

NATHAN L. HECHT,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
TEXAS ETHICS COMMISSION,	§	
	§	
Defendant.	§	250 TH JUDICIAL DISTRICT

PLEA IN INTERVENTION AND MOTION TO DISQUALIFY

TO THE HONORABLE JUDGE OF SAID COURT:

Texans for Public Justice, Intervenor, files this plea in intervention and motion to disqualify, as follows.

Introduction.

1. Intervenor Texans for Public Justice¹ requests that this Court issue an Order disqualifying Texas Attorney General Greg Abbott as counsel for the Texas Ethics Commission, defendant, in this case for the following reasons:

(A) Attorney General Abbott has utterly failed to pursue this case, in which Chief Justice Nathan Hecht seeks to set aside a fine of \$29,000 that the Texas Ethics Commission imposed on December 4, 2008 (and ordered payable within 30 days)—almost six years ago. Chief Justice Hecht filed the present lawsuit on January 27, 2009, and Attorney General Greg Abbott filed an Answer for defendant Commission on February 23, 2009. Since then, the case has languished. Almost nothing has happened. Attorney General Abbott, representing the Texas Ethics Commission, has failed to bring the case to trial or otherwise resolve the case. No hearings have been held or even scheduled. By his unconscionable delay, Attorney General Abbott has violated the Texas Rules of Judicial Administration, the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer’s Creed, and the statutory and constitutional obligations of the Attorney General—and he has failed to collect the fine that should have been collected years ago for the benefit of Texas taxpayers. Instead, he has helped his friend, former colleague,

¹ Texans for Public Justice is a non-profit entity formed in 1997, with a primary focus on access to the civil justice system, open government, and public information.

and political ally, by allowing the case to be inactive and dormant.

(B) The Texas Supreme Court adopted the Texas Rules of Judicial Administration. Rule 6.1 specifies that civil jury cases are to be disposed of within 18 months. Attorney General Abbott has failed to act in the manner required by the very Court on which he served.

(C) Attorney General Abbott has violated multiple legal ethics rules and professional responsibility standards that he and every other Texas lawyer are subject to—including (i) Texas Disciplinary Rule of Professional Conduct 3.02, which prohibits a lawyer from taking any position that “unreasonably delays resolution” of a matter, (ii) Texas Disciplinary Rule of Professional Conduct 1.06, which prohibits a lawyer from representing a client when the lawyer “reasonably appears to be adversely limited by the lawyer’s . . . responsibilities to a third person or by the lawyer’s . . . own interests” (—here, by Abbott’s responsibilities, favoritism, and personal interests concerning his friend, former colleague, current political ally, and political-ticket colleague, Chief Justice Hecht), (iii) Texas Disciplinary Rule of Professional Conduct 2.01, which requires that a lawyer “exercise independent professional judgment” on behalf of the client, (iv) Texas Disciplinary Rule of Professional Conduct 3.04(d), which prohibits a lawyer from “knowingly disobey[ing] . . . an obligation under the standing rules of . . . a tribunal . . . ,” and (v) Texas Disciplinary Rule of Professional Conduct 8.04(a)(12), which prohibits a lawyer from violating any Texas law “relating to the professional conduct of lawyers and to the practice of law.”

(D) Attorney General Abbott has violated Article II(2) of the Texas Lawyer’s Creed, which required him to “achieve my client’s lawful objectives . . . in litigation as quickly and economically as possible.” Then Justice Hecht signed the November 7, 1989, Order of the Texas Supreme Court adopting the Creed, and that Order states that Texas courts may enforce the Creed “when necessary . . . through their inherent powers and rules already in existence.”

(E) By permitting, aiding and abetting, and acquiescing in almost six years of delay, Attorney General Abbott has violated his fundamental constitutional and statutory duties (as recognized on the Attorney General’s own website)² to “defend the laws” of Texas and “represent the State in litigation.” Through his passive approach in this case, apparently designed to protect his friend and former colleague, Attorney General Abbott has violated his obligation under the Texas Disciplinary Rules of Professional Conduct to

² See <https://www.texasattorneygeneral.gov/agency/agency.shtml>. See also Tex. Gov’t Code § 402.021 (“The attorney general shall prosecute and defend all actions in which the state is interested . . .”).

“zealously assert[] the client’s position under the rules of the adversary system.”³

Because of Attorney General Abbott’s almost six years of unjustified delay, and his ongoing, extensive course of conduct in this case of violating his legal, constitutional, and ethical obligations, Intervenor Texans for Public Justice respectfully requests that this Court disqualify Attorney General Abbott as counsel for the Texas Ethics Commission, and that the Court appoint an independent counsel.

Authority of this Court to grant the relief requested.

2. As the Texas Supreme Court recognized in *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997), Texas trial courts have the “inherent power” to discipline a lawyer’s behavior, to sanction “bad faith abuse of the judicial process,” and to ensure an “adversarial process.” Specifically, the Texas Supreme Court (in a per curiam opinion, in which Justice Hecht and then Justice Abbott participated) held as follows:

Courts possess inherent power to discipline an attorney’s behavior. See *Lawrence v. Kohl*, 853 S.W.2d 697, 700 (Tex.App.—Houston [1st Dist.] 1993, no writ)(holding that trial courts have the power to sanction parties for bad faith abuse of the judicial process not covered by rule or statute); *Kutch v. Del Mar College*, 831 S.W.2d 506, 509–10 (Tex.App.—Corpus Christi 1992, no writ)(same); see also *Public Util. Comm’n v. Cofer*, 754 S.W.2d 121, 124 (Tex.1988)(recognizing the inherent power of courts to ensure an adversarial proceeding); *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398–99 (Tex.1979)(recognizing that a court has inherent power ‘which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity’). A court has the inherent power to impose sanctions on its own motion in an appropriate case.

