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**STATE'S MOTION IN SUPPORT OF ITS SUBPOENA FOR THE E-MAIL
COMMUNICATIONS OF JUDGE NATALIA CORNELIO**

The State's subpoena is necessitated by the mysterious circumstances surrounding two missing *ex parte* motions that were considered and granted by Judge Cornelio. On June 26, Judge Cornelio entered an order granting Haskell's "Ex parte Request for Bench Warrant." *Ex. 2, June 26 Order*. On July 28, Judge Cornelio entered an order granting Haskell's "Ex parte Motion to Order Harris County Sheriff to

1

Transport the Applicant in order to Conduct Neuroimaging Evaluations.” *Ex. 3, July 28 Order.*

The June 26 and July 28 orders grant motions purportedly presented to Judge Cornelio on June 17. However, the Harris County District Clerk has no record of such motions. Directed by the Presiding Judge to locate file-stamped copies of the June 17 motions, Haskell has come up empty.

One of two scenarios is likely. First, there were so many *ex parte* communications between Haskell and Judge Cornelio that the parties lost track. Second, Haskell’s file-stamped July 29 “Second Ex Parte Motion To Order Harris County Sheriff To Transport The Applicant In Order To Conduct Neuroimaging Evaluations and to Seal The Same” is, in fact, the missing June 17 motion. *Ex. 4, Motion.* Neither of these scenarios would prompt confidence in a reasonable person that Judge Cornelio is unbiased.²

² The State believes the second scenario is the most likely and distressing. In the “Second Ex Parte Motion” Haskell requests the Harris County District Clerk and the Harris County Sheriff Office “be ordered to withhold all information” relating to Haskell’s MRI, and that any of Haskell’s “jail records given to the government’s attorney or law enforcement under subpoena or request do NOT reflect that this procedure was conducted.” *Ex. 4* at 7 (emphasis in original). Put differently, the motion asks Judge Cornelio to direct two county agencies to impair the availability and legibility of governmental record(s).

The timing of the “Second Ex Parte Motion” also raises eyebrows. The motion is undated, but contains a July 29 file-stamp. That is, it is file-stamped the day after Judge Cornelio ordered Haskell transported for an MRI. The State believes the July 29 “Second Ex Parte Motion” was actually presented to Judge Cornelio in June, but not filed with the District Clerk until the eve of Haskell’s July 30 MRI, so as to not raise the possibility of alerting the State. This is consistent with Haskell’s acknowledgement that his transport to the Harris County Jail for a court setting was “imaginary” and “cloak and dagger” for its true purpose – an MRI.

Under controlling law, the State is unquestionably entitled to all non-work product *ex parte* communication between Haskell and Judge Cornelio. *Abdygapparova v. State*, 243 S.W.3d 191, 206-210 (Tex. App.—San Antonio 2007) (pet ref'd). The specter of missing motions that resulted in Judge Cornelio improperly ordering the Harris County Sheriff's Office to create evidence for Haskell via transportation orders necessitates the *in-camera* review of relevant e-mails. Indeed, the State is required to provide particularized facts that, if proven, would be sufficient to justify recusal. TEX. R. CIV. P. 18(a)(4)(C). To do this, it must have access to the entire universe of any pertinent *ex parte* e-mail communications at issue, including attachments such as motions and orders.

Judge Cornelio is not entitled to protect relevant, non-work product, *ex parte* e-mail communications from inspection in the instant recusal proceeding. *Abdygapparova*, 243 S.W.3d at 206-210. This Court has already properly determined that the *ex parte* transportation motions and orders in the District Clerk's files were not work product. The Court of Criminal Appeals was similarly unmoved by Haskell's arguments to the contrary. Indeed, in a similar case, the Eighth District Court of Appeals recently determined that the trial court in a death capital proceeding lacked express authority to enter multiple *ex parte* orders relating to a defendant's jail medical and housing records, as these orders exceeded the scope of permissible *ex parte* communications under *Ake v. Oklahoma* and *Williams v. State. In re State*, --- S.W.3d ---, 2024 WL 5048408 (Tex. App. — El Paso Dec. 9, 2024).

