

CAUSE NOS. 1766257 & 1766258

STATE OF TEXAS }} IN THE DISTRICT COURT
v. }} HARRIS COUNTY, TEXAS
ALEX TRIANTAPHYLLIS }} 174TH JUDICIAL DISTRICT

CAUSE NOS. 1766261 & 1799262

STATE OF TEXAS }} IN THE DISTRICT COURT
v. }} HARRIS COUNTY, TEXAS
WALLIS NADER }} 174TH JUDICIAL DISTRICT

STATE’S MOTION FOR SANCTIONS

TO THIS HONORABLE COURT:

The State of Texas moves this Court for an order imposing sanctions for violating grand jury secrecy and violating the Texas Disciplinary Rules of Professional Conduct by filing the frivolous Motions upon Marla Thompson Poirot, Dan Cogdell, and Brett Podolsky (together “Counsel”).

These cases involve the prosecution of three county employees, Aaron Dunn, Wallis Nader, and Alex Triantaphyllis, for misuse of official information and tampering with a governmental record. On June 1, 2022, Ms. Poirot and Mr. Cogdell filed a Motion to Disqualify the Harris County District Attorney’s Office and Appoint an Attorney *Pro Tem* on behalf of Defendant Alex Triantaphyllis (the “Triantaphyllis Motion”). Also on June 1, 2022, Mr. Podolsky filed a motion that is

substantively identical to the Triantaphyllis Motion on behalf of Defendant Wallis Nader (the “Nader Motion” together with the Triantaphyllis Motion as “Motions”).

Grand jury secrecy is sacrosanct. Throughout the Motions, Counsel refer to grand jury proceedings and hearings and rulings related to statutorily secret proceedings. These public statements are forbidden by law and Counsel is subject to sanctions to be imposed by the Court for violating grand jury secrecy.

The Motions seem to be a publicity stunt rather than a legal motion based on law and admissible evidence. Counsel spin a false narrative based on false facts, seemingly as a campaign piece intended to support Harris County Judge Lina Hidalgo, and attempt to deflect attention from the actual facts at issue in this litigation. For example, on page two of the Motions, Counsel proclaim that “Ogg opened a grand jury investigation into Judge Hidalgo and her staff merely because the Commissioners Court decided to allocate funds to programs and priorities other than the District Attorney’s Office.” This proclamation is absolutely groundless and without any evidentiary support whatsoever. Counsel violate multiple disciplinary rules by submitting the Motions to the court including but not limited to 3.03 (Candor to the Tribunal) and 3.07 (Trial Publicity).

As a result of the violations of grand jury secrecy and the Texas Disciplinary Rules of Professional Conduct, the State of Texas asks this Court to impose sanctions on Counsel.

I. TEXAS COURTS HAVE THE INHERENT POWER TO SANCTION ATTORNEYS

A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Tex. Code Jud. Conduct, Canon 3(D).

Texas courts have the inherent power to punish contemptuous behavior. Tex. Gov't Code §§21.001, 21.002. Texas courts may sanction attorneys whose abusive conduct affects the core functions of the judiciary. Tex. Code Jud. Conduct, Canon 3(D); *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997) (orig. proceeding) (per curiam). A court may employ sanctions to aid in the administration of justice. *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979). This authority exists even when the conduct is not specifically proscribed by rule or statute. *Westview Drive Invs., LLC v. Landmark Am. Ins. Co.*, 522 S.W.3d 583, 613-614 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (trial court properly found attorney abused judicial process even without finding that attorney significantly interfered with traditional core functions).

II. COUNSEL VIOLATED GRAND JURY SECRECY PROVISIONS OF THE TEXAS CODE OF CRIMINAL PROCEDURE BY FILING THE MOTION

Grand jury proceedings are secret. Tex. Code Crim. Proc. art. 20A.202(1). A grand jury subpoena must be kept secret “to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” Tex. Code Crim. Proc. art. 20A.202(b). The signature of an attorney constitutes a certificate by the attorney that they have read the motion and that, to the best of their knowledge, information, and belief formed after reasonable inquiry that the instrument is not groundless and brought in bad faith or groundless and brought for harassment, unnecessary delay, or other improper purpose. Tex. Code Crim. Proc. art. 1.052(b). Counsel filed the Motions in the public domain via the Harris County District Clerk’s Office and made no effort to shield information protected by grand jury secrecy from the general public.

