

*Ex Parte*

\* IN THE DISTRICT COURT

\*

\* 385th JUDICIAL DISTRICT

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Clinton Lee Young

\* MIDLAND COUNTY, TEXAS

**STATE'S MOTION TO RECUSE THE DISTRICT ATTORNEY'S OFFICE OF  
MIDLAND COUNTY TEXAS**

The State of Texas, pursuant to Texas Code of Criminal Procedure article 2.07 (b-1), brings to the Court its motion to recuse the District Attorney of Midland County Texas from representing the State in this case as respondent:

1. On October 5, 2017 District Attorney Laura Nodolf interviewed David Page in the Midland County Courthouse in anticipation of testimony he was supposed to give on October 16, 2017.
2. This interview was recorded. In it, Mr. Page related certain aspects of the kidnapping of Samuel Petrey that were different from what he testified to at trial.
3. Applicant contends that these differences amounted to Mr. Page's admission that he lied about applicant being responsible for the kidnapping: "In that interview, Page admitted that he lied at Young's trial when he testified that Young had kidnapped Petrey. In reality, Page admitted, *he himself* was the one who kidnapped Petrey as Young looked on." (Reply in Support of Application for a Writ of Habeas Corpus p. 2)
4. In the interview, Mr. Page did say that he personally abducted Mr. Petrey *with the aid of Applicant*: "He (Mr. Petrey) came out, Clint handed me the gun I had the gloves on." (October 4, 2017 interview)
5. Later in his reply, Applicant accused the State of withholding this information in order to secure his wrongful execution: "Instead of immediately providing this information to Young, the state withheld it, permitting Young to march towards his execution date completely ignorant of this important favorable evidence." (Reply p. 2) "The state's concealment of this bombshell evidence in the fact of Young's imminent death raises disturbing questions as to its good faith, and flies in the face of the prosecutions fundamental duty to ensure 'not that it shall win a case, but that justice shall be done.'" (Reply at p. 3)
6. The State initially chalked up Applicant's florid prose to zealous advocacy, but once Applicant disclosed that one of his witnesses was going to be Ralph Petty, an assistant district attorney who was primarily responsible for handling


Applicant's post-conviction writ litigation until October 17, 2017, the above quoted language was seen in a new light: "Ralph Petty will testify concerning recent events that unfolded while Mr. Young had an active execution warrant, during which the Midland County District Attorney's Office brought David Page to Midland, interviewed him, and did not disclose the interview to Young or Page's lawyer until after the Texas Court of Criminal Appeal (sic) issued a stay of execution pending the instant hearing."

7. Then, the Chief of the Capital Habeas Unit of the Federal Public Defender of the Central District of California, Margo A. Rocconi, sent an email to Laura Nodolf, the District Attorney of Midland County: "The central issue at our hearing is David Page's trial testimony and whether it was false, and as you'd expect, your October 4, 2017 interview with him is probative of that question. I'd appreciate an opportunity to talk by phone with you about this interview and the delay in your disclosure of it to both Mr. Petty and Mr. Young's lawyers." (emphasis added)
8. Later, representatives of Applicant's attorney assured me that they would not need to call Ralph Petty as a witness if the District Attorney's Office stipulated to certain undisputed facts, which we were willing to do. However, subsequent discussions with the Federal Public Defender's Office indicate that this matter is still a centerpiece of their litigation effort in this case, possibly meaning that members of the District Attorney's Office staff may need to testify about these matters.
9. Additionally, information, obtained late last week by the District Attorney have put the District Attorney's Office in an untenable position to move forward as the State's representative in this case.
10. On August 16, 2019, while researching unrelated matters with the county treasurer, Laura Nodolf, the District Attorney, discovered that Ralph Petty, the above mentioned former assistant district attorney, had been billing the District Court judges for work he had been performing for the District Attorney's Office as its primary lawyer in post-conviction writ of habeas corpus cases. The District Attorney's Office has reason to believe that this included work he performed on this case.
11. This means that Mr. Petty was working as a *de facto* law clerk for the judges presiding in this case—indeed, apparently on this case—while he was representing the State in these same matters. This would appear to be in direct violation of Rule 1.11 (a) of the Texas Disciplinary Rules of Professional Conduct: "A lawyer shall not represent anyone in connection with a matter in which the lawyer has passed upon the merits or otherwise participated personally and substantially as an adjudicatory official or law clerk to an adjudicatory official, unless all parties to the proceeding consent after disclosure."

12. Rule 1.11 (c) of the Texas Disciplinary Rules of Professional Conduct provides that if Rule 1.11 (a) applies, no other lawyer in an organization in which that lawyer is associated may “knowingly undertake or continue representation in the matter.” While Mr. Petty is no longer employed by the District Attorney’s Office, his employment only terminated on July 5, 2019, meaning that he was employed with this office while other lawyers in the office were working on this matter.
13. This also violates Rule 3.05 (b) of the Texas Disciplinary Rules of Professional Conduct: “[E]xcept as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing that entity or person concerning a pending matter . . . .”
14. The Texas Rules of Professional Conduct prohibit a lawyer from continuing as an advocate in a proceeding if that lawyer knows or believes she “may be a witness necessary to establish an essential fact on behalf of the lawyer’s client.” Tex. Disciplinary Rules Prof’l Conduct R. 3.08. Because of the very real possibility that Mr. Kalenak and Ms. Nodolf would need to testify as to substantive matters, they have an ethical obligation to refrain from continuing to represent the State of Texas in this matter.
15. Given the deep entwinement of attorneys currently working in the District Attorney’s Office in matters that may be the subject of future litigation in this case, it is best that this court appoint an attorney *pro tem* under article 2.07 of the Texas Code of Criminal Procedure to carry forward this litigation on behalf of the State.

Given the foregoing, the State of Texas respectfully asks this court to recuse the District Attorney of Midland County and appoint an attorney *pro tem* to represent the State as respondent in this cause.

Respectfully submitted



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct of the foregoing document was sent on August 22, 2019 by email to Margaret Farrand, Deputy Federal Public Defender, [Margaret.Farrand@fd.org](mailto:Margaret.Farrand@fd.org), attorney of record for Applicant.



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Eric Kalenak

