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Plaintiff Andrew Willey is passionately committed to reforming a broken indigent-defense system. He believes that his reform efforts are commanded by his Christian faith, which teaches him to “[s]peak up for those who cannot speak for themselves; ensure justice for those being crushed; speak up for the poor and helpless, and see that they get justice.” *Proverbs* 31:8-9 (New Living Translation). To do that, Willey speaks to criminal defendants whose appointed attorneys have ignored them and who are left to languish in jail with no one fighting for them. For this he is being threatened with prosecution for barratry. Because speaking to those people—hearing their stories, advising them that their legal rights are being violated, and helping them vindicate those rights—is at the core of the First Amendment’s protections for political speech, *NAACP v. Button*, 371 U.S. 415, 443, 438 (1963), *In re Primus*, 436 U.S. 412, 423–24 (1978), Willey is entitled to an injunction that he may not be prosecuted.

I. FACTS

Andrew Willey is a criminal defense lawyer and community activist who works to protect the rights of low-income people charged with crimes. Data from the Texas Indigent Defense Commission (“TIDC”) indicate that more than 71% of low-income people who are appointed private defense attorneys in Harris County are represented by someone with more appointed cases than statewide standards recommend. *Compare* TIDC, *Statewide Attorney Caseload Report*, <http://tidc.tamu.edu/public.net/Reports/AttorneyCaseLoad.aspx> (last visited May 18, 2020) with Dottie Carmichael et. al., *Guidelines for Indigent Defense Caseloads* 30, 34 (2015). Some of these attorneys take vastly more than statewide standards (and basic notions of professional responsibility) would tolerate. These attorneys, who are appointed by the judges before whom they practice, often fail to communicate with their clients, file motions on their behalf, and investigate and defend their cases. Willey believes that ending direct judicial appointment of counsel is the only way to ensure conflict-free, effective representation. So he has advocated for the creation of

a Managed Assigned Counsel plan in Harris County under which a non-judicial manager would ensure fair and adequate representation for poor people who are not represented by the Harris County Public Defender's office.

As part of his effort to reform Harris County's indigent-defense system, Willey sought to bring structural litigation to establish maximum caseloads that attorneys may constitutionally accept. The plan was to file motions for substitute counsel on behalf of people currently represented by the most overburdened attorneys in the county. *See* Exhibit A, Declaration of Andrew Willey ¶ 3. To do this, Willey would contact people represented by the most overburdened attorneys and offer the people a limited-scope representation for the purpose of filing a motion to seek new appointed counsel and filing for mandamus¹ in the Court of Appeals if the motion is denied. Willey's hope was that the Court of Appeals would recognize that defendants' Sixth Amendment rights are violated when they are represented by attorneys who, by virtue of their excessive caseloads—as defined by authoritative standards—do not have time to adequately defend their cases.

Willey's very first attempts at this project were frustrated by threats of prosecution. Willey attempted to communicate with clients represented by a particularly overburdened attorney, Jerome Godinich. In response, Godinich subpoenaed Willey to a hearing in one of the clients' underlying criminal cases, *see* Exhibit B, Subpoena, at which the District Attorney's office was represented, *see, e.g.*, Exhibit C, Transcript of May 6, 2020 Hearing at 2. Before the hearing, Willey's attorney met with Godinich and the judge who was presiding over the criminal case, and at that meeting the judge described Willey's conduct as potentially "criminal." Exhibit A ¶ 8. At

¹ Willey would first move to reconsider in district court, which appellate courts in Texas require to seek mandamus.

the hearing, and subsequent hearings thereafter, the judge admonished Willey that his speech was improper and warned him that if he continued it she would “not be so nice” in the future. *See* Exhibit D, Transcript of May 11, 2020 Hearing at 23. The Judge additionally said on the record that Willey’s assertion of Fifth Amendment privilege “makes all the sense in the world,” indicating that she sees potential criminal exposure for Willey. *Id.* at 13. Because Willey is afraid that he will be referred for prosecution and ultimately prosecuted if he continues speaking to clients, Willey agreed to cease contacting Godinich’s clients. *Id.* at 20–21.

II. ARGUMENT

Willey has standing to seek a preliminary injunction, and he is entitled to one because Texas’s barratry law, as applied to him, is unconstitutional; the chilling effect on his speech irreparably harms him; and the balance of the equities tips in his favor.

A. Willey Has Standing to Sue

Willey has Article III standing to bring this challenge against the District Attorney, who under Texas law is tasked with enforcing the penal laws of the state, *see* Tex. Code Crim. Proc. Art. 2.01, to prevent enforcement of an unconstitutional state criminal statute because he faces the legitimate threat of prosecution and because his speech is chilled as a result.

Plaintiffs need not wait to be prosecuted to seek relief from a criminal statute. “When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he ‘should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.’” *See Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979) (quoting *Doe v. Bolton*, 410 U.S. 179, 188 (1973)); *see also Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Plaintiffs may seek federal-court relief even if the threat of prosecution is not explicit, so long as the plaintiffs’ fears are not “chimerical.” *Id.* (quoting *Poe v. Ullman*, 367 U.S.

497, 508 (1961)); *see also* *Babbitt*, 422 U.S. at 298; *Virginia v. Am. Booksellers Ass., Inc.* 484 U.S. 383, 392 (1988); *International Soc. for Krishna Consciousness of Atlanta v. Eaves* 601 F.2d 809, 818 (5th Cir. 1979). Willey’s intended behavior facially violates the Texas barratry statute. Willey has been subpoenaed to court to defend his actions, where representatives of the DA’s office were present, after the presiding judge said his behavior “could be criminal.” That judge threatened that she would “not be so nice” if Willey continued his speech. Willey reasonably fears prosecution.

Similarly, plaintiffs whose speech is chilled state cognizable harms sufficient to confer Article III standing. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014); *see also Justice v. Hosemann*, 771 F.3d 285, 291 (5th Cir. 2014) (“In First Amendment pre-enforcement challenges, ‘chilling a plaintiff’s speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.’” (quoting *Hous. Chronicle Publ’g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir.2007))). Willey has demonstrated a “serious interest” in continuing to exercise his First Amendment rights to political expression and, but for the threat of criminal enforcement, would be continuing his protected speech today. *See Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 755 (5th Cir. 2010) (finding standing for plaintiff who sought to challenge the rules for public comment at a school board meeting despite having already complied with them at the previous meeting at which she presented her complaint); *Justice*, 771 F.3d at 290–91 (finding standing for plaintiffs, who had “no formal organization or structure,” to challenge campaign finance disclosure requirements that led them to forego political fundraising for a ballot initiative that they wanted to support). Indeed, the Supreme Court has allowed attorneys specifically to challenge statutes and state rules proscribing certain attorney speech without requiring any special showing that they had been, or were at imminent risk of being, prosecuted for a violation of those rules. *See, e.g., Shapero v. Kentucky Bar Ass’n*, 486 U.S. 466 (1988) (reviewing a Kentucky Supreme Court decision from

an action that originated as an attorney's request for an advisory opinion from a grievance commission); *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618 (1995) (ruling on a challenge to the state's solicitation law without any indication that the challenging attorney was specifically threatened with enforcement). Willey has Article III standing to bring this action.

B. Willey is Entitled to a Preliminary Injunction

Willey seeks a preliminary injunction against application of a Texas law that would bar Willey's efforts to communicate with prospective clients and bring targeted actions aimed at vindicating their civil rights. To get a preliminary injunction, "[t]he applicant must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that the injunction might cause to the defendant; and (4) that the injunction will not disserve the public interest." *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 288 (5th Cir. 2012). Because this statute violates the First Amendment as applied to Willey, because it irreparably harms him, and because enjoining it would not harm Defendant and would be in the public interest, Willey is entitled to a preliminary injunction.

