

EX PARTE	§	IN THE DISTRICT COURT
	§	TARRANT COUNTY, TEXAS
BARTON R. GAINES	§	213TH JUDICIAL DISTRICT

Applicant's Request (Motion) To Take The Deposition On Written Questions,
And Applicant's Preemptive Objection On The Court's Failure to Explicitly Rule Hereto

Barton R. GAINES, Applicant pro se, or Bart, and moves¹ to take deposition on written questions.

INTRODUCTION

1. Applicant is Barton R. Gaines; respondent is the Tarrant County Criminal District Attorney's Office.

BACKGROUND

2. There are controverted, previously unresolved facts which are material to the legality of the applicant's fine and confinement:
 - a. :
 - i. specifically whether Westfall (Greg) and Minick (Cheyenne) abandoned their duty to keep Bart informed of important developments throughout the course of the prosecution, and / or
 - ii. whether they failed to bring to bear such skill and knowledge to know the difference between what was or was not important, i.e., so that they could render the trial a reliable testing process.
 - b. And was Bart therefore prejudiced therefrom. Or ,

¹ See Articles 4.05, 11.05, and 11.07, Section 3(d) of the Texas Code of Criminal Procedure, Sections 25.003 and 25.004 of the Texas Government Code, Article V, § 8 of the Texas Constitution, and Rule 199.2 and 200.1 of Texas Rule of Civil Procedure.

c. :

- i. whether Westfall (Greg) and Minick (Cheyenne) actively represented conflicting interests,² and
- ii. whether that actual conflict of interest adversely affected their performance.

ARGUMENT & AUTHORITIES

3. Section 3(d) of Article 11.07 of the Texas Code of Criminal Procedure provides:

If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, additional forensic testing, and hearings, as well as using personal recollection. The state shall pay the cost of additional forensic testing ordered under this subsection, except that the applicant shall pay the cost of the testing if the applicant retains counsel for purposes of filing an application under this article. The convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. On completion of the transcript, the reporter shall immediately transmit the transcript to the clerk of the convicting court. After the convicting court makes findings of fact or approves the findings of the person designated to make them, the clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals, under one cover, the application, any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact.

See Section 3(d) of Article 11.07 of the Texas Code of Criminal Procedure.

4. The controverted, previously unresolved **facts** which are material to the **legality** of applicant's **fine** and **confinement**, are:

a. :

- i. did Westfall and Minick (Cheyenne) abandon their duty to keep Bart informed of important developments throughout the course of the prosecution, and / or did they fail

² I.e., giving substance and meaning / setting legal precedent (legal loopholes) on Bart's potential criminal / culpable responsibility for shooting Rick.

to bring to bear such skill and knowledge to know the difference between what was or was not important, so that they could render the trial a reliable testing process.

Strickland v. Washington, 466 U.S. 668, 688 (1984), and

- ii. was Bart prejudiced therefrom; or
- b. :
- i. did Westfall (Greg) and Minick (Cheyenne) actively represent conflicting interest (i.e. setting legal precedent on Bart's potential criminal / culpable responsibility for shooting Rick), and
 - ii. did that actual conflict of interest adversely affect their performance, *Strickland*, 466 U.S. at 692.³

See, generally, Applicant's affidavit attached to his 11.07 Applications.

5. Applicant knows this may be a tad bit of an inconvenience for the deponents, but, in comparison to the 20 year inconvenience they caused applicants, it is the least they can do is answer Applicant this one simple issue.

