REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 13-11-19452-CV

IN RE: TY CLEVENGER SUBPOENA AND DEPOSITION NOTICE	)	IN THE DISTRICT COURT OF
	)	ROBERTSON COUNTY, TEXAS
	)	82ND JUDICIAL DISTRICT

AND

TRIAL COURT CAUSE NO. 13-11-19453-CV

IN RE: TY CLEVENGER SUBPOENA	)	IN THE DISTRICT COURT OF
	)	ROBERTSON COUNTY, TEXAS
	)	82ND JUDICIAL DISTRICT

AND

TRIAL COURT CAUSE NO. 13-11-19454-CV

IN RE: TY CLEVENGER SUBPOENA AND DEPOSITION NOTICE	)	IN THE DISTRICT COURT OF
	)	ROBERTSON COUNTY, TEXAS
	)	82ND JUDICIAL DISTRICT

AND

TRIAL COURT CAUSE NO. 13-11-19463-CV

IN RE: TY CLEVENGER SUBPOENAS	)	IN THE DISTRICT COURT OF
	)	ROBERTSON COUNTY, TEXAS
	)	82ND JUDICIAL DISTRICT

TESTIMONY OF BRYAN F. RUSS
AND JUDGE ROBERT STEM
IN RE ALL MOTIONS TO QUASH
AND
ALL MOTIONS FOR PROTECTION

On the 7th day of January, 2014, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable J.D. Langley Judge presiding, held in Franklin, Robertson County, Texas:

Proceedings reported by Machine Shorthand.

COPY

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(The following contains the requested excerpts of testimony)

MR. BOSTWICK: Your Honor, we would call Mr Bryan Russ.

THE COURT: All right

Mr. Russ.

BRYAN F RUSS,

was called as a witness by and on his own behalf, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOSTWICK:

Q Mr Russ --

MR BOSTWICK: May I proceed, Your Honor?

THE COURT: Yes, sir.

Q (By Mr Bostwick) Mr Russ, will you introduce yourself to the Court, please --

A My name is Bryan Russ, Jr. I'm from Robertson County, Texas, born and raised, and I practice law here

Q. And how long have you practiced law in this area?

A. It will be 31 years in May.

Q. Okay. During the course of that -- and -- and I believe your father was a lawyer here as well?

A. My -- my dad was an attorney here from 1950

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until the time that he died in 1996.
Q. And your son -- one of your sons is now practicing with you?
A. That is true. My son Bryan Russ, III
Q. Okay And you have another partner as well, Jimmy McCullough?
A. I do.
Q And y'all were all defendants in a suit that Mr. Clevenger filed against you in Federal Court; is that correct?
A. We were, and I think Mrs Hedrick also works with us and she was named too.
Q. And during that case there was discovery served on us; correct?
A. Yes, sir.
Q And did you produce documents related to the Erwin case allegation --
A My office spent a number of hours gathering the documents that were responsive. I believe it was 21 boxes that we delivered to your office in Waco, Texas.
Q Okay And there they -- and were those boxes in my office for a number of months?
A. Your boxes were there for many months from the time that we gave them to you until the time that the

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Fifth Circuit rendered their -- their decision
Q And to your knowledge did Mr. Clevenger ever avail himself of the opportunity to review those documents?
A. To my knowledge, he did not.
Q. You've been asked -- or Mr Clevenger has -- and I -- I don't say slightly -- has impuned -- has impuned you, your firm, your partners, Judge Stem and Judge Smith; correct?
A I think that's an understatement, yes
Q. And he has filed grievances with the State Bar against you?
A Repeatedly.
Q. Have any of those grievances been sustained?
A. Not a single one of them.
Q And that would be in addition to the lawsuit he filed against you and the other members of your firm?
A. That would be correct
Q. Which was dismissed?
A Yes, sir
Q. By Judge Smith?
A. Yes, sir.
Q And Judge Smith -- did Judge Smith sanction Mr. Clevenger for the filing of that case?