1. Willey is Likely To Succeed on the Merits

Texas's barratry statute criminalizes speaking to people about a legal matter, whom the speaker knows to be represented by counsel in that matter, with the goal of securing employment for the speaker or another. The statute does not require that the speaker be seeking money for himself or anyone else. State barratry laws may not constitutionally be applied to attorneys soliciting clients for non-pecuniary, ideological purposes. *In re Primus*, 436 U.S. 412, 423–24 (1978). Therefore, Section 38.12(d)(2)(B) of the Texas Penal Code is unconstitutional as applied to someone, like Willey, whose purposes are ideological, not pecuniary.

a. Texas's Barratry Law

At common law, the offense of “barratry” was defined as “soliciting potential legal clients . . . [to generate a] lawsuit [that] was utterly baseless.” *Barratry*, Black’s Law Dictionary (11th ed. 2019); *see also Bailey v. Morales*, 190 F.3d 320, 322 (5th Cir. 1999) (“Barratry involves stirring up or exciting litigation, some of which may be frivolous.”). Over time, states began expanding their regulation of attorney solicitation under the heading “barratry,” and the term took on new meanings, including the solicitation of clients in violation of state restrictions on when and how this may be done. *E.g.*, Katherine A. Laroe, Comment, *Much Ado About Barratry: State Regulation of Attorneys’ Targeted Direct-Mail Solicitation*, 25 St. Mary’s L.J. 1513, 1519–20 & n.28 (1994). In Texas, criminal penalties for attorneys soliciting business have existed since 1901, and barratry statutes have existed since 1876. *See State v. Mays*, 967 S.W.2d 404, 408 (Tex. Crim. App. 1998); *Bailey*, 190 F.3d at 323.

In 1993, Texas amended its barratry statute to add prohibitions aimed at attorney (and other professional) solicitation. *See Amendments to Penal Code*, 1993 Tex. Sess. Law Serv. Ch. 900 (S.B. 1067) (Vernon’s). Since then, the statute has been amended several times, most recently in 2013. *E.g. Barratry*, 2013 Tex. Sess. Law Serv. Ch. 315 (H.B. 1711) (Vernon’s). Codified at Section 38.12, the current barratry statute contains three substantive subsections. Subsections (a) and (b) prohibit various types of improper professional conduct (*e.g.*, paying clients to obtain professional employment and filing suits without authorization to do so). These subsections apply only if the defendant acted “with intent to obtain an economic benefit.” Tex. Penal Code Ann. § 38.12(a). Subsection (d), however, has no such requirement. In relevant part, Subsection (d) provides that

A person commits an offense if the person is an attorney . . . [,] and with the intent to obtain professional employment for the person or for another, provides or knowingly permits to be provided to an individual who has not sought the person’s employment, legal

representation, [or] advice . . . a written communication or a solicitation, including a solicitation in person or by telephone, that . . . concerns a specific matter and relates to legal representation and the person knows or reasonably should know that the person to whom the communication or solicitation is directed is represented by a lawyer in the matter.

Id. at (d)(2)(B) (subsection markings omitted). Conviction for a first offense under Subsection (d) is a Class A misdemeanor punishable by up to one year in prison and a \$4,000 fine, *see* Tex. Penal Code Ann. § 12.21; subsequent convictions are third-degree felonies, punishable by at least two and not more than ten years in prison and a \$10,000 fine, *id.* at § 12.34.

b. Section 38.12(d)(2)(B) Violates the First Amendment as Applied to People Contacting Clients Without Pecuniary Gain as a Significant Motivation

The First Amendment protects the rights of attorneys to solicit clients for the purpose of changing the legal system. Although attorney speech undertaken for the purpose of earning money is permissibly subject to regulation as commercial speech, *see Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 624 (1995), attorney speech undertaken for ideological purposes is protected as core political speech, *NAACP v. Button*, 371 U.S. 415, 443, 438 (1963). Accordingly, Texas may not forbid soliciting clients for ideological purposes absent exceptionally compelling reasons for doing so. Because no such reasons are remotely in view, Section 38.12(d)(2)(B) is unconstitutional as applied to attorneys soliciting clients for ideological purposes.

The Supreme Court has long held that the First Amendment protects attorneys when they “seek vindication of constitutional rights” in court, and that state rules are unconstitutional where they forbid communication that “advises [a prospective client] that his legal rights have been infringed and refers him to a particular attorney or group of attorneys” *NAACP v. Button*, 371 U.S. 415, 443, 438 (1963). “[C]ollective activity undertaken to obtain meaningful access to the courts,” the Supreme Court has held, “is a fundamental right within the protection of the First

Amendment.” *United Transportation Union v. Michigan Bar*, 401 U.S. 576, 585 (1971); *see also Bates v. State Bar of Arizona*, 433 U.S. 350, 376 n.32 (1977). Where an attorney is seeking to “express personal political beliefs” and “advance . . . civil-liberties objectives,” rather than “to derive financial gain,” she is entitled by the First Amendment to solicit clients in person. *Primus*, 436 U.S. at 422.

In a pair of cases decided on the same day, the Supreme Court clarified that states may not forbid in-person solicitation of clients for purposes other than pecuniary gain. *Compare id.*, with *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 455 (1978). In *Primus*, the Court invalidated a South Carolina disciplinary sanction for solicitation against a private attorney who was associated with a local branch of the A.C.L.U. 436 U.S. at 427–28. Relying on *Button*, the *Primus* court reaffirmed that “[t]he solicitation of prospective litigants . . . for the purpose of furthering the civil-rights objectives of the organization and its members . . . come[s] within the right to engage in association for the advancement of beliefs and ideas.” *Id.* at 423–24 (citations and quotation marks omitted). By contrast, in *Ohralik*, the Court held that although the First Amendment forbids states to ban non-deceptive attorney advertising for profit, *Bates*, 433 U.S. at 384, states may ban in-person solicitation for profit, *Ohralik*, 436 U.S. at 454–56. The Court reasoned that, unlike solicitation for political or ideological purposes, “[a] lawyer’s procurement of remunerative employment is a subject only marginally affected with First Amendment concerns.” *Ohralik*, 436 U.S. at 459. The *sine qua non* of permissible regulation of attorney solicitation is the purpose of pecuniary gain.

Section 38.12(d)(2)(B) on its face forbids attorney solicitation regardless of its purpose. Subsection (d), in contrast to Subsections (a) and (b), contains no requirement that the attorney act “with intent to obtain economic benefit.” Tex. Penal Code Ann § 38.12(a). Instead, Subsection (d)

forbids any contact otherwise within its compass for the purpose of obtaining “employment” and forbids any “solicitation.”² *Id.* at (d)(2)(B). Subsection (d)(2)(B), then, violates the First Amendment as applied to someone who, like Willey, is seeking to “express personal political beliefs” and “advance . . . civil-liberties objectives,” rather than “to derive financial gain.” *Primus*, 436 U.S. at 422.³

Because solicitation for political purposes is core protected speech, *id.*, the state may regulate it at all—let alone forbid it on pain of criminal sanction—only if the state’s interests are compelling and the means it uses are narrowly drawn to forward those interests, *e.g.*, *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 442 (2015) (explaining strict-scrutiny standard in other solicitation contexts). Texas’s interests in applying Subsection (d)(2)(B) to attorneys soliciting for political purposes are unclear, and even the far less demanding “standard [for commercial-speech regulation] does not permit [courts] to supplant the precise interests put forward by the State with

² Elsewhere, Texas law defines “[s]olicit employment” to mean:

“[T]o communicate in person or by telephone with a prospective client or a member of the prospective client's family concerning professional employment within the scope of a professional's license, registration, or certification arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing problem of the prospective client within the scope of the professional's license, registration, or certification, for the purpose of providing professional services to the prospective client, when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include a communication initiated by a family member of the person receiving a communication, a communication by a professional who has a prior or existing professional-client relationship with the person receiving the communication, or communication by an attorney for a qualified nonprofit organization with the organization's members for the purpose of educating the organization's members to understand the law, to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services. The term does not include an advertisement by a professional through public media.”

Tex. Penal Code Ann. § 38.01(11).

