesses herein. Such indifference creates a reasonable question about Clifford's willingness to hew the line of the law in his duties as trial judge: if he will not impose on himself the very simple discipline to refuse *ex parte* communications with witnesses, how can he be expected to impose on himself the discipline to hew the line of the law in less apparent, perhaps, but no less significant trial rulings? Consider that when presented with the opportunity to invite counsel for each party herein to the *ex parte* conference with trial witnesses that he convened after the March 1, 2013 Hearing, he refused, and

closed the door in the face of two attorneys who have a duty to report such conduct. He conducted an *ex parte* communication with a witness, at the bench, *in open court*, for ten minutes, and subsequently paid her for her appearance with court funds. This conduct is remarkable not only for its clear impropriety and suggestion of impartiality, *it is singular for its audacity*. It is chilling in its indifference to observation, and this very indifference must create a reasonable concern about subsequent inappropriate conduct, impartiality, bias and prejudice. In the language of the relevant statute, his communications with these witnesses indicate a likelihood of "...personal knowledge of disputed evidentiary facts concerning the proceeding;..." so real that *at the very least* the appearance of significant impropriety renders him unfit to serve as trial judge herein, and more importantly, raise concern about his willingness to hew the line of less apparent but meaningful law relating to the countless issues that arise during *vois dir*, trial and sentencing.

Concern about Clifford's indifference to the law is further evidenced by his *open court*, unsolicited remarks after the June 6, 2013 CPS Hearing on the guilt and sentencing of the Defendant herein. *From the bench, in open court*, Clifford expressed his observation that the Defendant is guilty as charged herein and will spend a "long, long time in prison" in an apparent effort to explain to observers of the CPS Hearing his refusal to afford the Defendant a hearing about the placement of his children by CPS. These remarks in particular evidence a reasonable question – if not an unfettered conclusion – about Clifford's impartiality, and indicate a "...personal bias and prejudice concerning the subject matter or party...." of this case so structural and thoroughgoing as to render him plainly, simply, flatly incapable of serving as trial judge herein. There really is nothing a trial judge could conceivably utter more indicative of impartiality, bias or prejudice than the words uttered by Clifford at the June 6, 2013 CPS Hearing.

This situation is not novel. The undersigned has confronted this issue with Clifford in another matter. That experience was insufficient to modify Clifford's conduct with respect to *ex parte* communications, and the failure of that experience is informative. That failure disabuses us of the idea that Clifford is simply unaware of the prohibitions against such *ex parte* communications, and leaves us with the indisputable conclusion that he is simply indifferent to the prohibition and, more meaningfully, to the consequences for the administration of justice. This history – and it is important to bear in mind here Mr. Young's observations to Judge Ovard about the routine nature of such *ex parte* communications - is evidence of an indifference to the law that cannot be ignored. Indeed, by this point, an established indifference to this fairly routine rule against *ex parte* communications begs the question of

Clifford's willingness to hew the line of the law in less apparent, but perhaps more meaningful trial decisions. He must be recused from this case.

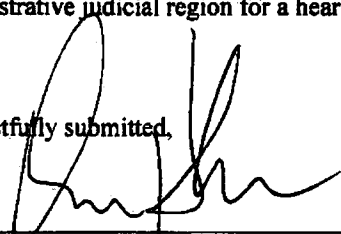
III.

This Motion to Recuse is not brought for the purpose of delay. Sufficient cause has been shown for the recusal of the Honorable Trial Judge. The Motion sets forth such facts as would be admissible in evidence. Movant does not wish to waive any ground for recusal stated in the instant Motion. The case is set for jury selection August 21, 2013, and jury trial September 10, 2013. Many motions are pending. The Defendant has been in custody since September 2012. Time is of the essence.

WHEREFORE, PREMISES CONSIDERED, the Defendant requests that the Honorable Trial Judge voluntarily recuse himself from any further proceedings in this case and that another trial judge be assigned to hear the case; or in the alternative, that the Honorable Trial Judge refer this matter to the presiding judge of the applicable administrative judicial region for a hearing on the allegations in said Motion as soon as is practicable.

Respectfully submitted,

By:



G. Donald Haslam, Jr., Counsel for Defendant
32 Clarksville Street, Ste. 202
Paris, TX 75460
903-739-9221
903-784-7878 FAX
haslamlaw@att.net

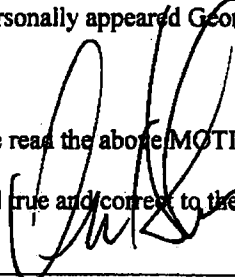
State of Texas

County of Lamar

VERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared George D. Haslam, Jr., who being by me duly sworn, upon oath deposes and says:

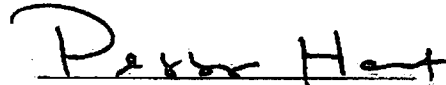
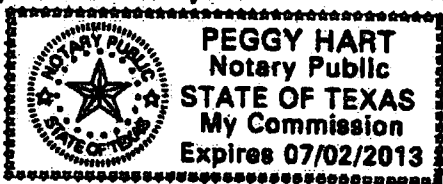
"I am the attorney for the Defendant in this cause, I have read the above MOTION FOR RECUSAL OF TRIAL JUDGE AND NOTICE OF PRESENTMENT and it is all true and correct to the best of my knowledge."



AFFIANT, George D. Haslam, Jr.

SUBSCRIBED AND SWORN BEFORE ME on this 13 day of June, 2013, to

certify which witness my hand and seal of office.



Notary Public, State of Texas

My commission expires: 7-2-2013

NOTICE OF PRESENTMENT

Defendant expects this motion to be presented to the trial judge three [3] days after the filing of this motion unless otherwise ordered by the trial judge.

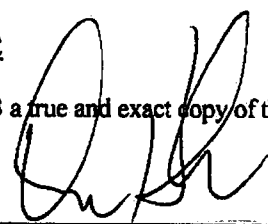
FIAT

IT IS HEREBY ORDERED that the above Motion be heard on the _____ day of

_____, 201 at _____ : _____ :0 o'clock _____ .m.

CERTIFICATE OF SERVICE

The undersigned certifies that on June 13, 2013 a true and exact copy of the foregoing was delivered to the office of the Lamar County District Attorney.



