

CAUSE NO. D-1-GV-10-000454

STATE OF TEXAS  
*Plaintiff,*

IN THE DISTRICT COURT OF

v.

RETIREMENT VALUE, LLC,  
RICHARD H. "DICK" GRAY,  
HILL COUNTRY FUNDING, LLC,  
a Texas Limited Liability Company,  
HILL COUNTRY FUNDING, a  
Nevada Limited Liability Company, and  
WENDY ROGERS,  
*Defendants,*

TRAVIS COUNTY, TEXAS

AND

JAMES SETTLEMENT SERVICES, LLC,  
ET AL.  
*Third-Party Defendants.*

126<sup>th</sup> JUDICIAL DISTRICT

**THIRD-PARTY DEFENDANT, MICHAEL McDERMOTT'S SUPPLEMENTAL BRIEF  
TO HIS MOTION TO ENFORCE SETTLEMENT AGREEMENT,  
SEEK INDEMNIFICATION, AND ENJOIN**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Third-Party Defendant, **Michael McDermott** ("McDermott"), and files this Supplemental Brief to his Motion to Enforce Settlement Agreement, Seek Indemnification, and Enjoin, as follows:

**I. PRELIMINARY STATEMENT AND SUMMARY OF SUPPLEMENTAL ARGUMENT**

1. On May 1, 2015, McDermott filed his Motion to Enforce Settlement Agreement, Seek Indemnification, and Enjoin, Brief in Support Thereof, and Request for Evidentiary Hearing ("Motion and Brief in Support"). Subsequently, this Court asked that McDermott address, through supplemental briefing, the effect, if any, that the Texas Supreme Court's holding in *Life*

*Partners v. Arnold*, No. 14–0122, 14–0126, 2015 WL 2148767 (Tex. May 8, 2015), on McDermott’s arguments and authorities in his Motion and Brief in Support.

2. By way of preliminary statement, the *Life Partners* case addresses whether or not Life Partners’ product is a security. The Supreme Court held that Life Partners’ product is an “investment contract” and thus a “security” under the Texas Securities Act (“TSA”). *Life Partners*, 2015 WL 2148767 at \*1. Additionally, the Court declined to limit its holding to prospective application as to Life Partners. *Id.* at \*20. The holding only applied to Life Partners’ product. *See id.* at \*1 (“We hold that the agreements *at issue* are investment contracts . . .”) (emphasis added); \*17 (“Applying this definition to *Life Partners’* life settlement agreements, we conclude . . . they are investment contracts, and thus securities, under the [TSA].”) (emphasis added); \*20 (noting that retroactive application of the Court’s holding “impose[s] no inequities on *Life Partners*”) (emphasis added).<sup>1</sup>

3. McDermott gave up the right to pursue his appeal (the “McDermott Appeal”) of the Court’s Order of December 7, 2011, concluding that the RV product was a security, based upon his execution of the Settlement Agreement, effective as of May 6, 2012. Had McDermott been advised by the TSSB and the Receiver, who was acting in complicity with the TSSB, that the TSSB was pursuing a criminal investigation against him, he would *not* have dismissed the McDermott Appeal with prejudice.

4. If anything, the underlying procedural history of the *Life Partners* decision supports McDermott’s arguments and authorities in his Motion and Brief in Support: On August 16, 2012, the State, at the request of TSSB Commissioner John Morgan, brought suit against Life Partners

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<sup>1</sup> McDermott is aware that the State and the Receiver will likely read the *Life Partners* decision differently, by claiming that the Texas Supreme Court’s holding applies to all life settlement agreements, both prospectively and retroactively. That being said, the *Life Partners* decision has no effect whatsoever on the arguments and authorities that McDermott raised in his Motion and Brief in Support, *i.e.*, it is a red herring that is not relevant to the issues before the Court.

in Cause No. D-1-GV-12-001128; Hon. Stephen Yelenosky, 345<sup>th</sup> Judicial District Court of Travis County, Texas, Judge Presiding. See Plaintiff's Original Verified Petition and Application for Temporary Restraining Order, Temporary and Permanent Injunction, Appointment of Receiver, and Other Relief at 6–7 (citing TSA § 581-25-1(F) in support of Plaintiff's jurisdictional argument). This lawsuit was also brought by the State at the request of then-Deputy TSSB Commissioner John Morgan, under TSA § 581-1(F). See Plaintiff's First Amended Verified Petition, on file with the Court. **The *Life Partners* decision and this lawsuit support McDermott's argument that the TSSB only has civil investigatory authority, not criminal prosecutorial authority.**

5. The TSSB has contravened its own rules and regulations—and blatantly ignored the very Act under which it is governed—by bringing the Criminal Action against McDermott in Collin County. McDermott continues to assert that the TSSB and the Receiver (collectively, “Respondents”) acted wrongfully under the Settlement Agreement. Based upon the procedural history of the *Life Partners* decision and this very lawsuit, coupled with newly discovered evidence, McDermott urges the Court to focus on Respondents' violation of constitutional law, as reiterated and expounded upon *infra*.

## II. BACKGROUND FACTS

6. McDermott hereby incorporates by reference the Background Facts set forth in his Motion and Brief in Support, ¶¶ 1–26, as if fully set forth herein.

7. To put McDermott's supplemental argument in the proper context, McDermott would direct the Court to these additional background facts: TSSB enforcement attorney Dale R. Barron has a history of being deputized as a “special prosecutor” by elected criminal district attorneys in

Collin County, Texas. Exhibit 4.<sup>2</sup> Likewise, other TSSB employees, such as the current commissioner, John Morgan, have been appointed as “special prosecutors” for years. Exhibit 5.

8. In 1995, the Texas legislature passed Senate Bill 1379; this bill was signed into law, and it amended Article 2.07 of the Code of Criminal Procedure, Chapter 402 of the Government Code, Section 41.102 of the Government Code, and Chapter 574 of the Government Code. Tex. S.B. 1379, 74 R.S. (1995). These changes allow Texas attorneys general to assist locally elected prosecutors in prosecuting cases. *Id.* The changes “allow[] assistant attorneys general to serve as duly appointed and deputized assistant prosecutors” and clarify that an assistant attorney general may serve “as an attorney pro tem pursuant to Article 2.07, Code of Criminal Procedure.” *Id.*

9. The bill analysis for Senate Bill 1379 reads as follows:

The prosecutor assistance division of the Office of the Attorney General has provided technical and specialized assistance to local prosecutors across the state. Currently, although these actions are taking place, there is no statutory provision which allows the division to assist as a duly appointed assistant prosecutor, or as an attorney pro tem.

Senate Comm. on Criminal Justice, Bill Analysis, Tex. S.B. 1379, 74 R.S. (1995). The purpose of the bill is described as, “. . . authoriz[ing] the attorney general’s office to provide technical and legal assistance as an appointed assistant prosecutor or as an attorney pro tem, upon the request of a local prosecuting attorney.” *Id.* Further, the bill analysis states, “It is the committee’s opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, department or agency.” *Id.* No law giving the TSSB the same authority as the attorney general’s has been passed, and as will be shown *infra*, this is because any such law would be unconstitutional, since among officers, only county attorneys, district attorneys, and the attorney general may represent the State in court.

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<sup>2</sup> The last exhibit to McDermott’s Motion and Brief in Support was Exhibit 3. Accordingly, McDermott attaches the first exhibit to his Supplemental Brief as Exhibit 4.

## II. ARGUMENTS AND AUTHORITY

10. The arguments and authority presented in McDermott’s Motion and Brief in Support ¶¶ 27–96, are incorporated by reference as if fully set forth herein.

*A. This Court may enjoin the TSSB from prosecuting McDermott because it is attempting to enforce a criminal statute by applying an unconstitutional rule or policy that infringes on the exclusive powers of local prosecutors and the attorney general, and this rule/policy threatens McDermott’s property and personal rights.*

11. “[A] civil court has jurisdiction to declare constitutionally invalid and enjoin the enforcement of a criminal statute only when (1) there is evidence that the statute at issue is unconstitutionally applied by a rule, policy, or other noncriminal means subject to a civil court’s equity powers and irreparable injury to property or personal rights is threatened, or (2) the enforcement of an unconstitutional statute threatens irreparable injury to property rights. *State v. Morales*, 869 S.W.2d 941, 942 (Tex. 1994). Under *Morales*, this Court should enjoin the TSSB from prosecuting McDermott through the role of special prosecutor, attorney pro tem, or any form of deputized local prosecutor.

12. The TSSB, by acting as special prosecutor (or some other form of local prosecutor), is enforcing criminal laws: Article 581 Sec. 29(C) of the TSA, Texas Penal Code 31.03(F)(1), Texas Penal Code Section 34.02, and Texas Penal Code 71.02(1) and (10). Exhibit 3. The unconstitutional rule or policy being applied during these criminal enforcements—and threatening McDermott with the irreparable injuries of prison time and criminal fines—is the TSSB’s repeated practice of acting as a special prosecutor, attorney pro tem, or some other form of local criminal prosecutor, without any statutory or constitutional authority to do so.

**1. The TSSB has established an invalid *ad hoc* rule that its employees may act as local prosecutors:**

13. The Texas Government Code states that a “Rule”:

- (A) means a state agency statement of general applicability that:
  - i. implements, interprets, or prescribes law or policy; or
  - ii. describes the procedure or practice requirements of a state agency;
- (B) includes the amendment or repeal of a prior rule; and
- (C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.