³ This Court need not address the question whether Subsection 38.12(d)(2)(B) is unconstitutional as applied to someone who is motivated by neither pecuniary gain nor political views because Willey, as explained below, acts on an explicitly ideological motivation.

other suppositions.” *Went For It*, 515 U.S. at 624. Because Texas has not put forward any reasons for regulating attorneys’ political speech (in legislative history or elsewhere, to undersigned counsel’s knowledge), this Court cannot be sure what they are. Nonetheless, applying Subsection (d)(2)(B)’s flat prohibition on communicating with people who have lawyers with a goal of representing them is nowhere near narrowly tailored to protect the interests that have been offered in support of similar regulations. These interests usually take the form of preventing “undue influence, overreaching, misrepresentation, or invasion of privacy.” *Primus*, 436 U.S. at 435. These interests can be easily protected with less-restrictive means, including regulating only commercial speech, which would prevent private actors from intentionally sowing confusion in an effort to secure paid employment. And misleading or otherwise improper solicitation is already extensively regulated. Subsection (d)(2)(B) is unconstitutional as applied to people soliciting for non-pecuniary purposes.

c. Willey Seeks to Engage in Core Political Speech

Willey’s attempts to contact Godinich’s clients are core political speech because pecuniary gain is not a significant motivation. In fact, there is no prospect whatever of remuneration for Willey or anyone associated with him: The representation Willey offered to Godinich’s clients was entirely free of charge, and Willey does not plan to seek appointment as criminal counsel for them if their motions are granted. *See* Exhibit A ¶ 4. And Willey is motivated by explicitly ideological purposes: he believes that the appointed-counsel system in Harris County violates the rights of poor people, and he seeks to help them vindicate those rights in court. *Id.* ¶ 3. Applying Subsection (d)(2)(B) to Willey violates the First Amendment.

2. Willey Will Suffer Irreparable Harm Without a Preliminary Injunction

Willey is currently being threatened with prosecution for exercising his First Amendment rights. As a result of these threats, Willey has been forced to stop contacting Godinich’s clients,

and his project of filing motions and bringing mandamus actions on their behalf has been temporarily frustrated. *See* Exhibit A ¶¶ 9–10. This inflicts an irreparable harm on Willey, and he is entitled to an injunction to protect his rights. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also* Charles Alan Wright, et al., 11A Federal Practice and Procedure § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”); *see also* *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (same). Because Willey cannot safely exercise his First Amendment rights under threat of prosecution, he is entitled to a preliminary injunction to protect his rights during the pendency of this litigation.

3. *Balancing of the Equities*

To award a preliminary injunction, a Court must conclude “that the threatened injury outweighs any harm that the injunction might cause to the defendant[,], and that the injunction will not disserve the public interest.” *Opulent Life Church*, 697 F.3d at 288. Here, the Defendant would not be harmed by a preliminary injunction at all, and such an injunction would protect the interests of the public.

Willey seeks to improve the legal system in Harris County by providing free legal representation to people in need and by seeking to vindicate their constitutional rights in court. That his project may pose a threat to the established way of doing things in some state district courts does not harm the Defendant; it benefits the Defendant. The District Attorney’s office is as interested in a fair process in which criminal defendants are provided adequate representation as Willey is. *See* Harris County District Attorney, *Mission and Guiding Principles*, <https://app.dao.hctx.net/about-hcdao/mission-guiding-principles> (last visited May 12, 2020) (“The Harris County District Attorney’s Office is dedicated to making our community safer through

evidence-based prosecution and equal justice for all. This means guaranteeing a fair process to obtain a just result for the victim, the accused and the community in every case.”) At the same time, Willey’s conduct is consistent with the substantive rules of professional conduct governing Texas lawyers. The harm to Willey’s interests, which is significant, therefore outweighs the non-existent harm to the Defendant’s interests.

And the public interest is served by a preliminary injunction in this case. Because Willey is currently unable to contact them, scores (if not hundreds) of Godinich’s clients—along with many more of the over 7,000 detainees in the Harris County Jail whose court-appointed attorneys are overburdened—are currently in jail unable to realistically challenge the representation that they are receiving if they want to. A preliminary injunction in this case would allow Willey to hear what these people have to say and, if they decide after consultation that it is in their interest, file motions on their behalf. Adequate vindication of third-party legal rights is a significant public benefit, and no public harm is in view. Balancing the equities, this Court should conclude that Willey is entitled to a preliminary injunction.

4. *Posting of Security*

Finally, if this Court concludes that Willey is entitled to a preliminary injunction, it should exercise its discretion to dispense with the requirement that he post a bond. Federal Rule of Civil Procedure 65(c) normally requires the moving party to post security to protect the other party from any financial harm likely to be caused by a temporary injunction if that party is later found to have been wrongfully enjoined. Rule 65(c), however, vests the district court with broad discretion to determine the amount of security required, or to waive the bond requirement. *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981). This Court should waive the bond requirement because Willey is a public-interest attorney whose practice does not generate large amounts of money, *cf. Wayne Chem. v. Columbus Agency Serv. Corp.*, 567 F.2d 692, 701

(7th Cir. 1977) (requiring no bond for indigent person), and because this lawsuit is brought to enforce constitutional rights, *City of Atlanta*, 636 F.2d at 1094 (upholding district court's decision to waive the bond requirement because "plaintiffs were engaged in public-interest litigation, an area in which the courts have recognized an exception to the Rule 65 security requirement.").⁴ Moreover, there is no prospect that a preliminary injunction will result in financial harm to Defendant. *See Steward v. West*, 449 F.2d 324, 325 (5th Cir. 1971) (finding that no injunction bond need be posted when "it is very unlikely that the defendant will suffer any harm").

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests a preliminary injunction forbidding enforcement of Subsection (d)(2)(B) against him so long as his communications with prospective clients are not motivated by pecuniary gain. Plaintiff respectfully requests that if a preliminary injunction issues he not be required to post a bond.

Respectfully submitted,

/s/ Charles Gerstein

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⁴ See also, e.g., *Mitchell v. City of Montgomery*, No. 14-CV-186, ECF No. 18 at *3 (M.D. Ala. May 1, 2014); *Bass v. Richardson*, 338 F. Supp. 478, 490 (S.D.N.Y. 1971) ("It is clear to us that indigents, suing individually or as class plaintiffs, ordinarily should not be required to post a bond under Rule 65(c)."); see also 11A Wright & Miller § 2954 (courts can waive the bond requirement in cases involving poor plaintiffs); *Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758, 761 (M.D. Tenn. 2015); *Cooper v. City of Dothan*, No. 1:15-CV-425-WKW, 2015 WL 10013003, (M.D. Ala. June 18, 2015).

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ANDREW WILLEY,

Plaintiff,

V.

THE HARRIS COUNTY DISTRICT
ATTORNEY, in her official capacity,

Defendant.

Case No. 20-CV-1736

DECLARATION OF ANDREW WILLEY

1. My name is Andrew Willey, I am over 18 years of age, and I live in Houston, Texas.

2. I believe in the teachings of the Bible, and my Christian faith compels me to “[s]peak up for those who cannot speak for themselves; ensure justice for those being crushed; [and] speak up for the poor and helpless, and see that they get justice.” *Proverbs* 31:8-9 (New Living Translation).

3. To seek justice for the poor and helpless, I planned to offer completely free, limited-scope representation to poor people whose appointed attorneys carried excessive caseloads because I believe that these people are receiving constitutionally deficient representation.

4. I did not seek to earn money from this representation and there was no prospect that this representation would generate money for me.

5. I was subpoenaed by Jerome Godinich to appear at a setting of the criminal case of Kermit Johnson on April 8, 2020.

6. My attorney moved to quash the subpoena I received.

7. On April 3, 2020, my attorney told me that she was planning to meet with Mr. Godinich and Judge Amy Martin, before whom Mr. Johnson’s criminal case is pending, on April 6, 2020.

8. After her meeting on April 6, 2020, my attorney told me that during the meeting Judge Martin said my efforts to contact Mr. Godinich’s clients “could be criminal.”

9. I fear prosecution if I continue my efforts to vindicate the rights of people who have been assigned overburdened attorneys.

