

CAUSE NUMBER 921126

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THE STATE OF TEXAS

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IN THE 351ST DISTRICT COURT

VERSUS

OF

ROLAND JEFFERY PRIBLE, JR

HARRIS COUNTY, TEXAS

AND

CAUSE NUMBERS AP-74,487 & 921126-A

EX PARTE

RONALD JEFFERY PRIBLE, JR

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IN THE TEXAS COURT OF
CRIMINAL APPEALS

AND

IN THE 351ST DISTRICT COURT
OF HARRIS COUNTY, TEXAS

FILED ARISE
CHARLES BACER
DISTRICT CLERK
HARRIS COUNTY, TEXAS
07 JAN 22 PM 12:10

MAIL PROCESSING DEPUTY

MOTION TO DISQUALIFY JUDGE MARK KENT ELLIS, ATTORNEY HENRY BURKHOLDER, III AND ATTORNEY ROLAND MOORE, III.

TO THE HONORABLE JUDGES OF SAID COURTS:

NOW COMES RONALD JEFFERY PRIBLE, JR., acting on my own behalf, to file this motion. In support of this I state the following:

I am innocent. In October of 2002 I was convicted and sentenced to death in the 351ST Judicial District Court of Harris County, Texas, Judge Mark Kent Ellis presiding. Terrence Gaiser and Kurt Budd Wentz were my court-appointed trial attorneys. Soon afterward Judge Ellis appointed Henry Burkholder, III to help me prepare and file my direct appeal to the Texas Court of Criminal Appeals. About the same time Judge Ellis appointed Roland Moore, III to help me prepare and file my Texas State Application for Writ of Habeas Corpus.

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The Texas Court of Criminal Appeals denied the direct appeal on January 26, 2005. The Supreme Court of the United States of America denied the petition for writ of certiorari on the direct appeal on October 17, 2005. The status of the Texas State Application for Writ of Habeas Corpus is pending.

I've uncovered what I feel is a bribery scheme between Judge Mark Kent Ellis, Henry Burkholder and Roland Moore. However, even if I'm wrong and there is no actual impropriety, the appearance of impropriety is unmistakable. Judge Ellis, Mr. Burkholder and Mr. Moore should be disqualified from my case.

JUDGE MARK KENT ELLIS

The legal system in the United States and the State of Texas is based on the fundamental principle that an independent and competent judiciary will interpret and apply the laws in a fair and just manner. This is vital to the American ideal of justice and rule of law. In keeping with this ideal, the Texas Code of Judicial Conduct provides basic standards to establish and maintain the principles of proper judicial conduct.

Canon 1 of the Texas Code of Judicial Conduct succinctly states what is generally desired and expected of Texas judges, both individually and collectively.

Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

Also, the Texas Code of Judicial Conduct specifically provides that judges

- “[Avoid] impropriety and the appearance of impropriety in all of the Judge’s Activities” Title of Canon 2.
- “should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2(B).
- “shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism.” Canon 3(C)(4).
- “shall refrain from financial and business dealings that tend to reflect adversely on the judge’s impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position” Canon 4(D)(1).

I feel that Judge Mark Kent Ellis has betrayed or violated these ideals of integrity, of independence, of high standards of conduct. It appears to me that Judge Ellis accepted kickbacks (in the form of political campaign contributions) from Henry Burkholder and Roland Moore in return for their respective court appointments to represent me on my appeals.

According to Texas Ethics Commission records Mr. Burkholder and Mr. Moore each gave Judge Ellis two (and only two) campaign contributions. For each attorney, the first campaign contribution was before appointment to my appeal and the second contribution was after appointment to my appeal. In fact, Mr. Burkholder and Mr. Moore each gave Judge Ellis their first campaign contribution on the exact same day: September 28, 1999. Most telling, Mr. Burkholder’s and Mr. Moore’s each largest Harris County Judicial campaign contributions went to Judge Ellis.

I feel this is characteristic of a typical bribery kickback scheme. One payoff is made before the desired concession (i.e. the court appointment) and another payoff is made afterward. Also, Mr. Burkholder and Mr. Moore each made their first campaign contribution to Judge Ellis on the exact same day (September 28, 1999), and their contributions were disproportionately large. For example, Henry Burkholder made two \$500 contributions to Judge Ellis, and contributed no more than \$100 to any other individual Harris County Judge.

