Appellate Docket Number 03-13-00580-CV

Texas Third Court of Appeals

Response to Appelle Response to Motion for Sanctions

Marc T. Sewell Petition for Judicial Review
under Local Government Code Sec 211

Vs.

Llano Board of Adjustment (Chairman Mikel Virdell)

Appellant and Filer of this document:

Marc T. Sewell
108 Summit
Llano, TX 78643
Pro Se

Appellee:
City of Llano
Mikel Virdell Chairman & Mayor
301 West Main
Llano, TX 78643

Appellee Attorney:
Carey L. Bovey
2251 Double Creek Drive
Round Rock, TX 78664

Oral Argument Not Required

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TO THE HONORABLE THIRD COURT OF APPEALS:

I respectively present the following counter-points to the Appelle's response to my motion for sanctions:

Language

I apologize in advance for the use of the word *lie*. I realize that it is politically incorrect and harsh to the ear but it is concise and precise: *to make an untrue statement with intent to deceive*. I could use the Texas Penal Code - Section 37.02 language of *false statement with intent to deceive* but that would be verbose and would render this paper laborious to read.

Was it a lie?

The salient point in this discussion is whether the City Manager, Brenton Lewis, lied in his affidavit. Mr. Bovey actually never showed that Mr. Lewis didn't lie. In the 132 page reply to my sanctions motion, he never once said "usage changes are text changes and not regulation changes because _____". He could have simply responded to my sanctions motion with that phrase in one paragraph. As a matter of fact, Brenton Lewis could have avoided this entire nine month ordeal had he replied to that specific question when he was asked in a Planning & Zoning meeting or in a City Council meeting or in Public Hearings or in emails. He did not, and to date has not, because he cannot, because it is not true.

In my motion for sanctions, the legal basis for proof of the lie is found in statutes 110.53, 211.003, and 211.005[1]. These statutes were not even mentioned in Mr. Bovey's response and were certainly not refuted. Anyone would expect Mr. Bovey to first address my basic premise regarding the lie, but he never did. Thus, Mr. Bovey's entire 132-page reply is obfuscation and an attempted cover-up of Mr. Lewis' perjury and illegal activity.

Stated differently in the unambiguous language of mathematical proof theory:

$$\text{Usage change} = \text{Regulation change}^{1}$$

$$\text{Usage change} \neq \text{Text change}$$

$$\text{Text change} \neq \text{Text change} + \text{Usage change}$$

$$\text{Text change claim by Lewis was overt}^{2}$$

$$\text{Text change claim by Lewis was an intent to deceive}^{3}$$

$$\therefore \text{Text change claim by Lewis} = \text{Lie}^{4}$$

So it remains uncontested that the Llano City Manager, Brenton Lewis, lied to the Texas Third Court of Appeals in a sworn affidavit[4] approved and submitted by City Attorney, Carey Bovey.

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[1] Sewell Motion for Sanctions page 2, section *The False Representation of Fact*
[2] Sewell Motion for Sanctions page 4, starting with header "Brenton Lewis' false statements are overt"
[3] Sewell Motion for Sanctions page 5, *intent of obfuscation, getting false statements into the Court record, or impugning my original petition and me*
[4] Appendix A - Appendix A – Affidavit of Llano City Manager Brenton Lewis on page 15

Is Lying to the Appeals Court OK?

Mr. Bovey's main argument to my motion for sanctions is that I referenced the wrong laws. His argument is that the two state laws and one rule I mentioned were not valid in an appeals court. The corollary of his argument is that since the Rules for Appellate Procedure do not mention perjury during an appeal, it is OK to lie to the appellate court - just not in a trial court. I am not a lawyer but I am certain that perjury is not allowed in the Third Court of Appeals Court.

Is Texas Civil Practice and Remedies Code §10.001 Appropriate?

Mr. Bovey's statement that the language of Texas Civil Practice and Remedies Code §10.001[5] requires a motion under the Texas Rules of Civil Procedure (TCRP) is incorrect. He has misquoted the statute. The reference to TCRP in Section 10.001[5] is merely a qualifying statement regarding the requirement of the signing of a pleading, i.e. TCRP Rule 57[6] or TRAP Rule 9.1[7], and not a requirement for filing a motion in a specific court as he attempts to extrapolate.

In the Bill Analysis for H.B. 1565[8] which created Texas Civil Practice and Remedies Code §10.001, the Purpose section of that document, states "... lawsuits

[5] Appendix B – Texas Civil Practices and Remedies Code Chapter 10 on page 18
[6] Appendix C – Texas Rules of Civil Procedure Rule 57 on page 19
[7] Appendix D – Texas Rules of Appellate Procedure Rule 9.1 on page 19
[8] Appendix F – Legislative Session 74R Bill HB 1565 on page 21

in Texas state courts." The authors were not intending to limit the law to just lower courts.

Actually, it is Section 10.002[9] that describes the *motion for sanctions* and that would be the place for limiting sanctions to the lower courts had that been the desire of the authors. However, Section 10.002[6] imposes no such restriction on the court in which the motion may be made.

Mr. Bovey dismisses, as dicta, the Supreme Court statement in *Merrill Dow Pharmaceuticals, Inc. v Havner*[10] that the legislature has provided Texas Civil Practice and Remedies Code §10.001-10.005[9] as a mechanism to sanction council. In the referenced case, the Supreme Court Order to Dismiss was, except for the first line, entirely about addressing the conduct of the attorney. Thus, Code §10.001-10.005[9] cannot be considered dictum since it was relevant to the Court that used this code as one of the foundations to propose serious penalties. The Supreme Court of Texas seems to think it appropriate to use §10.001-10.005 in courts other than lower courts.