G. Donald Haslam, Jr.

ORDER

On this _____ day of _____, 2013, came to be heard the foregoing Motion and it appears to the Court that the same should be GRANTED / DENIED.

If GRANTED, it is ORDERED that the trial judge recuses himself and requests the presiding judge of the administrative judicial district to assign another judge to sit herein. IT IS FURTHER ORDERED that the recusing trial judge shall make no further orders and shall take no further action in this case except for good cause stated in this order.

If DENIED, it is ORDERED that, in either original form or certified copy, an order of referral, the motion, and all opposing and concurring statements be forwarded to the presiding judge of the administrative judicial district. IT IS FURTHER ORDERED that the recusing trial judge shall make no further orders and shall take no further action in this case after the filing of the instant motion and prior to a hearing on the motion except for good cause stated in this order.

SIGNED on this the ___ day of _____, 2013.

JUDGE PRESIDING

EXHIBIT A

CAUSE NO. 24923

THE STATE OF TEXAS

V.

STANLEY WAYNE MAGGARD

§
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§
§

IN THE 6th DISTRICT COURT

OF

LAMAR COUNTY, TEXAS

BY Suzanne F. Owen DEPUTY

HARVIN ANN PATTERSON
DISTRICT CLERK

2013 APR 15 A 8 54

FILED FOR RECORD
LAMAR COUNTY, TEXAS

DEFENDANT'S OBJECTION TO WITNESS FEES

TO THE JUDGE OF THIS HONORABLE COURT:

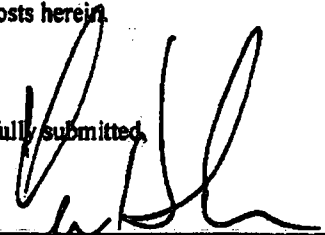
COMES NOW the Defendant and objects to the Court's March 1, 2013 Order taxing certain witness fees to this case as costs and shows the following in support:

1. That the Defendant subpoenaed three witness – RoniKaye Rusac, Beth Gilmer and Kim Jones – to a hearing on March 1, 2013;
2. That these witness were called by the Defendant at the hearing as fact witnesses, not as experts;
3. That the Defendant did not petition the Court for approval of these witnesses as experts, or for funds for expert testimony, and the Court did not enter a pre- or post-hearing orders approving them as expert witnesses.
4. That each of the witnesses resides and works in Lamar County. None testified about travel costs incurred for their testimony;
5. That at the March 1, 2013 hearing, the prosecutor herein, Jill Drake, inquired of the Rusac on cross-examination if she requested the Court award her an hourly fee for her preparation for and appearance at the hearing, and Rusac testified that she was.
6. That the Court granted Rusac and - depending on how the transcript of the hearing is read – Gilmer and Jones an hourly fee for their appearances and prep time.
7. That none of the three witnesses was qualified or testified as an expert, none was asked on direct for an expert opinion; rather each was questioned exclusively about factual issues relating to when and under what circumstances they rendered counseling services to the complainant and her sister herein, and about their production of related records pursuant to an earlier court order. In point of fact, the hearing was conducted only because these witnesses were each uncooperative in the Defendant's effort to collect these records without a hearing.

The Defendant objects to the taxing of an appearance fee for these witnesses as costs herein. The witnesses' testimony was factual, not expert, and the Defendant's rights to compulsory process and confrontation under the VI Amendment and Texas Constitution were exercised to elicit their testimony. The Defendant has no objection to the witnesses' payment *per se* if it is the desire of the Court to pay them, but the Defendant expressly objects to the taxing of any such payment as costs herein because such costs are taxed to the Defendant in the event there is a finding of guilt. While the costs of subpoenaing fact witnesses is appropriate, the Defendant objects to the fees awarded these witnesses being taxed as costs, or in any way or under any circumstances being taxed to him, as violative of due process, equal protection, and the rights to confrontation and compulsory process under the Texas and federal constitutions, and respectfully moves the Court for hearing on this motion, and its order striking these fees as costs herein.

Respectfully submitted,

By:


G. Donald Haslam, Jr., Counsel for Defendant
32 Clarksville Street, Ste. 202
Paris, TX 75460
903-739-9221
903-784-7878 FAX
haslamlaw@att.net

FIAT

IT IS HEREBY ORDERED that the above Motion be heard on the _____ day of

_____, 201____ at _____ : _____:0 o'clock _____m.

CERTIFICATE OF SERVICE

The undersigned certifies that on April 15, 2013 a true and exact copy of the foregoing was delivered to the office of the Lamar County District Attorney.



G. Donald Haslam, Jr.

ORDER

On this _____ day of _____, 201_____, came to be heard the
foregoing Motion and it appears to the Court that the same should be GRANTED/DENIED.

JUDGE PRESIDING

EXHIBIT B

CAUSE NO. 24923

THE STATE OF TEXAS

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IN THE 6th DISTRICT COURT

V.

OF

STANLEY WAYNE MAGGARD

LAMAR COUNTY, TEXAS

DEFENDANT'S FIRST AMENDED MOTION FOR EVIDENTIARY HEARING ON EX PARTE COMMUNICATIONS
BY THE COURT AND OBJECTION TO FURTHER EX PARTE COMMUNICATIONS

TO THE HONORABLE JUDGE OF THIS COURT:

The Defendant moves the Court for a hearing on the issue of ex parte communications conducted the Court with witnesses in this matter and shows:

FILED FOR RECORD
LAMAR COUNTY, TEXAS
2013 APR - 8 P 3 16
MARY ANN PATTERSON
DISTRICT CLERK
BY DEPUTY

1. On March 1, 2013 a hearing was conducted herein on Defendant's *Motion to Compel Production of Therapy Notes*. The Defendant subpoenaed three fact witnesses to the hearing: Ronikaye Rusac, Kim Jones and Beth Gilmer. These three witnesses and Cindy Whatley, a supervisor in the Lamar County office of Child Protective Services, testified during that hearing.
2. After the hearing, the Court convened a meeting in chambers and *ex parte* with Rusac, Gilmer and Jones. The undersigned and Assistant District Attorney Jill Drake ["Drake"] approached Judge Clifford as he was closing the door to his chambers with the three witnesses inside and asked to be included in whatever discussion the Court appeared to be conducting with these witnesses.
3. The Court responded that neither counsel would be admitted to chambers, and that he intended to hear complaints *ex parte* from the witnesses about the work in this matter of Ray Ball, court-appointed investigator for the Defendant, specifically, his attempts to interview them, and serve subpoenas on them.
4. The Court did not indicate how such complaints had been brought to his attention before closing the door to chambers and conducting the meeting.
5. Cindy Whatley has advised the undersigned that the Court also inquired of her sometime following the hearing about Mr. Ball's interview of her in this matter.
6. On April 3, 2013, in a hearing conducted to consider the proposed language of the order reciting the terms of the March 1, 2013 pronouncement, *supra*, the Court expressly acknowledged conducting the *ex parte* meeting with the three witnesses *supra*, elaborated on the inquiry conducted about Mr. Ball

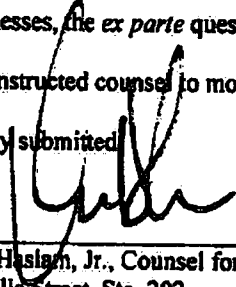
therein, and indicated the Court intended to speak directly to Mr. Ball about his work in this matter at its next opportunity. Importantly, the Court further instructed the undersigned to somehow modify Mr. Ball's behavior, without any description whatsoever of the behavior alleged in the *ex parte* hearing that offended the Court, or any description of what Mr. Ball should modify about his behavior.

7. The Code of Criminal Procedure is explicit as to when and under what circumstances a court may conduct *ex parte* hearings in a criminal matter. Under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, counsel must inquire into the substance of these *ex parte* communications so that the Defendant's rights are protected and any error is preserved.

WHEREFORE, PREMISES CONSIDERED, the Defendant moves the Court for its order setting a hearing on the March 1, 2013 *ex parte* communications with the fact witnesses subpoenaed to the hearing by the Defendant to inquire of the Court the subject of the *ex parte* communications, the specific *ex parte* statements made by the witnesses, the *ex parte* questions of and representations made to the witnesses and what specific behaviors the Court has instructed counsel to modify in Mr. Ball. Defendant prays for general relief.

Respectfully submitted,

By:


G. Donald Haslam, Jr., Counsel for Defendant
32 Clarksville Street, Ste. 202
Paris, TX 75460
903-739-9221
903-784-7878 FAX
haslamlaw@att.net

FIAT

IT IS HEREBY ORDERED that the above Motion be heard on the _____ day of _____, 201____ at _____: _____:0 o'clock _____m.

CERTIFICATE OF SERVICE

The undersigned certifies that on April _____, 2013 a true and exact copy of the foregoing was delivered to the office of the Lamar County District Attorney.


G. Donald Haslam, Jr.

EXHIBIT C

2007

CAUSE NO. 82433

IN THE INTEREST OF

[REDACTED]

AND

CHILDREN

§
§
§
§
§

IN THE DISTRICT COURT OF

LAMAR COUNTY TEXAS

6TH JUDICIAL DISTRICT

FILED FOR RECORD
LAMAR COUNTY TEXAS
JUN 17 PM 4:38
MARVIN ANN PATTERSON
DISTRICT CLERK
DEPUTY

AMENDED
TEMPORARY ORDER FOLLOWING ADVERSARY HEARING

On June 6, 2013, a full adversary hearing pursuant to § 262.205, Texas Family Code, was held in this cause.

1. **Appearances**

- 1.1. The Department of Family and Protective Services ("the Department") appeared through **SARA ESTRADA**, caseworker, and by attorney, **LAURIE K. POLLARD** and announced ready.
- 1.2. Respondent Mother **MARY LYNN MAGGARD** appeared in person and through **R. WESLEY TIDWELL** who appeared for attorney of record **TREY KAMPFER** and announced ready.
- 1.3. Respondent Presumed Father **STANLEY WAYNE MAGGARD**, father of [REDACTED] AND [REDACTED] appeared in person and through attorney of record **G. DONALD HASLAM** and announced ready.
- 1.4. **JEFF C. STARNES** appointed by the Court as Attorney Ad Litem of the children the subject of this suit, although duly and properly notified, did not appear.
- 1.5. **CASA FOR KIDS**, appointed by the Court as Guardian Ad Litem of the children the subject of this suit appeared and announced ready.

2. **Jurisdiction**

- 2.1. The Court, after examining the record and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been satisfied and that this Court has jurisdiction of this case and of all the parties.
- 2.2. The Court further finds that the State of Texas has jurisdiction of this case pursuant to Subchapter C, Chapter 152, Texas Family Code, because Texas was

the home state of the children on the date of the commencement of this proceeding, and there is no prior child custody determination in another state.

3. Findings

3.1. Having examined and reviewed the evidence, including the sworn affidavit accompanying the petition and based upon the facts contained therein, the Court finds there is sufficient evidence to satisfy a person of ordinary prudence and caution that: (1) there was a danger to the physical health or safety of the children which was caused by an act or failure to act of the person entitled to possession and for the children to remain in the home is contrary to the welfare of the children; (2) the urgent need for protection required the immediate removal of the children and reasonable efforts consistent with the circumstances and providing for the safety of the children, were made to eliminate or prevent the children's removal; and (3) reasonable efforts have been made to enable the children to return home, but there is a substantial risk of a continuing danger if the children are returned home.

3.2. Findings for Appointment of Managing and Possessory Conservator

3.2.1. The Court finds that appointment of the parent or parents as managing conservator of the children is not in the best interest of the children because the appointment would significantly impair the children's physical health or emotional development.

3.2.2. The Court finds that it is in the best interest of children to limit the rights and duties of each parent appointed as possessory conservator.

