

CAUSE NO: 23-2535

THE STATE OF TEXAS	§	
EX REL. CHLOE M. LOVE	§	
	§	
Relator-Plaintiff	§	
	§	
V.	§	IN THE ____ JUDICIAL DISTRICT
	§	COURT, HAYS COUNTY, TEXAS
	§	
AVREY J. ANDERSON	§	
	§	
In His Official Capacity	§	
as District Clerk of Hays	§	
County, Texas	§	
	§	
Respondent-Defendant	§	
	§	
	§	

ORIGINAL PETITION TO REMOVE HAYS COUNTY DISTRICT CLERK FROM OFFICE AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, the STATE OF TEXAS, by the relation of Chloe M. Love (hereinafter Relator), complaining of District Clerk Avrey J. Anderson (hereinafter Defendant), and for cause of action would show unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Relator Chloe M. Love intends to proceed under a Level 3 discovery control plan.

PARTIES AND SERVICE

2. Plaintiff Chloe M. Love is an Individual whose address is 12243 Mesa Verde Dr., Austin, TX 78737.
3. The last three numbers of Chloe M. Love's driver's license are 403.
4. Defendant Avrey Anderson is an Individual and the current officeholder of HAYS COUNTY DISTRICT CLERK.
5. Avrey Anderson resides in Hays County and may be served with a citation at his place of employment at the Hays County District Clerk's Office located at 712 S. Stagecoach Trail, Suite 2211, San Marcos, Texas 78666 in HAYS COUNTY, TEXAS.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to Section 87.015 of the Texas Local Government Code.
7. Venue in Hays County is proper in this cause under Tex. Local Gov't Code § 87.015 because the relator resides in Hays County, has been a resident of this State for more than six months, and the Defendant resides and is an officer subject to removal in Hays County.

STANDING

8. Pursuant to Section 87.015(b) of the Texas Local Government Code, a petition for removal of an officer, such as a District Clerk, may be filed by any resident of the county in which the petition is to be filed and has resided within the State of Texas for at least the last six months prior.

FACTS

9. On January 1, 2023, Defendant was sworn into office as the District Clerk of Hays County at the age of 19.
10. Since taking office, Defendant has failed at least three times to provide the

record to the Third Court of Appeals within the time allowed by law. On March 16, March 20, and September 5, 2023, the District Clerk's Office filed in the Third Court of Appeals, requesting additional time to provide the records on appeal and thereby delaying the appellate process. Myriad deleterious effects result from the delay of appeals. Justice delayed is justice denied.

11. Since taking office, Defendant has repeatedly failed to deliver jury summons. The absence of jury pools postponed numerous trials, adding to the backlog of pending cases, increasing the Hays County jail population awaiting trial, wasting Hays County taxpayer money, and potentially violating criminal defendants' due process rights.
12. Since taking office, Defendant has repeatedly failed to timely deliver subpoenas. This has many of the same effects as the jury summons failure described above and further risks the potential destruction of evidence.
13. Since taking office, Defendant has consistently failed to timely file grand jury indictments. This resulted in more delays in the courthouse, which is already subject to the Defendant's dilatory actions, further compounding the problems detailed in this Petition.
14. Since taking office, Defendant has repeatedly failed to send temporary protective orders to the appropriate law enforcement entities. The potential for harm resulting from this failure is grave. Temporary criminal protective orders are issued to protect people where "there is a clear and present danger of sexual assault or abuse, indecent assault, stalking, trafficking, or other harm."¹ The failure to deliver temporary protective orders to the appropriate law enforcement entities placed protected persons at unnecessarily increased risk.
15. Since assuming office, Defendant has consistently issued payment orders to the Hays County Treasurer's Office that have failed to conform with the

¹ Tex. Code Crim. Proc. Ann. art. 7B.002 (West)

orders of the District Court. This resulted in both overpayments and underpayments by numerous defendants, the total number of which is unknown at this time.

16. Since taking office, Defendant has consistently failed to disburse restitution payments in a timely manner. The Hays County Treasurer's Office has and continues to regularly notify the Defendant that his payment orders are not in compliance with the orders of the District Court. However, these warnings and notifications are consistently ignored.

