

Affidavit of Jeffrey F. Duke

I, Jeffrey F. Duke, am greater than 18 years of age, competent to testify, and I do testify under oath as follows:

1. I am the attorney of record representing Alan Eppers in *Ex Parte Brandon James Eppers, a child*, Cause No. 09-06-18,386-CV, Robertson County District Court.
2. I first began to work on this case in June of 2009.
3. Mr. Eppers came to my office in the latter part of May 2009 and explained to me that he sought relief from the court because his ex-wife, Hollie Eppers, had denied him visitation with his son for more than a year, directly violating the divorce decree. During that period, he indicated that the court would not enforce the divorce decree's visitation requirement. He had not seen his son Brandon since April of 2008. He also informed me that he currently had an attorney representing him and that he was very concerned because it had been over a year since he had seen his son and asked if I could help him.
4. I agreed to help Mr. Eppers and became his attorney of record in June of 2009.
5. In that same month there was a hearing in Robertson County where we established temporary orders to get Mr. Eppers back into his son's life; at this hearing we set a status hearing for the last week of July to see how Mr. Eppers visitation was going.
6. At the Status Hearing in July, it was reported that every thing was going well with Brandon and his father, the court set a final hearing, to reestablish the full visitation rights granted in the divorce decree, for September 28, 2009.
7. On September 28, 2009, Mr. Eppers and I drove to Franklin to attend what was supposed to be the final orders hearing before Judge Robert Stem.
8. Before the hearing, opposing counsel Bryan F. Russ, Jr., directed my client and me into a jury room to discuss pending modifications for child support, after our discussion and resolution to the child support matter. Much to my surprise Mr. Russ

confronted Mr. Eppers about his participation in *Roy E Erwin, et al. v. Bryan F Russ, Jr., et al.* Case No. 4:09-cv-1894 (S.D. Tex.) ("Federal Case"). Before that time, I was not aware of Mr. Eppers involvement in this Federal Case, and I do not represent Mr. Eppers in this Federal Case. Mr. Russ began asking Mr. Eppers about facts concerning Mr. Eppers's ex-wife and her relationship to Mr. Russ's wife (as alleged in the Federal Case).

9. At this time I demanded to know what was going on and Mr. Russ pointed out that Mr. Eppers was named as a plaintiff in a federal lawsuit and that the judge who was about to hear his case, *i.e.*, Judge Stem, had been named as a co-conspirator in this Federal Case. Mr. Russ told Mr. Eppers he wanted him to give a statement on the record that he, *i.e.*, Mr. Eppers, had not authorized Ty Clevenger to file the Federal Case on his behalf.
10. We next were directed into Judge Stem's chambers for a hearing on *Ex Parte Brandon James Eppers*. Near the end of the hearing, Judge Stem directed Mr. Russ to prepare an order reestablishing Mr. Eppers's visitation rights. Following the hearing, Judge Stem convened what essentially was a deposition of Mr. Eppers regarding his involvement – or lack of involvement – in the Federal Case. As reflected in the transcript, the Federal Case had no relevance to *Ex Parte Brandon James Eppers*.
11. All of Mr. Russ's law partners, *i.e.*, James H McCullough, Molly Hedrick, and Bryan F. "Trey" Russ, III, were present in the room during the deposition, as was Larry Catlin, the attorney ad litem for Brandon Eppers. Though Mr. McCullough, Ms. Hedrick and Trey Russ are not involved in *Ex Parte Brandon James Eppers*, they are defendants in the Federal Case.
12. Bryan Russ asked Mr. Eppers a series of questions about the Federal Case, and Trey Russ whispered questions for Bryan Russ to ask Mr. Eppers
13. The day after the hearing, Judge Stem called to let me know he was sending me a transcript of the hearing. He encouraged me that it was my duty to file a bar grievance against Mr. Clevenger. The transcript was sent free of charge, and I am not sure who paid for

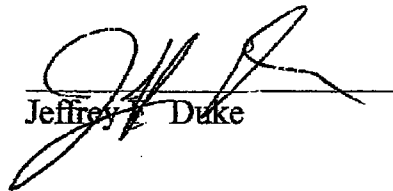
it. I have never before received a free transcript, much less an unsolicited free transcript.

14. Shortly thereafter, I received a phone call from Brian Schwartz, an investigator for the Brazos County District Attorney's Office. Mr. Schwartz informed me that he was investigating Mr. Clevenger, and he said he wanted permission to speak with Mr. Eppers. Mr. Schwartz later informed me that he was investigating Mr. Clevenger for barratry, and that the case had been referred from Robertson County
 15. Judge Stem called me several times between September 29, 2009 and October 22, 2009. He said that he wanted to make sure that I had received the forwarded transcript of the September 28, 2009 hearing, he also informed me that he had forwarded the transcript to the State Commission on Judicial Conduct in order to rebut the judicial complaint filed by Mr. Clevenger. He then again advised me that I had a duty to file a bar grievance against Mr. Clevenger.
 16. I told Judge stem that my duty was to my client and that I would not do anything until I had a chance to discuss my clients involvement with Mr. Clevenger. He agreed, but also wanted to make sure my grievance against Mr. Clevenger was in the works
 17. I now have discussed my client's, Mr. Eppers, involvement in the above mentioned federal case and have come to understand why he was named a plaintiff. Mr. Eppers informed me that he had spoken with Mr. Clevenger and had intended on joining the Federal Case, he mistakenly thought the he had to have signed a contract with Mr. Clevenger before he could be named as a plaintiff. He told me he planned on telling me about this after our final hearing.
 18. I have also spoken with Mr. Clevenger about this matter and I am satisfied with the explanation that he gave me regarding my clients involvement in the above mentioned Federal Case
 19. After learning the facts of the relationship between Mr. Eppers and Mr. Clevenger that transpired before the September 28, 2009 hearing, and given the facts alleged in the federal lawsuit, coupled with the subsequent conversations, submitting this statement makes me uncomfortable, because Bryan Russ still had not produced – and Judge Stem still had not signed – an order from the
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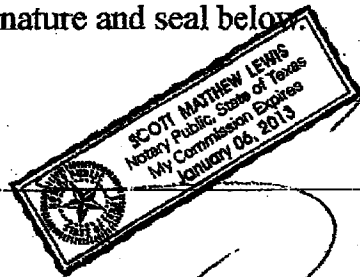
September 28, 2009 hearing As of this date, Judge Stem still has not signed an order from the September 28, 2009 hearing. Although, Judge Stem has treated me with respect and kindness, I must wonder whether Judge Stem is waiting to sign an order until I file a bar grievance against Mr. Clevenger.

20. I can not in good faith file a bar grievance against Mr. Clevenger. I do not intend to file such a grievance.
21. I would also like to add, that this is the first case that I have ever had before Judge Stem, a client opposed to Bryan Russ, and I did not know Mr. Clevenger until recently.
22. I regret that I was put in the position to have to make this statement. However, I feel it is my moral and legal obligation.

As witnessed by my signature below, all the contents of this affidavit are true and correct based on my own personal knowledge.


Jeffrey Duke

On this 26TH day of October, 2009, Jeff Duke appeared before me and testified under oath that the foregoing affidavit was true and correct, based on his own personal knowledge, as witnessed by my signature and seal below.



10/26/09