It is also noteworthy that, in *Merrill Dow Pharmaceuticals, Inc. v Havner*[11], the Supreme Court stated a concern for "the public's confidence in the judicial process" should it not sanction for bad behavior. What confidence will the citizen's

[9] Appendix B – Texas Civil Practices and Remedies Code Chapter 10 on page 18
[10] Appendix G – Merrell Dow Pharmaceuticals, Inc. v. Havner - Order on page 24
[11] Appendix G – Merrell Dow Pharmaceuticals, Inc. v. Havner - Order on page 24

of Llano have if the city manager, whose salary they pay, is not sanctioned for the same lie to the Third Court of Appeals that they saw in their own city hall?

Is Texas Penal Code §37.03 Appropriate?

Mr. Bovey stated in his response to my motion for sanctions that I am requesting the Appeals Court for a criminal conviction and felony penalties and thus, Texas Penal Code §37.03 is not appropriate. I did not nor am not. My Prayer in my motion for sanctions was clear and simply to have the affidavit withdrawn and removed from the court record and online file. I didn't ask for any money or any criminal penalty.

Thus, Mr. Bovey's only argument against my use of Texas Penal Code §37.02 and §37.03 is incorrect and my use of that law is substantiated. It is a State Statute and there are no articulated exclusions in the law for the Appeals Court.

Is TRAP Rule 13 Appropriate?

The Texas Rules of Appellate Procedure (TRAP) were adopted in 1985 and revised in 1997[12]. Before 1985, the civil appellate rules were contained in the Texas Rules of Civil Procedure (TCRP). The new appellate rules were part of an

[12] Appendix H – History of TRAP on page 26

ongoing simplification effort. TCRP Rule 13[13] was being updated at the same time as TRAP was being written. TRAP Rule 52.11[14] was added in 1997. It is close in concept to Rule 13 but it is to be used for an original proceeding, which this case is not. I speculated that there wasn't a similar rule for an appeal from a trial court because all the content would have been submitted to the trial court. Thus, I used TRCP Rule 13 to describe the sanctions for perjury. After all, TRCP Rule 1[15] does state that "these rules shall be given a liberal construction." Thus, applying TRCP Rule 13 to a civil case in a court of appeals that came from a trial court is supported by Rule 1.

Still Perjury

I believe my legal references are reasonable and demonstrate that the State of Texas and the Texas Supreme Court believe perjury is a violation of law and, in any state court, a motion for sanctions for perjury is appropriate. If the Court finds that I have not correctly specified the proper rule or statute for this circumstance, I humbly request that the Court sanction the City Manager and City Attorney for perjury under a Court chosen rule or statute. I am not an attorney but I have proven

[13] Appendix I – Texas Rules of Civil Procedure: Rule 13 on page 30
[14] Appendix E – Texas Rule of Appellate Procedure 52.11 on page 20
[15] Appendix J – Texas Rules of Civil Procedure Rule 1 on page 31

Mr. Lewis did commit perjury and Mr. Bovey supported and facilitated that perjury.

Must Judges Find the True Statements from the Lies?

Another spurious argument from Mr. Bovey was that the truth could be found in the affidavit's appendix. So, Mr. Bovey is saying that it is the Court's responsibility to find the truth in the amendments and ignore the lies in the affidavit – and determine which is the truth vs. the lie. Said differently, lies in an affidavit are OK as long as the appendix has the truth. Again, I am not a lawyer but this sounds absurd. Besides, isn't it the responsibility of the attorney who accepted and submitted the affidavit to validate the veracity of the document?

The documents in the affidavit appendix were created before Mr. Lewis concocted his lie. Prior to the P&Z meeting, he changed his story when confronted by a citizen questioning his interpretation of the zoning laws. First he claimed that a regulation change only referred to boundary changes. When that proved to be false, he claimed that usage changes were text changes and not regulation changes. This false statement was made to protect his decision to not properly notify citizens of a zoning ordinance change. Thus, the change in language in the affidavit was overt and intended to deceive the Appeals Court – and the citizens of Llano, the Llano Planning and Zoning Board, and the Llano City Council.

This "difference in language" that Mr. Bovey ridicules is the key to Mr. Lewis' position that he did not violate zoning laws. Since he can't answer the fundamental question, "usage changes are text changes and not regulation changes because _____", Mr. Lewis, and now Mr. Bovey, must lie and obfuscate with this circular argument.

Projection Tactic - Who Wasn't Diligent?

Unfortunately, the projection tactic is very prevalent in today's society and what is so disturbing is that projection actually works according to Professor Anthony Pratkanis. False accusations and blaming others for their own negative behavior and misdeeds is a "powerful tool for exonerating the accuser."

Professor Pratkanis[16] goes on to say "The best defense against projection is a strong social norm against 'bearing false witness.'" He also recommends exposing projection tactics by focusing on evidence and motive. I shall do this here by exposing each of Mr. Bovey's projection attempts:

- **Who wasn't diligent** – Mr. Bovey submitted a perjurious affidavit to the court. Mr. Bovey didn't research §211.011(g)[17] nor did he respond when I

[16] Professor of Psychology at University of California at Santa Cruz, "Age of Propaganda, The Everyday Use and Abuse of Persuasion" and "Weapons of Fraud"
[17] Appendix K - Local Government Code Sec 211.011. Judicial Review on page 32

explained it. I have no legal training and my hundreds of hours of research should be evident in my presentation of the laws that Mr. Lewis has violated.