Additionally, the Texas Rules of Judicial Administration contain a carve-out for the matter at issue to permit access to Judge Cornelio's *ex parte* e-mails with Haskell. While judicial work product and drafts are normally exempt from public disclosure, the exemption does not apply when access to records or information is controlled by the Code of Judicial Conduct. *Compare* TEX. R. JUD. ADMIN. 12.3(a)(3) (rules protecting judicial work product do not apply to records controlled by the Code of Judicial Conduct), *with* TEX. R. JUD. ADMIN. 12.3(a)(5) (judicial work product and drafts generally exempt from disclosure).

The Code of Judicial Conduct prevails in the instant matter. Canon 3(B)(8)(e) makes clear that a judge shall only consider an *ex parte* motion "expressly authorized by law" which is not the case in the instant proceeding. *See In re City of Lubbock*, 666 S.W.3d 546, 562-563 (Tex. Crim. App. 2023) ("Neither *Ake* nor *Williams* purports to apply beyond the context of the appointment of experts.").³ Moreover, disclosure of Judge Cornelio's *ex parte* e-mails with Haskell makes sense as matters of policy and common sense. Absent the Rule 12.3(a)(3) exception, a judge could engage in regular *ex parte* e-

³ Examination of Haskell's "Second Ex Parte Motion" underscores this point. Haskell argues that dictum in the majority opinion in *In re UTMB* ("We need not decide whether the trial court could have ordered the requested transportation for expert assistance had the Real Party at Interest first sought prepayment . . . because the Real Party In Interest did not do that in this case"), Judge Slaughter's concurring opinion in *In re UTMB*, and case law from Arizona constituted authority for Judge Cornelio's *ex parte*, sealed order to transport Haskell to a Texas Medical Center MRI facility. *Ex. 4* at 3-4. Dictum, a concurrence, and out-of-state jurisprudence are certainly insufficient for Judge Cornelio's transportation order to be "expressly authorized by law."

mail communication with a party about unauthorized matters, and then seek refuge from recusal under a claim of work product.

THE STATE OF TEXAS recognizes its subpoena is unusual, but so is the circumstance. Motions in death capital proceedings do not typically go missing. False entries are not usually made in bench warrants. Requests of the judiciary to impair the availability of governmental records are not an everyday occurrence. Accordingly, the State prays this Court orders compliance with its subpoena. Something is rotten in Denmark.

SIGNED THIS 20th of December, 2024.

Respectfully submitted,

KIM OGG

District Attorney

/s/Joshua A. Reiss

Joshua A. Reiss

Division Chief

Harris County District Attorney

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SBOT# 24053738

Certificate of Service

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Josh Reiss

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Envelope ID: 95557001

Filing Code Description: Motion

Filing Description: State's Motion in Support of its Subpoena for the E-Mail Communications of Judge Natalia Cornelio

Status as of 12/20/2024 3:27 PM CST

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HARRIS COUNTY 351st DISTRICT COURT

DA



Reiss, Josh

1201 Franklin

Houston, TX 77002 1234



3-143439501010

Custodian Of Records
1201 Franklin Street, 7th Floor

Houston, TX 77002

CASE NO.:	143439501010-3
COURT:	IN THE 351st DISTRICT COURT
OFFENSE:	CAPITAL MURDER (MULTI MURDER)
Offense R. No:	HC1498835

COURT SUBPOENA

**A FINE AND IMPRISONMENT MAY BE IMPOSED
FOR FAILURE TO OBEY THIS NOTICE**

BRING THIS DOCUMENT WITH YOU TO COURT

In the case of the STATE OF TEXAS v. HASKELL, RONALD LEE

You are ordered to appear as witness in behalf of the State and Defendant in the above styled cause before Judge NATALIA CORNELIO IN THE 351st DISTRICT COURT, located on the 14 floor, of the County Criminal Justice Center located at 1201 Franklin, Houston, Texas 77002 and to remain there from day to day, term to term until discharged by the Court.