Starting on page two of the Motions, Counsel refer to the grand jury proceedings and motions related to the grand jury proceedings¹:

- She [Ogg] then repeatedly moved to compel the production of privileged documents. Motions at 2.
- Frustrated by the grand jury court’s rulings on those challenges, her prosecutors sought and obtained search warrants – from a judge with no

¹ The State of Texas disputes Counsel’s allegations in the Motions. For example, Counsel repeatedly makes the allegation throughout the Motions that the search warrants sought the same information sought by grand jury subpoenas. The State of Texas is not going to be baited into discussing materials and documents that are protected by grand jury secrecy. Nonetheless, the State of Texas vehemently disputes this baseless allegation.

relation to the case – to seize the *same material* that they had already received months earlier by grand jury subpoena. Motions at 2-3.

- The District Attorney’s Office did not seek the search warrants from the court overseeing the ongoing grand jury investigation that had already yielded the same materials from these very same computers and phones. Motions at 14.
- The seized devices contain materials that the court overseeing the grand jury had already deemed privileged. Motions at 15.
- Ogg’s prosecutors have repeatedly served represented parties directly with grand jury subpoenas. Motions at 25.
- After the grand jury court ruled that some of the handful of documents withheld are indeed protected by privilege, that frustration boiled over. Motions at 26.
- For example, the grand jury subpoena to Wallis Nader sought “Any and All Communication [sic] and Documents” related to: the composition and work of the RFP “Contract Committee,” the Vaccine Outreach Contract, Elevate Strategies, Elevate CEO Felicity Pereyra, and bids by UT Health and others for the Vaccine Outreach Contract. Motions at 26.
- Incredibly, these materials *had already been produced*.²
- It is unclear whether Judge Gaido was told that the warrants she was signing (1) sought the same material from the same custodians covered by months-old grand jury subpoenas, (2) that the recipients of the subpoenas had produced the requested materials months earlier, or (3) that the grand jury court had already determined through in-camera review that some of the materials sought by the warrants were privileged. If Judge Gaido was not, it means Ogg intentionally made an end-run around the grand jury court’s prior rulings. Motions at 27.
- Regardless, because the responsive, non-privileged material sought by the warrants had already been produced to the District Attorney’s Office, the warrants had no proper basis. Motions at 27.
- Attaching the grand jury subpoenas as exhibits. Exhibits H-1, H-2.

Counsel violated grand jury secrecy by filing the Motions and should be punished.

² This allegation is without factual foundation whatsoever. Again, the State of Texas will not address processes and procedures cloaked in grand jury secrecy in a public filing.

III. COUNSEL VIOLATED THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Rule 3.01 of the Texas Rules of Professional Conduct forbids attorneys from bringing or defending proceedings, or raising or attacking particular issues, unless they reasonably believe that there is a nonfrivolous basis for doing so. In direct violation of this rule, the Motions are fundamentally groundless, inaccurate, and speculative. The Motions rely on erroneous information and circular logic to level unsubstantiated charges and personal attacks to docket this case in the court of public opinion. With no due diligence, Counsel violate multiple disciplinary rules by submitting this motion to the court including but not limited to 3.03 (Candor to the Tribunal) and 3.07 (Trial Publicity).

A. Counsel violated Tex. Disciplinary Rules Prof'l Conduct R. 3.03 (Candor to the Tribunal)

An advocate is tasked with presenting a persuasive case free of misleading legal arguments and false statements. Tex. Disciplinary Rules of Prof'l Conduct R. 3.03. A lawyer shall not knowingly “make a false statement of material fact or law to a tribunal.” *Id.*

1. Counsel make false statements about the search warrant affidavits

Throughout the Motions, Counsel use false statements and misleading legal arguments. For example, Counsel blame the District Attorney's Office because a

Texas Ranger followed the Code of Criminal Procedure. Counsel claim that the elected district attorney posted search warrants on the district clerk's website. Motions at 3. This statement exposes a fundamental misunderstanding of the entire criminal process in Harris County, Texas. Peace officers execute search warrants. Tex. Code Crim. Proc. art. 18.06. Following execution of a search warrant, the officer shall return the search warrant to the magistrate. Tex. Code Crim. Proc. art. 18.10. A sworn affidavit is required to accompany a search warrant. Tex. Code Crim. Proc. art. 18.01(b) ("A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested."). The sworn affidavit becomes public information when the search warrant is executed and shall be made available for public inspection. Tex. Code Crim. Proc. art. 18.01(b).