TEX. GOV'T CODE § 2001.003(6). Likewise, TSA article 581-28-1, which governs the TSSB, defines “rule and regulation” in the same manner. “[T]o constitute a ‘rule’ under this definition, ‘an agency statement interpreting law must bind the agency or otherwise represent its authoritative position in matters that impact personal rights.’” *Tex. State Bd. of Pharmacy v. Witcher*, 447 S.W.3d 520, 528 (Tex. App.—Austin 2014, no pet.).

14. Examples of such statements by the TSSB include: (1) “Nancy Elmilady, an attorney in the Enforcement Division of the State Securities Board, will serve as a special prosecutor in the case [of theft and securities violations], working with the Hays County District Attorney’s Office.”; (2) “Angela Cole, an enforcement attorney in the Corpus Christi office of the State Securities Board, is serving as a Special Prosecutor in the case [dealing with sales of unregistered securities].”; (3) “Morgan’s 27 ½ years of experience at the Agency includes 13 years in the Enforcement Division, eight of them as Director of Enforcement. During that time he was a special prosecutor in securities fraud trials in several Central Texas counties.” Exhibit 5.

15. Through its public statements and actions, the TSSB has established a rule that its employees are legally authorized to act as special prosecutors in criminal cases, even though, as demonstrated *infra*, the Texas constitution expressly forbids this, and no statute permits the TSSB’s behavior (because any such statute would be unconstitutional). The TSSB has thus incorrectly interpreted and implemented the laws dealing with the power to represent the State in courts and the proper statutory procedures for appointing prosecutors in criminal cases.

16. The TSSB's behavior and statements are of general applicability because its employees have acted as special prosecutors for several years, during several different prosecutions, and in various parts of the state. The agency obviously feels free to prosecute any criminal case involving alleged securities violations and has shown it will do so at any time. The TSSB has engaged in this behavior in Collin County, Hays County, Nueces County, Hood County, and "several Central Texas counties" during the years of 2015, 2014, 2013, 2012, 2011, 2010, 2009, and, according to a TSSB press release, 1998 through at least 2011. Exhibits 4, 5, 6. Multiple TSSB employees such as Dale Barron, Nancy Elmilady, and Angela Cole have taken part in implementing this rule by serving as special prosecutors. *Id.* (Indeed, Mr. Barron, Greta Cantwell, Tina Lawrence, and Matthew Leslie, all TSSB enforcement attorneys employed and paid by the TSSB, are acting as the "special prosecutors" in the very Criminal Action against McDermott. Exhibit 6. The TSSB's statements and actions lead one to the conclusion that the agency's employees are legally authorized to serve as local prosecutors.

17. Finally, the TSSB's rule/policy does not come under an exception to rule creation because it results in the prosecution and criminal punishment of defendants like McDermott, and does not deal only with the internal management or organization of the agency. And the rule is *ad hoc* because it has not been established through the proper notice, hearing, and adoption procedures required by the TSA and the Administrative Procedures Act ("APA"). *See* TEX. CIV. STAT. art. § 581-28-1; *see* TEX. GOV'T CODE §§ 2001.023, 2001.029, 2001.033, 2001.035 (setting forth the notice, hearing, adoption, and substantial compliance requirements of the APA). For these reasons and others, as shown *infra*, the TSSB's rule/policy is invalid. TEX. GOV'T CODE § 20001.035 (prescribing that "[a] rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.0225 through 2001.034").

18. “An agency rule is invalid if (1) the agency had no statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.” *Williams v. Tex. State Bd. of Orthotics & Prosthetics*, 150 S.W.3d 563, 568 (Tex. App.—Austin 2004, no pet.). The TSSB’s rule meets all three criteria establishing invalidity, and each will be addressed.

- i. The TSSB had no statutory authority to promulgate its *ad hoc* rule, and it was not promulgated pursuant to proper procedure.

19. “In deciding whether an administrative agency has exceeded its rulemaking powers, the determinative factor is whether the rule’s provisions are “in harmony” with the general objectives of the statute.” *Id.* “In determining whether a rule is in harmony with an act’s general objectives, courts look to all applicable provisions of that act, rather than only one particular section.” *Id.* “As in all questions of statutory interpretation, our goal is to determine and give effect to the legislature’s intent.” *Id.*

20. The TSSB’s behavior is clearly not in harmony with the TSA as shown by the Act itself and by statutes that allow other state agency employees to assist in local prosecutions. In this case, the statutes that should be considered by the Court are Texas Civil Statutes articles 581-28-1, 581-28, and 581-3, Texas Code of Criminal Procedure article 2.07, Texas Government Code §§ 41.102 and 574.004, and Texas Penal Code §§ 1.09 and 39.015.

- a. *Texas Civil Statutes articles 581-28-1, 581-28, and 581-3 analyzed:*

21. The TSSB’s establishing a rule that its employees may behave as local prosecutors violates TSA article 581-28-1, “Adoption of Rules and Regulations,” which reads

B. The board may, from time to time, in accordance with the provisions of this Section 28-1, make or adopt such rules and regulations as may be necessary to carry out and implement the provisions of this Act, *including rules and regulations governing registration statements, applications, notices, and reports, and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this Act.* For the purpose of adoption of rules and regulations, the board may



*classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.* The board may, in its discretion, waive any requirement of any rule or regulation in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

TEX. CIV. STAT. art. § 581-28-1 (emphasis added). Nowhere in this paragraph is the TSSB given authority to adopt rules allowing its employees to serve as criminal prosecutors.

22. Not only has the TSSB gone beyond the bounds of the subject matters for which it can establish rules, it has violated the statute dictating how TSSB rules are to be promulgated:

C. No rule or regulation may be made or adopted unless the board finds, after notice and opportunity for comment in accordance with the provisions of this Section 28-1, that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act.

*Id.* Despite these statutory requirements for notice, comment, and rule adoption procedures, the TSSB's rules show no provision by which its employees can act as local prosecutors. *See generally* 7 TEX. ADMIN. CODE. Again, the TSSB has violated its own governing statutes by establishing an *ad hoc* rule by which its employees act as criminal prosecutors.

23. Article 581-28 of the TSA is titled "Investigations, Investigatory Materials, and Registration Related Materials" and is introduced by the words "Investigations by Commissioner". Throughout the article, the word "investigation" is used multiple times, including in "C. Assistance to Securities Regulator of Another Jurisdiction." TEX. CIV. STAT. art § 581-28. Nowhere in this article is the TSSB Commissioner permitted to conduct or assist prosecutions in the role of prosecutor. *Id.* Likewise, TSA article 581-3 ("art. 581-3") directs the TSSB to *investigate* securities violations and then turn criminal findings over to a local prosecutor; if a local prosecutor fails to act on the findings, the TSSB is to present them to the

Attorney General, who is authorized by art. 581-3 to act as a stand-in district or county attorney. TEX. CIV. STAT. art. § 581-3 (emphasis added).

24. The TSSB's, local prosecutors', and the Attorney General's powers are designated by these articles (and the Texas constitution, as will be explained *infra*), and the TSSB's powers cannot be expanded according to the whims of the TSSB. The case law bears this out. *Shields v. State* makes clear that the TSSB cannot exceed the bounds of its governing statutes. *See Shields v. State*, 936 S.W.2d 711, 713 (Tex. App.—Austin 1996, no writ). In *Shields*, a civil cause of action, the State had alleged, and the trial court had found, that Shields had committed fraudulent acts while dealing in securities, thus committing several violations of the TSA. *Id.* The State sought an injunction against Shields under article 581-32(A), and the trial court granted an injunction “restrain[ing] Shields from future violations of that character” but went even further in “restrain[ing] his selling, brokering, or dealing in securities in any manner, without reference to fraud or the terms of the Act.” *Id.* On appeal, the Austin court found that because article 581-32(A) did “not authorize an injunction of that scope,” the trial court had abused its discretion in “restrain[ing Shields from] acts that are not fraudulent or a violation of the Act.” *Id.*

25. If the TSSB cannot seek injunctions that exceed its governing statutory language, it certainly cannot ignore the limitations placed on its role in criminal proceedings by art. 581-3 and the Texas Constitution; and, as shown in *Shields*, trial courts cannot be complicit and use their authority in allowing the TSSB to exceed its powers. As held in *Shields*, quoted directly *infra*, the TSSB cannot use whatever broad, self-appointed powers it pleases to enforce the TSA, because doing so is a violation of the TSA (and in McDermott's case, discussed *infra*, a violation of the Texas Constitution):

The State suggests the scope of the injunction is authorized by article 531-3 of the Act. That statute entrusts administration of the Act to the Securities

Commissioner and requires that officer and the Attorney General to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. We hold the State's interpretation is not a reasonable construction of the statutory language. That interpretation turns the statute on its head because it would authorize the two public officers to misapply the terms of article 581-32—a statute that article 581-3 instructs them to enforce.

*Id.* at 713–14. (internal citations and quotation marks omitted). Just as in *Stevens*, the TSSB would have us believe it can engage in whatever broad activity it wishes to enforce security laws; instead, it has “turn[ed] the statute on its head” because it has ignored and misapplied the very statutes it has been charged with enforcing. *See id.*

*b. Texas Code of Criminal Procedure article 2.07 analyzed:*

26. If it so attempts, the TSSB cannot cite Code of Criminal Procedure article 2.07, shown below, as giving it authority by rule to prosecute criminal cases.

(a) Whenever an attorney for the state is disqualified to act in any case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of his office, or in any instance where there is no attorney for the state, the judge of the court in which he represents the state may appoint any competent attorney to perform the duties of the office during the absence or disqualification of the attorney for the state.