3.3. The Court finds that the following orders for the safety and welfare of the children are in the best interest of the children.

4. Conservatorship

4.1. **IT IS ORDERED** that the Department of Family and Protective Services is appointed Temporary Managing Conservator of the following children:

4.1.1. Name: [REDACTED]
Sex: Female
Birthplace: Unknown
Birth Date: [REDACTED]
Indian Child Status: No

4.1.2. Name: [REDACTED]
Sex: Female
Birthplace: Unknown
Birth Date: [REDACTED]
Indian Child Status: No

4.2. **IT IS ORDERED** that the Temporary Managing Conservator shall have all the rights and duties set forth in § 153.371, Texas Family Code.

4.2.1. **IT IS ORDERED** that, in addition to the rights and duties listed in § 153.371, Texas Family Code, the Department is authorized to consent to medical care for the subject children, pursuant to § 266.004, Texas Family Code.

4.3. **IT IS THEREFORE ORDERED** that **MARY LYNN MAGGARD** is appointed Temporary Possessory Conservator of the children, [REDACTED] and [REDACTED], with the limited rights and duties set forth in Attachment A.

4.4. **IT IS THEREFORE ORDERED** that **STANLEY WAYNE MAGGARD** is appointed Temporary Possessory Conservator of the child, V [REDACTED] [REDACTED] with the limited rights and duties set forth in Attachment A.

5. Possession and Access

The Court finds that the application of the guidelines for possession of and access to the children, as set out in Subchapter F, Chapter 153, Texas Family Code, is not in the children's best interest. **IT IS ORDERED** that **MARY LYNN MAGGARD** shall have limited access to and possession of the children as set forth in Attachment A.

The Court finds that the application of the guidelines for possession of and access to the children, as set out in Subchapter F, Chapter 153, Texas Family Code, is not in the children's best interest. **IT IS ORDERED** that **STANLEY WAYNE MAGGARD** shall have limited access to and possession of the children as set forth in Attachment A.

6. Child Support

IT IS ORDERED that **MARY LYNN MAGGARD** shall provide child support for the children as set forth in Attachment B.

None ordered at this time for **STANLEY WAYNE MAGGARD** due to his incarceration.

7. **Medical Support**

None ordered at this time.

8. **Release of Medical and Mental Health Records**

IT IS ORDERED that Respondents **MARY LYNN MAGGARD** and **STANLEY WAYNE MAGGARD** execute an authorization for the release of medical and mental health records to the Department, and provide the Department with a list of the names and addresses of the physicians and mental health providers who have treated the Respondents. Respondents shall execute the authorization and deliver it, together with the list of physicians and mental health providers, to the Department within 15 days of the date of this hearing.

9. **Required Home Study/ Social Study**

9.1. The Court finds that Respondent Mother, **MARY LYNN MAGGARD**, has submitted the Child Placement Resources Form required under § 261.307, Texas Family Code.

9.2. The Court finds that Respondent Father, **STANLEY WAYNE MAGGARD**, has submitted the Child Placement Resources Form required under § 261.307, Texas Family Code.

9.3. **IT IS ORDERED** that each Parent, Alleged Father or Relative of the subject children before the Court complete the Child Placement Resources Form provided under § 261.307, and file the completed Form with the Court if the form has not previously filed. **IT IS FURTHER ORDERED** that each Parent, Alleged Father or Relative provide the Department with a copy of the completed Form and the full name and current address or whereabouts and phone number of any absent parent, alleged father or relative of the subject children, pursuant to § 262.201, Texas Family Code.

9.4. **IT IS ORDERED** that the Department shall conduct a home/social study on individuals as identified, if preliminary criminal and CPS background checks of all members of the household age 14 and up are favorable.

10. **Finding and Notice**

The Court finds and hereby notifies the parents that each of the actions required of them below are necessary to obtain the return of the children, and failure to fully comply with these orders may result in the restriction or termination of parental rights.

11. **Psychological Evaluation**

11.1. **IT IS FURTHER ORDERED** that **MARY LYNN MAGGARD** shall submit to and cooperate fully in the preparation of this court-ordered psychological or

psychiatric evaluation. Respondent is hereby notified that any communications made with a counselor, therapist, psychiatrist, or psychologists are not confidential. **MARY LYNN MAGGARD** shall follow all recommendations.

12. Counseling

12.1. **IT IS ORDERED** that **MARY LYNN MAGGARD** shall attend and cooperate fully in counseling sessions to address the specific issues that led to the removal of the children from the home and to address any additional issues arising from the psychological examinations or from the counseling sessions. Said counseling sessions shall continue until the counselor determines that no further sessions are necessary or until further order of this Court.

13. Parenting Classes

13.1. **IT IS ORDERED** that **MARY LYNN MAGGARD** shall attend, participate in and successfully complete parenting classes and shall submit to the Department or file with Court a certificate of completion.

14. Compliance with Service Plan

14.1. **MARY LYNN MAGGARD** is **ORDERED**, pursuant to § 263.106 Texas Family Code, to comply with each requirement set out in the Department's original, or any amended, service plan during the pendency of this suit.

14.2. **No services are ordered for STANLEY WAYNE MAGGARD at this time due to his incarceration.**

14.3. The court finds that this order, as supplemented by the service plan to be approved at the Status Hearing under Texas Family Code §263.201, sufficiently defines the rights and duties of the parents of the child pursuant to Texas Family Code § 153.602 and satisfies the requirements of a parenting plan. To the extent there is evidence demonstrating that the children have been exposed to harmful parental conflict, the court orders that the Department address this issue in the Family Plan of Service.

15. Required Information

15.1. **IT IS ORDERED** that each Respondent to this cause provide to the Department and the Court, no later than thirty days from the date of this hearing, the information detailed below.

15.2. **IT IS ORDERED** that each Parent furnish information sufficient to accurately identify that parent's net resources and ability to pay child support along with copies of income tax returns for the past two years, any financial statements, bank statements, and current pay stubs, pursuant to § 154.063, Texas Family Code.