- **Who wasted taxpayer's money** – Mr. Bovey has spent over $13,000 of taxpayer funds defending the city manager from perjury and preventing him from having to answer a citizen's question on his illegal actions. I asked the District Court to review a city action and I have asked the Appeals Court to review the District Court's process. The city need not have spent anything for my two actions and would not have needed to spend anything, even if the city manager was found to be wrong in the Judicial Review.
- **Who "would have this court believe"** - this condescending phrase is really a euphemism for calling the opposition a liar. Another projection of Mr. Covey and Mr. Lewis for I have proven that they have lied.
- **Who was frivolous** – Mr. Bovey has not even attempted to address the basic premise of the lie nor has he provided any legal justification of Mr. Lewis' false statements and actions. I have with detailed legal references.
- **Who harassed whom** – Mr. Bovey's baseless request for damages of over $13,000 is clear intimidation and harassment. That would be my entire IBM pension for a year. The projection tactic is also a form of intimidation. I have merely asked for a document with false statements to be removed from the record.

- **Who has improper motives** – Mr. Bovey's motive is clearly to protect the city manager's ethical and legal violations from being exposed. Financially, Mr. Bovey is the only beneficiary regardless of the outcome. My motive is to protect property rights in Llano from infringement by a city manager who acts with impunity and who will be emboldened should I fail.

The use of the projection tactic is done when no valid arguments are available. The usage of projection by Mr. Bovey is another indication that my claim for sanctions is valid.

Valid Jurisdiction and Ignoring §211.011(g)

Mr. Bovey continues to state that §211.011(a)[18] says the judicial review can only be used for errors made by the "board of adjustment," yet ignores §211.011(g)[18] which states that the city council and board of adjustment are equivalent when composed of city council members. Mr. Bovey never refutes this or any of my other jurisdiction arguments from my response to his motion to dismiss.

Was Mr. Bovey's reply additional perjury?

I believe I have demonstrated that the deposition contained perjurious statements. Mr. Bovey's response to my motion for sanctions was his opportunity to refute my

[18] Appendix K - Local Government Code Sec 211.011. Judicial Review on page 32

premise for perjury yet he doesn't ever address the premise or the law behind the premise. Not a word. Mr Bovey even explains my premise in Section 6 of his response, so he clearly understands the premise. Thus, the reply to my motion for sanctions by Mr. Bovey "swears to the truth of a false statement previously made"[19] is also perjury in itself.

Who should pay for legal fees?

Mr. Bovey's request that I pay for his costs is audacious and outrageous.

1. The city manager lied to the Third Court of Appeals, to the Llano Planning and Zoning Commission, to the Llano City Council, and to the Citizens of Llano.
2. Both the City Manager and the City Attorney used this appeal in an attempt to keep Mr. Lewis from answering a simple question to the citizens of Llano.
3. Mr. Bovey did not even have to respond to my simple question of district court process. Even if I succeed, the result would have been to revert back to the district court. There was no $13,000 reason to prevent that.
4. Both the city manager and city attorney would gain by the deception and prevention of a judicial review.

I, on the other hand:

[19] Appendix L – Texas Penal Code Chapter 37 on page 33

1. Requested that the Llano District Court review a city decision on citizen property rights. This act is protected by the Constitution.
2. Requested the Third Court of Appeals to review the process used by the Llano District Court in rejecting my request for judicial review.

Who had the abhorrent behavior? Who broke the law? Who lied? Who did not represent the citizens, and who did? I suggest that Mr. Lewis and Mr. Bovey had the egregious behavior and should pay. Surely not the citizens of Llano and surely not me, who had nothing to gain but justice.

I will respond to Mr. Bovey's Motion for Damages separately.

Prayer

I began this endeavor 9 months ago in an attempt to protect the property rights of the citizens of Llano and to stop the unending lying to justify city actions. Now I find myself defending the integrity of the Court. Both property rights and perjury are fundamental to our liberty.

Mr. Bovey did not even attempt to show that Brenton Lewis did not commit perjury while I have demonstrated that he did. He has not answered the salient question: usage changes are text changes and not regulation changes because _____".

I have answered all Mr. Bovey's legal arguments against my motion for sanctions for perjury and have demonstrated that my arguments are reasonable and defensible. My requested action for penalty was merely to remove the offensive document and was not financial or punitive.

I have also demonstrated that his personal attacks are projection tactics which, in themselves, are perjury added to the original perjury. These tactics are disrespectful to the Court and deserve additional sanctions and reprimand.

Thus, my claim of aggravated perjury stands. I respectfully request that my Motion for Sanctions be approved.

