

Exhibit "Dr. Who 5"

IN THE DISTRICT COURT, HARRIS COUNTY

234th Judicial District

Mark Burke)	CASE No. 202268307
)	
Plaintiff.)	
)	
vs.)	
)	
KPH – Consolidation Inc.,)	
DBA HCA Houston Healthcare)	
Kingwood, a domestic For-Profit)	
Corporation,)	
)	
)	
Defendant.)	

**MOTION FOR SANCTIONS, TO DISQUALIFY SERPE ANDREWS
PLLC, NICOLE G. ANDREWS, AND MADISON J. ADDICKS AND
ORDER RELEASE OF VIDEO SURVEILLANCE FOOTAGE TO
PLAINTIFF**

Mark Burke, Plaintiff, files this Motion to Disqualify the attorneys and law firm representing KPH – Consolidation Inc., DBA HCA Houston Healthcare Kingwood, a domestic For-Profit Corporation (“HCA”), Defendant herein;

Reasons Disqualification is Mandatory

Plaintiff avers opposing counsel, Serpe Andrews, PLLC, assigned attorneys Nicole G. Andrews, and Madison J. Addicks (“Andrews”, “Addicks” and collectively referred to as “HCA’s Lawyers”) should be disqualified for the following reasons:

Sanctionable Conduct Mandates State Bar Referral

Sanctions and referral to the Bar is warranted, and a mandatory duty of an ethical judge. *Comm’n for Lawyer Discipline v. Cantu*, 587 S.W.3d 779, 784 (Tex. 2019).

Here, Plaintiff had identified early on by reviewing the Harris County District Court (“HCDC”) database of lawsuits, HCA Lawyers would make an

appearance for HCA. HCA Lawyers appear to represent HCA in all lawsuits filed in this category of litigation, per HCDC.

Waiver of Service Blanked

Plaintiff wrote to HCA Lawyers at the time of filing of this lawsuit, seeking a simple waiver of service. HCA Lawyers blanked the email correspondence, directed specifically to Andrews, which was sent to the same email which is now confirmed and listed in Defendants response to this lawsuit, namely nandrews@serpeandrews.com:

(see <https://kingwooddr.com/whos-answered-for-hca-kingwood-hospital-as-predicted-the-unethically-silent-serpe-andrews-llc/>).

- (i) First email, dated Oct. 10, 2022; *“Reminder II: Letter in Response to HCA. I have included HCA’s known legal counsel, Ms. Nicole G. Andrews who would be responsible for addressing the Perpetuate Testimony filing in Harris County District Court. Furthermore, I am still waiting for a response from HCA re Spoliation Letter II. I look forward to a response by email.”*

- (ii) Second email, dated Oct. 18, 2022; *“The attached Petition was filed into Harris County District Court this afternoon. Case: 202268307. Please advise if you will waive service or not by return.”*

- (iii) Third email, dated Oct. 19, 2022; *“See attached re case # 202268307 (referencing; Request for Production and Inspection of HCA Kingwood Hospital Video Surveillance Footage)”*
- <https://kingwooddr.com/request-for-production-and-inspection-of-hca-kingwood-hospital-video-surveillance-footage/>

In summary, the above provides evidentiary proof HCA Lawyers maliciously and willfully refused to respond to Plaintiff, for the sole purpose of delay, in violation of Texas Disciplinary Rules of Professional Conduct, which establishes the minimum standards of conduct for attorneys.

Specifically, the delay is related to obtaining the video evidence requested from HCA, who have refused to supply the video or make it available on-site for review by the Plaintiff.

Delay is the confirmed objective by HCA Lawyers

On late Friday afternoon, November 18, 2022, HCA Lawyers filed their response, titled "Defendant HCA Houston Healthcare Kingwood's Original Answer and Jury Demand".

It should be noted, Plaintiff's Original Petition was supplied via email to HCA Lawyers and HCA a month earlier, on October 18, 2022.

HCA's response is a general denial without reaching the merits of the Plaintiff's petition.

In short, it's a calculated tactical delay and one which is not allowed. For example, see; *In re Facebook, Inc., Consumer Privacy User Profile Litigation* (3:18-md-02843), District Court, N.D. California;

"The judge came in blazing hot, announcing at the very beginning of the hearing that he had developed "quite a strong preliminary view" that the company's conduct [delay] was sanctionable – and that the Gibson Dunn lawyers who signed Facebook's briefs are just as much to blame as their client."

– Reuters Alison Frankel, Feb. 14, 2022.

Plaintiffs seek \$2M in sanctions in their latest sanction filings (Nov. 18, 2022) at the behest of federal Judge Chhabria.

Here, this case has already shown the same traits and should be dealt with swiftly by this court.

As admitted by HCA Lawyers, it's a *notice* which meets the bare minimum legal requirement to be considered a response. However, unlike the many recent cases the Plaintiff has reviewed involving HCA and HCA Lawyers, it does not include a Defense section, and fails to address any of the substantive arguments raised in Plaintiff's pleadings.

The Plaintiff is and will be prejudiced, satisfying the "showing of actual prejudice required under Disciplinary Rule 3.08,

See; In re Sanders, 153 S.W.3d 54, 57 (Tex. 2005) ("Disqualification is only appropriate if the lawyer's testimony is "necessary to establish an essential fact." Tex. Disciplinary R. Prof'l Conduct 3.08(a). Consequently, the party requesting disqualification must demonstrate that the opposing lawyer's dual roles as attorney

and witness will cause the party actual prejudice. Ayres, 790 S.W.2d at 558.”).

Here, the HCA Lawyers will be named by Plaintiff as a witness in a future supplement to the Initial Disclosures provided to HCA Lawyers on November 21, 2022. This will include confirmation of the obstruction of justice and unnecessary time and expenses incurred by Plaintiff to serve HCA, as stated above.