Candidates for Texas elected office file campaign reports with the Texas Ethics Commission semi-annually. Judge Ellis has filed 14 reports since July 1, 1999, but in only four of those did Judge Ellis show campaign contributions:

July 1, 1999 – December 31, 1999	\$12,625.00
January 1, 2000 – June 30, 2000	\$350.00
July 1, 2003 – December 31, 2003	\$3,150.00
January 1, 2004 – June 30, 2004	\$4,800.00

Since July 1, 1999 Judge Ellis has received 90 individual campaign contributions. Eighty-five came from attorneys, and two came from court reporters. Interestingly, the times that Judge Ellis received campaign contributions coincide significantly with the times that Judge Ellis' campaign itself contributed money to the Harris County Republican Party:

July 1, 1999 – December 31, 1999	\$2,575.00
July 1, 2000 – December 31, 2000	\$500.00
July 1, 2003 – December 31, 2003	\$500.00
January 1, 2004 – June 30, 2004	\$2,500.00
July 1, 2004 – December 31, 2004	\$3,000.00

Judge Ellis' campaign's other expenditures since July 1, 1999 total \$1,242.71 – not much compared to the \$20,925 in campaign contributions and the \$9,075

Judge Ellis' campaign in turn contributed to the Harris County Republican Party. The other expenditures include such items as campaign printing costs, campaign postage, campaign related meals, and courtroom office supplies not otherwise provided by the Harris County Courts. Note, as of the last report submitted, Judge Ellis' campaign has a cash-on-hand balance of \$10,800.05.

According Texas Ethics Commission reports for the week of September 27, 1999 through October 1, 1999 Judge Ellis received 60 campaign contributions totaling \$11,475. Fifty-five of those contributions (averaging \$198.18, totaling \$10,900) came from lawyers, 2 from court reporters (averaging \$150, totaling \$300) and 1 from a bail bondsman (averaging and totaling \$150). That is, 58 of the 60 contributions came from individuals who work and make their livelihood in the Harris County Criminal Justice System.

On Tuesday, September 28, 1999 alone, Judge Ellis received 47 campaign contributions, totaling \$8,525. September 28, 1999 is the day in which Henry Burkholder first gave Judge Ellis \$500. September 28, 1999 is the day in which Roland Moore gave Judge Ellis \$250. It sure appears me to that Judge Ellis laid the foundation for kickbacks during the week of September 27, 1999 through to October 1, 1999.

It's interesting to note that according to the Texas Ethics Commission Terrence Gaiser and Kurt Budd Wentz haven't ever contributed any money to Judge Ellis. My understanding is that Harris County Criminal District Judges don't have discretion in appointments for trial representation in capital cases, that Harris County Criminal District Judges appoint the next attorney on a preset

list of available and qualified capital defense trial attorneys. That is, Judge Ellis didn't have any choice but to appoint Mr. Gaiser and Mr. Wentz to represent me at my capital trial. They were the next on the preset list. If there is a kickback scheme, then there was no reason for Mr. Gaiser or Mr. Wentz to contribute money to Judge Ellis. They would have been appointed to represent me at trial regardless.

However, I think appellate appointments are different. It is my understanding that Judge Ellis did have complete discretion to appoint Henry Burkholder and Roland Moore to represent me on appeal. Yes, Mr. Burkholder and Mr. Moore had to be qualified for appointment, but Judge Ellis was free to choose any capital qualified appellate attorney. Judge Ellis chose Henry Burkholder and Roland Moore. Judge Ellis wasn't required to use the next attorneys on any preset capital appeals list or lists.

SPECIAL NOTE: I don't find Henry Burkholder's name on the Second Administrative Judicial Region of Texas list of Qualified Counsel for Appointment in Death Penalty cases. Thus, I'm not really sure that Henry Burkholder was lawfully qualified to represent me on direct appeal.

Henry Burkholder gave Judge Ellis a \$500 campaign contribution on September 28, 1999, and another \$500 campaign contribution on February 27, 2004. Mr. Burkholder was appointed to represent me on my direct appeal in October of 2002. Since July 1, 1999 Mr. Burkholder gave seven other campaign contributions to Harris County Criminal District Judges, six for \$100 each and one for \$50. Mr. Burkholder gave Judge Ellis 10 times as much money (\$1,000 as

compared to \$100) as he gave any other individual Harris County Criminal District Judge.