2. Counsel make false statements about Barbara Armstrong

Counsel spend a great deal of time alleging that a conflict exists with Assistant District Attorney Barbara Armstrong. In order to create this conflict, Counsel claim that "Armstrong was in charge of the group that handled Elevate's Census Outreach Contract." Motion at 8. This is completely false. Ms. Armstrong never represented Defendants on an Elevate Strategies Census Contract because it does not exist. Ms. Armstrong previously represented Harris County as an Assistant Harris County Attorney and now represents the State of Texas as an Assistant Harris County

District Attorney. Counsel should be sanctioned for this violation alone as they clearly made an extremely serious allegation with no basis in fact and no due diligence whatsoever, which should be punished.

3. Counsel make false, baseless hearsay statements about a meeting involving Judge Hidalgo's criminal defense attorneys

Defendants' misrepresentation of the facts in the Motion includes a false rendition of events that occurred between Judge Hidalgo's criminal defense attorneys, Edward "Matt" Hennessy, Ashlee McFarlane, Eric Gerard and First Assistant District Attorney David Mitcham, along with Assistant District Attorneys Barbara Armstrong and Aaron Chapman, at a meeting in the District Attorney's Office on February 8, 2022. Judge Hidalgo's attorneys had requested the meeting with the District Attorney's Office supposedly to provide "information" that would demonstrate how the Harris County District Attorney's Office, the investigating Texas Rangers, and the Harris County Grand Jury, participating in an investigation reviewing the evidence of a corrupt bidding process for a lucrative county government contract, had a "fundamentally flawed misunderstanding of the facts."

To be clear, there is no misunderstanding of the facts concerning this criminal episode of fiscal governmental corruption, on the part of the Harris County District Attorney's Office, the Texas Rangers, and the Harris County Grand Jury. There appears to be a calculated misinformation media campaign presently conducted by

Judge Hidalgo for the benefit of the Defendants. This campaign attempts to confuse public opinion and taint any future jury pool with what can only be described as a knowing misrepresentation of the facts. The *prosecutors* representing the State of Texas are presently prevented by the requirements of grand jury secrecy to publicly refute the Defendants' false allegation of "a fundamental misunderstanding of the facts." Tex. Code Crim. Proc. Art. 20A.202. At trial, when the appropriate fact finders in a court of law are able to review the admissible evidence previously shown to the Grand Jury, it will become fully apparent to any reasonable person how deceitful and self-serving the Defendants' groundless contentions are in this matter.

On February 8, 2022, as a matter of professional courtesy, the said three representatives of the District Attorney's Office agreed to meet with Judge Hidalgo's attorneys in order to hear what they had to say. If there had been any substantive or probative evidence offered by Judge Hidalgo's criminal defense attorneys, they would have been directed to contact the Texas Rangers, the investigative law enforcement agency assigned to the case, and provide such actual evidence.

4. Counsel make false allegations about the investigation

Counsel claim in the Motions that the "search warrants were plainly inappropriate" and then continue to make baseless allegations with no foundation in fact or law. Motion at 26. For example, Counsel claim that "the County Judge's Office and its staff would have provided the devices had they simply been asked"

and claim that Judge Hidalgo and her staff “complied with investigators’ requests from the outset.” *Id.* There are two problems with these statements: (1) they are not truthful and (2) criminal defendants do not get to choose how the elected district attorney and her staff and the Texas Rangers conduct a criminal investigation. *See e.g.*, Tex. Code Crim. Proc. arts. 2.01, 2.022, 18.01, *et seq.*

Crime in Harris County is a 24 hours a day, 7 days a week, 365 days a year business. For years, the Harris County District Attorney’s Office has operated a continually open intake office and the Harris County Criminal District Court judges maintain a rotating on call list that allows law enforcement to contact these judges to obtain search warrants at any time, day or night. To obtain a search warrant, a peace officer submits a sworn affidavit. Tex. Code Crim. Proc. art. 18.01. A search warrant is issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same. *Id.*

Counsel’s allegations regarding the search warrant are wrong and attack the character of the elected district attorney and her assistants as well as an elected criminal district court judge and taint the jury pool with misleading and wrong statements about the law. Counsel are permitted to vigorously represent their clients, but they are not allowed to make wholly baseless allegations and air these falsities in a public court filing.

5. Counsel make false allegations about a taint team

In the Motions, Counsel claim that the District Attorney's Office did not implement a taint team to address potentially privileged materials received through the search warrants. That is wrong and has no basis in fact. Counsel could have raised this issue in one of the court settings before making a false allegation in a public filing. Instead, Counsel erred on the side of throwing baseless allegations into a motion to continue their public relations campaign based on a false narrative.

