

APR 29 2013 CJ

At 3:06 P. M.
Amalia Rodriguez-Mendoza, Clerk

NO. D-1-GV-13- D-1-GV-13 000421

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
On the Relation of David A. Escamilla	§	
	§	
Plaintiff	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
ROSEMARY LEHMBERG,	§	
In Her Official Capacity as District	§	
Attorney of Travis County, Texas	§	
	§	
Defendant	§	98 th JUDICIAL DISTRICT

ORIGINAL PETITION FOR REMOVAL FROM OFFICE
AND JURY DEMAND

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW the State of Texas, through David A. Escamilla, the County Attorney of Travis County, Texas, Plaintiff and Relator in this matter, hereafter "Plaintiff," and pursuant to Chapter 87 of the Texas Local Government Code, files this Original Petition for Removal of Rosemary Lehmberg, Travis County District Attorney, hereafter "Defendant," from office, and in support would show as follows:

I. DISCOVERY

1. Discovery in this case will be conducted pursuant to Level 2, as set out in Texas Rule of Civil Procedure 190.3.

II. PARTIES

2. Plaintiff-Relator, David A. Escamilla, is a resident of Travis County, Texas, who has lived in Travis County, Texas, for more than six months, and is not under

indictment in any jurisdiction. He is the duly elected County Attorney of Travis County and, as such, he is required to represent the State in this matter pursuant to Section 87.018(d) of the Texas Local Government Code.

3. Defendant, Rosemary Lehmberg, is the District Attorney of Travis County, Texas, and may be served with process at the Travis County Jail, 500 W. 10th St., Austin, Texas 78701, Booking No. 1316692.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over this proceeding pursuant to Section 87.015 of the Texas Local Government Code.

5. Venue is proper in Travis County pursuant to Section 87.015 of the Texas Local Government Code, as Defendant resides in Travis County.

IV. REASONING

6. Plaintiff believes that the legislature of the State of Texas enacted Section 87.013(a)(3) of the Texas Local Government Code, relating to removal of certain elected officials, not as an additional way to punish elected officials, but instead to provide protection for the public from elected officials who are unable to perform their duties adequately or may injure the public interest in the performance of their duties. Other statutes, including various criminal statutes, are enacted for the purpose of punishment.

7. Plaintiff files this Original Petition for Removal from Office and Jury Demand in order to ensure protection of the public and the public interest in the execution of the duties of the Travis County District Attorney.

8. The Local Government Code, Section 87.018(d), states that "[t]he county attorney shall represent the state in a proceeding for the removal of an officer" As the attorney representing the State, the County Attorney has full authority over the conduct of the litigation, including the authority to nonsuit, dismiss, settle, and/or try the case.

V. FACTS

9. Defendant is the elected District Attorney of Travis County, Texas (53rd Judicial District).

10. Plaintiff petitions the Court for removal of Defendant on the following ground set out in Section 87.013(a)(3) of the Texas Local Government Code: "Intoxication on or off duty caused by drinking an alcoholic beverage."

11. On or about April 19, 2013, Defendant pled guilty to the charge of Driving While Intoxicated, a class A misdemeanor, committed on April 12, 2013, one of the elements of which is that Defendant operated a motor vehicle in a public place with a blood-alcohol level of 0.15 or higher.

12. The Texas Penal Code, Section 49.04(a), states that "[a] person commits an offense if the person is intoxicated while operating a motor vehicle in a public place."

13. The Texas Penal Code, Section 49.04(d), states that "[i]f ... an analysis of a specimen of the person's blood ... showed an alcohol concentration level of 0.15 or more ... , the offense [Driving While Intoxicated] is a Class A misdemeanor."

14. The Texas Penal Code, Section 49.01(2), defines "intoxicated" as "(A) not having the normal use of physical faculties by reason of the introduction of alcohol ... into the body; or (B) having an alcohol concentration of 0.08 or more."

VI. IMMEDIATE SUSPENSION

15. Plaintiff petitions the Court to immediately suspend Defendant from her position as District Attorney of Travis County pursuant to Section 87.017 of the Texas Local Government Code pending the trial of this case for removal.