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A. I believe that he did
Q. And was that case appealed to the Fifth Circuit?
A. It was.
Q And did the Fifth Circuit affirm Judge Smith's Judgment?
A They -- they did.
Q Now among the things that you have been accused of is your relationship with Judge Stem; correct?
A Among many others, yes.
Q And have you known Judge Stem before the Erwin case?
A Absolutely.
Q How did you know Judge Stem?
A. I met Judge Stem in 1986 when he was sworn in as a judge. I had the privilege of trying the very first civil suit in front of him. He's been the presiding judge in Robertson and Falls County, the 82nd Judicial District, since then.
I practice a whole lot in the 82nd Judicial District and that's how I know him.
Q Have you had any kind of financial relationship with him?
A Never.

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Q Did your firm handle a matter -- an easement matter that did not result in litigation for Judge Smith (sic)?
A For Judge Stem?
Q I'm sorry I misspoke. Judge Stem.
A. I -- I handled an easement issue for -- for Judge Stem against his brother.
Q. Okay. And -- and approximately when was that? How long ago was that?
A. I -- over ten years ago.
Q. Okay Have you had any other either financial or professional relationship outside of what every lawyer that appears before Judge Stem has other than what you've just said?
A I have -- I have absolutely never had any financial relationship with Judge Stem or any other judge That's the only matter that I have handled for -- for him.
Q. Okay.
A. And it was not -- did not result in litigation at all
Q. Okay Have you ever had any -- anything other than a professional relationship with Judge Smith?
A. I have never had anything but a professional relationship with Judge Smith

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Q Have you appeared before Judge Smith from time to time?
A. I have
Q As the sitting judge in the Western District, Waco Division of the Federal Court System?
A. That is -- that is accurate
Q. Okay. Did you have any conversations or communications at all with Judge Smith about the Erwin case?
A. I -- I did not The last time I had any conversation with Judge Smith was years ago when I filed a suit against Sears Roebuck and he poured me out and that was a professional conversation on the record. Well, it wasn't on the record He called me up to the bench and said I lose, so.
Q. Okay You said that you practice to a sig -- to a large extent maybe -- is the majority of your practice in Robertson and Falls County?
A I would say that's accurate, yes.
Q. Okay Do you communicate professionally with the Court and the Court's clerk in Robertson County and Falls County?
A. I communicate professionally almost daily with Mrs. Rekieta. She's the Court Coordinator where we have settings, we have hearings, we submit orders,

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things of that nature
I communicate professionally with Judge Stem when he's on the bench on the record.
Q. And these would involve over the period of time that you've been practicing in these two counties and with those two court individuals thousands and thousands of communications?
A I couldn't even begin to count them. Yes. It -- it happens daily
Q. Okay. Would it be burdensome to have to produce all of those communications over all those many years?
A. I -- I could not do it I mean, yes, it would burdensome I -- there's no -- I -- I can't do it
MR. BOSTWICK: Your Honor, I pass the witness.
MR. SHEPHERD: No questions.
THE COURT: Mr. Clevenger.
MR. CLEVENGER: Thank you, Your Honor.

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CROSS-EXAMINATION
BY MR. CLEVENGER:
Q. Did you have any communications with the State Bar about my case, this case, the un -- the case in Collin County that underlies these grievances?
A I had a communication with a lawyer named Daryl Jones who I've never met. It wasn't about the subject matter of the case It was about my Motion to Quash
Q. Okay.
A And that's the only communication I've had with the State Bar
Q. With respect to any of the grievances filed against you, did you have any communications with grievance committee members or anyone in Austin at the State Bar?
A. I did. Not a -- not a committee member. A lawyer for the State Bar named Childers (phonetic) I believe called me to tell me it was going to be dismissed
Q. Was anything else said during that conversation?
A. Not that I know of.
Q. Regarding your attorney/client relationship with Judge Stem --