10. If it were not for this fear, I would be attempting to contact people who have been assigned overburdened attorneys.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge,

/s/ Andrew Willey
Andrew Willey

Private



GODINICH, JEROME JR.
917 FRANKLIN STREET
HOUSTON, TX 77002 0000



3-162273601010

Custodian of Records
3402 Delhi St.
Houston, TX 77022
- Harris County

CASE NO.:	162273601010-3
COURT:	IN THE 263rd DISTRICT COURT
OFFENSE:	AGG ROBBERY-DEADLY WPN
Offense R. No:	UNKNOWN

COURT SUBPOENA

A FINE AND IMPRISONMENT MAY BE IMPOSED
FOR FAILURE TO OBEY THIS NOTICE

BRING THIS DOCUMENT WITH YOU TO COURT

In the case of the STATE OF TEXAS v. JOHNSON, KERMIT

You are ordered to appear as witness in behalf of the State and Defendant in the above styled cause before Judge AMY MARTIN IN THE 263rd DISTRICT COURT, located on the 20 floor, of the County Criminal Justice Center located at 1201 Franklin, Houston, Texas 77002 and to remain there from day to day, term to term until discharged by the Court.

You are ordered to appear on: *** April 08, 2020 @ 8:45 AM ***

Special Instructions:

#2 You are to bring ANY and ALL records, files, summaries, interviews (audio and video), narratives, New Client sheets (Client Intake Documents) which are related to attorney Jerome Godinich, Jr. regarding ANY and ALL of his clients; namely, Kermit Johnson. CDLB
4407 ,New Orleans St. ,Houston, ,TX 77020

Issued this 26th day of March A.D. 2020

By: *Marilyn Burgess*

Marilyn Burgess
District Clerk
Harris County, Texas

Tracking No. 805033

**EXTREMELY IMPORTANT
UPON RECEIPT, CALL PERSON:**

**GODINICH, JEROME JR.
713-237-8388**

Private



GODINICH, JEROME JR.
917 FRANKLIN STREET
HOUSTON, TX 77002 0000



3-162273601010

Andrew Joseph Willey
3402 Delhi St.
Houston, TX 77022
- Harris County

CASE NO.:	162273601010-3
COURT:	IN THE 263rd DISTRICT COURT
OFFENSE:	AGG ROBBERY-DEADLY WPN
Offense R. No:	UNKNOWN

COURT SUBPOENA

A FINE AND IMPRISONMENT MAY BE IMPOSED
FOR FAILURE TO OBEY THIS NOTICE

BRING THIS DOCUMENT WITH YOU TO COURT

In the case of the STATE OF TEXAS v. JOHNSON, KERMIT

You are ordered to appear as witness in behalf of the State and Defendant in the above styled cause before Judge AMY MARTIN IN THE 263rd DISTRICT COURT, located on the 20 floor, of the County Criminal Justice Center located at 1201 Franklin, Houston, Texas 77002 and to remain there from day to day, term to term until discharged by the Court.

You are ordered to appear on: *** April 08, 2020 @ 8:45 AM ***

Special Instructions:

Amended: You are ordered to report to the 263rd District Court at 8:30AM on April 8th, 2020.
4407 ,New Orleans St. ,Houston, ,TX 77020

Issued this 26th day of March A.D. 2020

By: *Marilyn Burgess*
Marilyn Burgess
District Clerk
Harris County, Texas

Tracking No. 805031

EXTREMELY IMPORTANT
UPON RECEIPT, CALL PERSON:

GODINICH, JEROME JR.
713-237-8388

Private



GODINICH, JEROME JR.
917 FRANKLIN STREET
HOUSTON, TX 77002 0000



3-162273601010

Jessica Elise Willey
3402 Delhi St.
Houston, TX 77022
- Harris County

CASE NO.:	162273601010-3
COURT:	IN THE 263rd DISTRICT COURT
OFFENSE:	AGG ROBBERY-DEADLY WPN
Offense R. No:	UNKNOWN

COURT SUBPOENA

BRING THIS DOCUMENT WITH YOU TO COURT

In the case of the STATE OF TEXAS v. JOHNSON, KERMIT

You are ordered to appear as witness in behalf of the State and Defendant in the above styled cause before Judge AMY MARTIN IN THE 263rd DISTRICT COURT, located on the 20 floor, of the County Criminal Justice Center located at 1201 Franklin, Houston, Texas 77002 and to remain there from day to day, term to term until discharged by the Court.

Special Instructions:

**You are ordered to appear in the 263rd District Court at 8:30AM on April 8th, 2020.
 4407 ,New Orleans St. ,Houston, ,TX 77020**

Issued this 26th day of March A.D. 2020

By: *Marilyn Burgess*

Marilyn Burgess
District Clerk
Harris County, Texas

Tracking No. 805032

GODINICH, JEROME JR.
713-237-8388

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 1622736

STATE OF TEXAS) IN THE DISTRICT COURT
)
)
vs.) HARRIS COUNTY, TEXAS
)
)
KERMIT JOHNSON) 263RD JUDICIAL DISTRICT

HEARING

On the 6th day of May, 2020, the following
proceedings came on to be held in the above-titled
and numbered cause before the Honorable Amy Martin,
Judge Presiding, held in Houston, Harris County,
Texas.

Proceedings reported by computerized stenotype
machine.

APPEARANCES

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Counsel for the Defendant

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Counsel for Mr. Andrew Willey

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Okay. We're here on Cause No. 1622736. The State of Texas vs. Kermit Johnson. And Mr. Johnson is present and counsel for Mr. Johnson. State your name and bar card number.

MR. GODINICH: Jerome Godinich, 00854700.

MR. SHEARER: R. Scott Shearer for Mr. Godinich, 00786464.

THE WITNESS: Okay, Mr. McKinney.

MR. MCKINNEY: Troy McKinney, 13725020, for Drew Willey.

THE COURT: Mr. Willey?

MR. WILLEY: I'm sorry, Your Honor. Andrew Willey, 24093371.

THE COURT: Okay. And for it to reflect on the record currently our setup is this: In the courtroom with me are Mr. Johnson and counsel for Mr. Johnson, Mr. Godinich; and Mr. Godnich's counsel, Mr. Shearer. Via Zoom, we have Mr. McKinney and Mr. Willey.

Mr. Willey, what is the correct pronunciation? Willy or Willey?

MR. WILLEY: Willey, Your Honor.

THE COURT: Okay. Willey.

1 And our court reporter is in the
2 hearing via Zoom, as well.

3 And I'm a little bit in the dark, so
4 who wants to go -- the last recollection I have of
5 this is the parties were working on an agreed order
6 to be entered under seal. What's happened since?

7 MR. SHEARER: Your Honor, nothing has
8 happened. I've heard representations were made by
9 Mr. Willey's previous counsel about something, it
10 was something he was interested in. Apparently not.
11 He's changed, after one drastic change, his tactic
12 as to what he wants to do regarding his hearing.

13 THE COURT: Okay. So Mr. McKinney,
14 you don't look like Monique Sparks. So what's going
15 on?

16 MR. MCKINNEY: Judge, at this point I
17 don't have any idea what's going on. He was given a
18 subpoena to appear in court and he has appeared
19 pursuant to that subpoena. As far as I can tell,
20 there's a motion before the court. With regards to
21 Mr. Willey, I don't have any idea what's going on.
22 I've seen Mr. Godinich's proposed order and without
23 getting into details, it's unacceptable.

24 THE COURT: Now, have you -- what
25 happened to Ms. Sparks? What, is she no longer

1 representing --

2 MR. McKINNEY: She is no longer
3 representing Mr. Willey. I'm representing
4 Mr. Willey.

5 THE COURT: Okay. Have you spoken
6 with Mr. Godinich and Mr. Shearer?

7 MR. McKINNEY: I have not.

8 THE COURT: Okay. How do we hope to
9 do anything if no conversation has been had?

10 MR. SHEARER: Your Honor, I was
11 informed through Mr. Godinich there was new counsel
12 this morning literally walking in the front door.

13 THE COURT: Okay.

14 MR. SHEARER: Ms. Sparks had made the
15 representation that she was going to be signing the
16 the agreed order and get it back to us very quickly
17 and that simply didn't happen.