Marc Sewell

108 Summit

Llano, TX 78643

Appendix A – Affidavit of Llano City Manager Brenton Lewis

No. 03-13-00580-CV

MARC T. SEWELL,	§	**IN THE COURT OF APPEALS**
APPELLANT	§	
	§	
V.	§	**THIRD SUPREME JUDICIAL**
	§	
CITY OF LLANO, MIKEL VIRDELL, BRENTON LEWIS, DIANNE FIRESTONE, LETITIA McCASLAND, MARCY METHVIN, TODD KELLER, JEANNE PURYEAR, AND TONI MILAM,	§	**DISTRICT OF TEXAS**
APPELLEES	§	**AT AUSTIN, TEXAS**

AFFIDAVIT OF BRENTON B. LEWIS

STATE OF TEXAS	§
	§
COUNTY OF LLANO	§

Before me the undersigned authority, on this day personally appeared Brenton Lewis, Affiant, who by me first duly sworn upon his oath swears the following statements are true and are within the personal knowledge of Affiant:

"My name is Brenton B. Lewis. I am the City Manager of the City of Llano, Texas and have held that position since April 1, 2013. I hold a Bachelor of Business Administration degree in Management and have also completed 27 hours of coursework toward a Master of Public Administration degree. I have 29 years of professional experience working for local governments in Texas and other states, including 20 years of experience working as a zoning administrator.

As the City Manager, I am the City of Llano employee designated to provide staff support to the City of Llano Board of Adjustment, Planning and Zoning Commission, and City Council. My duties related to these afore-mentioned municipal governing boards include, but are not limited to: 1) coordinating the preparation of public meeting agendas; 2) preparing the agenda item reports, documents and other written materials for review and consideration by the members of said governing bodies; 3) attending the meetings of the said boards to provide City staff recommendations and other resources as requested; 4) presenting various agenda items and reports for review and consideration by the board members; 5) supervising other City employees to ensure that the meeting agendas, minutes, public notices, and similar items are properly prepared and published as required; and 6) other duties as requested by said governing boards.

As a result of the duties I perform as City Manager, as outlined hereinabove, I am personally familiar with the activities, operations, practices and decisions of the City of Llano Board of Adjustment, Planning and Zoning Commission, and City Council. The Planning and Zoning Commission held a regular meeting on June 13, 2013 at which meeting, after proper notice was published, a Public Hearing was held on proposed text amendments to Ordinance Nos. 735 and 1231 regarding an Overlay District in the Single Family 1 Zoning District. Further,

after said Public Hearing, the Planning and Zoning Commission voted to recommend to City Council that the proposed text amendments to Ordinance Nos. 735 and 1231 be approved by the City Council. A copy of the minutes (approved, but unsigned) of the June 13, 2013 Planning and Zoning Commission meeting is attached to this Affidavit as Exhibit "A" and incorporated herein for all purposes.

On June 17, 2013, the Llano City Council held a regular meeting at which meeting, after proper notice was published, a Public Hearing was held on proposed text amendments to Ordinance Nos. 735 and 1231 regarding an Overlay District in the Single Family 1 Zoning District. Further, after said Public Hearing, the City Council voted to approve the proposed text amendments to Ordinance Nos. 735 and 1231 by the enactment of Ordinance No. 1247. A copy of Ordinance No. 1247 and the minutes of the June 17, 2013 Llano City Council meeting are attached to this Affidavit as Exhibits "B" and "C" respectively, and incorporated herein for all purposes.

At no time did the Llano Board of Adjustment take any action, hold any meeting, or make any decision regarding the enactment of Ordinance No. 1247 by the Llano City Council. The Llano Board of Adjustment was not involved at all in the actions, hearings and decisions of the Llano Planning and Zoning Commission or the Llano City Council culminating in the enactment of Ordinance No. 1247 by the Llano City Council on June 17, 2013.

Further, I am aware that Marc T. Sewell filed a Petition for Judicial Review in Cause No. 18504, In the District of Llano County, 33rd/424th Judicial District, the Honorable J. Allan Garrett being the Presiding Judge ("District Court"). The City of Llano, Mikel Virdell (Mayor), Brenton Lewis (City Manager), Dianne Firestone (Planning & Zoning Commission Chairman), Letitia McCasland (Planning & Zoning Commission Member), Marcy Methvin (Planning & Zoning Commission Member), Todd Keller (City Councilmember), Jeanne Puryear (City Councilmember) and Toni Milam (City Secretary), listed as Appellees in No. 03-13-00580-CV, in the Court of Appeals, Third Supreme Judicial District of Texas, at Austin, Texas, as of the date of this Affidavit, have not been served with proper citation issued by the District Court in Cause No. 18504, nor have any of the Appellees made an appearance or waived service in Cause No. 18504."

Further Affiant sayeth not.

Signed this 9th day of October, 2013.

Brenton B. Lewis

Subscribed and sworn to before me by the said Brenton B. Lewis on this 9th day of October, 2013.

Notary Public of the State of Texas
My commission expires: 9/4/2017

REBECCA BOVEY
Notary Public
STATE OF TEXAS
My Comm. Exp. September 4, 2017

Appendix B – Texas Civil Practices and Remedies Code Chapter 10

Sec. 10.001. SIGNING OF PLEADINGS AND MOTIONS. The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

(1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.002. MOTION FOR SANCTIONS. (a) A party may make a motion for sanctions, describing the specific conduct violating Section 10.001.

(b) The court on its own initiative may enter an order describing the specific conduct that appears to violate Section 10.001 and direct the alleged violator to show cause why the conduct has not violated that section.

(c) The court may award to a party prevailing on a motion under this section the reasonable expenses and attorney's fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may award to the prevailing party all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.003. NOTICE AND OPPORTUNITY TO RESPOND. The court shall provide a party who is the subject of a motion for sanctions under Section 10.002 notice of the allegations and a reasonable opportunity to respond to the allegations.

Appendix C – Texas Rules of Civil Procedure Rule 57

RULE 57. SIGNING OF PLEADINGS

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his State Bar of Texas identification number, address, telephone number, and, if available, telecopier number. A party not represented by an attorney shall sign his pleadings, state his address, telephone number, and, if available, telecopier number.