You are ordered to appear on: * January 09, 2025 @ 8:45 AM *****

Special Instructions:

Please provide hard copy print outs of the following for in camera review:

All e-mails, including documentary attachments such as motions and orders, sent and received by 351st District Court Judge Natalia Cornelio (natalia_cornelio@justex.net) with the domain dallascounty.org during June-August 2024 pertaining to (1) a bench warrant of inmate Ronald Haskell, and (2) transportation of inmate Ronald Haskell for an MRI/Imaging.

All e-mails, including documentary attachments such as motions and orders, sent and received by 351st District Court Coordinator Christopher Gil (christopher_gil@justex.net) with the domain dallascounty.org during June-August 2024 pertaining to (1) a bench warrant of inmate Ronald Haskell, and (2) transportation of inmate Ronald Haskell for an MRI/Imaging.

Please appear with the above at an evidentiary hearing on Thursday, January 9, 2025 @ 9AM in the 178th District Court, 19th Floor, 1201 Franklin Street.

RequestReason

Issued this 10th day of December A.D. 2024

By: *Marilyn Burgess*
Marilyn Burgess
District Clerk
Harris County, Texas

Tracking No. 1418825

**EXTREMELY IMPORTANT
UPON RECEIPT, CALL PERSON:**

**Reiss, Josh
713-274-5800**

Unofficial Copy Office of Marilyn Burgess District Clerk



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this December 20, 2024

Certified Document Number: 117925776 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Unofficial Copy Office of Marilyn Burgess District Clerk

In accordance with Texas Government Code 51.301 and 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

EX PARTE Ronald Haskell

§
§
§
§
§

Cause No. 1434395

351st Judicial District Court

Harris County, Texas

**ORDER REGARDING ATTORNEY'S EX PARTE REQUEST
FOR BENCH WARRANT ISSUED UNDER SEAL**

Upon consideration of the motion presented before the Court, the Court hereby **GRANTS** Attorney's June 17, 2024 Ex parte Request for Bench Warrant and ~~SEALS the same~~. The Court also **SEALS** this order.

and seals the motion.

[Handwritten Signature]

Natalia Cornelio, Judge Presiding

6/26/24



Unofficial Copy Office of Marilyn B. [illegible] Clerk

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

CAUSE NO. 1434395

EX PARTE
RONALD LEE HASKELL

§
§
§

IN THE 351ST JUDICIAL
DISTRICT COURT
HARRIS COUNTY, TEXAS

**COURT ORDER UNDER SEAL ALLOWING MINDSET TO CONDUCT
NEURO-IMAGING AND ELECTRO-PHYSIOLOGICAL TESTING VIA
SIMONMED ON INMATE RONALD HASKELL**

The Court GRANTS Applicant's June 17, 2024 Ex parte Motion to Order Harris County Sheriff to Transport the Applicant in order to Conduct Neuroimaging Evaluations and to Seal the Same in its entirety and AUTHORIZES Mindset Consulting Group ("MINDSET") to conduct neuro-imaging and electro-physiological testing at SimonMed Imaging on inmate Ronald Haskell outside of the Texas Department of Criminal Justice and the Harris County Jail. The Court ORDERS the Sheriff of Harris County to make any arrangements necessary, consistent with the provisions contained in the June 17, 2024 motion to transport, for inmate Ronald Haskell, to be available for testing at SimonMed Imaging at 2256 W. Holcombe Blvd., Houston, Texas 77030 on Tuesday, July 30, 2024 with an arrival time of 8:15 a.m. The MRI is scheduled to [REDACTED]. The Sheriff's Office retains the authority to make any arrangements to ensure the custody of the Defendant and the safety and protection of the community. The Court SEALS Applicant's June 17, 2024 Ex parte Motion to Order Harris County Sheriff to Transport the Applicant in order to Conduct Neuroimaging Evaluations and to Seal the Same. The Court also SEALS this order.

SIGNED this 22 day of July, 2024.

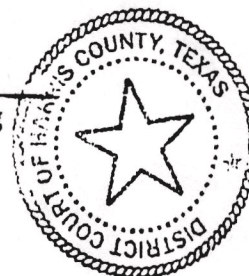
FILED
Marilyn Burgess
District Clerk

JUL 22 2024

Time: _____
Harris.

By _____
Deputy.