(b) Except as otherwise provided by this subsection, if the appointed attorney is also an attorney for the state, the duties of the appointed office are additional duties of his present office, and he is not entitled to additional compensation. Nothing herein shall prevent a commissioners court of a county from contracting with another commissioners court to pay expenses and reimburse compensation paid by a county to an attorney for the state who is appointed to perform additional duties.

(b-1) An attorney for the state who is not disqualified to act may request the court to permit him to recuse himself in a case for good cause and upon approval by the court is disqualified.

(c) If the appointed attorney is not an attorney for the state, he is qualified to perform the duties of the office for the period of absence or disqualification of the attorney for the state on filing an oath with the clerk of the court. He shall receive compensation in the same amount and manner as an attorney appointed to represent an indigent person.

(d) In this article, “attorney for the state” means a county attorney, a district

attorney, or a criminal district attorney.

(e) In Subsections (b) and (c) of this article, “attorney for the state” includes an assistant attorney general.

(f) In Subsection (a) of this article, “competent attorney” includes an assistant attorney general.

(g) An attorney appointed under Subsection (a) of this article to perform the duties of the office of an attorney for the state in a justice or municipal court may be paid a reasonable fee for performing those duties.

27. The only attorneys discussed in article 2.07 above are “attorneys] for the state,” which refers to county attorneys, district attorneys, and criminal district attorneys, and in (b) and (c), assistant attorneys general (all of which is consistent with the Texas Constitution, as explained *infra*). TEX. CODE CRIM. PROC. art. § 2.07. Subsection (c) cannot include TSSB attorneys because only attorneys general are specifically added for consideration (and adding other agencies’ attorneys would be unconstitutional) and the last sentence of (c) indicates that such attorney, if not an attorney for the state (such as an attorney general), “shall receive compensation in the same amount and manner as an attorney appointed to represent an indigent person.” *Id.*

28. A TSSB attorney therefore cannot be considered, as the statute clearly contemplates a person in this role, aside from an attorney general, as not already receiving compensation from the state as an employee or officer. *See* TEX. GOV’T CODE § 311.016(2) (prescribing that “[t]he following constructions apply unless the context in which the word or phrase necessarily requires a different construction or unless a different construction is expressly provided by statute” and that “(2) shall imposes a duty”).

29. Further, “competent attorney” is clarified in (f) as including “an assistant attorney general.” TSSB attorneys were not included as “competent,” and the legislature’s so choosing must be respected by the TSSB. *See* TEX. CODE CRIM. PROC. art. § 2.07(f); *see Cameron v.*

*Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) (reciting the rules that “every word of a statute must be presumed to have been used for a purpose,” “every word excluded from a statute must also be presumed to have been excluded for a purpose,” and “[o]nly when it is necessary to give effect to the clear legislative intent can we insert additional words or requirements into a statutory provision”). Accordingly, constitutional considerations aside, Code of Criminal Procedure article 2.07 does not vest the TSSB’s employees with any ability to serve as local prosecutors and does not support the TSSB’s *ad hoc* rule.

c. *Texas Government Code § 41.102 analyzed:*

30. Likewise, should it so attempt, the TSSB cannot cite TEX. GOV’T CODE § 41.102, shown below, as allowing its attorneys to serve as local prosecutors by rule:

(a) A prosecuting attorney may employ the assistant prosecuting attorneys, investigators, secretaries, and other office personnel that in his judgment are required for the proper and efficient operation and administration of the office.

(b) A prosecuting attorney may request the assistance of the attorney general, and the attorney general may offer to the prosecuting attorney the assistance of his office, in the prosecution of all manner of criminal cases or in performing any duty imposed by law on the prosecuting attorney. In requesting or accepting such assistance, a prosecuting attorney may appoint any assistant attorney general as an assistant prosecuting attorney.

(c) The attorney general may offer to assist a prosecuting attorney in the prosecution of criminal offenses concerning the Texas Youth Commission.

Subsection (a) above discusses a prosecuting attorney’s ability to employ personnel. Under TEX.

LAB. CODE § 201.041,

“employment” means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the commission that the individual’s performance of the service has been and will continue to be free from control or direction under the contract and in fact.

Similarly, the Merriam-Webster Dictionary defines “employ” as

- 1 a : to make use of (someone or something inactive) <employ a pen for sketching>  
b : to use (as time) advantageously <a job that employed her skills>  
c (1) : to use or engage the services of (2) : to provide with a job that pays wages or a salary
- 2 : to devote to or direct toward a particular activity or person <employed all her energies to help the poor>

Merriam-Webster, “employ”, <http://www.merriam-webster.com/dictionary/employ> (last visited May 22, 2015). Further, the definition of “personnel” is “a body of persons usually employed (as in a factory or organization)” and “a division of an organization concerned with personnel.” Merriam-Webster, “personnel”, <http://www.merriam-webster.com/dictionary/personnel> (last visited May 22, 2015).

31. Given these definitions and the context of Subsection (a), the conclusion to be drawn is that the subsection deals with hired employees and paid personnel. As salaried state employees, TSSB attorneys and assistant attorneys general cannot qualify as such. Therefore, Subsection (b) creates an exception and allows assistant attorneys general in particular to assist local prosecutors while retaining their status as state employees. TEX. GOV'T CODE § 41.102(b). The existence of Subsection (b) and the powers afforded the attorney general alone therein was a deliberate legislative choice. The legislative history of this statute shows that Subsection (b) was added in 1995 by Senate Bill 1379, after Subsection (a) had already been in existence. Tex. S.B. 1379, 74 R.S. (1995). If Subsection (a) already implied assistant attorneys general, or any state agency's attorney, could provide such assistance, Subsection (b) would not have been necessary. *Carrion*, 618 S.W.2d at 540 (reciting the rule that “every word of a statute must be presumed to have been used for a purpose”).

d. *Texas Government Code § 574.004 analyzed:*

32. As shown in the language below, only assistant attorneys general, not TSSB attorneys, may be deputized as assistant prosecutors:

Nothing in this chapter shall prevent the attorney general from providing assistance to district attorneys, criminal district attorneys, and county attorneys on request by allowing assistant attorneys general to serve as duly appointed and deputized assistant prosecutors, nor shall this chapter prohibit the appointment of an assistant attorney general as an attorney pro tem pursuant to Article 2.07, Code of Criminal Procedure.

e. *Texas Penal Codes §§ 1.09 and 39.015 analyzed:*

§1.09. Concurrent Jurisdiction Under This Code to Prosecute Offenses That Involve State Property

With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute under this code any offense the element of which occurs on state property or any offense that involves the use, unlawful appropriation, or misapplication of state property, including state funds.

§ 39.015. Concurrent Jurisdiction to Prosecute Offenses Under This Chapter

With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this chapter.

Once again, the statutes show that the agency of the Texas Attorney General is particularly designated to work with local prosecutors in pursuing criminal prosecutions, and the TSSB is given no analogous statutory consideration.

2. The Texas Constitution forbids TSSB attorneys from serving as local prosecutors.

33. The Office of the Attorney General's ("OAG") unique statutory position is not merely a matter of legislative whim; the OAG operates in this role because "[t]he courts have interpreted the constitution to confer upon the attorney general and the county or district attorney the

exclusive authority to represent the state.” Tex. Att’y Gen. Op. No. JM-791 (1987) (citing *Maud v. Terrell*, 200 S.W. 375 (Tex. 1918)).

That instrument [the Constitution], by Section 21 of Article 5, lodges with the county attorneys the duty of representing the State in all cases in the district and inferior courts, with the right in the Legislature to regulate by law the respective duties of district and county attorneys where a county is included in a district having a district attorney; and by Section 22 of Article 4 that duty as to suits and pleas in the Supreme Court is confided to the Attorney-General. With the limitation existing in the authority of the Legislature, under Section 22 of Article 4, to create additional causes of action in favor of the State and intrust their prosecution, whether in the trial or in the appellate courts, solely to the Attorney-General, *the powers thus conferred by the Constitution upon these officials are exclusive. The Legislature cannot devolve them upon others. Nor can it interfere with the right to exercise them.*

*State v. Walker-Texas Inv. Co.*, 325 S.W.2d 209, 212 (Tex. Civ. App.—San Antonio, writ ref’d n.r.e) (citing *Brady v. Brooks*, 89 S.W. 1052 (Tex. 1905); *Harris Cnty. v. Stewart*, 41 S.W. 650 (Tex. 1897); *State v. Int’l & G. N. R.R. Co.*, 35 S.W. 1067 (Tex. 1926)) (emphasis added).

34. The statutes cited *supra*—TSA articles 581-28-1, 581-28, and 581-3, Texas Code of Criminal Procedure article 2.07, Texas Government Code §§ 41.102 and 574.004, and Texas Penal Code §§ 1.09 and 39.015—all harmonize with each other and the Texas Constitution in the sense that county attorneys, district attorneys, and the attorney general are designated as having the power to prosecute criminal cases. The statutes also demonstrate that the attorney general is not treated as the *de facto* agency for prosecuting crimes; local prosecutors are shown deference in that they are given rights of first refusal in prosecuting cases before the attorney general may step in, and they can request and permit that the attorney general provide assistance. For example, the attorney general can serve as attorney pro tem only when a local prosecutor has recused herself, once again showing that local prosecutors are vested with the authority to prosecute criminal violations locally, and that power can be ceded *only to the attorney general*, the one state agency given constitutional authority to represent the State’s interests in court. *See*,



*e.g., Life Partners*, 2015 WL 2148767 (indicating the Texas Attorney General, *at the request of Commissioner Morgan*, brought suit against Life Partners).