B. Counsel violated Tex. Disciplinary Rules Prof'l Conduct R. 3.07 (Trial Publicity)

Tex. Disciplinary Rules Prof'l Conduct R. 3.07 is concerned with preserving the right to a fair trial. "In the course of representing a client, a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding. A lawyer shall not counsel or assist another person to make such a statement." Tex. Disciplinary Rules Prof'l Conduct R. 3.07. A lawyer is in violation of this rule if the lawyer's extrajudicial statement refers to information the lawyer knows would create a substantial risk of prejudicing an impartial trial. *Id.*

Counsel complains about publicity, but it is Counsel who has provided public statements to the media including *Texas Monthly* and the *Houston Chronicle*.

Counsel quotes self-sourced news articles to support the accusations against the State. For example, Counsel claims, “When various news outlets began questioning the accuracy of the search warrant affidavits, Ogg and her prosecutors ignored the reports.” Motions at 3. Purportedly, Counsel is referring to “reports” like the March 29, 2022 *Texas Monthly* article titled *Lina Hidalgo Aides Are Accused of Steering a Contract to an Ally. Internal Communications Paint a Murkier Picture*.³ The author of this article admits that he reviewed dozens of documents including emails, memorandums, text messages, and WhatsApp conversations “made available to *Texas Monthly*.” The State of Texas did not make evidence available to *Texas Monthly*; so, it is clear that either the defendants and/or their allies provided these documents to a reporter at the publication. This article contains a description of the execution of a search warrant by Ms. Poirot (“According to Triantaphyllis’s attorney, Marla Poirot, the [Texas] Ranger’s vehicle was parked diagonally across his driveway, as if to prevent an escape, and its lights were flashing, drawing the attention of neighbors who emerged to see what the ruckus was about.”). Ms. Poirot stated that, “The accusations against my client are unsupported by a full and objective review of the facts.” She also told *Texas Monthly*, “The way this

³ Mike Snyder, *Lina Hidalgo Aides Are Accused of Steering a Contract to an Ally. Internal Communications Paint a Murkier Picture*, *Texas Monthly* (March 29, 2022), <https://www.texasmonthly.com/news-politics/lina-hidalgo-aides-vaccine-outreach-contract/>.

investigation has been conducted raises serious concerns that it is part of an agenda designed to attack committed public servants for political gain.”

On April 3, 2022, the *Houston Chronicle* Editorial Board posited the question: Did Texas Rangers miss a key fact in probe of Lina Hidalgo’s office?⁴ The Editorial Board released this editorial after interviewing Judge Hidalgo’s lawyers. *Id.* (“In interviews with media outlets including this editorial board, Hidalgo’s lawyers have unveiled some key facts that weren’t acknowledged in the recently released Texas Rangers affidavit detailing evidence for search warrants.”). On the same day, the *Houston Chronicle* ran a story claiming that lawyers for Judge Hidalgo say their “records undercut allegations in vaccine contract probe.”⁵ This article includes quotes from Ms. Poirot showing that she worked to explain the evidence, including messages, to the reporters. *Id.* (“The texts, Poirot stressed, show the aides did not view Pereyra as a vendor for the vaccine work.”).

In the Motions, Counsel blame politics for the defendants’ criminal indictments. Counsel lay out the history from their perspective of Harris County bail

⁴ Editorial Board, *Editorial: Did Texas Rangers miss a key fact in probe of Lina Hidalgo’s office?*, *Houston Chronicle* (April 3, 2022), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-Did-Texas-Rangers-miss-a-key-fact-in-17052529.php>.

⁵ Mike Morris, Nicole Hensley, *Lawyers for Hidalgo, aides say records undercut allegations in vaccine contract probe*, *Houston Chronicle* (April 3, 2022), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Lawyers-for-Hidalgo-aides-say-records-undercut-17052373.php>.

reform. *See* Motions at 5-6. Counsel quote political consultants and reporters with clear animus against the elected district attorney. *See e.g.*, Motions at 7.

In short, defendants are creating the publicity surrounding this litigation, not the State. In the Motions, Counsel work to paint the same, petty narrative as outlined in the self-supported narratives in *Texas Monthly* and the *Houston Chronicle*. In truth, an elected district attorney and her assistants are representing the State of Texas and seeing that justice is done, even in the face of baseless political attacks.

IV. CONCLUSION

As a result of Counsel's repeated violations, the State of Texas asks this Court to impose monetary sanctions against Counsel to prevent further sanctionable conduct.

Prayer for Relief

It is respectfully requested that this Court GRANT the States Motion for Sanctions.

Respectfully Submitted,

/s/ George Lindsey

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CERTIFICATE OF SERVICE

I certify that I have requested that the District Clerk's E-filing system electronically serve a copy of this filing on counsels for the Defendants as of the day of this filing.

/s/ George Lindsey
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