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A Well, let me -- let me back up. I did ask Mr Childers how I could prevent this in the future.
Q And what did he say?
A He said that I probably could not
Q With respect to your attorney/client relationship with Judge Stem, how much were you paid to represent him?
A I wasn't paid anything.
Q. So you did it pro bono?
A. I did.
Q. Did you disclose that to any of the parties that were appearing against you in front of Judge Stem?
A. I did not I have -- I can't disclose
Q Why can you not disclose it?
A I can't disclose who I represent
Q. And why is that?
A. I believe it's prejudiced.
Q. And why is that?
A Rules of Evidence say there's an attorney/client relationship It's not my privilege to -- to waive.
Q. Where is there a rule or a law that says you are prohibited from disclosing the fact that you are representing the judge in front of whom you are --
A. I don't think that I can disclose who I

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represent to anybody. That's my reading of the rule
Q. Which rule in particular do you refer to?
A Whatever the rule is under the Rules of Evidence under the attorney/client relationship and also under the disciplinary rules.
I don't believe it's my privilege going around telling people who I -- who I represent and who I don't.
Q Well, you told the Court about it today, didn't you?
A. Yes.
Q. So what's the difference?
A He's a judge You're not
Q Who is a judge and I'm not?
A. Judge Langley is the judge. I told him that I represented -- I have represented Judge Stem in one easement matter, but that's it.
Q. Did Judge -- am I incorrect, did Ju --
A I'm -- no, sir, but I'm under oath --
Q Well --
A -- to -- to answer your question.
Q. -- please -- please let me finish my question
A Sure.
Q. Did Jud -- Judge Langley just order you disclose the fact that you represent Judge Stem or did

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he --
A. He did not --
Q Let me finish the question please. Or did you disclose that voluntarily?
A I disclosed that I represented him voluntarily, but I don't think I can go around disclosing it.
Q So if you -- your attorney asks you publicly and it's to your advantage to disclose that you represented Judge Stem, you can answer?
A I believe in the contexts of this hearing I can answer that question, yes
Q But you under any other context such as when you're appearing in front of Judge Stem and there's an opposing party who might object to your conflict, you don't think you can disclose it?
A. I do not.
Q And again what rule is that that you think --
A That's my reading of the DR's and the Rules of Evidence
Q. Are you aware of anyone else that shares your reading of the Rules --
A. No, sir, I haven't done any research in who shares my reading
Q. So this is just some kind of opinion you threw

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together up here on the stand?
A No, sir, I haven't thrown it together That's my reading --
MR. BOSTWICK: Your Honor, I'm going to object. This is -- that's harassment.
THE COURT: Objection on the grounds of argumentativeness will be sustained
Q (By Mr. Clevenger) So to be clear you don't think you can disclose who your clients are except under what circumstances?
A I don't think I can disclose who my clients are if -- unless I'm ordered to by a Court, unless the client waives the privilege, or under circumstance such at this when -- when you're asking me -- me to produce documents, and I'm simply telling you that I did handle an easement matter. That was -- that's it
Q And again --
A And I'm not telling you anything other than that unless Judge Langley orders me to.
Q But again you would agree with me you just voluntarily testified as to your attorney/client relationship --
A. I just voluntarily testified that I handled and easement matter over ten years ago.
Q With Judge Stem?

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A. For Judge Stem
Q And nobody compelled you to do that?
A. No.
Q. You reached a -- a settlement agreement with the Erwins, did you not?
A I believe that we did.
Q. It was in excess of $900,000, was it not?
A. I have no idea, and I'm -- even if it -- even if I knew, I'm not going to tell you because I believe it's to be confidential.
Q And on what basis do you think you should not have to testify to that?
A. Because I --
MR BOSTWICK: And I'm going to object at this point because there is a -- a privileged settlement -- Confidential Settlement Agreement and the details of that have no relevancy whatsoever to this.
MR CLEVENGER: Your Honor, they opened the door. They're the ones that opened all this stuff about the Erwin case. He voluntarily testified about his relationship with Judge Stem.
THE COURT: Objection sustained.
Q (By Mr. Clevenger.) Would you agree with me, Mr Russ, that my -- some of my clients, the Erwin Heir Majority as they were referred to were sanctioned