35. Further, the attorney general can enjoy such power only when allowed by the Texas Constitution. The agency's powers cannot be expanded by statute beyond the office's constitutional boundaries.

This article [Article 4, § 22, Texas Constitution] is broad enough to confer all the power claimed; but it is not believed that it was the intention of the constitution to confer, by the general clause above referred to, power upon the legislature to give to the attorney general power to perform those acts which the constitution itself conferred upon county attorneys; but that it was intended thereby to give the legislature power to confer upon the attorney general such powers as might be deemed necessary in regard to matters which had not been expressly conferred by the constitution upon some other officer. Any other construction would lead to the doctrine that the constitution had empowered the legislature to alter the constitution itself, without an express grant of such power. Art. 2802a, R.S., grants some powers and imposes some duties upon the attorney general in regard to matters upon which the constitution is silent, and in so far as it does so, there can be no objection to their exercise. The legislature has imposed upon the attorney general many duties in regard to which the constitution says nothing, among which it is made his duty to examine the charters of contemplated railway corporations (Acts 1876, 141); he is made a member of the board to contract for public printing (Acts 1876, 31); he is member of the board to have land for new capital surveyed, sold and capital built (Acts 1879, 9, 111); and many other powers and duties are imposed upon that officer.

*Walker-Texas Inv. Co.*, 325 S.W.2d at 211 (emphasis added). As emphasized above, state officers are limited by the authority they are delegated by the state constitution, and these bounds cannot be expanded by the legislature, thus explaining why: (1) the TSSB has never been given statutory authority to directly prosecute criminal securities violations, and (2) why it is represented in civil suits by the attorney general.

36. If even the Texas Legislature cannot authorize the TSSB to prosecute criminal cases because it is prevented from doing so by the constitution, it defies reason that the TSSB attempts to construct legal workarounds that allow the office of the TSSB to encroach upon the

constitutional authority of local prosecutors and the attorney general and attempt to operate in two capacities. The TSSB has no constitutional capacity to accept the role of local prosecutor; the only state agency that can accept this role is the one so named by the Texas Constitution, the attorney general, because that is the only state agency with the power to represent the state. *E.g., Life Partners*, 2015 WL 2148767.

37. If an attorney of any other state agency wishes to represent the State in court, they must follow both the Texas Constitution and be permitted to do so by statute. These dynamics were spelled out in a Texas Attorney General Opinion, wherein the Texas Commission on Human Rights had inquired as to “the authority of the attorney general to represent the Texas Commission on Human Rights in litigation under article 5221K, V.T.C.S., the Commission on Human Rights Act.” Tex. Att’y Gen. Op. No. JM 791 at \*1 (1987). The Act had given the commission statutory “authority to bring civil suits to carry out the purposes of the article,” but the Act did not also expressly state that the attorney general shall represent the commission.” *Id.*

38. In reviewing precedent, the attorney general recited that “[p]rior opinions have determined that similar provisions do not limit the constitutional authority of the attorney general to represent the state in court, and that state attorneys of a state agency may appear in court for the agency only in subordination to the authority of the attorney general.” *Id.* This was so because, as stated previously, “Texas courts have held that the powers conferred by the[] constitutional provisions on the attorney general and the county or district attorneys are exclusive, and that the legislature may not confer them on others. . . .” *Id.* at \*2. Further, the constitution, in some exceptional instances, permits the legislature to designate the attorney general as the officer who will represent the state in lower courts during particular causes of action, even though such power is usually reserved to local prosecutors. *Id.*

39. The attorney general found that the legislature had done so in enacting Article 5221k, a statute of statewide concern, and that the Article “would be unconstitutional if it allowed any other attorney to represent the state, except in subordination to the attorney designated by the relevant constitutional provision.” *Id.* at \*3. The opinion closed in saying “[a]ny staff attorney or outside attorney employed by the commission may represent the commission in court only subject to the supervision and direction of the attorney general.” *Id.*

40. As concerns McDermott’s case, a few key, relevant points are raised in this opinion. First, state agencies cannot be presumed as being constitutionally fit to serve as local prosecutors. There is a presumption that county and district attorneys fulfill that role. Tex. Const. art. V, § 21 (amended Nov. 2, 1954). Second, the nature of a statutory infraction determines what kind of prosecutor is constitutionally permitted to proceed with a case. *See Walker-Tex. Inv. Co.*, 325 S.W.2d at 212 (reciting that “under Section 22 of Article 4,” the legislature may “create additional causes of action in favor of the State and intrust their prosecution, whether in the trial or the appellate courts, solely to the Attorney-General”). The Criminal Action, a criminal case based on alleged crimes and harms affecting residents of Collin County, would be presumed to come under the jurisdiction of local prosecutors. Third, **aside from the attorney general, a state agency does not have inherent, constitutional authority to pursue suits in court unless a statute that comports with the constitution says it may do so (with the understanding that they will be subordinate to a constitutionally designated prosecutor), and courts may not assist them in violating the laws.** *See id.* (opining that the powers of the local prosecutors and attorney general are “exclusive”); *see Lamar Cnty. Appraisal Dist. v. Campbell Soup Co.*, 93 S.W.3d 642, 646 (Tex. App.—Texarkana 2002, no pet.) (reciting that “[a]n agency may exercise only those specific powers that the Legislature confers on it in clear and express language.”);

*Pub. Util. Comm'n of Tex. v. Cofer*, 754 S.W.2d 121, 124 (Tex. 1988) (“The courts are not free to thwart the plain intention of the Legislature expressed in a law that is constitutional.”).

41. Indeed, even when the Texas Commission on Human Rights was allowed by statute to pursue civil causes of action, the Commission was constitutionally required to be subordinate to the attorney general during such actions, despite the attorney general’s absence from article 5221k. This is because Constitutional powers must be respected and are always underlying statutory directives. *See* TEX. GOV’T CODE § 311.021(1). Thus, the TSSB cannot be allowed to control and initiate actions that represent the state in court. The Texas Constitution and art. 581-3 forbids this. Moreover, even if the TSSB were found to be able to act in the assistantship capacity to a local prosecutor or the attorney general, it can do so *only if a constitutional statute permits it to do so*, and only in the kinds of actions so designated by statute. No statute permits the TSSB to represent the State in criminal prosecutions and exceed its constitutional authority, and the TSSB cannot argue it is acting under the power of local prosecutors because a local prosecutor cannot amend the constitution and designate powers to state agencies in addition to the attorney general; nor can prosecutors essentially rewrite the statutes and give state agencies more power than what the legislature has bestowed upon them. *See* Tex. Const. art. II, § 1 (establishing a division of powers with three separate departments and prescribing that “no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted”).

42. Since the TSSB, through an improperly *ad hoc*<sup>3</sup>, invalid rule, has violated the Texas Constitution and its own statutes and cannot act as local prosecutors, it should be enjoined from

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<sup>3</sup> The TSSB cannot argue that investigating criminal violations and turning over those investigations to statutorily authorized prosecutors is “novel to [the] agency or so specialized and varying as to be impossible of capture within any general rule.” *See Witcher*, 447 S.W.3d at 527–28. The TSSB has been conducting securities investigations for decades; the TSA – including art. 581-3, requiring the handing over of investigations to authorized prosecutors –

prosecuting McDermott. *See Morales*, 869 S.W.2d at 942; *see Witcher*, 447 S.W.3d at 527–28 (explaining that in some limited circumstances, agencies may promulgate rules in an *ad hoc* fashion without adhering to the APA, such as when an “issue is novel to [the] agency or so specialized and varying as to be impossible of capture within any general rule” or when doing so is “appropriate to flesh out [a] new statute or rule”) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 201–03 (1947); *Sw. Bell Tel. Co. v. Pub. Util. Comm’n of Tex.*, 745 S.W.2d 918, 926 (Tex. App.—Austin 1988, writ denied)). “A rule that is not properly promulgated under mandatory APA procedures is invalid, and an agency decision based on an invalid rule must be reversed and remanded to the agency if substantial rights of the appellant have been prejudiced thereby.” *Id.* at 527.

43. Instead, the TSSB has avoided this statutorily mandated, transparent process by agreeing to take over, wholesale, unconstitutional criminal prosecutions throughout the state, even though the Texas Constitution grants prosecutorial authority only to county prosecutors, district prosecutors, and the Attorney General. *See* Tex. Att’y Gen. Op. No. JM-791 (1987) (opining that “[t]he Texas Constitution places in the attorney general and the district or county attorney the exclusive power to represent the state,” and that a statute “would be unconstitutional if it allowed any other attorney to represent the state, except in subordination to the attorney designated by the relevant constitutional provision”).

44. Therefore, the TSSB’s prosecutorial behavior violates both Texas’s constitution and its statutes and, and since it has created an *ad hoc* rule in doing so, under *Morales*, this Court has the equitable authority to the TSSB from prosecuting McDermott.

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was passed in 1957. *Life Partners*, 2015 WL 2148767 at \*19. The TSSB has had every opportunity to strictly follow the statutes it is required to enforce by law, or to attempt a notice and hearing process by which the public and other government authorities could scrutinize any attempt by the TSSB to pass rules permitting its employees to serve as prosecutors.

### III. CONCLUSION

The *Life Partners* decision has no bearing on the arguments and authorities that McDermott raised in his Motion and Brief in Support. It actually supports McDermott's supplemental arguments and authorities herein, as the TSA only allows the TSSB to perform investigatory functions, not simultaneously act as a criminal prosecutor. The statutes and case law are clear on this issue; the TSSB has engaged in *ad hoc* rulemaking and has breached the Settlement Agreement by prosecuting McDermott in the Criminal Action in Collin County. Likewise, the TSSB breached the Settlement Agreement by failing to disclose to McDermott that he was subject of an ongoing criminal investigation by the TSSB. McDermott's constitutional rights have been violated in myriad ways due to Respondents' conduct, and should not go unchecked by the Court.