³ "In certain Sixth Amendment contexts, prejudice is presumed. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. So are various kinds of state interference with counsel's assistance. See *United States v. Cronin*, ante at 466 U. S. 659, and n. 25. Prejudice in these circumstances is so likely that case-by-case inquiry into prejudice is not worth the cost. Ante at 466 U. S. 658. Moreover, such circumstances involve impairments of the Sixth Amendment right that are easy to identify and, for that reason and because the prosecution is directly responsible, easy for the government to prevent. ¶ One type of actual ineffectiveness claim warrants a similar, though more limited, presumption of prejudice. In *Cuyler v. Sullivan*, 446 U.S. at 446 U. S. 345-350, the Court held that prejudice is presumed when counsel is burdened by an **actual conflict of interest**. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, see, e.g., Fed. Rule Crim. Proc. 44(c), it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest. Even so, the rule is not quite the *per se* rule of prejudice that exists for the Sixth Amendment claims mentioned above. Prejudice is presumed only if the defendant demonstrates that counsel "**actively represented conflicting interests**" and that "**an actual conflict of interest adversely affected his lawyer's performance.**" *Cuyler v. Sullivan*, supra, at 446 U. S. 350, 446 U. S. 348 (footnote omitted)." (emphasis added).

CONCLUSION

6. Bart Therefore asks the Court to:

a. allow him to take the deposition on written questions from the:

i. parties under respondent's direct control, (or who used to be under their direct control as their employees, otherwise applicant request the same as non-parties), i.e.:

- | | |
|---|---------------------------------------|
| 1. Deleon, Juan, Tarrant Co. DA Inv.; | |
| 2. Foran, Robert F., Tarrant Co. ADA; | 5. Tarrant Co. Dist. Clerk, Custodian |
| 3. Hartmann, Michele B., Tarrant Co. ADA; | of Records; and |
| 4. Hubbard, John C., Tarrant Co. DA Inv.; | 6. Wright, Ann B., Tarrant Co. ADA; |

ii. nonparties under neither applicant's nor respondent's direct control, namely:

- | | |
|---|---|
| 1. Adams, Melissa G. | 16. Hood Co. Sheriff's Ofc., Custodian of |
| 2. Adkins, Robert L., Ft. Worth PD Forensics Ofc. | Records |
| 3. Ancira, Jheen M. | 17. Horvath, Andrew S. |
| 4. Ancira, Stephen A. | 18. Hysmith, Corey A., Ft. Worth PD Ofc. |
| 5. Bush, Raymond O., Ft. Worth PD Ofc. | 19. Keisel, Melinda D. |
| 6. Chandler, Joel G. | 20. Minick, Cheyenne B., Atty. @ Law |
| 7. Fazio, Ronald T., Ft. Worth PD Forensics Ofc. | 21. Minick, Kimberly F., Atty. @ Law |
| 8. Fineman, Stephen G., Ft. Worth PD Ofc. | 22. Peterson, Gregory A. |
| 9. Ft. Worth PD Custodian of Records | 23. Savoy, Keith A., Ft. Worth PD Ofc. |
| 10. Gill, Robert K. | 24. Shipp, Joseph F., Ft. Worth PD Ofc. |
| 11. Goin, Larry B., Hood Co. sheriff's Ofc. | 25. Smith, Charla B., Ft. Worth PD Det. |
| 12. Green, Sherry B. | 26. Tucker, Brett L. |
| 13. Green, Tarah | 27. Waco PD Custodian of Records |
| 14. Griffin, Paul R. | 28. Weaver, Richard L. |
| 15. Hanlon, Donald T., Ft. Worth PD Ofc. | 29. Westfall, Gregory B., Atty. @ Law |
| | 30. Westmoreland, Jerri D. |
| | 31. Williams, Michael E. |

b. :

i. schedule this request for a hearing, and

ii. send applicant and respondent notice of when the hearing is scheduled,⁴

⁴ See Applicant's attachment Notice of Hearing on / Submission of Applicant's Request (Motion) To Take The Deposition On Written.

- iii. send applicant and respondent certified copies of the Court's ORDER granting or denying this request;⁵
- c. And, in the event the Court grants the request (motion):
 - i. set a time for the deposition,
 - ii. send applicant, respondent, the court reporter, and the deponents notice of when the deponents will be disposed;⁶
 - iii. issue subpoenas on the non party deponents,⁷
 - iv. send applicant and respondent notice whether the subpoenas were successfully served on the deponents, and if not, reason why not,⁸
 - v. ensure a full record of the deposition(s) is / are made, and all notes preserved,⁹ and
 - vi. grant all other necessary and proper ORDERS to bring the same to pass (In the event the Court grants the request (motion), of course).
- 7. In the alternative, Applicant requests the Court hold an oral / live evidentiary hearing.