18 THE COURT: So are we of the mind
19 that the agreed order is going to even be a
20 possibility anymore?

21 MR. McKINNEY: I don't know the
22 answer to that at this point. There may be some
23 things that could be agreed upon. There are others
24 that would absolutely not be agreeable. And this is
25 all in the context of, again, there's no motion

1 before the Court. I don't know what, you know -- he
2 appeared because he was subpoenaed to appear.

3 THE COURT: And I am -- I sort of
4 don't want to overstep. We were keeping things very
5 informal to try and minimize, sort of -- I don't
6 want to say, but -- trying to keep things, as much
7 as possible, that they could be worked out and
8 wouldn't have to have a big hearing whether with
9 Zoom or otherwise. What would you like?

10 MR. McKINNEY: Perhaps it might be a
11 good idea for this to be reset to some future date
12 for Jerome Godinich and I to talk.

13 MR. SHEARER: Your Honor, my client
14 and I have been very patient in trying to
15 accommodate the Court and Mr. Willey's previous
16 counsel. Of course, had there been an agreed order,
17 you would have had the benefit of a sealed order.
18 If he is no longer interested in that, we would like
19 a full and fair hearing.

20 In fact, the Court mentioned calling
21 all of Mr. Godinich's appointed clients to come down
22 here and testify to the actions of Mr. Willey. I
23 don't think, obviously, that's going to be
24 practical. But we were not given the option of
25 subpoenaing these other clients that Mr. Willey has

1 unethically contacted without Mr. Godinich's
2 permission. I think we should hear from clients in
3 addition to the present.

4 THE COURT: What we are going to
5 do -- I really, really am doing my very best to
6 limit the record and the potential striking of
7 proceedings and everything else. And it's just
8 becoming harder and harder for me to do that.

9 I am -- (inaudible) Mr. McKinney
10 accepted representation that Mr. Godinich's clients
11 and actually nobody else's clients are being
12 contacted and interviewed and getting -- their
13 signatures aren't being obtained anymore. Is that a
14 fair assumption?

15 MR. McKINNEY: I did not hear the
16 last sentence of what you said.

17 THE COURT: Are -- currently or in
18 the future, will there be any physical actions by
19 your client to interview, fill out questionnaires
20 and get signatures of Mr. Godinich's or anybody
21 else's clients? Does something need to be put in
22 place to stop that behavior?

23 MR. McKINNEY: Well, without -- give
24 me one second, Judge.

25 Okay. Judge, without proper answer

1 to imply in any way that Mr. Willie has done
2 something that is in any way improper, unethical or
3 illegal, but given that understanding, your
4 (inaudible) is correct.

5 THE COURT: And any information
6 information that's been collected should not be used
7 for any purposes.

8 MR. MCKINNEY: Well, any information
9 that has been collected, if there is any, is
10 privileged and to be treated accordingly.

11 THE COURT: I think we have to have
12 an emergency hearing.

13 MR. SHEARER: Your Honor, I don't see
14 any other way other than an emergency hearing. This
15 information is out there. We requested --
16 Mr. Godinich is entitled to proceed, all of the
17 damage control, all of his clients literally in
18 court.

19 You've given every opportunity to
20 bend over backwards for Mr. Willey. And he is
21 simply thumbing his nose at the court, basically
22 refuses to come down here and make an appearance
23 personally. He was subpoenaed to be here today. I
24 would ask the court to declare this an emergency and
25 to require his personal appearance.

1 THE COURT: Well, formal appearing on
2 Zoom is equivalent to appearing in person given the
3 current situation. It's not (inaudible) --

4 MR. McKINNEY: I'm sorry, if I can
5 interject here. I don't want any -- any
6 confrontation, either. But I'm coming into this
7 blind. I've read the transcript of the prior
8 hearings before you so I've got a flavor of what's
9 going on.

10 If I get cut off, I just got notice
11 my internet connection is unstable. Are y'all still
12 there?

13 THE COURT: We are still here.

14 MR. McKINNEY: I don't want to make
15 this any more confrontational than it needs to be.
16 I can represent to you whatever information that has
17 been gathered that there is nothing that is done
18 with that and at least for the foreseeable future,
19 if ever, nothing will be done with that.

20 But I think the only (inaudible)
21 requires an emergency situation.

22 THE COURT: Well, at the very least
23 from (inaudible).

24 MR. McKINNEY: I guess I'll add an
25 additional clarifier on that. If there ever comes a

1 point at which any information that's been gathered
2 would be used for anything, I will get notify
3 Mr. Godinich's counsel in advance.

4 MR. GODINICH: Judge, the problem
5 with that -- if may speak -- is that these are the
6 same representations that Monique Sparks made. So
7 here we are, a different lawyer and same
8 representations and there's nothing to stop
9 Mr. Willey or Mr. Willie from hiring another lawyer
10 and continuing.

11 THE COURT: Oh, that's not happening.
12 I don't tolerate lawyers -- multiple musical
13 lawyers.

14 MR. GODINICH: And as far as the
15 order is concerned, we agreed on, Monique Sparks,
16 Mr. Shearer and myself, we did not have a problem
17 with the order. We imagined as much of as we could
18 ment. The only problem, getting Mr. Willey to sign
19 it. So as far as negotiating any more in that
20 order, that is not going to happen.

21 THE COURT: Have you had a chance to
22 talk to Ms. Sparks or get her file?

23 MR. MCKINNEY: I'm sorry, was that
24 directed to me, Judge?

25 THE COURT: Yes, I'm sorry.

1 MR. McKINNEY: I only heard half of
2 it.

3 THE COURT: Have you had a chance to
4 be talk to Ms. Sparks and get her file?

5 MR. McKINNEY: I do not have her
6 file. I had a brief conversation with her
7 yesterday. And by brief, I mean, very brief just
8 for the purpose of trying to figure out what was
9 going on today. We have had no substantive
10 conversations about the situation.

11 THE COURT: Do you guys have a
12 proposed order that you want him to sign?

13 MR. SHEARER: Yes, Your Honor. We
14 do. And I would be happy to go back over that and
15 tailor it to where we are now in terms of procedure.
16 But I think our discovery requires at least
17 Mr. Godinich's testimony and I would like to call
18 Mr. Willey.

19 THE COURT: Okay. Monday at one
20 o'clock.

21 We're in the court Monday. Yes.

22 Monday at one o'clock, you guys be
23 here. If anyone wants to be here, they can; but it
24 appearing by Zoom is perfectly acceptable. And so
25 the proceedings are continued, so the subpoena is

1 still in place on that day.

2 If you want me to review anything,
3 give it to me, I will not put anything additional in
4 the file until it becomes absolutely necessary. But
5 when it becomes necessary, I will not hesitate to do
6 so.

7 Let's see if we can't do something to
8 make this as (inaudible) and informal as possible.

9 MR. McKINNEY: I understand that,
10 Judge. If I can clarify something so that I'm
11 clear, I understood you to say that if there are any
12 documents, they should be hand delivered to you
13 rather than being filed with the clerk at this
14 point?

15 THE COURT: I wouldn't -- I would
16 prefer nothing be filed with the court clerk at this
17 time. But if you have something you want me to look
18 at, absolutely give it to opposing counsel. I'm
19 just -- I'm doing my very best here. I'm doing my
20 absolute very best to keep this away from certified
21 public copies and it's getting to the point where I
22 can't do that anymore. So if anyone has anything,
23 bring it to me directly, don't file it with the
24 clerk. And you could even bring it or send it to me
25 Monday morning. I'm sure I will have time to review

1 whatever I have and then we'll hash out whatever
2 order will be put in place regarding Mr. Godinich's
3 interactions with Mr. Willey or his associates.

4 I need to check in with you
5 Mr. Johnson. Are you following?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Did you have any
8 questions?

9 THE DEFENDANT: No, ma'am.

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Are you tired?

12 THE DEFENDANT: Yes.

13 THE WITNESS: We'll get you back,
14 back to your pod.

15 Are there any other questions?

16 MR. McKINNEY: None from me.

17 THE COURT: Okay. And please get
18 ahold of Ms. Sparks. That might clear up a lot of
19 these issues.

20 MR. McKINNEY: I am, Judge.

21 THE COURT: Try and get ahold of
22 Ms. Sparks, Mr. Shearer.

23 MR. McKINNEY: I will. She and I
24 will talk more today.

25 THE COURT: Okay. Thank you. We're

1 dismissed.