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$9,375 by Judge Smith?
A Whatever that Order says.
MR. CLEVENGER: Your Honor, if I may approach I'll provide a copy to the witness?
THE COURT: (Judge Langley nods head)
Q. (By Mr. Clevenger.) I believe it's on Page 7
A. How much did you say?
Q. I believe at the bottom it says $9000,375,000 (sic) -- $9,375?
A What I'm reading says "one-half the amount or $12,500 will be paid by the he -- the Erwin Heir Majority, Plaintiffs, and Clifton Muzyka, so forth," and then it says, "three-fourths of that amount, $9,375 will be paid by the Erwin Heir Majority."
Q Right. Could you read that next sentence on the bottom of Page 7 onto Page 8?
A. "-- to the following Defendants: Bryan Russ, Jr.; James H McCullough; Palmos, Russ, and McCullough, L.L.P.; Nestor Leamon; LK&P, L L C.; Oaks & Diamonds, L L.C ; Deminimus Management L L C ; Velnon L L.C.; Flare Royalties, L.L.C.; Flare Royalties L P ; and Dona Harris.
Q. And isn't it true, Mr. Russ, that every version of the federal lawsuit explicitly stated that those Plaintiffs were not bringing claims against you?

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MR. BOSTWICK: Your Honor, I'm going object at this point. This is exactly what I have suggested was the problem with the request to depose. He wants to go back and ask why Judge Smith or what Judge Smith said in an Order The Order speaks for itself
Mr Russ -- neither Mr Russ nor any of his partners know any more about that Order than Mr. Clevenger does. In addition to that, the Order speaks for itself and -- and simply reading what the Order says brings no clarity nor any reason that these people ought to be deposed about Mr. -- or Judge Smith's Order, and we would object in so much that this is just not relevant to anything currently before this Court
MR. CLEVENGER: Your Honor, I am asking him to concede that my clients did not sue him, period That's all I'm asking. It's a matter of fact.
They put him on the witness stand. He should be able to answer whether or not my client sued him.
THE COURT: The question as it was originally framed attempts to interpret the meaning of the Order and it's applicability to parties to the lawsuit, does it not?
MR CLEVENGER: Your Honor, I can rephrase

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I'm just wanting to ask him point blank whether or not the Erwin Heir Majority Plaintiffs did in fact sue them or whether or not they said they were not suing him.
THE COURT: How is that relevant to what I've got to decide?
MR CLEVENGER: Your Honor, I'm just trying to show that there is grounds to go in front of a jury and say that the allegations from Judge Smith are not true, period.
THE COURT: Well, that's a collateral attack on the Judgment.
MR. CLEVENGER: It is certainly but permissible under these circumstances This was not decided by a jury. It was decided by Judge Smith and under Neely (phonetic), I'm able to argue to the jury Judge Smith was just plain wrong.
THE COURT: Objection sustained
Q. (By Mr. Clevenger.) Mr. Russ, isn't it true that before hearings you and members of your firm routinely go into Judge Stem's chambers with no one else?
A That's not true at all
Q. Have you ever gone into his chambers before with no one else around?
A Before a hearing?

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Q. Sure.
A No, sir.
Q. Never done it?
A. In relationship to a hearing? I never --
Q. I'm not saying just -- isn't it -- I'm not saying what the subject matter of the conversation is. I'm saying isn't it true that you and members of your firm routinely go into his chambers without anyone else except perhaps Ms Rekieta?
A. To say good morning?
Q I don't know what you're saying
A Sure I've gone in there, Mr Clevenger, and I have shook -- shook the man's hand and said good morning, but if you're implying that we would talk about something that's going to be heard that day, the answer is unequivocally no.
Q. So you're denying that there were ever any ex parte --
MR. BOSTWICK: Your Honor, I'm going to object at this point This has nothing to do with the issues before this Court today
It is utterly irrelevant, and it is exactly the sort of questioning that has nothing do with the sanctions that are being sought against Mr. Clevenger and is just a continuing harassment and unfounded

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suspicion of a relation -- professional relationship that a lawyer has with a sitting judge

MR. CLEVENGER: Your Honor, what Mr Bostwick wants is a one way street here where he can put the witness stand and ask him a question that he thinks suits his purposes but then I'm not allowed to cross-examine or ask any other questions He's the one that opened up the this line of testimony

THE COURT: You're on a fishing expedition. You're asking me to order him to discuss what he's ever done in his entire history in the relationship between him and a sitting district judge

MR. CLEVENGER: I'm not, Your Honor That's not what I'm asking.