Objections

In the event the Court denies Applicant's 11.07s before he has a chance to object to the Court's denial of his opportunity to prove up his constitutional violations, Applicant objects to the Court's implicit overrule of the above request (motion).

⁵ See Applicant's attached Order on Applicant's Request (Motion) To Take The Deposition On Written Questions, And Applicant's Preemptive Objection On The Court's Failure to Explicitly Rule.

⁶ See Applicant's attached Notice of Hearing on / Submission of Applicant's Request (Motion) To Take The Deposition On Written Questions, And Applicant's Preemptive Objection On The Court's Failure to Explicitly Rule.

⁷ See Bart's attached Subpoena Deposition.

⁸ See Bart's attached Return of Notices of Subpoena(s).

⁹ See Bart's Request To Court Reporter To Make A Full Record & Preserve All Notes.

PRAYER

8. Applicant Prays the Court ORDER the above identified persons to respond to his (Applicant's) questions for them.

Respectfully submitted,

By: _____
BARTON R. GAINES, Pro Se
244 Siesta Court
Granbury, Texas 76048
Tel.: 682-500-7326
Email bartongaines@gmail.com

EX PARTE	§	IN THE DISTRICT COURT
	§	TARRANT COUNTY, TEXAS
BARTON R. GAINES	§	213TH JUDICIAL DISTRICT

Order on Applicant's Request (Motion) To Take The Deposition On Written Questions,
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After considering the aforesaid motion or request, the response, the evidence on file,
and arguments of counsel, the Court:

DENIES the motion

1. And will send applicant and respondent certified copies of this ORDER.

GRANTS the motion with regards to the noted parties below:

- | | |
|---|--|
| 1. <input type="checkbox"/> Foran, Robert F., Tarrant Co. ADA | 4. <input type="checkbox"/> Hubbard, John C., Tarrant Co. DA |
| 2. <input type="checkbox"/> Hartmann, Michele B., Tarrant Co. | Inv. |
| ADA | 5. <input type="checkbox"/> Tarrant Co. Dist. Clerk, Custodian |
| 3. <input type="checkbox"/> Deleon, Juan, Tarrant Co. DA Inv. | of Records |
| | 6. <input type="checkbox"/> Wright, Ann B., Tarrant Co. ADA |

and the noted non parties below:

- | | |
|---|---|
| 1. <input type="checkbox"/> Adams, Melissa G. | 15. <input type="checkbox"/> Hanlon, Donald T., Ft. Worth PD |
| 2. <input type="checkbox"/> Adkins, Robert L., Ft. Worth PD | Ofc. |
| Forensics Ofc. | 16. <input type="checkbox"/> Hood Co. Sheriff's Ofc., Custodian |
| 3. <input type="checkbox"/> Ancira, Jheen M. | of Records |
| 4. <input type="checkbox"/> Ancira, Stephen A. | 17. <input type="checkbox"/> Horvath, Andrew S. |
| 5. <input type="checkbox"/> Bush, Raymond O., Ft. Worth PD | 18. <input type="checkbox"/> Hysmith, Corey A., Ft. Worth PD |
| Ofc. | Ofc. |
| 6. <input type="checkbox"/> Chandler, Joel G. | 19. <input type="checkbox"/> Keisel, Melinda D. |
| 7. <input type="checkbox"/> Fazio, Ronald T., Ft. Worth PD | 20. <input type="checkbox"/> Minick, Cheyenne B., Atty. @ Law |
| Forensics Ofc. | 21. <input type="checkbox"/> Minick, Kimberly F., Atty. @ Law |
| 8. <input type="checkbox"/> Fineman, Stephen G., Ft. Worth | 22. <input type="checkbox"/> Peterson, Gregory A. |
| PD Ofc. | 23. <input type="checkbox"/> Savoy, Keith A., Ft. Worth PD Ofc. |
| 9. <input type="checkbox"/> Ft. Worth PD Custodian of | 24. <input type="checkbox"/> Shipp, Joseph F., Ft. Worth PD |
| Records | Ofc. |
| 10. <input type="checkbox"/> Gill, Robert K. | 25. <input type="checkbox"/> Smith, Charla B., Ft. Worth PD |
| 11. <input type="checkbox"/> Goin, Larry B., Hood Co. sheriff's | Det. |
| Ofc. | 26. <input type="checkbox"/> Tucker, Brett L. |
| 12. <input type="checkbox"/> Green, Sherry B. | 27. <input type="checkbox"/> Waco PD Custodian of Records |
| 13. <input type="checkbox"/> Green Tarah | 28. <input type="checkbox"/> Weaver, Richard L. |
| 14. <input type="checkbox"/> Griffin, Paul R. | 29. <input type="checkbox"/> Westfall, Gregory B., Atty. @ Law |