- 15.3. **IT IS ORDERED** that each Respondent provide the Department and the Court information sufficient to establish the parentage and immigration status of the children, including but not limited to marriage records, birth or death certificates, baptismal records, social security cards, records of lawful permanent residence ("green cards"), naturalization certificates, and any records from the United States Citizenship and Immigration Services, and records of Indian Ancestry or Tribal Membership.
- 15.4. **IT IS ORDERED** that each Respondent furnish to the Department all information necessary to ensure the Department has an adequate medical history for the children, including but not limited to the immunization records for the children and the names and addresses of all physicians who have treated the children.
- 15.5. **IT IS ORDERED** that each Respondent provide the Department information regarding the medical history of the parent and parent's ancestors on the medical history report form, pursuant to § 161.2021, Texas Family Code.
- 15.6. **IT IS ORDERED** that each Respondent to this cause provide to the Department and the Court a current residence address and telephone number at which each can be contacted.
- 15.7. **IT IS ORDERED** that each Respondent to this cause notify the Department and the Court of any change in his or her residence address or telephone number within five (5) days of a change of address or telephone number.

16. Duty To Provide Information

- 16.1. **IT IS ORDERED** pursuant to § 153.076(a), Texas Family Code that each conservator of a child has a duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child.
- 16.2. **IT IS ORDERED** pursuant to § 153.076(b), Texas Family Code, that each conservator of the child has the duty to inform the other conservator if the conservator resides with for at least 30 days, marries, or intends to marry a person who the conservator knows:
- 16.2.1. is registered as a sex offender under Chapter 62, Code of Criminal Procedure; or
- 16.2.2. is currently charged with an offense for which on conviction the person would be required to register under that chapter.
- 16.3. The notice required to be made under § 153.076(b), Texas Family Code, must be made as soon as practicable but not later than the 40th day after the date the conservator of the child begins to reside with the person or the 10th day after the date the marriage occurs, as appropriate. The notice must include a description of

the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged.

16.4. A CONSERVATOR COMMITS AN OFFENSE IF THE CONSERVATOR FAILS TO PROVIDE NOTICE IN THE MANNER REQUIRED BY SUBSECTIONS (b) AND (c) OF § 153.076, Texas Family Code. AN OFFENSE UNDER THIS SUBSECTION (d) IS A CLASS C MISDEMEANOR

17. Notice of Status Hearing

IT IS ORDERED that this cause is set for a Status Hearing, pursuant to § 263.201 Texas Family Code, on JULY 16, 2013 at 2:00 p.m. in the 6th Judicial District Court of Lamar County in Paris, Texas.

18. All said TEMPORARY ORDERS shall continue in force during the pendency of this suit or until further order of the Court.

SIGNED this 17th day of June 2013.



JUDGE PRESIDING

ATTACHMENT A

19. Rights and Duties of Temporary Possessory Parents

19.1. Each Temporary Possessory Conservator appointed in this Order shall have the following rights:

19.1.1. the right to receive information concerning the health, education, and welfare of the children;

19.1.2. the right to access to medical, dental, psychological, and educational records of the children;

19.1.3. the right to consult with a physician, dentist, or psychologist of the children;

19.1.4. the right to consult with school officials concerning the children's welfare and educational status, including school activities;

19.1.5. the right, during times of unsupervised possession, to consent for the child to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the children;

19.1.6. the right, during times of possession, to direct the moral and religious training of the children;

19.2. Each Temporary Possessory Conservator appointed in this Order shall have the following duties:

19.2.1. the duty, during periods of possession of the children which are not supervised by the Department or its designee, of care, control, protection, and reasonable discipline of the children;

19.2.2. the duty to support the children, including providing the children with clothing, food, and shelter during periods of possession of the children which are not supervised by the Department or its designee;

20. Possession of and Access to the children

IT IS ORDERED that each Temporary Possessory Conservator appointed in this Order may have supervised visitation with the children, under the terms and conditions agreed to in advance by the parties, subject to 48 hours notification to the Department by the Temporary Possessory Conservator of intent to exercise the visitation. The Department or its designee shall supervise the visitation.

IT IS ORDERED that each Temporary Possessory Conservator appointed in this Order shall have visitation with the children as follows:

Mary Maggard shall have visitation with the children at the discretion of Robert Morton and Yvonne Morton. Visitation shall be supervised by Robert Morton or Yvonne Morton.

Mary Maggard may transport Whitney Renee Maggard to and from driver's education classes.

No visitation is ordered for Stanley Wayne Maggard at this time.

EXHIBIT D

CAUSE NO. 23067

THE STATE OF TEXAS

V.

JASON LADD BAKER

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IN THE 6th DISTRICT COURT

OF

LAMAR COUNTY, TEXAS

MOTION FOR RECUSAL OF TRIAL JUDGE

FILED FOR RECORD
2012 AUG 29 PM 1:30
Suzanne Roberts
CLERK OF DISTRICT COURT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Defendant in the above-styled and numbered cause by and through his attorney of record, and moves for the recusal of the Honorable Trial Judge Eric Clifford in this case; and in support thereof would show as follows:

I.

Tex.R.Civ.P. 18b states the situations in which a trial judge should be recused from presiding over a particular case. *Tex.R.Civ.P.* 18a[f]2.b. states the circumstances under which a motion to recuse may be filed after evidence is offered at trial. Defendant's *Motion for New Trial* was filed herein on August 28, 2012.

II.

In this case the trial judge, Hon. Eric Clifford, should be recused from presiding over this case because the trial judge's impartiality might reasonably be questioned, the trial judge has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

The facts are these in particular. The State filed its *Motion to Proceed with an Adjudication of Guilt* on July 2, 2012. [the "Motion"]. The Defendant was arrested and the undersigned was appointed counsel in due course. On July 30, 2012, counsel received an e-mail from Gary Young, the Lamar County District Attorney, indicating that he had been advised that Judge Clifford had "...visited with ...[someone] who desires to see Mr. Baker in prison for as long as possible and that Judge Clifford advised the probation department to file the MTR." [See attached Exhibit A]. On receiving this email, the undersigned called Mr. Young to discuss the issue in more detail. Mr. Young indicated that a representative of the local Probation and Parole office ["P&P"] had notified him directly that Judge Clifford had conducted an *ex parte, in camera* discussion with the courthouse janitor about the Defendant's alleged violation of the terms and conditions of his Community Service and, on the basis of this discussion, picked up the phone, called the P&P office and instructed it to file the Motion. Mr. Young further advised the violations alleged in the Motion were of a "technical" nature that would not normally result in the filing of such a motion.