Appendix D – Texas Rules of Appellate Procedure Rule 9.1

Rule 9. Papers Generally

9.1. Signing

(a) *Represented Parties.* If a party is represented by counsel, a document filed on that party's behalf must be signed by at least one of the party's attorneys. For each attorney whose name appears on a document as representing that party, the document must contain that attorney's State Bar of Texas identification number, mailing address, telephone number, and fax number, if any.

(b) *Unrepresented Parties.* A party not represented by counsel must sign any document that the party files and give the party's mailing address, telephone number, and fax number, if any.

Appendix E – Texas Rule of Appellate Procedure 52.11

Groundless Petition or Misleading Statement or Record

On motion of any party or on its own initiative, the court may — after notice and a reasonable opportunity to respond — impose just sanctions on a party or attorney who is not acting in good faith as indicated by any of the following:

(a) filing a petition that is clearly groundless;

(b) bringing the petition solely for delay of an underlying proceeding;

(c) grossly misstating or omitting an obviously important and material fact in the petition or response; or

(d) filing an appendix or record that is clearly misleading because of the omission of obviously important and material evidence or documents.

Appendix F – Legislative Session 74R Bill HB 1565

BILL ANALYSIS

H.B. 1565

By: Hunter

3-8-95

Committee Report (Unamended)

BACKGROUND

According to Rule 13 of the Texas State Rule of Court general rules, attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction.

PURPOSE:

This bill would sanction and punish parties bringing frivolous **civil lawsuits in Texas state courts** similar to those in Rule 11 of the Federal Rule of Civil Procedure.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency or institution.

SECTION-BY-SECTION:

SECTION 1. Amends Subtitle A, Title 2, Civil Practices and Remedies Code, is amended by adding Chapter 10 as follows:

CHAPTER 10. SANCTIONS FOR FRIVOLOUS PLEADINGS AND MOTIONS.

Sect. 10.001. SIGNING OF PLEADINGS AND MOTIONS. The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitute a certificate by the signatory (attorney or unrepresented party) that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

(1) the pleading or motion (civil suit) is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) each denial in the pleading or motion of a factual contention is warranted on the evidence on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Sect. 10.002. MOTION FOR SANCTIONS.

(a) A party may make a motion for sanctions describing the specific conduct violating Sect. 10.001.

(b) A judge on his or her own initiative may enter an order describing the conduct that violates Sect. 10.001 and direct the alleged violator to show cause why the conduct is not a violation.

(c) The court may award to a party prevailing on a motion under this section the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

Sect. 10.003. NOTICE AND OPPORTUNITY TO RESPOND. The court must give a party who is the subject of a motion for sanctions under Sect. 10.002 notice of the allegations and a reasonable opportunity to respond to the allegations.

(a) A court that determines that a person has signed a pleading or motion in violation of Sect. 10.001 may impose a sanction on the person, a party represented by the person, or both.

(b) The sanction must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similar situated.

(c) A sanction may include:

(1) a directive to the violator to perform, or refrain from performing, an act:

(2) an order to pay a penalty into court;

(3) an order to pay to other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney's fees.

(d) The court may not award monetary sanctions against a represented party for a violation of Sect. 10.001(2).

(e) The court may not award monetary sanctions on its own initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party or the party's attorney who is to be sanctioned.

SECT. 10.005. ORDER. A court shall describe in an order imposing a sanction under this chapter the conduct the court has determined violated Sect. 10.001 and explain the basis for the sanction imposed.

SECT. 10.006. CONFLICT. Notwithstanding Sect. 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

SECTION 2. Effective Date - September 1, 1995. Applies only to a pleading or motion in a suit commenced on or after that date.

SECTION 3. Emergency Clause.

SUMMARY OF COMMITTEE ACTION

House Bill 1565 was considered by the House Committee on Civil Practices in a public hearing on March 8, 1995. The following people testified in support of the bill: Joseph V. "Joe" Crawford, representing himself and the Texas Association of Defense Counsel and George S. Christian, representing the Texas Civil Justice League. No one testified in opposition to the bill. No one testified neutrally on the bill. The bill was referred to a subcommittee consisting of Representatives Hunter (Chair), Hilbert and Hartnett. After being recalled from subcommittee, the bill was considered by the committee in a public hearing on March 15, 1995. The bill was reported favorably without amendment with the recommendation that it do pass and be printed, by a record vote of six ayes, zero nays and zero present not voting with three absent.

Appendix G – Merrell Dow Pharmaceuticals, Inc. v. Havner - Order

ON MOTION FOR REHEARING

ORDER

The motion for rehearing filed on behalf of the Havners is overruled. However, the tenor of that motion requires that we address the conduct of Respondents' counsel.

This is not the first time in this case that the Havners' counsel have engaged in less than exemplary conduct. Following the decision of the original panel of the court of appeals, which had reversed the judgment of the trial court and rendered judgment that the Havners take nothing, Robert C. Hilliard filed two briefs with the court of appeals which that court, sitting en banc, found to be "insulting, disrespectful, and unprofessional." Merrell Dow Pharmaceuticals, Inc. v. Havner, 907 S.W.2d 565, 566 (Tex.App.—Corpus Christi 1994) (en banc) (per curiam). The court of appeals further concluded that the briefs "evidence[d] a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness." Id. The court of appeals accordingly forwarded copies of those briefs to the Office of General Counsel of the State Bar of Texas pursuant to Texas Code of Judicial Conduct, Canon 3(D)(2). Id.