Natalia Cornelio, Judge Presiding
351st Judicial District Court



FILED

Marilyn Burgess
District Clerk

JUL 29 2024

CAUSE NO. 1434395

Time: _____
Harris County, Texas

By _____
Deputy

EX PARTE
RONALD LEE HASKELL

§
§
§

IN THE 351ST JUDICIAL
DISTRICT COURT
HARRIS COUNTY, TEXAS

**SECOND EX PARTE MOTION TO ORDER HARRIS COUNTY SHERIFF TO
TRANSPORT THE APPLICANT IN ORDER TO CONDUCT NEUROIMAGING
EVALUATIONS and TO SEAL THE SAME**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Applicant in the above case, by and through his attorney of record, Christi Dean, and respectfully moves this Honorable Court to grant his Ex Parte Motion to Order the Harris County Sheriff to Transport the Applicant in Order to Conduct a Neuroimaging Evaluation and to Seal the same and for good cause shows the following:

1. Applicant has been convicted of capital murder and sentenced to death.
2. It is necessary to complete a magnetic resonance imaging (MRI) procedure on the Applicant. As Applicant recounted in his March 25, 2022 ex parte funding request for Mindset, Mr. Haskell has been convicted of capital murder and sentenced to death. Undersigned counsel, her investigator Jim Spurger, and mitigation specialist Alan Ellis have all personally visited with Mr. Haskell multiple times and reviewed a significant number of records from trial counsel, the trial mitigation specialist, and Texas Defender Service, in addition to the trial transcript. The records are rife with indications that Mr. Haskell suffered from multiple diagnosed mental health issues, suffered possible head injury, and took an uncontrolled cocktail of medications (at least eight to ten medications in the months preceding the offense). Neuropsychologist Dr. John Fabian reviewed some of the same records and has prescribed an MRI. Review of trial counsel's files and the clerk's record shows that trial counsel twice requested funding for a series of experts, including neuroimaging specialist Ruben Gur. (CR2:381-388, 473-492). The clerk's record further appears to show that the trial court granted funding for Dr. Gur, as well as an MRI.

Id. Undersigned counsel contacted trial counsel Neal Davis and trial mitigation specialist Tiffany Cunningham to find out whether the trial team went forward with an MRI or

ultimately retained Dr. Gur. Ms. Cunningham did not recall whom the trial team ultimately retained, but she did not believe an MRI was ever done. Mr. Davis did not respond. Undersigned counsel has seen no evidence to indicate that the trial team retained a neuroimaging specialist or facilitated any neuroimaging. Undersigned counsel believes that trial counsel should have hired Dr. Gur (or a similar specialist).

3. In Applicant's case, it is critically necessary to complete a magnetic resonance imaging (MRI) procedure as part of his mental health evaluation. There is evidence of both severe mental illness and head trauma. Neuroimaging data can help investigate underlying neurobiological damage (e.g. lesions or atrophy) that can contribute to deficits in cognitive functioning and can be associated with varying types of psychological and psychiatric symptoms. Additionally, a neuroimaging evaluation can detect head injury-related pathology and structural abnormalities consistent with developmental pathology, as well as rule out the presence of any tumors. Neuroimaging data will provide consulting experts additional insight into his neurological state that cannot be obtained any other way, particularly as it pertains to his insanity defense and his case in mitigation.

4. Counsel previously brought this motion during the pendency of *In re UTMB*, 677 S.W.3d 696 (Tex. Crim. App. 2023), a mandamus proceeding before the Texas Court of Criminal Appeals involving similar issues. This Court denied Applicant's first "Ex Parte Motion to Order Harris County Sheriff to Transport Applicant in Order to Conduct Neuroimaging Evaluations and to Seal the Same" pending disposition of the mandamus proceeding. The Court of Criminal Appeals issued an opinion last October that leaves the door open for the MRI procedure in this case. *Id.*