Premised on information and belief as this story then was, the undersigned elected to attempt to negotiate a resolution to the Motion acceptable to Defendant. Indeed, this effort did result in an agreement between the parties to let the Defendant "sit out" the balance of his probation in the Lamar County Jail. Defendant's probation was then scheduled to exhaust on or about January 20, 2013, at which time the State expressly agreed to dismiss the Motion.

On August 20, 2012, 9:00 A.M., this cause was called by the Hon. Clifford. The parties announced no hearing was needed, that a resolution had been reached. Judge Clifford, however, ordered the cause be heard and evidence be taken at 1:30 P.M. that afternoon and that no negotiated agreement would be entertained.

At 1:30 P.M., the State announced it was dismissing this cause. Judge Clifford, however, refused to permit the State to dismiss the cause and ordered it for evidentiary hearing as previously announced.

When Judge Clifford called the case for hearing shortly thereafter, the State announced it would call no witnesses and put on no evidence whatsoever and rested. Judge Clifford, however, ordered the Defendant's probation officer to the stand *sui sponte* and prepared to conduct direct examination *sui sponte*. The undersigned then requested the Court to hear a matter in chambers and the Court declined his request. The undersigned then orally urged his motion to recuse and described his understanding – on information and belief – that the Court had personal knowledge of disputed evidentiary facts as set forth *supra*, and identified by name the courthouse janitor who putatively met with Judge Clifford. Judge Clifford expressly, vociferously denied any such meeting or awareness of facts in the case and denied the motion to recuse and proceeded with his examination of the probation officer *sui sponte*.

The probation officer testified generally that the allegations in the Motion are true. On cross, the officer denied knowledge of any communication between the Court and P&P.

The undersigned called the Assistant Director of P&P to the stand. Contrary to Judge Clifford's account, he testified that he received a call from Judge Clifford advising him to "investigate" Defendant. He further testified that such communications between the Court and P&P are "common" events.

The undersigned called D.A. Gary Young who refused to testify without a subpoena.

No further evidence was taken and Judge Clifford ordered Defendant to serve ninety days in the Red River County Jail¹ and on completion of this time to further complete the SAFE-P program.

¹ No explanation was offered for ordering Defendant to another county's jail to serve his sentence.

In sum, the factual grounds for recusal lie in the accounts of Judge Clifford's hearing facts about this case from a witness *ex parte* before the matter was filed, and then engaging in the prosecutorial process – a matter reserved to the Executive Branch – by picking up the phone and causing the Motion to be filed. Defendant respectfully urges that the mere taking of evidence *ex parte* is a sufficient grounds for recusal: it creates an appearance of impropriety and weakens the perception of the integrity of the Court by creating – *at the least* – the appearance that citizens with access to the judge can influence its decision-making. Compounding this ground, however, is – *at the least* - the appearance of actual bias revealed by Judge Clifford's refusal to accept the parties' negotiated settlement or the State's attempt to dismiss the cause and force an evidentiary hearing.

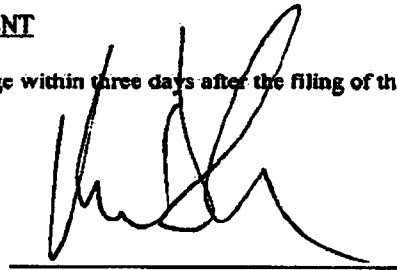
III.

This Motion to Recuse is not brought for the purpose of delay. Sufficient cause has been shown for the recusal of the Honorable Trial Judge. The Motion sets forth such facts as would be admissible in evidence, and in fact, the testimony of the Assistant Director of P&P is on the record and under oath, received by the Court without objection. Movant does not wish to waive any ground for recusal stated in the instant Motion.

WHEREFORE, PREMISES CONSIDERED, the Defendant requests that the Honorable Trial Judge voluntarily recuse himself from any further proceedings in this case and that another trial judge be assigned to hear the case; or in the alternative, that the Honorable Trial Judge refer this matter to the presiding judge of the applicable administrative judicial region for a hearing on the allegations in said Motion.

NOTICE OF PRESENTMENT

Defendant expects this motion to be presented to the trial judge within three days after the filing of this motion unless otherwise ordered by the judge. *Tex. R. Civ. P. 18a (a)*.



G. Don Haslam, Jr.

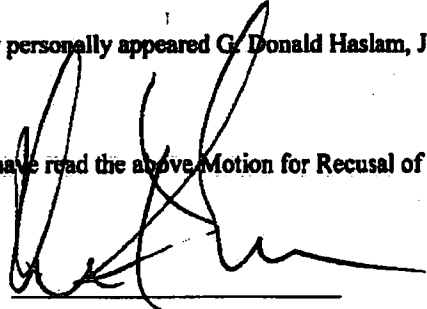
State of Texas

County of Lamar

AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared G. Donald Haslam, Jr., who being by me duly sworn, upon oath deposes and says:

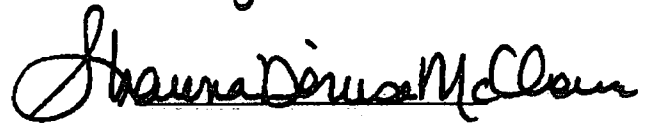
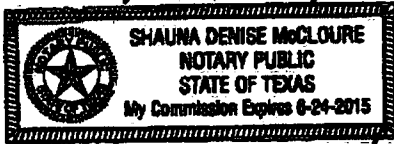
"I am the attorney for the Defendant in this cause, I have read the above Motion for Recusal of Trial Judge and it is all true and correct to the best of my knowledge."