In assessing the appropriate response to the motion for rehearing that has now been filed by Hilliard and his cocounsel in this Court, we agree with another of our courts of appeals who recently found it necessary to address attacks on the integrity of that court:

A distinction must be drawn between respectful advocacy and judicial denigration. Although the former is entitled to a protected voice, the latter can only be condoned at the expense of the public's confidence in the judicial process. Even were this court willing to tolerate the personal insult levied by [counsel], we are obligated to maintain the respect due this Court and the legal system we took an oath to serve.

In re Maloney, 949 S.W.2d 385, 388 (Tex.App.—San Antonio 1997, no writ) (en banc) (per curiam); see alsoJohnson v. Johnson, 948 S.W.2d 835, 840–41 (Tex.App.—San Antonio 1997, writ requested) 1 (sanctioning counsel fordisparaging remarks about the trial court and forwarding the court of appeals' opinion to the Office of General Counsel, concluding that a substantial question had been raised about counsel's honesty, trustworthiness, or fitness as a lawyer).

Courts possess inherent power to discipline an attorney's behavior. " 'Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence.' " Chambers v. NASCO, Inc., 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (further observing that a federal court has the power to control admission to its bar and to discipline attorneys who appear before it) (quoting Anderson v. Dunn, 19 U.S. (6 Wheat.) 204, 227 (1821)); see also Public Util. Comm'n v. Cofer, 754 S.W.2d 121, 124 (Tex.1988); Johnson, 948 S.W.2d at 840–41.

The Disciplinary Rules governing the conduct of a lawyer provide:

*733 A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

TEX. DISCIPLINARY R. PROF'L CONDUCT preamble ¶ 4, reprinted in TEX. GOV'T CODE, tit. 2, subtit. G app. A (Vernon Supp.1997) (TEX. STATE BAR R. art. X, § 9).

Rule 8.02(a) of the Disciplinary Rules specifically states:

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory official or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Id. Rule 8.02(a).

The Legislature has also provided a mechanism for courts to sanction counsel who file pleadings presented for an improper purpose or to harass. TEX. CIV. PRAC. & REM.CODE §§ 10.001—10.005. In addition, one of the lawyers for the Havners, Barry Nace, is a non-resident attorney. His appearance in Texas courts is subject to the Rules Governing Admission to the Bar, including Rule XIX.

The specific portions of the "Respondents' Motion for Rehearing" filed in this Court that raise particular concerns are the "Statement of the Case for Rehearing" (pages 1–5), the "Brief of the Argument" (pages 8, 14, and 16), and the "Prayer for Relief" (pages 19–20). Counsel for Respondents Robert C. Hilliard of the firm of Hilliard & Muñoz, Barry J. Nace of the firm of Paulson, Nace, Norwind & Sellinger, and Rebecca E. Hamilton of the firm of White, White & Hamilton, P.C., are hereby afforded the opportunity to respond as to why the Court should not

1) refer each of them to the appropriate disciplinary authorities;

2) prohibit attorney Nace from practicing in Texas courts;

and

3) impose monetary penalties as sanctions.

Any response must be filed in this Court by 5:00 p.m.,

Monday, November 24, 1997.

Done at the City of Austin, this 13th day of November, 1997.

Appendix H – History of TRAP

Excerpted from Nathan L. Hecht & E. Lee Parsley, Procedural Reform: Whence and Whither (Sept. 1997), updated by Robert H. Pemberton (Nov. 1998)

This paper explains how the Texas Supreme Court has derived its authority to promulgate procedural rules like the 1999 discovery rules revisions, the new combined Rules of Evidence and the new Rules of Appellate Procedure and describes the process by which the Court drafts such rules. It also briefly surveys the historical origins of the more important sets of Texas procedural rules.

§ 1.01 The Supreme Court's Rulemaking Authority

[1] The Texas Constitution

Some rules of procedure being essential to the operation of the judiciary, the Supreme Court adopted a few before it had any constitutional or statutory authority to do so. See 1 George D. Braden, et al., The Constitution of the State of Texas 471 (1977) (citing Texas Land Co. v. Williams, 48 Tex. 602 (1878)). Apparently the Court relied on the judiciary's inherent power, at least in the absence of legislated rules, to promulgate a few rules of procedure. See also Ashford v. Goodwin, 131 S.W. 535, 538 (Tex. 1910).

The 1876 Constitution authorized the Court to "make rules and regulations for the government of said court, and the other courts of the State, to regulate proceedings and expedite the dispatch of business therein." Tex. Const. art. V, § 25 (amended 1891, repealed 1985). Under this provision, the Supreme Court had the exclusive power to regulate the judiciary, both as to administration and procedure. This power was short-lived. In 1891 the provision was amended to give the Court "power to make and establish rules of procedure not inconsistent with the laws of the State for the government of said court and the other courts of this State to expedite the dispatch of business therein." Tex. Const. art. V, § 25 (repealed 1985) (emphasis added). The amended provision required judicial deference to the Legislature. In 1985, Section 25 was repealed and replaced by Section 31, which states:

(a) The Supreme Court is responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.

(b) The Supreme Court shall promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.

(c) The legislature may delegate to the Supreme Court or Court of Criminal Appeals the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law.

Thus, the Constitution now empowers the Supreme Court to adopt rules of administration and procedure, and authorizes the Legislature to delegate to the Court and to the Court of Criminal Appeals other rulemaking power.