THE COURT: That's what your question just asked

MR. CLEVENGER: Perhaps I didn't phrase it correctly --

THE COURT: We're not taking a deposition here today. I have to decide four motions that are presently before the Court on whether or not you have an essential need to take the deposition of these four witnesses who are more than a hundred miles away from the Courthouse in Collin County; right?

MR. CLEVENGER: Yes, Your Honor

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THE COURT: How does that question have anything to do with those four motions?

MR CLEVENGER: It goes to the heart of it I'm trying to show that there are grounds for seeking relevant information I mean again --

THE COURT: We're not in a recusal motion on Judge Stem.

MR. CLEVENGER: I'm not trying to recuse Judge Stem, Your Honor.

THE COURT: In fact all your recusal motions as I understand it were denied.

MR. CLEVENGER: They were all granted, Your Honor, but that's not why I'm here.

THE COURT: Oh.

MR. CLEVENGER: Your Honor, I'm just trying to put on a defense to show that there was in fact -- that the -- that the Pleadings in Erwin v Russ were true, this was not some imaginary lawsuit, that there was a legitimate basis for bringing that lawsuit, period.

THE COURT: Then why is their testimony necessary to do that?

MR. CLEVENGER: Because it shows --

THE COURT: Because it was your actions that is an issue, not theirs

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MR. CLEVENGER: Again, Your Honor, this goes to the credibility of Judge Smith. If Judge Smith is saying none of this happened --

THE COURT: You cannot recuse Judge Smith post judgment.

MR CLEVENGER: I'm not trying to recuse Judge Smith I --

THE COURT: You are

MR. CLEVENGER: I'm attacking his credibility in a State Court proceeding in Collin County.

THE COURT: I'm sorry, Mr. Clevenger, the objection is sustained.

MR. CLEVENGER: Then I have nothing further

THE COURT: Do you have anything else?

MR BOSTWICK: Nothing further, Your Honor.

THE COURT: All right.

THE WITNESS: May I be excused, Your Honor?

THE COURT: Yes, sir.

MR SHEPHERD: Your Honor, with the Court's permission, we would call Judge Robert Stem.

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JUDGE ROBERT STEM,

was called as a witness by and on his own behalf, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR SHEPHERD:

Q. Would you tell us your name, please, sir.

A Robert Stem.

Q And what do you do for a living?

A. 82nd District Court Judge.

Q. How long have you been the Judge of the 82nd District Court?

A. 1985.

Q. Do you know Bryan Russ and his partners and his law firm?

A. Yes, I do.

Q Have you ever had any financial relationship with Mr. Russ or his partners or his law firm?

A No

Q Has Mr Bryan Russ ever represented you in any matter?

A. In the easement matter that me made reference to.

Q What year was that in?

A. I believe that was 2003.

Q. Do you know whether in 2003 the Erwin vs. Russ

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case was pending?
A. I don't think so
Q And do you know back in 2003 was this Commission for Lawyer Discipline vs Ty Clevenger case pending?
A. It was not.
Q Do you know Judge Walter Smith?
A. Yes, I do.
Q. Did you ever have any communications with Judge Smith concerning Mr. Clevenger or the Erwin vs Russ case?
A. Absolutely none
Q. Oral or written?
A. Absolutely none in any form or fashion
Q Do you know why Judge Smith ruled the way he did in the Erwin vs Russ case?
A. I do not.
Q. Do you have any idea what Judge Smith's thought processes were when he was ruling in the Erwin vs. Russ case?
A I do not.
Q. Do you know why the State Bar has decided to bring a disciplinary action against Mr. Clevenger?
A. I do not.
Q. Do you know why the State Bar has decided