Roland Moore gave Judge Ellis a \$250 campaign contribution on September 28, 1999, and a \$100 campaign contribution on January 22, 2004. Mr. Moore was appointed to represent me on my Texas State Application for Habeas Corpus in October of 2002. Since July 1, 1999 Mr. Moore gave eight other campaign contributions to Harris County Criminal District Judges, five for \$100 and 3 for \$50. Mr. Moore's single largest campaign contribution of \$250 – 250% greater than any other individual campaign contribution – went to Judge Ellis.

Thus, I feel the kickback scheme is this 1) the Harris County Republican Party solicits contributions from Judge Ellis, and in return the Harris County Republican Party provides Judge Ellis perks and services – it pays his election filing fees, promotes his campaign, gives advice, etc.; 2) then to cover those costs, Judge Ellis solicits money from area criminal attorneys and court reporters. In return Judge Ellis gives these campaign contributors court appointed work.

SPECIAL NOTE: Texas District Court Judges must avoid the appearance of impropriety – especially in capital murder death penalty cases. Judge Ellis' intentions regarding his court appointments in my appeals may have been honorable. I personally don't think so. I think this situation stinks. However, even if Judge Ellis's intentions were honorable, that's not enough. It is the appearance of impropriety that Judge Ellis must avoid. He didn't.

ATTORNEY TERRENCE GAISER

As far as I could determine Terrence Gaiser has not given any Harris County Criminal District Judge a campaign contribution since July 1, 1999. Also, I could not determine if Mr. Gaiser has received any appellate court appointments in capital cases from Judge Ellis.

Clearly, this indicates no impropriety. It also clearly indicates no appearance of impropriety. However, ultimately this is inconclusive as to whether Judge Ellis shows favoritism in appellate court appointment to his campaign contributors. If Judge Ellis does show favoritism in court appointments, then, because Terrence Gaiser hasn't given any campaign contributions to Judge Ellis, it follows that Mr. Gaiser hasn't received any associated capital appeals court appointments.

ATTORNEY KURT BUDD WENTZ

As far as I could determine Kurt Budd Wentz has given two Harris County Criminal District Judge campaign contributions since July 1, 1999. Mr. Wentz gave Harris County Criminal District Judge Jeannine Barr a \$100 campaign contribution on July 2, 2001 and another \$100 campaign contribution on May 7, 2002. I could not determine if Mr. Wentz has received any appellate court appointments in capital cases from Judge Barr. Also, it doesn't appear that Mr. Wentz has received any appellate court appointments from Judge Ellis.

However, just as with Terrence Gaiser, the situation with Budd Wentz indicates no impropriety. It also indicates no appearance of impropriety, and this

is also inconclusive as to whether Judge Ellis shows favoritism in appellate court appointment to his campaign contributors. If Judge Ellis does show favoritism in court appointments, then, because Kurt Budd Wentz hasn't given any campaign contributions to Judge Ellis, it follows that Mr. Wentz hasn't received any associated capital appeals court appointments.

ATTORNEY HENRY BURKHOLDER, III

Since January 1, 1999, according to Texas Ethics Commission records, Henry Burkholder gave nine campaign contributions to Harris County Criminal District Judges.

Judge	Date	Amount
Elsa Alcala	Jan. 28, 1999	\$100
Mark Kent Ellis	Sept. 28, 1999	\$500
Unknown	Oct. 18, 1999	\$ 50
Denis Collins	Oct. 18, 1999	\$100
Mark Kent Ellis	Feb. 27, 2004	\$500
Devon Anderson	Sept. 14, 2004	\$100
James Anderson	Oct. 14, 2004	\$100
Marc Carter	Oct. 19, 2004	\$100
Angela Valesquez	Dec. 2, 2005	\$100
TOTAL		\$1,650

Henry Burkholder gave \$1,000 in campaign contributions to Judge Ellis. That's 10 times more than he contributed to any other individual Harris County Criminal District Judge. Over 60% of all of Henry Burkholder's campaign contributions to Harris County Criminal District Judges went to Judge Ellis. Something stinks. The appearance of impropriety is unmistakable. More importantly, Henry Burkholder's duty to me - that is, his duty to represent my

legitimate rights, claims and interests zealously and without being deterred by real or imagined fear of judicial disfavor – was violated.

Attorneys in Texas are bound by the Texas Lawyer's Creed, the Texas Standards for Appellate Conduct and the Texas Disciplinary Rules of Professional Conduct. And even though required to do so, Henry Burkholder didn't inform me about the Texas Lawyer's Creed (see rule 1 under "Lawyer to Client"), or the Texas Standards for Appellate Conduct (see rule 1 under "Lawyers' Duties to Clients").