[2] Statutory Authority

Soon after the 1891 amendment to Article V, Section 25 of the Texas Constitution, which gave the Legislature a role in making court procedural rules, the bench and bar became dissatisfied with the Legislature's piecemeal approach to rulemaking and with the difficulty in achieving any improvement in court procedure through the legislative process. Restoring broader rulemaking authority to the Supreme Court became the first priority of the bar. In 1934, the Congress empowered the United States Supreme Court to prescribe general rules of practice and procedure in federal courts consistent with Acts of Congress. 28 U.S.C. § 2071. The first Federal Rules of Civil Procedure approved by the Supreme Court became effective September 16, 1938.

In 1939 the Texas Legislature enacted the Rules of Practice Act giving the Supreme Court "full rulemaking power in the practice and procedure in civil actions." Act of May 15, 1939, H.B. 108, 46th Leg., R.S., ch. 25, 1939 Tex. Gen. Laws 201 (formerly codified as Tex. Rev. Civ. Stat. Ann. art. 1731a, now codified as Tex. Gov't Code § 22.004). In so doing, the Legislature found that --

the rules of practice and procedure in the Civil Courts, as prescribed by legislative enactment, often result in much unnecessary delay to litigants and in great and unnecessary expense to litigants and to the State, and in unnecessary reversals and new trials upon technical grounds, with consequent further delay and expense; and as a result the Courts are subjected to criticism calculated to weaken and undermine in the public estimate their prestige so essential to the stability of our democratic form of government; and that it is essential to place the rule-making power in civil actions in the Supreme Court, whose knowledge, experience, and intimate contact with the problems of judicial administration render that Court particularly well qualified to mitigate and cure these evils . . . .

The power conveyed by statute is plenary; the Act provides that rules adopted by the Court repeal all conflicting laws on procedure in civil cases, including statutes enacted by the Legislature. The Court must notify the bar of rules changes and must deliver a copy to the Secretary of State for transmission to the Legislature.

The statute states that the Legislature may disapprove rules adopted by the Court, but it has never done so. For fifty years the Legislature did not interfere with the rulemaking power given the Court. Beginning in 1989, however, the Legislature has enacted several statutes prescribing procedure in civil cases and prohibiting the Court from changing them through its power under the Rules of Practice Act. These include: Tex. Civ. Prac. & Rem. Code §§ 10.001-.006 (sanctions for frivolous pleadings and motions); §§ 14.001-.014 (inmate litigation); § 30.07 (personal identifying information privileged from discovery by inmate); §§ 52.001-.005 (security for judgments pending appeal); § 64.091 (service of process in suit for appointment of a receiver for mineral interests owned by nonresidents or absentees); §§ 65.041-.045 (injunction bond not required of indigents); Tex. Fam. Code §§ 111.001-.002 (guidelines for possession and child support); Tex. Gov't Code § 52.047 (official court reporter cannot be paid for preparing record for indigent if substitute reporter is being paid to perform official duties); Tex. Lab. Code § 410.305 (judicial review of issues regarding compensability or income or death benefits); Tex. Rev. Civ. Stat. Ann. art. 4590i, § 13.01 (cost bond, deposit, and expert report in health care liability claims).

In 1985, concurrent with the adoption of Article V, Section 31 of the Texas Constitution, the Legislature also authorized the Supreme Court to "adopt rules of administration setting policies and guidelines necessary or desirable for the operation and management of the court system and for the efficient administration of justice." Tex. Gov't Code § 74.024.

§ 1.02 The Supreme Court's Rulemaking Process

[a] The Supreme Court Advisory Committee

Following the U.S. Supreme Court's example, upon passage of the Rules of Practice Act, the Texas Supreme Court appointed an Advisory Committee to recommend Rules of Civil Procedure. The SCAC was comprised of 21 members -- lawyers, judges, and academics from all regions of the State. The committee completed its task and reported to the Court in September 1940.

The Court has kept the SCAC in existence throughout the intervening years to advise on revisions to the rules, although presently the group is not meeting and the terms of its members technically expired on December 31, 1997. This is because after completing the herculean tasks of advising the Court on new appellate, evidence, and discovery rules, there was little for the group to do until the Court promulgated each of these sets of rules. The Court anticipates reconstituting the SCAC after the 1999 discovery rules revisions take effect on January 1, 1999.

The structure of the SCAC has changed over the years. Most recently, it has had 36 members each appointed for a term of three years. In addition, there have been 11 ex officio members representing various elements of the bench and bar.

When the SCAC meets, its meetings are held at the Bar Center in Austin and are open to the public. In addition to revisions suggested by members, the SCAC considers every proposal it receives, whether from the Court itself, from the Executive and Legislative Departments, from bar groups interested in rules of procedure, from individual judges and lawyers, and from the public.

The SCAC is not the only group which studies revisions to procedural rules. Two State Bar committees -- the Court Rules Committee and the Administration of the Rules of Evidence Committee -- conduct their own studies of the rules. The Appellate Section of the State Bar is active in reviewing appellate rules, as is the Litigation Section in reviewing trial rules. Other groups, such as the Family Law Section, are very active in recommending changes to rules of procedure. The Court welcomes all input but refers it to the SCAC for initial consideration.

Since May 31, 1985, a record of the debates of the SCAC has been made by a court reporter. Transcriptions of debates and copies of proposals received by the committee are kept in the State Law Library and at the Supreme Court. All these materials are available to the public.