CAUSES OF ACTION

I. INCOMPETENCY

17. Relator re-alleges and incorporates paragraphs 1 through 15 above as though fully set forth herein.
18. Pursuant to Texas Local Government Code § 87.013(a)(1), an officer may be removed for incompetency. Under § 87.012(6), the District Clerk is an officer subject to removal under this subchapter. Incompetency, in relevant parts, is defined in § 87.011(2) as "(A) gross ignorance of official duties" or "(B) gross carelessness in the discharge of those duties."
19. The regular failure to meet deadlines falls squarely within the definition of incompetency. Once an appeal has been filed and the record has been ordered, it is the District Clerk's responsibility to timely provide that record to the Court of Appeals.
20. Defendant's incompetence is further evidenced by his repeated failure to deliver jury summons. Issuing and ensuring delivery of jury summons is the responsibility of the District Clerk.
21. The failures to file subpoenas in a timely manner and grand jury indictments demonstrate Defendant's gross carelessness. The filing of

subpoenas and grand jury indictments are core ministerial duties of a District Clerk.

22. The failure to provide the appropriate law enforcement entities with temporary protective orders is gross carelessness. Indeed, providing temporary protective orders is one of the most critical and time-sensitive duties of the District Clerk.
23. The failure to issue payment orders in compliance with District Court orders is incompetence. This is the definition of a ministerial duty in that the Defendant is required to simply obey the District Court in drafting a payment order in conformity with what was ordered by the District Court Judge.
24. Finally, the failure to disburse restitution payments in a timely manner is incompetence. It is the Defendant's duty to ensure that these payments are both made and in a timely manner.

II. OFFICIAL MISCONDUCT

25. Relator re-alleges and incorporates paragraphs 1 through 24 above as though fully set forth herein.
26. Pursuant to Texas Local Government Code § 87.013(a)(2), an officer may be removed for official misconduct. Under § 87.012(6), the District Clerk is among one of the officers subject to removal under this subchapter. Official Misconduct, as relevant, is defined in § 87.011(3)(A) as "an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law."
27. The Hays County Treasurer's Office has and continues to regularly notify the Defendant that his payment orders do not comply with the orders of the District Court. This constitutes an intentional and knowing refusal to carefully and effectively carry out the orders given to him by the District Court.
28. The systemic failure to provide temporary protective orders to the

appropriate law enforcement entities and the refusal to remedy the issue constitutes official misconduct.

JURY DEMAND

29. Pursuant to § 87.018 of the Texas Local Government Code, a jury trial is hereby demanded.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the State of Texas, through Relator Chloe M. Love, respectfully prays that the Defendant be cited to appear and answer herein and that upon a hearing of the causes by a jury, an order removing him from office be entered; allocating costs of court according to law; and granting such other and further relief to which Relator or the State of Texas may be entitled at law or in equity.

Respectfully submitted,

Gunter, Bennett & Anthes, P.C.
600 W. 9th Street
Austin, TX 78737

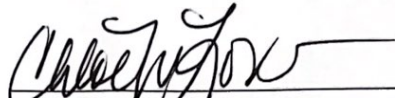


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STATE OF TEXAS §
COUNTY OF TRAVIS §

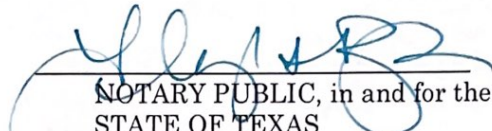
BEFORE ME, the undersigned authority, on this day, personally appeared CHLOE M. LOVE, who is by and duly sworn, upon oath, says:

My name is CHLOE M. LOVE, AND I am the Relator in the above Original Petition to Remove the Hays County District Clerk from Office and Jury Demand. I have read the above petition, and each fact stated herein is accurate to the best of my knowledge and belief.

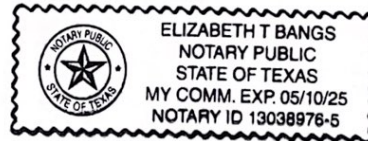


CHLOE M. LOVE, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 29th day of September, 2023.