2 MR. McKINNEY: Thank you.

3 (Court adjourned for the day.)

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1 STATE OF TEXAS

2 COUNTY OF HARRIS

3 I, Marcia E. Barnett, Official Court Reporter
4 in and for the 263rd District Court of Harris, State
5 of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription
7 of all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to
9 be included in this volume of the Reporter's Record
10 in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$ _____
18 and was paid/will be paid by Mr. Willey.

19 WITNESS MY OFFICIAL HAND on this, the 10th day
20 of May, 2020.

21
22 /s/Marcia E. Barnett
23 Marcia E. Barnett, CSR
24 Texas CSR 5144
25 Official Court Reporter
263rd District Court
201 Caroline
Houston, Texas 77002
Telephone: (832) 927-3735
Expiration: 12/31/2022

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 1622736

STATE OF TEXAS) IN THE DISTRICT COURT
)
)
vs.) HARRIS COUNTY, TEXAS
)
)
KERMIT JOHNSON) 263RD JUDICIAL DISTRICT

HEARING

On the 11th day of May, 2020, the following
proceedings came on to be held in the above-titled
and numbered cause before the Honorable Amy Martin,
Judge Presiding, held in Houston, Harris County,
Texas.

Proceedings reported by computerized stenotype
machine.

APPEARANCES

Mr. R. Scott Shearer
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Counsel for Mr. Godinich

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Drew Willey Law
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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Okay. We are here on Cause 1622736, the State of Texas vs. Kermit Johnson. And Mr. Johnson is here in the courtroom.

And Counsel, introduce yourselves.

MR. SHEARER: R. Scott Shearer, Your Honor, for Mr. Godinich.

MR. GODINICH: Jerome Godinich, Your Honor.

THE COURT: And I believe Mr. Willey is appearing before Zoom, on Zoom?

MR. MCKINNEY: That is correct, Your Honor. Mr. Willey is present in the courtroom. And this is Troy McKinney representing Mr. Willey.

THE COURT: Okay. And do you -- to reflect for the record, the Judge is in the courtroom with defense counsel, Mr. Shearer; and Mr. Johnson, who is in custody, therefore, he doesn't have a means of appearing before Zoom, via Zoom. Via Zoom appearing are Mr. McKinney and Mr. Willey. And the court reporter is also appearing before Zoom.

And we have tested the sound system and if there are glitches, you can let us know and we will stop the proceedings. Okay.

1 We've had a couple of settings on
2 this case and it started when Mr. Johnson asked to
3 come talk to the Court. And he did.

4 And correct me if I'm wrong,
5 Mr. Johnson, you had someone -- someone came to
6 visit with you. You had taken your medications and
7 so you weren't feeling really good and you had some
8 memory issues, and you signed some documents.

9 And -- I'm sorry?

10 THE DEFENDANT: I said yes, ma'am.

11 THE COURT: Okay. And you want to
12 see those documents, you want a copy of those
13 documents?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. So then I believe
16 what happened was Mr. Shearer subpoenaed Mr. Willey
17 and his nonprofit, who he believed was the person
18 who visited with Mr. Johnson to get a copy of those
19 papers and what's now become ancillary papers in
20 other cases. But for this proceeding in this case,
21 Mr. Willey was subpoenaed to provide those records.

22 At the last setting that we had
23 Ms. Monique Sparks represented Mr. Willey and
24 represented to the Court and to opposing counsel
25 that an agreement was being reached regarding this

1 case and potentially some other cases regarding this
2 issue, and it would be handled in such a manner as
3 anything involving it would be sealed.

4 If no one was aware, last Wednesday
5 when was the -- which was the date, I think, that I
6 had asked the parties to have their agreed order
7 together, Monique Sparks was no longer representing
8 Mr. Willey. Mr. McKinney showed up, had no idea
9 what the hearing was for. And I said, Well, let's
10 everybody find out what the hearing is for and since
11 we now know there is no agreement, there will not be
12 an agreement, to reconvene here this afternoon. And
13 here we are.

14 So, Mr. Shearer, would you like to go
15 ahead with your arguments, your motion today?

16 MR. SHEARER: Your Honor, I'd just
17 point out that I did file a memorandum of law
18 earlier this morning and then provided it to
19 Mr. McKinney. Almost immediately after I filed the
20 memorandum, Mr. McKinney reached out to me through
21 Jerome's email. Apparently he was not calling my
22 office.

23 But we talked briefly and
24 Mr. McKinney made certain representations about what
25 his client would be willing to accept, that

1 Mr. Godinich would not be willing to accept
2 something without -- something that has some teeth
3 into it.

4 We are not trying to have Mr. Willey
5 disbarred, we are not trying to get him in trouble.
6 We just want the behavior to stop. We want
7 something that is enforceable and something that can
8 be verified. It's actually regrettable that
9 Mr. Willey is not willing to agree to something
10 that's going to be off the record, so to speak.

11 THE COURT: I just want to interrupt
12 you for a second. I am doing my very best to limit
13 the sensationalist aspect of the case, to limit
14 the -- I don't know exactly. I think every one
15 understands what I mean.

16 So if this can be resolved by an
17 agreed order that can be sealed and taken care of, I
18 want to do that; but I need to know if that's the
19 case.

20 MR. SHEARER: From having spoken to
21 Mr. McKinney this morning, that does not appear that
22 Mr. Willey is agreeable to signing any agreed order
23 with the Court involved. He's made the -- he made
24 the offer to make something in writing that's not
25 enforceable in any way.

1 THE COURT: Okay. And Mr. McKinney,
2 does that sound about right to you?

3 MR. McKINNEY: In part, yes. The
4 concern we have -- and I want to make it real clear
5 up front you asked this the other day. And I
6 perhaps did not give you as direct an answer as you
7 were looking for, but let me make this clear now:
8 Mr. Willey has not sought, is not seeking and will
9 not seek to represent the defendant in this criminal
10 case. Mr. Willey is here because he was subpoenaed
11 to testify as a witness. And parenthetically here,
12 that subpoena does not request any documents; it
13 simply requests his presence.

14 Be that as it may, it is our position
15 that the subpoena that's been issued to Mr. Willey
16 subjects him to testifying to matters that are
17 relevant and material to the criminal charges
18 against the defendant in this case, to which he told
19 you or his lawyer told you on the motion to quash he
20 has no knowledge about anything concerning the facts
21 in the criminal case.

22 Importantly, Mr. Willey has not
23 appeared before this court in this case as an
24 attorney on this case. He is not appearing as an
25 attorney on this case and he will not be appearing

1 as an attorney on this case. The only thing he is
2 here for is to testify, if it's proper and
3 appropriate for him to do so on some -- a relevant
4 subject.

5 We did have a conversation this
6 morning and I made certain representations to
7 Mr. Shearer on what Mr. Willey would agree to and we
8 offered to put those in writing to Mr. Godinich.
9 Mr. Shearer made it clear that nothing sort of a
10 court order was going to be acceptable to his
11 client.

12 The problem we have with a court
13 order, Judge, is that -- and I don't mean this the
14 way it's going to sound -- but to be blunt, the
15 court has no jurisdiction over Mr. Willey. He's not
16 a lawyer in case, he's not a party to this case. He
17 has been subpoenaed as witness only. And as a
18 witness, he's not subject to orders of the court
19 except with respect to his testimony as a witness.

20 I understand based on what
21 Mr. Shearer has provided the Court -- and I was not
22 aware of the file, I just thought he emailed it to
23 the Court, that he is now seeking what I suspect he
24 was seeking all along which is some kind of sanction
25 order from this court against Mr. Willey.

1 I can address that now or separately,
2 as you please. But his filing of that and his
3 admission of that to you ought to be an indication
4 that they are aware that the subpoena they issued
5 for Mr. Willey is not a basis to get to where they
6 want to get because the court doesn't have
7 jurisdiction over Mr. Willey. Every case they cited
8 in that motion that they gave to you deals with
9 lawyers who were in a case as a lawyer, who were
10 representing the parties to the litigation.