AFFIANT

SUBSCRIBED AND SWORN BEFORE ME on this 29th day of August, 2012

certify which witness my hand and seal of office.

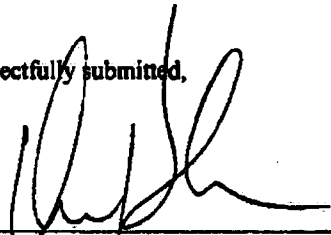


Notary Public, State of Texas

My commission expires: 6-24-2015

Respectfully submitted,

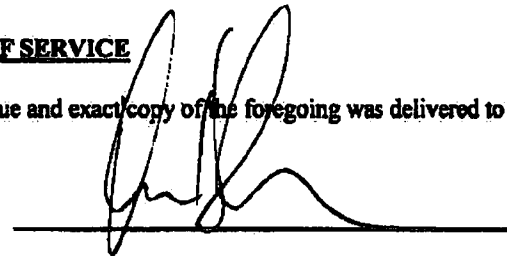
By:



G. Donald Haslam, Jr., Counsel for Defendant
32 Clarksville Street, Ste. 202
Paris, TX 75460
903-739-9221
903-784-7878 FAX
haslamlaw@att.net

CERTIFICATE OF SERVICE

The undersigned certifies that on August 29, 2012 a true and exact copy of the foregoing was delivered to the office of the Lamar County District Attorney.



G. Donald Haslam, Jr.

EXHIBIT A

Don Haslam

From: Gary Young <gyoung@co.lamar.tx.us>
Sent: Monday, July 30, 2012 9:32 AM
To: Don Haslam
Subject: Jason Ladd Baker

You have been appointed to represent Mr. Baker who is in jail on a pending MTAG for PCS < 1 gram.

My plea offer is 14 months SJF.

I have been advised (but cannot vouch for the credibility of the information) that someone has visited with Judge Clifford who desires to see Mr. Baker in prison for as long as possible and that Judge Clifford advised the probation department to file the MTR. Mr. Baker is in violation of various terms of probation and that is the reason that I signed the MTR myself.

Please let me know how you want to proceed. Mr. Baker has been in jail for 18 days at this point.

Gary D. Young
Lamar County & District Attorney's Office
119 N. Main, 3rd Floor
Paris, TX 75460
(903) 737-2458
(903) 737-2455 fax

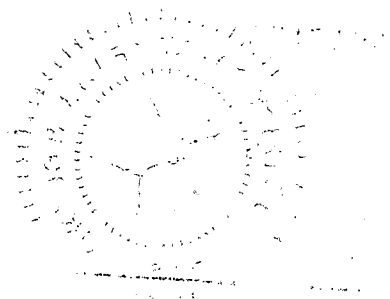


EXHIBIT B

NO. 83035

ALI JO BURRESS

VS.

RONNICA BLAKE,
BOBBY JOE HUNDLEY, JR. and
John Doe Defendant No. 1

§
§
§
§
§
§

IN THE DISTRICT COURT
LAMAR COUNTY, TEXAS

Level 2 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Ali Jo Burress shows:

DISCOVERY:

Discovery is intended to be conducted at Level 2.

PARTIES:

1. Plaintiff is Ali Jo Burress. She is a resident citizen of Lamar County, Texas.
2. Defendant, Ronnica Blake, is a resident citizen of Lamar County, Texas. She may be served with citation by serving her at her home, 210 Stone Avenue, Apt. #G23 Paris, Lamar County, Texas 75460-9499 or at her place of employment, Paris Police Department 2910 Clarksville Paris, Lamar County, Texas 75460, or wherever else she may be found. She is sued individually and in her official capacity as a police officer employed by the Paris Police Department. At all times relevant to this lawsuit, Ms. Blake was acting in her capacity as a police officer with the Paris, Texas Police Department.
3. Defendant, Bobby Joe Hundley, Jr., is a resident citizen of Lamar County, Texas. He may be served with citation by serving him at his home, 130 CR 43010 Powderly, Lamar County, Texas 75473-5103 or at his place of employment, Paris Police Department 2910 Clarksville Paris, Lamar County, Texas 75460, or wherever else he may be found. He is sued in

FILED FOR RECORD
 LAMAR COUNTY, TEXAS
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 MARYIN ANN PATTERSON
 DISTRICT CLERK
 BY _____ DEPUTY

his official capacity as the chief of police of the Paris Police Department.

4. John Doe Defendant No. 1 is an unknown person who, according to statements made by Defendant Blake, ordered the illegal search of the Plaintiff.

FACTS COMMON TO ALL CAUSES OF ACTION:

5. On or about February 27, 2013, Plaintiff was a spectator in the courtroom of the 6TH Judicial District Court of Lamar County. The case on trial was the State of Texas vs. Byron O'Keith Barrett. At approximately 10:00 a.m., Plaintiff left the courtroom to go to the restroom. As soon as she was outside of the courtroom, Plaintiff was intercepted and detained by Blake, who identified herself as a police officer with the Paris, Texas Police Department. The following exchange took place, in words in close identity to if not verbatim: Blake told Plaintiff, "I need you to come with me." Plaintiff asked, "On what grounds?" Blake responded, "A search was ordered." Plaintiff asked, "What for?" Blake advised, "I can't tell you. I was called up here to do a search." Plaintiff asked, "Why did they call you? Who called you?" Blake replied, "I can't tell you. You have to come with me." Plaintiff said, "I don't have to be searched. I'll just go home." Blake instructed Plaintiff, "If you refuse it you're going to go to jail. You have to." Blake then took Plaintiff into the Grand Jury restroom. Once in the Grand Jury restroom, Blake ordered Plaintiff to remove all of her clothing, which Plaintiff did. Thereupon, Blake frisked Plaintiff, then had her squat and cough. Once that was done, Blake searched Plaintiff's clothing. Nothing was found or seized. Thereafter, Blake allowed Plaintiff to get re-clothed. Plaintiff put her clothes back on and left the courthouse, instead of going back into the courtroom.