### PRAYER

WHEREFORE, PREMISES CONSIDERED, Third-Party Defendant, Michael McDermott, respectfully requests the following upon consideration of the applicable briefing:

1. The Court hold an oral hearing on McDermott's Motion to Enforce Settlement Agreement, Seek Indemnification, and Enjoin ("the Motion"), and thereafter (i) summarily grant McDermott's Motion as to the Receiver, ordering the Receiver to indemnify McDermott under the Settlement Agreement, or, as expectancy damages, pay McDermott's court costs and attorney's fees incurred in this matter; and (ii) conduct an evidentiary hearing and subsequently enjoin the TSSB from further prosecuting McDermott.

2. In the alternative, should the Court summarily decide, without first even holding an oral hearing, that the TSSB may continue to prosecute McDermott in the Criminal Action, then the State, the TSSB, the Receiver and the Settlement Class should be enjoined from sharing with

(i) “special prosecutors” Dale Barron, Tina Lawrence, Matthew Leslie, Greta Cantwell and (ii) the Collin County District Attorney’s Office any of the evidence the Receiver and/or CSSB secured from McDermott prior to and after May 6, 2012, the effective date of the Settlement Agreement.

3. McDermott further prays for any other relief to which he’s justly entitled at law or in equity, including the protection of his constitutional rights.

Respectfully submitted,

**DE LEON & WASHBURN, P.C.**

901 S. MoPac Expressway  
Barton Oaks Plaza V, Suite 230  
Austin, Texas 78746  
Phone: (512) 478-5308  
Fax: (512) 482-8628

By: /s/ Hector De Leon

Hector De Leon (lead attorney)  
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Texas Bar No. 24083675  
Email: aponce@dwlawtx.com

ATTORNEYS FOR THIRD-PARTY DEFENDANT  
MICHAEL MCDERMOTT

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of May, 2015, a true and correct copy of the above and foregoing document was served on the following via ProDoc e-service and/or email.

<p>Jack Hohengarten Texas Attorney General Financial and Tax Litigation Division 300 W. 15<sup>th</sup> Street, Sixth Floor Austin, Texas 78711-2548 (512) 475-3503 (512) 477-2348 fax jack.hohengarten@texasattorneygeneral.gov <i>Counsel for the State of Texas, the Texas State Securities Board, and John Morgan, In His Official Capacity as Commissioner of the Texas State Securities Board</i></p>	<p>Michael Napoli Cox Smith Matthews inc. 1201 Elm Street, Suite 3300 Dallas, Texas 75270 (214) 698-7800 (214) 698-7899 fax mnapoli@coxsmith.com</p> <p>Mary Schaerdel Pitzer Cox Smith Matthews inc. 111 Congress Avenue, Suite 2800 Austin, Texas 78701 (512) 703-6300 (512) 703-6399 fax mdieck@coxsmith.com <i>Counsel for RV Receiver</i></p>
<p>Richard H. Gray 301 Main Plaza, #349 New Braunfels, Texas 78130 (210) 392-3550 texasgraze@gmail.com <i>Pro Se Defendant</i></p>	<p>Carl Galant Nicholas P. Laurent McGinnis Lochridge &amp; Kilgore, llp 600 Congress Avenue, Suite 2100 Austin, Texas 78701 (512) 495-6000 (512) 495-6093 fax cgalant@mcginnislaw.com nlaurent@mcginnislaw.com <i>Counsel for Third-Party Defendants, Ronald and Donald James</i></p>
<p>Bogdan Rentea Rentea &amp; Associates 505 W. 12<sup>th</sup> Street, Suite 206 Austin, Texas 78701 brentea@rentealaw.com <i>Counsel for Defendant Wendy Rogers</i></p>	<p>Geoffrey D. Weisbart Mia L. Storm Weisbart Springer Hayes, LLP 212 Lavaca Street, Suite 200 Austin, Texas 78701 gweisbart@hslawmail.com madams@hslawmail.com <i>Counsel for the Cain/Edelstein Intervenors</i></p>



Dale R. Barron  
Enforcement Attorney  
Texas State Securities Board  
1210 River Bend Drive, Suite 208  
Dallas, Texas 75247  
dbarron@ssb.state.tx.us  
*Prosecuting Attorney in Collin County  
Criminal Action against Mr. McDermott*

/s/ Ben De Leon  
BENJAMIN S. DE LEON

Unofficial copy Travis Co. District Clerk Volva L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, **Greg Willis**, the elected Criminal District Attorney in Collin County, Texas, having full confidence in **Dale R. Barron**, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said **Dale R. Barron** my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]; Richard Hubert Gray; Wendy Lynn Rogers; Ronald Llewellyn James; Donald L. James; [REDACTED]; Michael Charles McDermott; [REDACTED]; [REDACTED] and any other person or entity shown to be legally and factually connected with such investigations and/or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 5<sup>th</sup> day of February 2015.

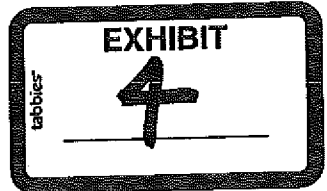
*Greg Willis*  
\_\_\_\_\_  
**GREG WILLIS**  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, *Della Bryant* in and for Collin County, Texas, on this day personally appeared **Greg Willis** known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas, this 5 day of February, 2015.

*Della Bryant*  
\_\_\_\_\_  
Notary Public



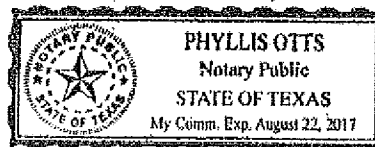
**OATH OF OFFICE**

I, **Dale R. Barron** do solemnly swear (or affirm) that I will faithfully execute the duties of the office of **Assistant Criminal District Attorney, special prosecutor**, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed *Dale R. Barron*  
**DALE R. BARRON**

Sworn to and subscribed before me, this 9<sup>th</sup> day of February, A.D. 2015.

*Phyllis Otts*  
\_\_\_\_\_  
Notary Public



Unofficial copy Travis Co. District Clerk Vernal Price

**DEPUTATION**

COUNTY OF COLLIN } I, **Greg Willis**, the elected Criminal District Attorney in Collin County, Texas, having full confidence in **Dale R. Barron**, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said **Dale R. Barron** my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]

[REDACTED]

[REDACTED]; Susan Gay Pruitt [REDACTED]

[REDACTED]; Garry B. Smith and Robert J. Nelson; [REDACTED]

[REDACTED]; Derek A. Nelson and Capital Mountain Holding Corp.; Christopher

Anthony Zaal; Mark Christopher Parnon; [REDACTED]; and any other person or

entity shown to be legally and factually connected with such investigations and/or

prosecutions, hereby ratifying and confirming any and all such acts and things lawfully

done in the premises by virtue thereof.

WITNESs my hand, this 8<sup>th</sup> day of January, 2015.

*Greg Willis*

**GREG WILLIS**  
Criminal District Attorney, Collin County, Texas

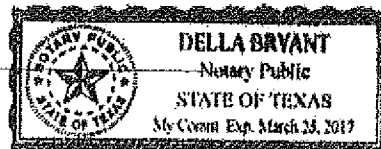
**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared **Greg Willis** known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas, this 8 day of

January, 2015.

*Della Bryant*  
Notary Public



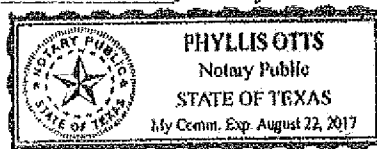
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I, **Dale R. Barron** do solemnly swear (or affirm) that I will faithfully execute the duties of the office of **Assistant Criminal District Attorney, special prosecutor**, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signature: Dale R. Barron  
**DALE R. BARRON**

Sworn to and subscribed before me, this 9<sup>th</sup> day of January, A.D. 2015.

Phyllis Otts  
\_\_\_\_\_, Notary Public



Unofficial copy Travis Co. District Clerk Jevon L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to Susan Gay Pruitt and [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

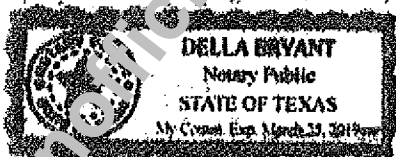
WITNESS my hand this 10 day of October, 2014.

*Greg Willis*  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,  
This 10 day of October, 2014.



*Della Bryant*  
\_\_\_\_\_  
Notary Public

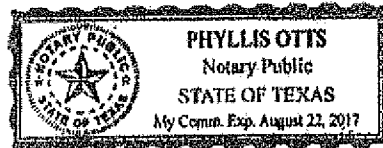
**OATH OF OFFICE**

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Signed *Dale R. Barron*  
**DALE R. BARRON**

Sworn to and subscribed before me, this 14<sup>th</sup> day of October A.D. 2014.

*Phyllis Otts*  
\_\_\_\_\_, Notary Public

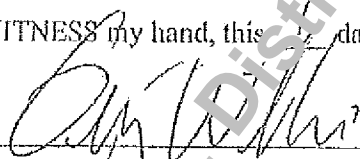


Unofficial copy Travis Co. District Clerk Neva L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED] and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 1 day of October, 2013.