11 Mr. Willey is not representing any
12 party to this litigation. He has not sought to
13 represent a party to this litigation. He hasn't
14 appeared before the court in that capacity and they
15 can't get where they want to go without in some way
16 making him a party. And I would suggest that motion
17 is an indication that they recognize the subpoena
18 can't do that. The subpoena does not make him a
19 party, does not make him subject to sanctions or
20 orders from the court apart from the scope of his
21 testimony.

22 THE COURT: I'm not concerned about
23 State Bar, any of those other things. His -- he was
24 subpoenaed to provide documents. I don't
25 remember -- I haven't looked at the subpoena today.

1 He was subpoenaed to provide documents. He's
2 refusing to provide the documents. So if he's going
3 to continue as a witness in possession of documents,
4 Mr. Johnson's client documents or something he
5 provided, then I do have jurisdiction. And if those
6 aren't going to be provided, then we have to take
7 those next steps.

8 It's an easy question: Is he going
9 to give Mr. Johnson the documents that Mr. Johnson
10 signed?

11 MR. MCKINNEY: Judge, when
12 Mr. Shearer made that comment a minute ago I looked
13 at the subpoena. The subpoena does not request any
14 documents. I wanted to be certain of that before I
15 made that representation to you.

16 If Mr. -- if the defendant in this
17 case wants documents, there's a way to get those and
18 it's not to come to the court asking a person who is
19 not a party to this matter to produce things.

20 THE COURT: The last subpoena I saw
21 did list logs and items and intake forms, whatever.
22 I mean, I don't doubt for one second,
23 Mr. McKinney -- what I'm looking at versus what
24 Mr. McKinney is looking at.

25 MR. SHEARER: Judge, we served two

1 subpoenas. One to the person of Mr. Willey, but
2 also to the custodian of records; and we subpoenaed
3 duces tecum were documents involving Mr. Godinich's
4 client and Mr. Godinich.

5 THE COURT: And that was directed
6 towards --

7 MR. SHEARER: You can look at it on
8 file, it's in the box.

9 THE COURT: I think that was the
10 issue I was looking at. It does spell out -- I
11 don't remember the exact language -- intake papers,
12 something and something else. And I believe at that
13 time we were attempting to address a more global
14 issue in various -- with various cases.

15 From these proceedings, it's clear
16 that it's going to have to be dealt with case by
17 case. So looking at Mr. Johnson's, what I had
18 reviewed did ask for intake papers or logs. I mean,
19 it's disingenuous to say Mr. Willey wouldn't know
20 what is being asked for when he sees Mr. Johnson's
21 name on there and he has documents, according to
22 Mr. Johnson's representation, that are signed by
23 Kermit Johnson.

24 I mean, I think that is -- we know
25 what we are asking for. Is there something that's

1 happened that that's not a true statement?

2 MR. McKINNEY: Judge, again, the only
3 subpoena that I have -- and I talked to Ms. Sparks,
4 as well, after we had our last meeting. The only
5 subpoena I have and seen is one simply regarding
6 testimony. If there's another subpoena, I have not
7 seen it.

8 Be that as it may, if there is a
9 request for documents -- I'll just -- I'm not trying
10 to hide or play games here, Mr. Willey will be
11 asserting the attorney-client privilege, will be
12 asserting the work product privilege, will be
13 asserting the Fifth Amendment in producing of the
14 documents in this form.

15 THE COURT: So he does represent
16 Mr. Johnson?

17 MR. McKINNEY: He has an
18 attorney-client privilege with Mr. Johnson. He has
19 an attorney-client relationship with Mr. Johnson,
20 but it was not to represent him in these charges.

21 THE COURT: If he's asserting an
22 attorney-client privilege, two points: One, is
23 there an attorney-client relationship? And two,
24 that's Mr. Johnson's privilege to waive.

25 MR. McKINNEY: I agree that's

1 Mr. Johnson's privilege to waive. Mr. Johnson
2 cannot waive the work product privilege, that
3 belongs to Mr. Willey. And he can't trump the Fifth
4 Amendment claim which Mr. Willey will assert, if
5 need be.

6 THE COURT: That makes all the sense
7 in the world to me.

8 Mr. Johnson, would you stand up,
9 please. Have you been sworn, in Mr. Johnson?

10 MR. GODINICH: No, Judge.

11 THE COURT: Are you feeling okay?
12 Okay. Let me if you need to sit down. Can you go
13 ahead and raise your right hand.

14 (*Defendant sworn.*)

15 THE COURT: Do you have an
16 attorney-client relationship with Mr. Willey?

17 COURT REPORTER: Excuse me, Judge.
18 Can you ask him to speak up, please?

19 THE COURT: Make sure you speak up,
20 okay. I don't want you to take the mask off because
21 that's not good nor you.

22 Do you have an attorney-client
23 relationship with anyone other than Mr. Godinich?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Okay. Have you ever

1 sought out another attorney besides Mr. Godinich?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Okay. If -- you had
4 expressed to the Court that somebody from
5 Mr. Willey's office interviewed you and got you to
6 sign some stuff?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you still want those
9 papers?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Even if you're
12 entitled to say, No, Court, you don't have -- you
13 don't get to see them, even if you have that
14 right --

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: -- do you want to waive
17 it? Do you want to say, I don't care if I have that
18 right, I want to see my papers and my current
19 attorney to see my papers?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Go ahead and have a seat.
22 Sorry to keep you standing like that, I know you're
23 uncomfortable.

24 Mr. Johnson has waived his
25 attorney-client privilege right, theoretically if

1 there is one. I'm not sure that's been established,
2 I'm very confused by that issue, generally. So can
3 we expect that those papers will be delivered
4 directly to defense counsel?

5 MR. McKINNEY: They'll be delivered
6 to whomever Mr. Johnson directs they be delivered
7 to.

8 THE COURT: Okay. So you get to
9 decide who you want the papers sent to. Do you know
10 now or do you need some time to think about it?

11 Ms. Brittany who works for
12 Mr. Godinich. So they can be sent over to
13 Mr. Godinich. We all -- everybody is friends in
14 this room, which is very helpful.

15 Okay. What he else? Mr. Shearer?

16 MR. SHEARER: Yes, Your Honor. I
17 understand Mr. McKinney's point about the
18 jurisdictional issue. We didn't believe it would
19 be -- in an abundance of caution, that the Court
20 issue a show cause order to have Mr. Willey receive
21 notice of the allegations of misconduct and to take
22 it from there. We would just be spinning our wheels
23 putting on testimony today.

24 He's obviously entitled to notice and
25 opportunity to be heard as to the Fifth Amendment

1 issue. I do not believe he's entitled to a blanket
2 assertion of the privilege. I do believe it has to
3 be question by question. In addition, if he were to
4 assert Fifth Amendment privilege as to the documents
5 themselves, he would still have to provide them in
6 camera to the Court.

7 We would also point out that certain
8 admissions were made by former counsel, Ms. Sparks.
9 And the Court is well aware that Mr. Willey's
10 behavior goes far beyond this current defendant.
11 There are many defendants that Mr. Willey contacted
12 without Mr. Godinich's permission. These are people
13 who are going to be uncertain as to who is
14 captaining the ship. There have already been two
15 hearings as to this issue and the Court has inherent
16 authority to recognize a violation of the rules and
17 make appropriate sanctions, whether it's further CLE
18 hours, or attorneys fees, or referral to the State
19 Bar.

20 There's a whole list of possible
21 sanctions that I will type up and propose a show
22 cause order and provide them to the court. But what
23 we absolutely need is something that is enforceable
24 and to make sure that Mr. Willey does not continue
25 this behavior, either through his own person or

1 through any alter ego.

2 My concern is, and I'm very much in
3 the belief, that no matter what the Court does
4 Mr. Willey is going to attempt to do the same exact
5 behavior through his organization. So, it's got to
6 have -- to be worded in such a way as this doesn't
7 get repeated just by Mr. Willey under a different
8 name.