30. ☐ Westmoreland, Jerri D.

31. ☐ Williams, Michael E.

and will:

1. Send applicant¹ and respondent² certified copies of this ORDER.
2. Schedule a time for the deposition to take place.
3. Serve the court reporter with the applicant's request to make a full record and preserve all notes.
4. Send applicant, respondent, the deponents, and the court reporter, Shelia Walker, of the aforesaid Court, applicant's notices of his depositions on written questions.
5. Issue applicants, subpoenas, and all processes therein.
6. Send applicant and respondent copies of the deponents' subpoenas' returns, with explanations as to why the sheriff/constable was unable to serve the subpoenas or find the deponent(s), if so be the case. And,
7. Send applicant and respondent certified copies of the transcribed stenographic, or other recordings.

SIGNED on : _____, 2021.

PRESIDING JUDGE

¹ BARTON R. GAINES, Pro Se, 244 Siesta Court, Granbury, Texas 76048, Tel.: 682-500-7326, Email bartongaines@gmail.com

² Tarrant Co. Crim. Dist. Atty. Ofc., Tim Curry Crim. Justice Ctr., 401 West Belknap, Ft. Worth, Texas 76196, 817-884-1400

EX PARTE § **IN THE DISTRICT COURT**
§ **TARRANT COUNTY, TEXAS**
BARTON R. GAINES § **213TH JUDICIAL DISTRICT**

Notice of Hearing on / Submission of Applicant's Request (Motion) To Take The Deposition On Written Questions, And Applicant's Preemptive Objection On The Court's Failure to Explicitly Rule Hereto

☐ (Select one) The attached Request (Motion) To Take The Deposition On Written has been filed and will be submitted to the Court for consideration at a hearing on (date):_____, at (time):_____.

☐ (Select one) The attached Request (Motion) To Take The Deposition On Written has been filed and will be submitted to the Court for consideration at a telephone hearing on (date):_____, at (time):_____. Please contact the court clerk before this date to make arrangements for the hearing.

☐ (Select one) The attached Request (Motion) To Take The Deposition On Written has been filed and will be submitted to the Court for consideration, without a hearing, on (date):_____. The Court will rule on the motion without a hearing unless you request one.

Respectfully submitted,

By:_____
BARTON R. GAINES, Pro Se
244 Siesta Court
Granbury, Texas 76048
Tel.: 682-500-7326
Email bartongaines@gmail.com

EX PARTE	§	IN THE DISTRICT COURT
	§	TARRANT COUNTY, TEXAS
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Applicant's Request To Court Reporter To Make A Full Record & Preserve All Notes

Applicant, Barton R. Gaines, asks the court reporter to make a full record of all hearings and to preserve the notes and recordings from all proceedings in this case.