6. At no time did Blake show Plaintiff any type of warrant, or state that she was acting under authority of a warrant. And at no time did Blake advise Plaintiff of her right to counsel.

7. On information and belief, Defendant Hundley is responsible for the training that Defendant Blake receives. It appears that Defendant Hundley has wholly failed to train Defendant Blake in the proper procedures for searching and seizing persons as required by the United States Constitution.

FIRST CAUSE OF ACTION:

8. By the conduct set forth above, in ¶¶ 5 and 6, Defendant Blake was acting under color of state law and interfered with Plaintiff's First, Fifth and Fourteenth Amendment right to be present in the courtroom of the 6TH Judicial District Court to watch the on-going proceedings. Defendant Blake also violated Plaintiff's Fourth Amendment right to be free from an illegal seizure of her person and from illegal searches. Defendant Blake also violated Plaintiff's right to privacy under the First, Third, Fourth, Fifth and Ninth Amendments as made binding on the States by the Fourteenth Amendment. Defendant Blake also violated Plaintiff's right to be free from arbitrary and unreasonable interference by the police. And Blake violated Plaintiff's right to counsel by failing to notify her of her right to counsel.

9. All of Blake's conduct caused Plaintiff damage, for which she now sues, pursuant to the provisions of 42 U.S.C. § 1983. These damages fall within the jurisdictional limits of this Court. Since this action is brought pursuant to Federal law, Plaintiff does not believe that the state procedural rules bind her as to pleading of damages, but out of an abundance of caution and in order to comply with Rule 47, T.R.C.P., Plaintiff alleges that she seeks monetary relief of \$100,000 or less and non-monetary relief as set forth herein. Plaintiff specifically reserves the right to amend this allegation of damages that she seeks.

10. Plaintiff also sues Blake for a permanent injunction, to enjoin her from ever again subjecting Plaintiff or anyone similarly situated to a warrantless strip search. And Plaintiff

alleges that the actions of Blake were perpetrated willfully, wantonly and maliciously, entitling her to recover punitive damages, for which she now also sues.

11. Plaintiff sues Defendant Hundley for a permanent injunction, requiring Hundley to institute proper procedures for training his officers in the constitutional limits of searches and seizures of persons, especially as to strip searches conducted without a warrant, and to thereafter implement those procedures.

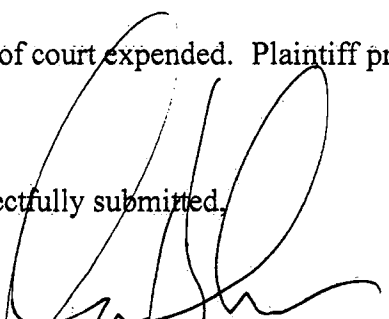
12. Pursuant to the provisions of 42 U.S.C. § 1988, Plaintiff also sues for reasonable and necessary attorney's fees for having to bring this action.

CONCLUSION:

Plaintiff prays that the Defendants be cited to appear and answer herein and that upon final trial hereof, she have and recover judgment of the Defendants, in accordance with the allegations hereof, for her actual damages, punitive damages, attorney's fees and injunctive relief. Plaintiff prays for pre- and post-judgment interest, as allowed by law, together with all costs of court expended. Plaintiff prays for general relief.

Respectfully submitted,

By:



G. Donald Haslam, Jr., Counsel for Plaintiff
3140 Clark Lane
Paris, TX 75460
Texas Bar #24071792
903-739-9221
888-541-9780 FAX
dhaslam@alumni.uchicago.edu

DISTRICT PLAY BEGINS

SPORTS, PAGE A8
Paris, North Lamar boys win district openers

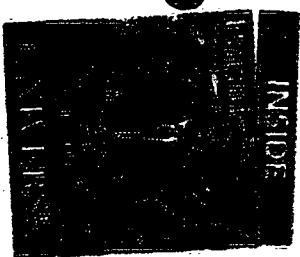
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TODAY

INSIDE



Views: "Say 'Yes' As Often As You Can"

The author interviews the former Today host Jane Pauley on being courageous, the upside

Volume 144, No. 160



CITY COUNCIL

rack \$1.51

Council to get lawsuit facts

A suit has been filed against Paris Police Chief, a Paris officer and 'John Doe'

MARY MADEWELL
mary.madewell@theparisnews.com

Paris City Council will discuss a lawsuit filed against Paris Police Chief Bob Hundley, a woman police officer and 'John Doe

Defendant No. 1!"

Alli Jo Burruss of Paris, a witness in the February murder trial of Byron Barrett, filed a \$100,000 civil rights lawsuit in the 62nd District Court in late December.

According to a Paris City Council agenda

item, the council will meet with an attorney behind closed doors to discuss the case during a 5:30 p.m. meeting. In papers filed Dec. 20, Burruss claims she

SUIT Page A3

Suit: Woman seeks \$100,000

from Page A1

was a spectator in the 6th District Courtroom and when she left to go to the restroom she was detained by officer Ronnica Blake who told her a search had been ordered. In a court document, Burruss said she protested but Blake threatened to take her to jail.

According to the lawsuit, Burruss said Blake took her into the grand jury restroom, ordered her to remove all her clothing and then squat and cough. Nothing was found and Burruss said she put her clothes back on and left the courthouse instead

of going back into the courtroom.

"At no time did Blake show plaintiff any type of warrant or state that she was acting under authority of a warrant," the petition states. "And at no time did Blake advise plaintiff of her right to counsel."

Hundley is named in the case for failure to train officers in the constitutional limits of searches and seizures.

Sixth District Court Judge Eric Clifford says he is "John Doe Defendant No. 1" who ordered the search.

"She had just finished testifying she was doing drugs and having sex with Barrett before

and after he killed his wife and I saw her mouthing 'I love you' to him," Clifford said Thursday. "We don't have much security up here and she has a criminal record so I told my bailiff she needs to be searched."

Clifford said he had no way of knowing what she might do.

"I was concerned for everyone's safety," Clifford said.

Hundley declined to comment, saying he can't comment on pending litigation.

Paris attorney Donald Haslam, who represents Burruss, said he stands by the allegations in the case.