[b] The Rules of Civil Procedure

In 1940, the SCAC proposed 820 rules taken almost entirely from the existing procedural statutes which they repealed, with a few based on the new Federal Rules of Civil Procedure. After making some minor

modifications, the Court adopted the new Rules of Civil Procedure to be effective September 1, 1941. Since 1941, the Rules of Civil Procedure have been amended numerous times, most recently when the Supreme Court promulgated the 1999 discovery rules revisions. Although the substance of the rules has changed significantly over the years, they remain in substantially the same form as originally promulgated, with one major exception: the separation of the Rules of Appellate Procedure.

[c] The Rules of Appellate Procedure

Effective September 1, 1986, the rules governing procedure on appeal were extracted from the Rules of Civil Procedure and promulgated as the Texas Rules of Appellate Procedure. At that time, the appellate rules were substantially rewritten and reorganized.

In 1997, the Supreme Court promulgated an entirely new set of Rules of Appellate Procedure. The new rules were intended to make appellate practice more user-friendly, refocus appellate procedure on the merits rather than technicalities, and reduce cost and delay.

[d] The Rules of Civil Evidence

Effective September 1, 1983, the Court promulgated Rules of Civil Evidence, replacing numerous statutory provisions. In 1997, the Court, together with the Court of Criminal Appeals, jointly promulgated uniform Rules of Evidence to govern both civil and criminal cases.

[e] The Rules of Judicial Administration

Effective February 4, 1987, the Supreme Court adopted Rules of Judicial Administration providing for a Council of Regional Presiding Judges, prescribing duties for presiding judges and local administrative judges, and setting time standards for disposition of cases. § 1.03 The Court of Criminal Appeals

The Court of Criminal Appeals has never had constitutional authority to make rules of procedure and did not have statutory authority until 1985, when the Legislature authorized the Court of Criminal Appeals to adopt rules of evidence and of posttrial, appellate, and review procedure in criminal cases. Tex. Gov't Code §§ 22.108-.109. The Court of Criminal Appeals participated in the adoption of the Rules of Appellate Procedure in 1986, and it adopted the Rules of Criminal Evidence the same year. More recently, it participated in the adoption of the new Rules of Appellate Procedure and the Rules of Evidence. The Court of Criminal Appeals must also be consulted on administrative rules affecting criminal cases. Tex. Gov't Code § 74.024.

Appendix I – Texas Rules of Civil Procedure: Rule 13

RULE 13. EFFECT OF SIGNING PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both.

Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

Appendix J – Texas Rules of Civil Procedure Rule 1

TEXAS RULES OF CIVIL PROCEDURE
PART I - GENERAL RULES

RULE 1. OBJECTIVE OF RULES

The proper objective of rules of civil procedure is to obtain a just, fair, equitable and impartial
adjudication of the rights of litigants under established principles of substantive law. To the end that this objective may be attained with as great expedition and dispatch and at the least expense both to the litigants and to the state as may be practicable, these rules shall be given a liberal construction.

Appendix K - Local Government Code Sec 211.011. Judicial Review

TEXAS LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(1) a person aggrieved by a decision of the board;

(2) a taxpayer; or

(3) an officer, department, board, or bureau of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section 211.008(g) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

Appendix L – Texas Penal Code Chapter 37

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.02. PERJURY. (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or

(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

(b) An offense under this section is a Class A misdemeanor.

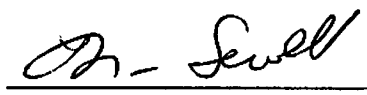
Appendix M– Certificate of Service

Certificate of Service

I certify that I have served this Response to Mr. Bovey's Response to my Motion for Sanctions for Docket Number 03-13-00580-CV on all other parties—which are listed below—on 1/6/14 as follows:

1. Llano City Attorney Carey Bovey **via email**
   Law office of Cary L. Bovey, PLLC
   2251 Double Creek Drive, Suite 204
   Round Rock, TX 78664
   (512) 904-9441
   cary@boveylaaw.com

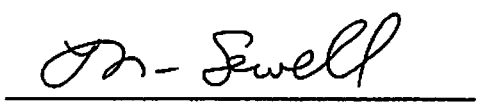
2. Llano City Secretary Toni Milam **in person** for distribution to: Board of Adjustment Chairman/Mayor Mikel Virdell, City Attorney Carey Bovey, City Manager Brenton Lewis
   City of Llano
   301 West Main
   Llano, TX 78643
   (325) 247-4158
   tmilam@cityofllano.com



Marc T. Sewell
108 Summit
Llano, TX 78643-1127
325-247-2508
marcs@simonlabs.com

Appendix N - Certificate of Compliance

I certify that this motion was prepared with Microsoft Office Word 2007, and that, according to that program's word-count function, the sections covered by TRAP 9.4(i)(1) contain 2,822 words.



Marc Sewell

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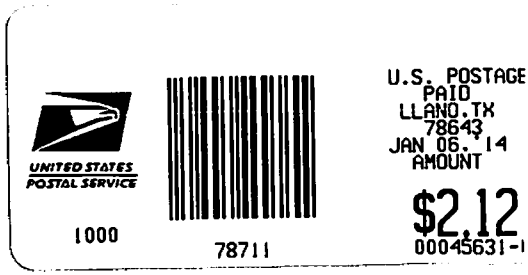
RC SEWELL

SUMMIT

VD, TX 78643



THIRD COURT OF APPEALS

P.O. BOX 12547

AUSTIN, TX 78711