Introduction

1. Applicant, Barton R. Gaines, sued respondent, The Tarrant County Criminal District Attorney, for unlawful fine and confinement.

2. Applicant needs to take the deposition of:

- | | |
|---|---|
| 1. Adams, Melissa G. | 16. Griffin, Paul R. |
| 2. Adkins, Robert L., Ft. Worth PD Forensics Ofc. | 17. Hanlon, Donald T., Ft. Worth PD Ofc. |
| 3. Ancira, Jheen M. | 18. Hartmann, Michele B., Tarrant Co. ADA; |
| 4. Ancira, Stephen A. | 19. Hood Co. Sheriff's Ofc., Custodian of Records |
| 5. Bush, Raymond O., Ft. Worth PD Ofc. | 20. Horvath, Andrew S. |
| 6. Chandler, Joel G. | 21. Hubbard, John C., Tarrant Co. DA Inv.; |
| 7. Deleon, Juan, Tarrant Co. DA Inv.; | 22. Hysmith, Corey A., Ft. Worth PD Ofc. |
| 8. Fazio, Ronald T., Ft. Worth PD Forensics Ofc. | 23. Keisel, Melinda D. |
| 9. Fineman, Stephen G., Ft. Worth PD Ofc. | 24. Minick, Cheyenne B., Atty. @ Law |
| 10. Foran, Robert F., Tarrant Co. ADA; | 25. Minick, Kimberly F., Atty. @ Law |
| 11. Ft. Worth PD Custodian of Records | 26. Peterson, Gregory A. |
| 12. Gill, Robert K. | 27. Savoy, Keith A., Ft. Worth PD Ofc. |
| 13. Goin, Larry B., Hood Co. sheriff's Ofc. | 28. Shipp, Joseph F., Ft. Worth PD Ofc. |
| 14. Green, Sherry B. | 29. Smith, Charla B., Ft. Worth PD Det. |
| 15. Green, Tarah | |

30. Tarrant Co. Dist. Clerk, Custodian
of Records;
31. Tucker, Brett L.
32. Waco PD Custodian of Records
33. Weaver, Richard L.

34. Westfall, Gregory B., Atty. @ Law
35. Westmoreland, Jerri D.
36. Williams, Michael E. And,
37. Wright, Ann B., Tarrant Co. ADA

3. A copy of this request has been served on the official court reporter, **SHELIA WALKER**, and a copy has been filed with the records of this case.

Make a Full Record

4. A court reporter is required to make a full record of the proceedings if requested to do so by a party. *Tex. Gov't Code* § 52.046(a); *Nicholson v. Fifth Third Bank*, 226 S.W.3d 581, 583 (CA1 2007, no pet.); *Nabelek v. Dist. Attorney of Harris Cty.*, 290 S.W.3d 222, 231 (CA14 2005, pet. denied); *Langford v. State*, 129 S.W.3d 138, 139 (CA5 2003, no pet.).
5. Applicant requests that the court reporter make a full record of all hearings in this case. This includes all pretrial hearings at which evidence is presented, the entire voir dire, all bench conferences, all evidence presented and objections made during hearings and trial, all orally recorded testimony played during trial, the charge conference, the jury argument, the hearing to receive the jury's verdict, and all post-trial hearings.

Preserve the notes

6. On request, a court reporter is required to preserve the notes from a hearing or trial for three years from the date they were taken. *Tex. Gov't Code* § 52.046(a)(4); *Piotrowski v. Minns*, 873 S.W.2d 368, 371 (Tex. 1993). When the proceedings are recorded, the court reporter has a duty to preserve the recordings and reporter's logs for at least three years. *Walker v. Stefanic*, 898 S.W.2d 347, 349 (CA4 1995, no writ).

7. Applicant requests that the court reporter preserve the shorthand notes and any recordings of all hearings and the trial in this case for at least three years. *Tex. Gov't Code* § 52.046(a)(4).

Respectfully submitted,

By: _____
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