NOTARY PUBLIC, in and for the
STATE OF TEXAS





600 WEST NINTH STREET
AUSTIN, TEXAS 78701

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September 29, 2023

Avrey J. Anderson
Hays County District Clerk
712 S. Stagecoach Trail
Suite 2211
San Marcos, Texas 78666

RE: The State of Texas
Ex Rel. Chloe M. Love
vs.
Avrey J. Anderson

ANTI-SPOLIATION NOTICE

Dear Mr. Avrey Anderson:

I am writing to ask for your immediate action to preserve information and evidence that may prove crucial to the above-referenced matter. Should you retain counsel, please have him or her contact me immediately.

Critical evidence in this matter exists in the form of electronic data contained in the computer systems (including but not limited to a personal computer, laptop, tablet and/or any external drives associated with said computer systems) and telephone systems (including but not limited to cellular phones, smartphones, text messages, photos captured on said

cellular, and/or smartphones, videos captured via cellular phone and/or smartphone, voice recordings captured via cellular phone and/or smartphone). This is notice and demand that the evidence identified below must be immediately preserved and retained until further written notice from the undersigned.

This request is essential, as a paper printout of text contained in a computer file does not entirely reflect all information contained within the electronic file. Additionally, the continued operation of the computer systems identified herein will likely result in the destruction of relevant evidence because electronic evidence can be easily altered, deleted, or otherwise modified. The failure to preserve and retain the electronic data outlined in this notice constitutes spoliation of evidence and could result in legal claims for damages and/or evidentiary and monetary sanctions.

1. For the purposes of this notice, "Electronic Data" shall include, but not be limited to, all audio and video recordings, image files, text files (including word processing documents), spreadsheets, e-mail files, and information concerning e-mail (including logs of e-mail history and usage, header information and "deleted" files), image files, databases, calendar and scheduling information, computer system activity logs, and all file fragments, metadata and backup files containing Electronic Data, cellular telephones, text messages, and instant messaging.
2. Please preserve and retain all Electronic Data generated or received by Avrey Anderson and/or any person working on his behalf or at his direction since January 1, 2023.
3. Avrey Anderson must refrain from removing or altering fixed or external drives and media attached thereto, standalone

personal computers, network workstations, and notebook and/or laptop computers operated or accessed by Avrey Anderson, regardless of ownership.

4. Avrey Anderson must retain and preserve all backup tapes or other storage media, whether online or offline, and refrain from overwriting or deleting information contained thereon, which may contain Electronic Data identified herein.
5. Items of particular interest currently include, without limitation:
 - a. Any communications and/or records of communications referencing or concerning providing the Third Court of Appeals with any documents.
 - b. Any communications and/or records of communications referencing or concerning jury summons or subpoenas.
 - c. Any communications and/or records of communications referencing or concerning grand jury indictments.
 - d. Any communications and/or records of communications referencing or concerning providing or failing to provide the appropriate law enforcement entity with temporary or permanent protective orders.
 - e. Any communications and/or records of communications referencing or concerning the drafting of payment orders.
 - f. Any communications and/or records of communications referencing or concerning disbursement of restitution payments.

Thank you for your prompt attention to this matter. If you have any questions or concerns, please do not hesitate to contact my office.

Very Respectfully,

A handwritten signature in cursive script that reads "Thomas M. Just". The signature is fluid and elegant, with a prominent initial 'T' and 'J'.

Thomas M. Just

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Sheliah Merlino on behalf of Thomas Just

Bar No. 24113382

sheliah@gbafirm.com

Envelope ID: 80103905

Filing Code Description: Petition

Filing Description: Original Petition to Remove Hays County District Clerk from Office and Jury Demand

Status as of 9/29/2023 4:03 PM CST

Associated Case Party: AvreyJamesAnderson

Name	BarNumber	Email	TimestampSubmitted	Status
Avrey Anderson		inventor0520@gmail.com	9/29/2023 2:50:37 PM	SENT