

CASE NUMBER 23-2535

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
EX REL. CHLOE M. LOVE	§	
	§	
VS.	§	207TH JUDICIAL DISTRICT
	§	
AVREY J. ANDERSON	§	
IN HIS OFFICIAL CAPACITY AS DISTRICT	§	HAYS COUNTY TEXAS
CLERK OF HAYS COUNTY TEXAS	§	

STATE'S MOTION TO RECUSE

To the Honorable Judge of Said Court:

Now comes Kelly Higgins, the duly elected Criminal District Attorney of Hays County, Texas, and makes this Motion to Recuse himself and any other Assistant Criminal District Attorney of Hays County, Texas as the Attorney for the State in this cause and in support thereof would show the Court the following:

I

Texas Local Government Code, Title 3, Subtitle B, Chapter 87, Sec. 87.018 (d) provides that “The County Attorney shall represent the state in a proceeding for the removal of an officer except as otherwise provided...” In Hays County, this duty falls to the Criminal District Attorney, an office currently held by Kelly Higgins (CDA Higgins).

II

CCP 2.07 (b-1) provides that a prosecuting attorney who is not disqualified may request the court to permit recusal for good cause.

III

CDA Higgins would show the court that he is currently an adverse party to Respondent Avrey Anderson in pending litigation and that Avrey Anderson did file a petition to remove CDA Higgins from office, which petition is still pending. (*Rogers v. State* 956 S.W. 2d 624, 625 (Tex. App.-Texarkana 1997 pet. ref’d)

III

CDA Higgins believes that he and employees of his office may be material witnesses in proceedings rising from the petition to remove Mr. Anderson. Additionally, CDA Higgins is currently in possession of material evidence in the present cause, and would not be able to sponsor that evidence as the prosecuting attorney, nor would other lawyers working within the CDA Office be able to sponsor said material evidence. (*Rosenbaum*, 852 S.W. 2d at 525)

IV

In order to ensure due process, and to avoid any appearance of impropriety or personal animus in this cause, given its implications for governance in Hays County, CDA Higgins believes that he and his office should be recused from prosecuting the present cause in the interest of justice.

V

CDA Higgins believes that the court should appoint an Attorney Pro Tem to prosecute the present cause. CDA Higgins undertakes to cooperate as requested with such Attorney Pro Tem in the prosecution of the present cause, and to make staff and lawyers working under CDA Higgins likewise available to the prosecution.

VI

CDA Higgins does not bring this motion for delay or for any undue purpose, but rather to ensure the proper and efficient administration of justice in this cause, and to avoid any appearance of impropriety.

PRAYER

Wherefore, premises considered, Movant Kelly Higgins, Criminal District Attorney for Hays County, prays this Honorable Court to recuse him and all Assistant District Attorneys employed within the Hays County Criminal District Attorney's Office in this matter, and further prays that this Honorable Court appoint an Attorney Pro Tem to prosecute this matter in accordance with Texas law.

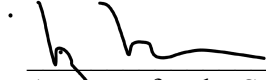
Respectfully submitted,



Kelly Higgins
Criminal District Attorney
Hays County, Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was e-filed with the court on this the 2nd day of October, 2023



Attorney for the State

Automated Certificate of eService

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Status as of 10/3/2023 3:29 PM CST

Associated Case Party: ChloeMLove

Name	BarNumber	Email	TimestampSubmitted	Status
Thomas Just	24113382	thomasjust@me.com	10/2/2023 5:08:52 PM	SENT

Associated Case Party: AvreyJamesAnderson

Name	BarNumber	Email	TimestampSubmitted	Status
Avrey Anderson		inventor0520@gmail.com	10/2/2023 5:08:52 PM	SENT
Avrey Anderson		avrey.anderson@co.hays.tx.us	10/2/2023 5:08:52 PM	SENT

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