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allegedly not to bring disciplinary actions against any other lawyers?
A. I do not.
Q. Did you file the grievance with the State Bar that led to the currently pending disciplinary proceeding against Mr. Clevenger?
A. I did not.
MR. SHEPHERD: Pass the witness.
MR. BOSTWICK: I have no questions, Your Honor
THE COURT: Mr. Clevenger?
CROSS-EXAMINATION
BY MR. CLEVENGER:
Q. Judge Stem, you testified that you had no connection -- relationship with Mr. Russ or his firm. He just testified and I believe you did too that he represented you in a -- an easement matter; is that correct?
A. Correct
Q Did -- did you receive those services pro bono?
A. Yes
Q. Did you disclose those to any of the parties that were appearing in front of you in opposition to Mr --

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A No, it made no difference
Q And why is it that it made no difference?
A. It just made no difference, Mr Clevenger.
Q. You don't think it's relevant that you had an attorney/client relationship where you were receiving free services from an attorney appearing in front of you?
A It had no bearing on any pending ligation
Q And you don't think the other lawyers had any right to know about that?
A It had no bearing on any pending litigation. I can assure you that.
Q. So you're testifying to your mental processes?
A No
Q. Well, you just said it had no bearing on any pending litigation.
A. I doesn't.
Q. Have you seen the Affidavit of Mickey Dyson (phonetic) from Conroe?
A It was part of your -- your numerous grievances you filed with the State Commission
Q The State -- you mean the --
A. I've seen it.
Q. The State Commission on Judicial Conduct --
A Yes. Uh-huh.

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Q. You're under investigation right now?
A No, I'm not.
Q Okay
A. You -- you filed another complaint months and months ago, and I've received nothing from them, and I assumed they dismissed it.
Q But you don't know that?
A. No
Q. But again back to Mr Dyson, in his Affidavit he clearly wanted to know about the fact that you had an attorney/client relationship with Mr Russ, didn't he --
A I don't re --
MR. SHEPHERD: -- it's hearsay.
THE COURT: Sustained.
Q (By Mr Clevenger.) Well, let me ask you this, Judge Stem: On what basis do you say that none of the opposing parties or their attorneys have any right to know that you were being represented free of charge by opposing counsel?
A I've already answered that.
MR. CLEVENGER: Objection, Your Honor Nonresponsive.
THE COURT: Overruled.
A It had no bearing on it -- on any liti --

pending litigation
Q. (By Mr Clevenger.) Are you saying it had no bearing because you didn't allow that to influence your decision?
A. No I doesn't influence my decision in any case.
Q And you don't think to third parties or opposing litigants that that creates the appearance of a conflict of interest?
A I explained all of this to the -- to the Commission, the -- the same questions you're asking and they dismissed your claim -- your grievance.
Q. Well, I'm not privy to what you explained to the Commission, so why don't you explain it here?
MR. SHEPHERD: That'S privileged and confidential under the rules governing the Commission on Judicial Conduct --
MR CLEVENGER: Your Honor --
THE COURT: Sustained.
MR CLEVENGER: Your Honor, he opened the door.
THE COURT: We are not going to go into Commission proceedings.
Q. (By Mr Clevenger) All right, then I'm not asking you to tell me what you told the Commission, but

you did not answer my question as to -- and the question was you said you didn't think it had any bearing, you didn't think third parties had a right to know, you didn't think opposing parties had the right to know, and I'm saying on what basis do you make that statement?
A. Irrelevant.
THE COURT: Sustained
MR. CLEVENGER: Nothing further
MR. SHEPHERD: Nothing further, Your Honor
THE COURT: All right.
(This concludes the requested excerpts.)

THE STATE OF TEXAS)
COUNTY OF ROBERTSON)
I, Patricia L. Schulz, Certified Shorthand Reporter #6801 in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; and I further certify that I reported in shorthand the proceedings conducted at the time and place set forth in the caption hereto and that the above and foregoing pages contain excerpts of the hearing and a full, true, and correct transcript of said proceedings.
Certified to on this 31st day of January, 2014

PATRICIA L. SCHULZ
Certified Shorthand Reporter #6801
in and for the State of Texas
Expiration Date: 12-31-15