  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

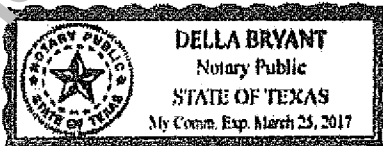
**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 1 day of October, 2013.

  
\_\_\_\_\_  
, Notary Public



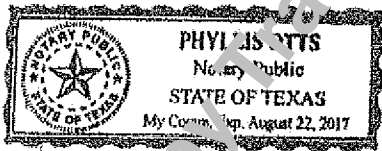


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Signed Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 1<sup>st</sup> day of October A.D. 2013.



Phyllis Ottis  
Notary Public

Unofficial copy Davis Co. District Clerk Veva L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to Christopher A. Zaal;

[REDACTED] and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 3 day of October, 2012.

*Greg Willis*

GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

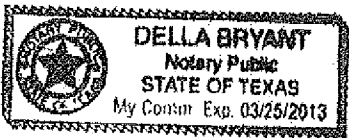
COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 3 day of October, 2012.

*Della Bryant*

Notary Public



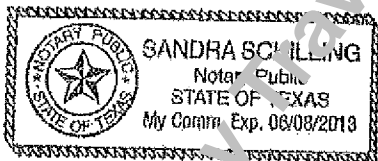
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Signed

Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 3rd day of October A.D. 2012.



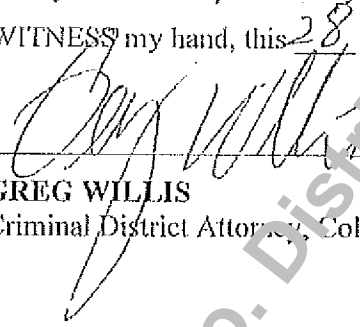
Sandra Schilling  
Collin County, Notary Public

Unofficial copy Davis Co. District Clerk Vernal Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to Kelly G. Rogers; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 28 day of September, 2011.

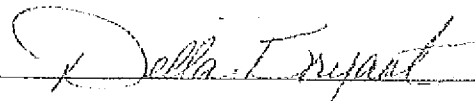
  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

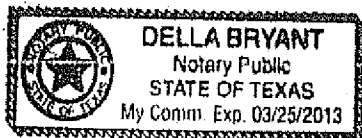
**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 28 day of September, 2011.

  
\_\_\_\_\_  
Notary Public



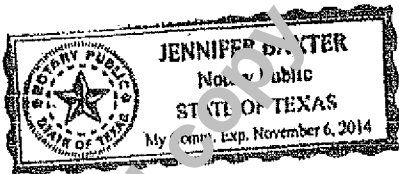
Unofficial copy Travis Co. District Clerk Verval Price

OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God, I understand that my authority is limited to the terms of the foregoing deputation.

Signed Dale R Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 29<sup>th</sup> day of September, 2011.



Jennifer Baxter  
Notary Public

Unofficial Copy - Travis Co. District Clerk Noiva L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]

[REDACTED]; Mark Christopher Parman and [REDACTED]; [REDACTED] Kenneth Paul Lawrence, [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 10<sup>th</sup> day of Sept, 2011.

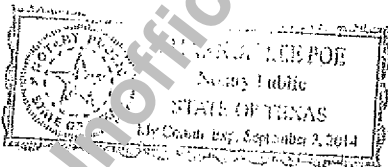
[Signature]  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Shannon Lee Poe in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 10<sup>th</sup> day of September, 2011.



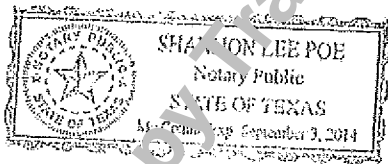
[Signature]  
\_\_\_\_\_  
, Notary Public

OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God, I understand that my authority is limited to the terms of the foregoing deputation.

Signed Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 11<sup>th</sup> day of September, A.D. 2011.



Shannon Lee Poe  
\_\_\_\_\_, Notary Public

Unofficial copy Davis Co. District Clerk Veava L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 18 day of May, 2011.

*Greg Willis*  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

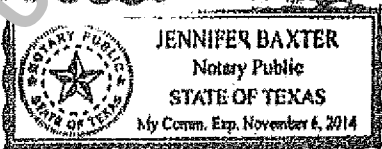
**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, JENNIFER BAXTER in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 18th day of May, 2011.

*Jennifer Baxter*  
\_\_\_\_\_  
, Notary Public



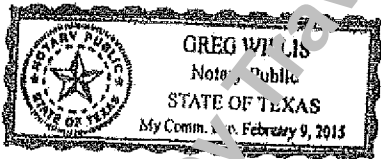


OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 18 day of May A.D. 2011.



[Signature]  
Notary Public

Unofficial copy. Visio Co. District Clerk. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to Karen Bowie and John Kim; William June Fletcher, Jr.; Garry B. Smith, Robert J. Nelson, [REDACTED]; [REDACTED]; Ricky Ray Knowles, John David Riddle, Casey Kay Vanloon, Ronnie Gene Nichols, Jr., Kenneth Paul Lawrence, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Derek A. Nelson and Capital Mountain Holding Corp.; Robert Mangiafico, Thomas Earl Grimshaw and [REDACTED]; William Paul Hudson and [REDACTED], and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand this 7th day of January, 2011.

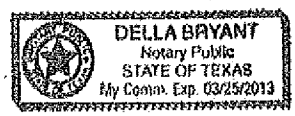
Greg Willis  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,  
This 7 day of January, 2011.

Della Bryant  
\_\_\_\_\_  
Notary Public



Unofficial copy Travis County District Clerk Neval L. Price

**OATH OF OFFICE**

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof. So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed *Dale R. Barron*  
DALE R. BARRON

Sworn to and subscribed before me, this 10<sup>th</sup> day of January, A.D. 2011.



*Shawn R. Gant*  
Notary Public

Unofficial copy Travis Co. District Clerk Vera L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, John R. Roach, the elected District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done on the premises by virtue thereof.

WITNESS my hand, this 24<sup>th</sup> day of March, 2010.

*John R. Roach*

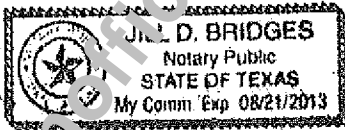
**JOHN R. ROACH**  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Will Bridges in and for Collin County, Texas, on this day personally appeared John R. Roach known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 24<sup>th</sup> day of March, 2010.



*Will D. Bridges*  
State of TX, Notary Public

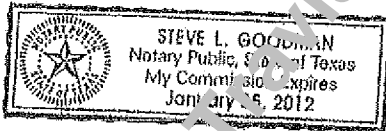
**OATH OF OFFICE**

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, committed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed

Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 23<sup>RD</sup> day of March A.D. 2010.



[Signature]

\_\_\_\_\_, Notary Public

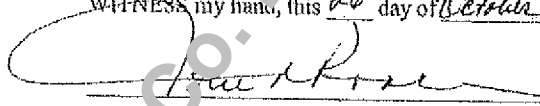
Unofficial copy of this document. For more information, contact the County Clerk's Office at (972) 970-1234. Price: \$15.00

**DEPUTATION**

COUNTY OF COLLIN } I, John R. Roach, the elected District Attorney in  
Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly  
licensed by the State of Texas and an attorney employed by the Texas Securities Board,  
do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy, and  
as a special prosecutor, in my name, place and stead, to do and perform any and all acts  
and things pertaining to my office that I may perform pursuant to the laws of the State of  
investigation and any prosecution of any case of or pertaining to [REDACTED]  
Thomas Lester Irby, II, [REDACTED]

[REDACTED]; and any other person or entity shown to be legally  
and factually connected with such investigations or prosecutions, hereby ratifying and  
confirming any and all such acts and things lawfully done in the premises by virtue  
thereof.

WITNESS my hand, this 26<sup>th</sup> day of October, 2009.

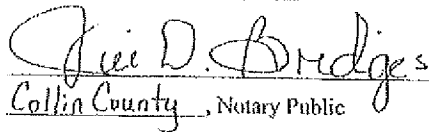


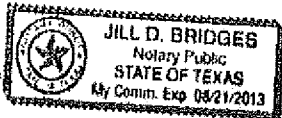
**JOHN R. ROACH**  
Circuit District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Jill D. Bridges in and for Collin  
County, Texas, on this day personally appeared John R. Roach known to me to be the  
person whose name is subscribed to the foregoing deputation, and acknowledged to me  
that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,  
This 26<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
Collin County, Notary Public



OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, In help me God, I understand that my authority is limited to the terms of the foregoing deputation.

Signed *Dale R. Barron*  
DALE R. BARRON

Sworn to and subscribed before me, this 26<sup>th</sup> day of October, A.D. 2009.



*Jennifer Baxter*  
Notary Public

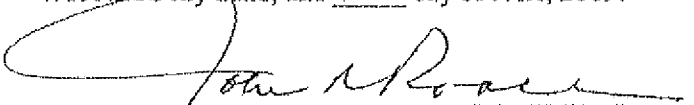
Unofficial copy Travis Co. District Clerk Noval L. Price

DEPUTATION

THE STATE OF TEXAS     }  
COUNTY OF COLLIN     }

I, John R. Roach, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas State Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant to the investigation and any prosecution of any case of or pertaining to Charles Scott Goist, [REDACTED], or any other person or entity shown to be legally and factually connected with such investigation or prosecution; Steven J. Denton, [REDACTED], or any other person or entity shown to be legally and factually connected with such investigation or prosecution; Ricky Knowles, [REDACTED], or any other person or entity shown to be legally and factually connected with such investigation or prosecution, and Garry B. Smith, [REDACTED], or any other person or entity shown to be legally and factually connected with such investigation or prosecution; hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 17<sup>th</sup> day of June, 2009.