9 THE COURT: I certainly understand
10 that concern. That's not really something that I
11 can address right now in this forum.

12 Do you believe that there's
13 information that -- I don't remember my exact
14 wording, but Mr. McKinney said the papers that
15 belonged to Mr. Johnson, whatever his client filed,
16 that he is going to be turning those over, I would
17 assume, before close of business tomorrow. Is there
18 anything else that you believe the subpoena was
19 seeking that you aren't getting? Is there anything
20 else that you're entitled to?

21 And we are going to limit this to
22 Mr. Johnson's case because I think we have left in
23 the dust the attempt to keep this from becoming --

24 MR. SHEARER: Your Honor, any
25 financial records pertaining to Mr. Johnson held by

1 Mr. Willey would not be subject to the
2 attorney-client privilege. We'd ask that we receive
3 those documents.

4 THE COURT: That would presumably be
5 in his file. So I would think that would presumably
6 be in Mr. Johnson's file, his client file.

7 MR. SHEARER: Of course, we want
8 everything. I'm just letting the Court know that if
9 they were to going to assert that privilege, it's
10 not encompassing of financial records.

11 THE COURT: Sure.

12 MR. SHEARER: So things like his
13 relatives paying money or, you know, retainer
14 agreements or expenses, things of that.

15 THE COURT: That's -- I take
16 Mr. McKinney and Mr. Willey on their word that when
17 we say "client file" we mean documents pertaining to
18 everything having to do with that representation. I
19 presume each of you will look at the file. And
20 there's a lot of experience sitting at that table, I
21 assume they're going to be able to see what might be
22 missing.

23 I assume Mr. Johnson is going to at
24 least be able to figure out if those papers he
25 signed and the notes that were taken are in there.

1 I know that you were really hazy on
2 it, but I think you'll probably be able to tell.
3 And if not, you need to come back and let the Court
4 know.

5 But Mr. Willey is required to turn
6 over all of the papers that would traditionally be
7 thought of as a part of Mr. Johnson's file.
8 Mr. Johnson is not under the impression that he has
9 an attorney-client relationship with Mr. Willey. He
10 expressed to me he never had any intention of having
11 an attorney-client relationship. I believe that
12 that's going to become a huge problem, but I think
13 right now we have addressed, to my satisfaction, the
14 issue of he wants his file back.

15 Subpoena the file and Mr. Willey is
16 going to turn it over before close of business
17 tomorrow. And if not, I expect counsel to let the
18 Court know. I'm not going to request Mr. Willey to
19 testify at this time because he at least needs to be
20 given the opportunity to comply with the court's
21 subpoena and subsequent ruling.

22 But as far as this, is there an
23 attorney-client relationship, if the client says
24 there's no attorney-client relationship, there's no
25 attorney-client relationship. I understand the

1 problem as we have this. I believe it was
2 represented to me four or five other cases we have
3 this issue in. We can address those case by case.
4 We will call everybody in to deal with this again.

5 I am going to trust -- again,
6 Mr. Willey has had very fine lawyers representing
7 him. I trust that the lawyers have advised him that
8 it is a very, very bad idea to continue to try and
9 solicit business, whether paid or unpaid from
10 defendants he knows are represented by attorneys,
11 particularly that have been appointed to the
12 court -- by the Court to those defendants.

13 Mr. McKinney, without going into
14 detail, I assume that's something that you probably
15 have and will advise your client of?

16 Mr. McKinney, you're on mute. You're
17 on mute.

18 MR. MCKINNEY: Sorry, I did -- I
19 turned that on because I coughed a minute ago and I
20 didn't want to mess everybody up.

21 I have represented to Mr. Shearer
22 that Mr. Willey will not contact, will not initiate
23 contact with any person represented by Mr. Godinich.

24 THE COURT: And his nonprofit will
25 not make that -- will not engage in that kind of

1 behavior, either. Correct?

2 MR. McKINNEY: Neither him directly
3 or directed by him.

4 THE COURT: Okay.

5 MR. McKINNEY: Whether it's through
6 him or through the nonprofit.

7 THE COURT: Okay. That sounds pretty
8 global: Not by the nonprofit, through him, or
9 directly by him.

10 Is it your concern the volunteers
11 that show up and talk to them?

12 MR. SHEARER: It seems to be a very
13 dedicated group of volunteers that are very
14 mission-oriented in terms of what they believe in.
15 Certainly, they have the right to free speech and to
16 criticize the Court and the Court's appointments.
17 What they can't do is cross the line and break the
18 rules and contact defendants directly and say, Oh,
19 by the way, the Court appointed you a bad lawyer.
20 You should get somebody else.

21 THE COURT: Sure. And I'm fairly
22 confident that we have all read the rules -- some of
23 us recently, some us not so recently. Anything that
24 you direct someone to do or that you're aware that
25 someone is doing on behalf of yourself, or agency

1 for which you are the attorney of record for, is --
2 is that bad, bad behavior is your bad behavior.

3 I also want to make this very clear
4 and I think this is one of the reasons Mr. Johnson
5 was very adamant he wanted to talk to me -- and he
6 talked to me for a very long time and it was on the
7 record. He was under his medications.

8 I mean, he takes a lot of medication.
9 It was -- it was all of these, like, Xanax,
10 Risperdal. And he was approached by someone he did
11 not know and he asked not to speak to them. And the
12 deputy said, You have to go in the booth.

13 I don't fault that deputy, things are
14 really bad right now over at the jail.

15 He said he didn't want to speak to
16 this person. He sat down, that person -- if that
17 person could not tell or had not done enough
18 research to know Mr. Johnson has a fairly serious
19 illness, he's struggled with it for a long time.
20 And he described to me how he looks when he's on his
21 medication late in the evening. If whoever
22 interviewed him could not figure out that he was
23 under the influence of psychotropic meds, that
24 person has no business representing indigent
25 criminal defendants.

1 He was then interviewed, asked questions
2 about his case. He was asked about his case and
3 asked to sign a document he does not recall was
4 signed. I don't know that I have seen much more
5 egregious behavior regarding a criminal defendant
6 being approached -- we will put it nicely --
7 approached by someone who is not their lawyer.

8 It will not happen again. I will give you
9 my word, Mr. Johnson. And if it does, I will take
10 care of it. And I want to again, reiterate
11 Mr. Johnson, you felt so bad you kept apologizing to
12 me that you couldn't remember exactly and that you
13 wished you hadn't talked to them. And you said --
14 it is not your fault. Okay. And I know you keep
15 falling all over yourself to apologize to me. It is
16 not your fault. And Mr. Godinich knows that and
17 Ms. Brittany knows that.

18 So as we leave today, those documents will
19 be in Mr. Godinich's hands by close of business
20 tomorrow. If there becomes an issue that everything
21 is not there that legally should be there, then
22 we'll wind up back here. If I find out that this
23 behavior continues, we will -- I will not be nearly
24 so nice.

25 And it if it ever happens to someone who

1 was on psychotropic medication at nine o'clock at
2 night -- they should be ashamed of themselves,
3 whoever did that.

4 And Mr. Johnson, this is all done. Do you
5 have anything?

6 THE DEFENDANT: No.

7 THE COURT: Thank you, sir.

8 Anything else?

9 MR. McKINNEY: Not that I can think
10 of, Judge.

11 THE COURT: Okay. We are adjourned.

12 Off the record.

13 (Court adjourned for the day.)
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1 STATE OF TEXAS

2 COUNTY OF HARRIS

3 I, Marcia E. Barnett, Official Court Reporter
4 in and for the 263rd District Court of Harris, State
5 of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription
7 of all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to
9 be included in this volume of the Reporter's Record
10 in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$200.00 and
18 was paid/will be paid by A. Willey.

19 WITNESS MY OFFICIAL HAND on this, the 13th day
20 of May, 2020.

21
22 /s/Marcia E. Barnett
23 Marcia E. Barnett, CSR
24 Texas CSR 5144
25 Official Court Reporter
263rd District Court
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Telephone: (832) 927-3735
Expiration: 12/31/2022