Because of the \$1,000 in campaign contributions, because Judge Ellis appointed Henry Burkholder to represent me, because Mr. Burkholder didn't tell me about the Texas Lawyer's Creed or the Texas Standards for Appellate Conduct, I feel Mr. Burkholder was more interested in serving Judge Ellis, than in serving me. I think Mr. Burkholder felt more of a duty to make Judge Ellis look good – or at least avoid making him look bad – than to represent me.

I feel there was an inappropriate understanding between Henry Burkholder and Judge Ellis. You do something for me (give me campaign contributions) and I'll do something for you (give you court appointments). The appearance of impropriety is obvious.

ATTORNEY ROLAND MOORE, III

Since January 1, 1999, according to Texas Ethics Commission records, Roland Moore gave ten campaign contributions to Harris County Criminal District Judges.

Judge	Date	Amount
Elsa Alcala	July 22, 1999	\$100
Mark Kent Ellis	Sept. 28, 1999	\$250
Mike Wilkinson	Dec. 30, 1999	\$ 50
Jeannine Barr	July 5, 2001	\$100
Mary Lou Keel	June 20, 2002	\$ 50
Jeannine Barr	Oct. 23, 2002	\$ 50
Mark Kent Ellis	Jan. 22, 2004	\$100
Marc Carter	Sept. 2, 2004	\$100
James Anderson	Sept. 28, 2005	\$100
Jeannine Barr	Nov. 17, 2005	\$100
TOTAL		\$1,000

Roland Moore gave \$350 in campaign contributions to Judge Ellis. That's \$100 more than he contributed to any other individual Harris County Criminal District Judge. Mr. Moore's largest single campaign contribution (by 250%) went to the Judge Ellis. Although this isn't as reprehensible as the situation with Mr. Burkholder, it's still very disturbing. Impropriety is apparent here, too.

Roland Moore's duty to me is also bound by the Texas Lawyer's Creed, the Texas Standards for Appellate Conduct and the Texas Disciplinary Rules of Professional Conduct. Yet, just as with Henry Burkholder, and even though required to do so, Mr. Moore didn't inform me about the Texas Lawyer's Creed or the Texas Standards for Appellate Conduct.

Thus, and similarly, I feel Mr. Moore is more interested in serving Judge Ellis, than in serving me. I think Mr. Moore feels more of a duty to curry favor with Judge Ellis than to represent me zealously.

SPECIAL NOTE: the Texas Standards for Appellate Conduct expressly provides that "[A] lawyer shall not be deterred by a real or imagined fear of judicial disfavor or public unpopularity." Yet this is exactly what Roland Moore appears to be doing.

I feel Mr. Moore is being deterred by real or imagined fear of judicial disfavor. I feel he's afraid that he won't get any more appellate criminal court appointments in Harris County if he doesn't properly ingratiate himself with Harris County Criminal Judges. Why else does Mr. Moore contribute money to judges? Judge Ellis, for one, has had an approximate \$10,000 surplus in his campaign fund for almost six years. Why else has Mr. Moore only visited me once in four years – we only talked for a few minutes, and not about anything meaningful? Why else has Mr. Moore refused to interview a witness I feel has crucial information about my case?


PRAYER

All things considered, the appearance of a bribery scheme between Judge Mark Kent Ellis and attorneys Henry Burkholder, III and Roland Moore, III is obvious. I'm not required to show that there really is a bribery scheme. All I have to show is the appearance of impropriety. I've done that.

Whether Mr. Burkholder's and Mr. Moore's campaign contributions to Judge Ellis are honorable, or more to curry favor than to get actual quid pro quo concessions, doesn't matter. Judge Ellis' appearance of impropriety, Henry Burkholder's appearance of impropriety, Roland Moore's appearance of impropriety is obvious.

Thus, I pray that this motion is granted. I am innocent.

Respectfully submitted,



Ronald Jeffery Prible, Jr. Pro Se

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NO PHONE
NO FAX

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this motion was mailed to the person listed below on ~~September~~ ^{JANUARY} 18 ²⁰⁰⁷ ~~2006~~. RSP

RSP
Roe Wilson
Harris County District Attorney's Office
1201 Franklin St., #600
Houston, TX 77002-1923



Ronald Jeffery Prible, Jr.