5. *In Re UTMB* addressed a scenario in which the Office of Capital and Forensic Writs, representing Texas Code of Criminal Procedure article 11.071 applicant Dillion Compton, obtained an ex parte order in the trial court (1) directing the University of Texas Medical Branch to conduct brain imaging of the applicant before authorizing payment and (2) directing state prison officials to arrange transportation for the imaging. The Court of Criminal Appeals held that the trial court was without the authority to issue the order ex parte. *Id.* at 697. It stated that article 11.071, section 3 authorizes ex parte requests in only

two instances (1) a request for prepayment of expenses, including expert fees, to investigate and present potential habeas corpus claims and (2) a claim for reimbursement for expenses for habeas corpus investigation that are reasonable necessary and reasonably incurred. *Id.* “The only *ex parte* communications expressly authorized by Article 11.071 relate to the prepayment or reimbursement of expenses. We need not decide whether the trial court could have ordered the requested transportation for expert assistance had the Real Party in Interest first sought prepayment for the testing pursuant to Article 11.071, § 3 because the Real Party in Interest did not do that in this case.” *Id.* at 697-98.

6. In a concurring opinion, Judge Slaughter also discussed the exception for first seeking authorization of expenses and then an order for testing:

As a practical observation, however, I note that a capital habeas applicant seeking to have this type of testing done is not without recourse. For example, although the habeas court cannot compel UTMB to conduct the brain imaging, there is nothing to prevent a private entity from agreeing to conduct brain imaging on Compton for a fee. The record here clearly reflects that the habeas judge was willing to appropriate funds to cover the cost of obtaining the MRI, pursuant to the judge’s express statutory authority under Article 11.071, Section 3. *See* Tex. Code Crim. Proc. art. 11.071, § 3(b), (c), (d) (providing that habeas counsel may submit requests for the prepayment and reimbursement of expenses related to the investigation of the factual and legal grounds for relief, and further providing that the habeas court “shall” grant such requests so long as they are reasonable). So, the only problem with the judge’s current order is that it *compels* Relator to conduct the brain imaging, which amounts to requiring a third party to create evidence. For the reasons explained above, this aspect of the court’s order was impermissible. But the issue may be remedied by simply relying on the provisions in Article 11.071, Section 3, governing prepayment of expenses, to authorize and order Compton to arrange for his own private testing. Under those circumstances, habeas counsel would still be able to “investigate expeditiously” the factual basis for the underlying claim, without needing to resort to a court order compelling a third party to conduct the testing.

Id. at 703–04 (Slaughter, J., concurring) (emphasis added).

7. The exception that both the majority and concurrence contemplate is the exact posture of Applicant’s request. This Court authorized funding for Mindset by order dated May 16, 2022. An *ex parte* request to authorize expert funds is effectively prepayment for

testing pursuant to Art. 11.071, section three. If the Court disagrees, Mindset has indicated that the testing portion of the authorized funds will total \$4,000.00, and it will bill for payment in advance of service.

Further, a canvas of state case law throughout the United States shows little guidance on issues surrounding the transportation of inmates post-conviction for mental health-related testing. Arizona and the Sixth Circuit have expressly acknowledged, however, that a constitutional habeas corpus investigation may include neurological testing. In *State ex rel. Ariz. Dep't of Corr. v. Kiger*, 224 Ariz. 252, 253, 229 P.3d 264, 266 (Ct. App. 2010), post-conviction counsel for a death-row inmate sought a court order requiring the inmate's transport to a medical facility in another city for organic and neurological testing. Under Arizona statute, A.R.S. § 12-123(B) (2003), "[t]he court, and the judges thereof, shall have all powers and may issue all writs necessary to the complete exercise of its jurisdiction." And under A.R.S. § 12-122 (2003), "[t]he superior court, in addition to the powers conferred by constitution, rule or statute, may proceed according to the common law." *Kiger*, 229 P.3d at 229 (citing *Fenton v. Howard*, 575 P.2d 318, 320 (1978) ("Every court has inherent power to do those things which are necessary for the efficient exercise of its jurisdiction"); *Owen v. City Court of Tucson*, 599 P.2d 223, 224 (1979) (Inherent powers are those that are "indispensable if a court is to perform the duties specifically assigned to it" and "are impliedly given when a court is created even though the powers may not be catalogued in the constitution or statute")). A court's power to order the custodian of a prisoner to transport him for a medical examination as part of a post-conviction relief proceeding is clearly indispensable to the court's ability to perform its duties. *Kiger*, 229 P.3d at 229.