**JOHN R. ROACH**  
Criminal District Attorney, Collin County, Texas

Unofficial copy Travis Co. District Clerk Melva L. Price



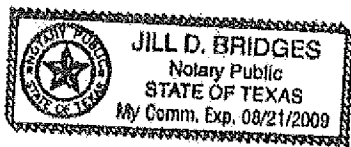
THE STATE OF TEXAS     }  
COUNTY OF COLLIN     }

BEFORE ME, Jill Bridges in and for Collin County, Texas, on this day personally appeared John R. Roach, known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas

This 17<sup>th</sup> day of June, 2009.

Jill D. Bridges  
\_\_\_\_\_, Notary Public



Unofficial copy Travis Co. District Clerk Vella L. Price

OATH OF OFFICE

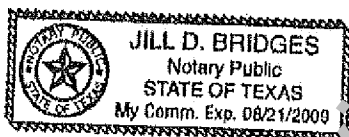
I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and the laws of the United States and this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed

Dale R. Barron

DALE R. BARRON

Sworn and subscribed before me, this 17<sup>th</sup> day of June, 2009.



Jill D. Bridges

Notary Public

Unofficial copy Travis Co. District Clerk Venable Price

## Press Release

### NEWS RELEASE FROM THE TEXAS STATE SECURITIES BOARD Oct. 21, 2011

Contact: Robert Elder, Communications, 512.305.8386 (O) or 512.507.9558 (M) [relder@ssb.state.tx.us](mailto:relder@ssb.state.tx.us)

### CENTRAL TEXAS MAN INDICTED IN OIL AND GAS FRAUD TARGETING ELDERLY INVESTORS

AUSTIN, Texas – A Hays County grand jury has indicted Robbie Dale Walker of Dripping Springs on one count of theft of more than \$200,000 in connection with an alleged oil and gas scam involving elderly investors.

The indictment was issued Oct. 12 and unsealed Oct. 21. Walker was arrested June 29 on a charge of theft following an investigation by the Hays County Sheriff's Office and the Texas State Securities Board.

According to the affidavit for search warrant in the case, Walker allegedly promised a 93-year-old Hays County woman that she would earn 15% annual returns if she invested in an oil and gas project in North Dakota.

Walker was not registered to sell securities. Nor was his company, RD Walker Resources Inc. With few exceptions, registration with the State Securities Board is required for both salespeople and investment products.

Walker is the son of the alleged victim's best friend, according to the affidavit. The indictment names two additional victims who invested at Walker's behest. All three women invested between July 2009 and June 2010, according to the indictment.

Walker spent some of the first alleged victim's money on items from Best Buy and luxury retailers Tiffany and Co. and Louis Vuitton. Another expense was a fee from online dating service Match.com. None of Walker's financial records indicate he invested in oil and gas development, according to the affidavit.

Walker allegedly convinced the first victim to invest \$100,000 on two separate occasions. The second investment came from a bank loan the woman secured through a certificate of deposit she held. All told, the woman has allegedly lost \$216,273, a total that includes bank fees and missed interest payments.

Nancy Elmilady, an attorney in the Enforcement Division of the State Securities Board, will serve as a special prosecutor in the case, working with the Hays County District Attorney's Office.



## Bulletin 2011

### Texas State Securities Board Bulletin

This is your Dec. 1, 2011 edition of the Texas State Securities Board Bulletin, a biweekly roundup of regulatory news and investor education tips. The Web version of this Bulletin and past issues are available at <http://www.ssb.state.tx.us/News/index.php>.

The State Securities Board registers securities offered or sold in Texas; oversees the firms and individuals selling securities or providing investment advice; enforces the Securities Act through criminal, civil and administrative actions; and provides investor education presentations and material. For more information, please contact Robert Elder, Communications, at 512-305-8386 or [relder@ssb.state.tx.us](mailto:relder@ssb.state.tx.us).

### Twice-Sanctioned Adviser Confesses to Sale of \$389,000 in Unregistered Securities

In 2005, the Securities Commissioner entered an Agreed Cease and Desist Order against William Erik Byrne of Corpus Christi that required him to stop selling unregistered variable annuities and promissory notes. It didn't take long for Byrne to violate the Order. From 2006 to 2009, Byrne, acting as an unregistered adviser, sold hundreds of thousands of dollars worth of unregistered promissory notes and other investments. In a Judicial Confession and Stipulation Byrne signed Nov. 14, he admitted he sold \$389,000 in investment contracts and promissory notes without disclosing some important facts to investors. Byrne failed to tell investors about his sanction by the Securities Commissioner; he didn't tell investors that the Texas Department of Insurance fined him \$10,000 in 2008 for engaging in the unauthorized business of insurance; and he intentionally failed to disclose that investors in several of his previous investment programs "had not received payments in accordance with the terms of their respective contracts."

The next step in the case, pending in the 117th state District Court of Nueces County, is expected to be an arraignment at which Byrne will enter a formal plea. Angela Cole, an enforcement attorney in the Corpus Christi office of the State Securities Board, is serving as a Special Prosecutor in the case.

### South Texas Adviser Suspended and Fined for Improper Securities Sales

Richard Henry Elizondo, an investment adviser representative in Harlingen, has had his state registration suspended for five years and has been ordered to pay \$30,000 to investors who purchased notes that were purportedly backed by the proceeds from insurance death benefits. Elizondo sold notes issued by National Life Settlements LLC, a Houston-based company whose principals are currently under indictment in Harris County for securities fraud. According to the Nov. 14 Disciplinary Order, Elizondo sold NLS notes even though his employer at the time, Planmember Securities Corp., denied him permission to do so. Elizondo later lied to Planmember about his sale of the notes and conducted business beyond the scope of his registration.

### Indictment: Stock Scam with Dallas Ties Raked in \$5 Million

Secured Capital Trust Ltd. (SCT) sold at least \$5 million in partnership interests to investors in 2006 and 2007, promising to generate returns for investors by buying shares of publicly traded stocks and other assets. Some of the salesmen for Florida-based SCT, however, neglected to tell investors they had a whopping conflict of interest when it came to buying stock in one company, the now-delisted Interfinancial Holdings Corp. According to a Nov. 1 indictment of Howard in U.S. District Court in Dallas, Howard and two associates each owned 11 million restricted shares of Interfinancial stock, meaning they had a strong incentive to pump up the value of the stock. Moreover, Howard, who worked in Florida, repeatedly bought Interfinancial shares at the direction of people in Dallas who Howard knew also held large numbers of shares. Howard and his associates received kickbacks from the Dallas group in the form of "rebates" of part of the purchase price of Interfinancial shares, according to the indictment. Howard and his partners didn't pass on the rebates to investors, instead spending the money on personal and business expenses. He was charged with one count of federal securities fraud.

Howard was also a salesman for the Amerifirst companies of Dallas, which sold more than \$50 million of fraudulent debt obligations to investors across the country. Stephanie Tourk, an attorney in the Enforcement Division of the Texas State Securities Board, is serving as a Special Assistant U.S. Attorney in the Amerifirst and Howard cases.

## Press Release

### NEWS RELEASE FROM THE TEXAS STATE SECURITIES BOARD

Feb. 3, 2014

Contact: Robert Elder, Communications, 512-305-8386 or [relder@ssb.state.tx.us](mailto:relder@ssb.state.tx.us)

### FRAUD TRIALS IN HOOD, COLLIN COUNTIES RESULT IN TOTAL OF 95 YEARS IN PRISON SENTENCES

AUSTIN, Texas – Eddie Lacy Stivers III was sentenced to 85 years in state prison on Jan. 31 for engaging in the fraudulent sale of stock and promissory notes, with some sales to investors coming after Stivers was indicted in Hood County on those charges.

In a separate case in Collin County State District Court, William Paul Hudson of Plano was convicted of theft in an oil and gas scam and sentenced to 10 years in state prison, also on Jan. 31. Hudson also received a sentence of 10 years, probated on charges of securities fraud and money laundering, and was ordered to pay restitution.

Dale Barron, an attorney with the Enforcement Division of the Texas State Securities Board, prosecuted Stivers with Hood County District Attorney Rob Christian.

Enforcement Division attorneys Tina Lawrence, Alexis Goldate, and Travis Iles served as the special prosecutors in the case against Hudson, which was done in cooperation with the Collin County District Attorney's Office.

Stivers received sentences of 85 years for first-degree securities fraud, 85 years for first-degree theft, and 20 years for second-degree securities fraud. The sentences, handed down in Hood County State District Court, will be served concurrently.

Even after his indictment in 2012, Stivers sold fraudulent promissory notes through a company called Life Style Protectors and Advisors LLC. His previous companies were Patriot Insurance Co. and Patriot Holding Co. According to an Affidavit for Evidentiary Search Warrant issued in Tarrant County, Stivers didn't disclose to investors in Life Style Protectors that he had been indicted in Hood County.

Stivers also didn't tell investors he had used their money to pay some of his and his wife's personal expenses. He also made payments to his criminal defense lawyer with investors' money.

Stivers sold investment contracts that supposedly would have given investors shares in Patriot Holding and Patriot Insurance and allowed them to participate in the profits of any affiliate company of Patriot Holding.

The son of one elderly investor in the fraudulent notes sold by Life Style Protectors testified that his mother, now deceased, invested more than \$117,000 with Stivers and lost it all.