(Emphasis added.)

3. Thus, this Court clearly has inherent power to discipline Attorney General Abbott and to disqualify him from representing the State in this case. Given Abbott’s extraordinary and egregious pattern of inaction and neglect in this case, in apparent deference and favoritism

³ Tex. Disciplinary R. Prof’l Conduct, Preamble ¶ 2 (“As an advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.”).

toward his friend and former colleague, Chief Justice Hecht, Intervenor Texans for Public Justice submits that this Court should remove Abbott as counsel for the Texas Ethics Commission, and appoint independent counsel to handle the case, to fulfill the statutory, constitutional, and ethical obligations that Abbott has violated, and to protect the interests of Texas taxpayers in collecting the monies that the Commission fined Chief Justice Hecht.

4. As noted above, the Texas Supreme Court Order (signed by Justice Hecht) adopting the Texas Lawyer's Creed also expressly recognized that Texas courts may enforce the obligations in that Creed under the court's "inherent power." Indeed, many Texas courts have imposed sanctions under the court's inherent power to impose sanctions.⁴ In fact, clear precedent exists to remove a member of the Texas Attorney General's staff from further participation in a case for misconduct. In *Lelsz v. Kavanagh*, 137 F.R.D. 646 (N.D. Tex. 1991),

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See, e.g., In re Bennett, supra (upholding sanctions of \$10,000 each against plaintiffs' counsel who intentionally circumvented the random-assignment system for cases); *Davis v. Rupe*, 307 S.W.3d 528 (Tex. App.—2010, no pet.) (affirming inherent power sanctions against a lawyer, including a \$15,000 monetary sanction and requiring the lawyer to participate in ten hours of ethics training, and stating that "[a] trial court has inherent power to discipline an attorney's behavior by imposing sanctions. . . . This inherent power exists to enable courts to effectively perform their judicial functions and to protect their dignity, independence, and integrity. . . . The power may be exercised to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process, such as any significant interference with the traditional core functions of the court. . . . The core functions of a trial court include hearing evidence, deciding issues of fact raised by the pleadings, deciding questions of law, rendering final judgments, and enforcing judgments."); *Gilbert & Maxwell, PLLC v. Texas Mutual Ins. Co.*, 2008 WL 5264910 (Tex. App.—Austin 2008, no pet.) (affirming a monetary sanction); *Clark v. Bres*, 217 S.W.3d 501 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (affirming a sanctions order against a lawyer, including \$2,500 in monetary sanctions and a requirement that she attend eight hours of continuing legal education in legal ethics); *Kings Park Apts., Ltd. v. National Union Fire Ins. Co.*, 101 S.W.3d 525 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) (affirming sanctions imposed under the trial court's inherent power, including requirements that the defendant place a copy of the Texas Lawyer's Creed in every litigation file and educate every litigation supervisor concerning the contents of the Creed).

a federal judge ordered removal of an Assistant Attorney General from a case as a sanction for violating the federal court equivalent of the Texas Lawyer's Creed.

5. Comment 17 to Texas Disciplinary Rule of Professional Conduct 1.06 states that while raising questions of conflict of interest are "primarily the responsibility of the lawyer undertaking the representation," in litigation "a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility."

6. As noted above, Attorney General Abbott apparently has violated multiple Texas Disciplinary Rules of Professional Conduct in his handling of this case, including Rules 1.06, 2.01, 3.02, 3.04, and 8.04. The Texas Supreme Court has repeatedly held (including in multiple decisions in which Justice Hecht and Justice Abbott participated) that state courts look to the disciplinary rules for "guidance in determining whether an attorney should be disqualified from representing a party in litigation."⁵ Attorney General Abbott's several rule violations in this case, including through inexcusable delay, violation of case-disposition standards, and his personal conflicts of interest arising from his relationship with Chief Justice Hecht, clearly justify disqualification.

7. Moreover, under Canon 3D(2), Code of Judicial Conduct, a Texas judge has a mandatory duty to report certain lawyer misconduct:

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.

⁵ *Henderson v. Floyd*, 891 S.W.2d 252, 253-54 (Tex. 1995); accord *In re Cerebrus Capital Mgt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005); *In re NITLA S.A. de C.V.*, 92 S.W.3d 419, 422 (Tex. 2002); *In re User Sys. Servs., Inc.*, 22 S.W.3d 331, 334 (Tex. 1999).

(Emphasis added.)

Conclusion and Request for Relief

8. For the foregoing reasons, Intervenor Texans for Public Justice requests that this Court set its motion to disqualify for hearing as soon as possible, and at the conclusion of the hearing, impose appropriate sanctions against Attorney General Greg Abbott under the Court's inherent power, including but not limited to disqualifying and removing Greg Abbott and the Assistant Attorneys General who have participated in the course of conduct described above as counsel for the Texas Ethics Commission in this case, and grant such other and further relief as is appropriate and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Intervention and Motion to Disqualify has been served on counsel of record, as listed below, by certified mail, return receipt requested, on the ____ day of October, 2014.

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