Similarly, county sheriffs in Texas are required to execute all process and precepts directed to them by legal authority. See, e.g., Tex. Loc. Gov't Code Ann. § 85.021; see also *Henry S. Miller Co. v. Evans*, 452 S.W.2d 426, 433-34 (Tex. 1980) ("A sheriff is an officer of the court, under a duty to execute process [and] is not a tribunal to determine doubtful questions of fact") (quoting *Harston v. Langston*, 292 S.W. 648, 650 (Tex. Civ. App.—Austin 1927, no writ)). The Local Government Code provides that "the sheriff of each

county is the keeper of the county jail” and exercises “supervision and control” over it, but the statute specifies that the sheriff’s lawful authority is “subject to an order of the proper court.” Tex. Loc. Gov’t Code Ann. § 351.041(a)–(b).

8. To conduct the testing, MINDSET has identified the following location to collect the neuroimaging data in this case: SimonMed Imaging Houston Med Center, located at 2256 W. Holcombe Blvd., Houston, Texas 77030. The day and time for these examinations is Thursday, July 2, 2024, beginning at 8:30 a.m. and ending at approximately 10:00 a.m. Applicant will need to arrive no later than 8:15 a.m.

9. It is necessary for the Harris County Sheriff to provide transportation and security for this procedure. The Harris County Sheriff will need to provide security to escort Applicant from the Polunsky Unit in Livingston, Texas to SimonMed Imaging in Harris County at 2256 W. Holcombe Blvd., Houston, Texas 77030 for the MRI on July 2, 2024 with an arrival time of 8:15 a.m. The MRI is scheduled to begin at 8:30 a.m. The MRI procedure is expected to take approximately 90 minutes. The presence of the Harris County Sheriff Deputies during the procedure for security purposes will not interfere with the procedure.

10. It is necessary that Applicant be fit with plastic restraints rather than metal restraints during the procedures.

11. Applicant requests that the results of these procedures be kept confidential and protected. See *Ake v. Oklahoma*, 470 U.S. 68 53 (1985) (holding that “an indigent [defendant] is entitled to ‘meaningful access to justice[,]’ which means that he should have ‘access to the raw materials integral to the building of an effective defense’ thus ensuring ‘a proper functioning of the adversary process’”); see also *Rey v. State*, 897 S.W.2d 333, 339 (Tex.Crim.App.1995); *DeFreece v. State*, 848 S.W.2d 150 (Tex. Crim. App. 1993).

12. The transportation officers and the Harris County Sheriff’s Department and Harris County Sheriff’s Department/Jail/Prison/Detention center employees shall not discuss the fact of Applicant’s transportation and examination and the contents of this

Order, except as necessary to facilitate the transportation of to and from the site of the examination.

13. Prior to the examination, the transportation officers shall be allowed to inspect the physical space where the examination will occur. During the examination, the transportation officers may remain outside of the door to the examination room for security purposes.

14. During the transportation of the client and the examination and consultation of the client with the respective providers/experts/staff of the facility where the examination takes place, the transportation officers shall not be present inside the examination/consultation room; they shall not ask question regarding the reasons for the examination; they shall not interfere with the examination in any way; and they shall remove the handcuffs of Applicant.

15. Additionally, Applicant requests that this Motion be filed under seal and that the Harris County Sheriff's Department and the Harris County District Clerk be ordered to withhold all information relative to the procedure or its scheduling and, specifically, that any of Applicant's jail records given to the government's attorney or law enforcement under subpoena or request do NOT reflect that this procedure was conducted.

Wherefore, premises considered and to facilitate the MRI procedure, Applicant prays that the Court grant (1) the attached attorney request for a bench warrant and (2) this motion and order the Harris County Sheriff to escort Applicant to and from the above location for imaging. Applicant also requests that the Court seal all documents related to this request.

Respectfully Submitted,

Christi Dean

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214-653-3550

Hon. Susan Brown
Presiding Judge
Eleventh Administrative Judicial Region