Hudson, the would-be oil well driller, stole approximately \$600,000 from at least 50 investors in multiple oil and gas projects. One, the Gulf Coast Project, was supposed to re-enter existing wells in Jackson, Gonzales, and Jim Wells counties. Hudson and his company also raised money for projects unrelated to Gulf Coast.

Hudson directed only a small fraction of investor funds to oil and gas programs. He spent the majority of investors' money to pay personal expenses.

Hudson already had a record of regulatory sanctions and bankruptcies before soliciting investors in 2007 and 2008. The Texas State Securities Commissioner

suspended and fined Hudson in 2003 for selling unregistered securities, and in 2006 the Alabama Securities Commissioner entered a Cease and Desist Order for the same violation. Hudson and his wife had filed for bankruptcy three times from 1998 to 2007.

Hudson did not disclose his regulatory sanctions or bankruptcies to his investors.

# # #

Unofficial copy Travis Co. District Clerk Velva L. Price

## Press Release

### NEWS RELEASE FROM THE TEXAS STATE SECURITIES BOARD Dec. 14, 2011

Contact: Robert Elder, Communications, 512.305.8386 (O) or 512.507.9558 (M) [relder@ssb.state.tx.us](mailto:relder@ssb.state.tx.us)

### JOHN MORGAN NAMED NEW TEXAS SECURITIES COMMISSIONER

AUSTIN, Texas – The Texas State Securities Board today welcomed back John Morgan, naming him the new Texas Securities Commissioner. Morgan had served as Deputy Commissioner for 14 years before retiring from state employment in February.

Morgan's 27 ½ years of experience at the Agency includes 13 years in the Enforcement Division, eight of them as Director of Enforcement. During that time he was a special prosecutor in securities fraud trials in several Central Texas counties.

Morgan replaces Benette L. Zivley, who resigned last month as Securities Commissioner.

"We are excited to have John's steady hand and nearly three decades of securities work to help guide the Agency," said Beth Ann Blackwood of Dallas, the chair of the State Securities Board. "He is well equipped to meet the continuing challenges of protecting Texas investors in these uncertain times for the capital markets."

Morgan said, "I'm looking forward to rejoining the State Securities Board, which I know from long experience has a dynamic, hard-working staff that is dedicated to protecting investors in Texas."

Morgan becomes the seventh Securities Commissioner since the Agency's creation in 1957.

Morgan is a graduate of the University of Kansas and received his law degree from the Texas Tech University School of Law.

The State Securities Board registers securities offered or sold in Texas; oversees the firms and individuals selling securities or providing investment advice; enforces the Securities Act through criminal, civil and administrative actions. The Agency also provides investor education presentations and material and maintains a separate educational site, [www.TexasInvestorEd.org](http://www.TexasInvestorEd.org).

Unofficial copy Travis Co. District Clerk Neval Price

**DEPUTATION**

COUNTY OF COLLIN } I, **Greg Willis**, the elected Criminal District Attorney in Collin County, Texas, having full confidence in **Dale R. Barron**, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said **Dale R. Barron** my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]; Richard Hubert Gray; Wendy Lynn Rogers; Ronald Llewellyn James; Donald L. James; [REDACTED]; Michael Charles McDermott; [REDACTED]; [REDACTED] and any other person or entity shown to be legally and factually connected with such investigations and/or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 5<sup>th</sup> day of February 2015.

*Greg Willis*

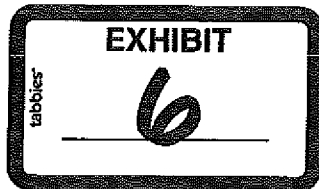
**GREG WILLIS**  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared **Greg Willis** known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas, this 5 day of February, 2015.

*Della Bryant*  
Notary Public





**OATH OF OFFICE**

I, **Dale R. Barron** do solemnly swear (or affirm) that I will faithfully execute the duties of the office of **Assistant Criminal District Attorney, special prosecutor**, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed

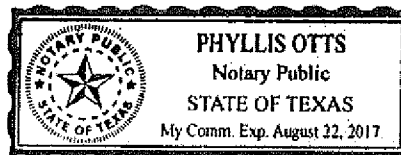
*Dale R. Barron*

**DALE R. BARRON**

Sworn to and subscribed before me, this 9<sup>th</sup> day of February A.D. 2015.

*Phyllis Otts*

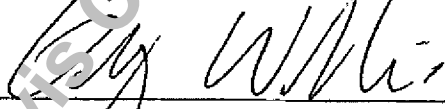
\_\_\_\_\_, Notary Public



**DEPUTATION**

COUNTY OF COLLIN } I, **Greg Willis**, the elected Criminal District Attorney in Collin County, Texas, having full confidence in **Matthew Leslie**, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said **Matthew Leslie** my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED] [REDACTED] Richard Grey, Wendy Rogers, Michael McDermott, Ronald James, and Donald James; [REDACTED]; Susan Gay Pruitt; Garry B. Smith and Robert J. Nelson; [REDACTED]; [REDACTED]; Derek A. Nelson; Christopher Anthony Zaal; Mark Christopher Parman; [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations and/or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

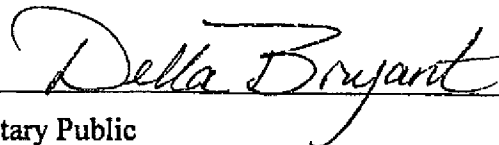
WITNESS my hand, this 25 day of Feb., 2015.

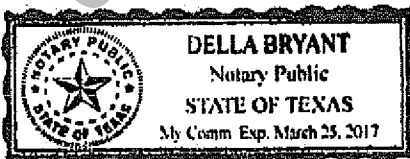
  
\_\_\_\_\_  
**GREG WILLIS**  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared **Greg Willis** known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas, this 25 day of February, 2015.

  
\_\_\_\_\_  
Notary Public




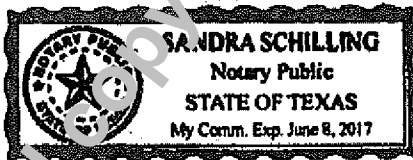
**OATH OF OFFICE**

I, **Matthew Leslie** do solemnly swear (or affirm) that I will faithfully execute the duties of the office of **Assistant Criminal District Attorney, special prosecutor**, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed   
\_\_\_\_\_  
**MATTHEW LESLIE**

Sworn to and subscribed before me, this 26<sup>th</sup> day of February A.D. 2015.

  
\_\_\_\_\_  
6-8-2017, Notary Public



**DEPUTATION**

COUNTY OF COLLIN } I, **Greg Willis**, the elected Criminal District Attorney in Collin County, Texas, having full confidence in **Tina Lawrence**, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said **Tina Lawrence** my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED] [REDACTED] Richard Grey, Wendy Rogers, Michael McDermott, Ronald James, and Donald James; [REDACTED]; Susan Gay Pruitt; Garry B. Smith and Robert J. Nelson; [REDACTED]; Derek A. Nelson; Christopher Anthony Zaal; Mark Christopher Parman; [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations and/or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 25 day of Feb., 2015.

*Greg Willis*

**GREG WILLIS**

Criminal District Attorney, Collin County, Texas

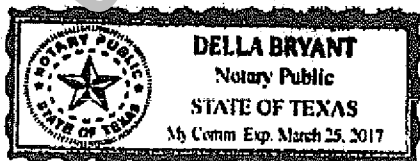
**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared **Greg Willis** known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas, this 25 day of February, 2015.

*Della Bryant*

Notary Public



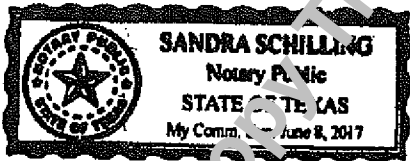
**OATH OF OFFICE**

I, **Tina Lawrence** do solemnly swear (or affirm) that I will faithfully execute the duties of the office of **Assistant Criminal District Attorney, special prosecutor**, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed *Tina Lawrence*  
**TINA LAWRENCE**

Sworn to and subscribed before me, this 26<sup>th</sup> day of February A.D. 2015.

*Sandra Schilling*  
6-8-2017, Notary Public



**DEPUTATION**

COUNTY OF COLLIN } I, **Greg Willis**, the elected Criminal District Attorney in Collin County, Texas, having full confidence in **Greta Cantwell**, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said **Greta Cantwell** my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED] [REDACTED] Richard Grey, Wendy Rogers, Michael McDermott, Ronald James, and Donald James; [REDACTED]; Susan Gay Pruitt; Garry B. Smith and Robert J. Nelson; [REDACTED]; Derek A. Nelson; Christopher Anthony Zaal; Mark Christopher Parman; [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations and/or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 25 day of Feb., 2015.

*Greg Willis*

**GRIG WILLIS**

Criminal District Attorney, Collin County, Texas

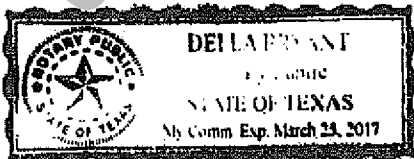
**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, *Della Bryant* in and for Collin County, Texas, on this day personally appeared **Greg Willis** known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas, this 25 day of February 2015.

*Della Bryant*

Notary Public



**OATH OF OFFICE**

I, **Greta Cantwell** do solemnly swear (or affirm) that I will faithfully execute the duties of the office of **Assistant Criminal District Attorney, special prosecutor**, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed *Greta Cantwell*  
**GRETA CANTWELL**

Sworn to and subscribed before me, this 26 day of February A.D. 2015.

*Sandra Schilling*  
6-8-2017, Notary Public