Furthermore, the Plaintiff will seek to question HCA Lawyers as to their role in maliciously and willfully delaying this time-sensitive case, where Plaintiff is seeking to recover video footage from Kingwood Hospital. The footage will prove key arguments made in Plaintiff’s lawsuit and prove HCA has been untruthful to Plaintiff in their documented responses (see Original Petition; Spoilation letters).

Lawyer as a Witness

Considering the afore mentioned, an attorney's dual role as an advocate and a witness may handicap opposing counsel's ability to effectively impeach him / [her], see *Bert Wheeler's, Inc. v. Ruffino*, 666 S.W.2d 510 (Tex. App. 1984).

Here, we have Nicole Andrews, who could easily be referred to as in-house General Counsel, for HCA. A review of the Harris County Court Docket when searching Andrews bar number returns 4 pages of paginated results wherein it confirms she represents or represented HCA in many lawsuits, dating as far back as 1999 (e.g. LAYTON, CANELIA E vs. COLUMBIA/HCA HEALTHCARE CORPORATION (DBA 1/7/1999 280 Civil PERSONAL INJURY (NON-AUTO) 199845521-7).

Plaintiff intends to question Nicole Andrews as a witness as to when she (i) First became aware of this lawsuit, (ii) Why she blanked Plaintiff's emails, (iii) Did she or her law firm provide legal advice to HCA prior to filing

the November 18 response, encouraging delaying all responses and refusing to respond or address the complaints submitted by Plaintiff, including the refusal to provide video surveillance footage and acknowledge the Plaintiff's Spoilation letters, (iv) Did she or her law firm advise HCA to sign letters to plaintiff as a *John Doe* and to refuse providing the names and addresses of those who 'investigated' Plaintiffs letters of complaint (v) As a Partner of Serpe Andrews, PLLC, what percentage of billable work does HCA represent in the company's annual accounts?, and (vi) related questions pertaining to the lawsuit and her lengthy relationship with HCA, dating back decades.

As such, disqualification should be granted. Plaintiff also notes on the Twitter account @serpeandrews, the HCA Christmas Party (2016) at the corporate offices in Tennessee included Serpe Andrews. See; SerpeAndrews Twitter.

Certainly, Plaintiff has never been at a work Christmas party where outside counsel were invited to attend (for example, referring to Deloitte's Christmas parties Plaintiff attended in the UK).

Nicole Andrews Blanked the Plaintiff's Sanctions Notice

When the Plaintiff submitted the Initial Disclosures via email to the case contacts per the docket in this case, the Plaintiff wrote (Nov. 21, 2022 at 12.09 pm):

Subject: INITIAL DISCLOSURES

To; Serpe Andrews, PLLC, Nicole Andrews, Madison Addicks, et al

First, I now enclose the Initial Disclosures and Medical Release document.

Second, is there any reason why I should not file a Motion for Sanctions / Disqualification of your firm and lawyers considering the history of my email communications, which you elected to blank?

In short form, you did not respond to waive service and this resulted in unnecessary delay and expense, in violation of Texas Disciplinary Rules of Professional Conduct, which establishes the

minimum standards of conduct for attorneys and which satisfies the “showing of actual prejudice” required under Disciplinary Rule 3.08.

Finally, failure to respond to this email by return will be acted upon without further notice. With prejudice.

At 9.05 pm on Nov. 21, 2022, Nicole Andrews, Partner, responded;

Mr. Burke: We acknowledge receipt of your response to Initial Disclosures. Thank you, Nicole.

Once again, HCA Lawyers decided to blank responding to the serious and time-sensitive question raised in the Plaintiff’s email, thus waiving their opportunity to state their reasons for their unethical acts.

Relief Requested

First, Plaintiff requests this court sanction the HCA Lawyers by disqualifying them from representing HCA and refer Nicole Andrews to the State Bar of Texas for her misconduct.

Second, due to the unnecessary delay on behalf of the Defendant, Plaintiff wishes sanctions to include expedited discovery related to the video

surveillance footage, which has been withheld by HCA Kingwood Hospital as detailed in the Original Petition. Plaintiff respectfully requests an Order from this Court demanding the full and unedited video be immediately released in unencrypted, .mp4 HD format with audio, and/or made available to Plaintiff in the cloud.

Conclusion

In *Delaney v. University of Houston*, 835 S.W.2d 56, 65 (Tex. 1992) (“Texas Lawyer’s Creed — A Mandate for Professionalism (adopted November 7, 1989), which states:

“Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.””).

The Texas Supreme Court states;

“Members of the legal profession have agreed to live under rules proclaiming that it is “a lawyer’s duty to uphold legal process,” that “[a] lawyer’s conduct should conform to the requirements of the law,” and that “[a] lawyer should demonstrate respect for the legal system and for those who serve it”

The continued viability of the rule of law depends on the bench and bar adhering faithfully to these obligations. To do otherwise impugns the integrity of our judicial institutions and undermines the public's trust in their objectivity and reliability.

As judges and lawyers, we bear a sacred obligation to uphold the rule of law even when the law does not conform to what we believe it should be.

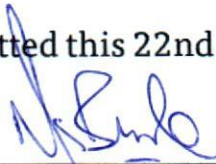
That duty includes withstanding the temptation to bend and abuse legal process to collect an earnestly desired result the law simply does not provide.

Those who underhandedly indulge that temptation dishonor both our profession and the rule of law."

*- In re Texas, No. 15-0139, at *5 (Tex. Apr. 15, 2016).*

For the foregoing reasons, the Plaintiff's Motion should be granted.

RESPECTFULLY submitted this 22nd day of November, 2022.



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Case Contacts

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