VII. JURY DEMAND

16. Plaintiff makes demand for a jury trial as required by Section 87.018 of the Texas Local Government Code.

PRAYER FOR RELIEF

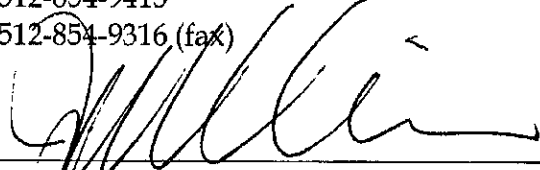
WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

- a. The Court order that citation be issued pursuant to the Plaintiff's Application for Issuance of Citation, and that citation be served on Defendant pursuant to Section 87.016 of the Texas Local Government Code;
- b. The Court temporarily suspend Defendant and appoint another person to perform the duties of her office, subject to execution of a bond set by the Court pursuant to Section 87.017 of the Texas Local Government Code;
- c. The Court require Defendant to appear and answer the cause of action alleged herein on a date selected by the Court, but after the fifth day after the day citation is executed;
- d. After trial on the merits, the Court remove Rosemary Lehmberg from her elected office as District Attorney of Travis County; and
- e. The Court authorize such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

DAVID A. ESCAMILLA
TRAVIS COUNTY ATTORNEY
P.O. Box 1748
Austin, Texas 78767
512-854-9415
512-854-9316 (fax)

By:



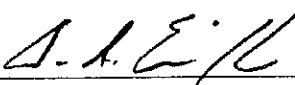
James W. Collins
State Bar No. 04611500
Executive Assistant County Attorney

ATTORNEY FOR PLAINTIFF

VERIFICATION

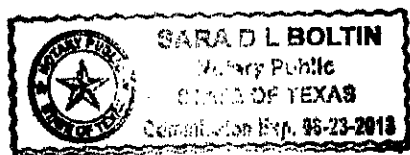
STATE OF TEXAS)
)
COUNTY OF TRAVIS)

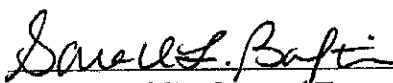
BEFORE ME, the undersigned Notary Public, on this day personally appeared David A. Escamilla, who, being by me duly sworn, on his oath deposed and said that he is the Relator in the foregoing and attached cause and is duly qualified and authorized in all respects to make this affidavit; that he has read the above and foregoing Original Petition for Removal from Office and Jury Demand; and that every statement contained therein is within his knowledge and is true and correct.



David A. Escamilla

SUBSCRIBED AND SWORN TO BEFORE ME on the 29th day of April, 2013, to certify which witness my hand and official seal.





Notary Public, State of Texas

NO. D-1-GV-13- 000421

APR 29 2013 CJ
At 3:06 P.M.
Amalia Rodriguez-Mendoza, Clerk

THE STATE OF TEXAS

Plaintiff

V.

ROSEMARY LEHMBERG,
In Her Official Capacity as District
Attorney of Travis County, Texas

Defendant

§
§
§
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§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98th JUDICIAL DISTRICT

APPLICATION FOR ORDER REQUIRING CITATION

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW the State of Texas, through David A. Escamilla, the County Attorney of Travis County, Texas, Plaintiff and Relator in this matter, hereafter "Plaintiff," and pursuant to Section 87.016 of the Texas Local Government Code, requests that the Court issue citation for service on Defendant Rosemary Lehmberg in this matter and in support would show as follows:

1. This suit seeks removal of Travis County District Attorney Rosemary Lehmberg from office pursuant to Chapter 87 of the Texas Local Government Code on the following ground set out in Section 87.013(a)(3) of that Chapter: "Intoxication on or off duty caused by drinking an alcoholic beverage."
2. Plaintiff's petition sets out specific facts which are within Plaintiff's personal knowledge and sworn to by Plaintiff.

3. Section 87.016(a) of the Local Government Code requires that after a petition for removal is filed, the person filing the petition shall apply to the district judge in writing for an order requiring a citation and a certified copy of the petition to be served on the officer whose removal is sought.

4. The Court has discretion to order issuance of citation or not and the decision of the Court is not subject to appeal or writ of error.

5. Pursuant to Section 87.016(d) of the Local Government Code, if the Court does issue citation, the citation is required to order the officer to appear and answer the petition on a date, fixed by the judge, after the fifth day after the date the citation is served, and the time is computed as in other suits.

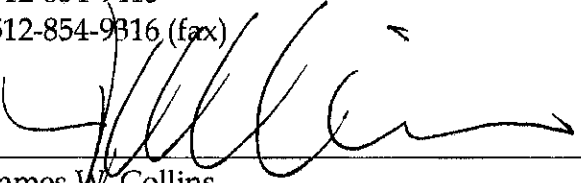
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court order that citation be issued and served upon Defendant with a certified copy of Plaintiff's Original Petition for Removal from Office and Jury Demand and that such citation order the Defendant to appear and answer the cause of action alleged in this suit by 10:00 a.m. on the Monday following the 20th day after the date the citation requested herein is served.

Respectfully submitted,

DAVID A. ESCAMILLA
TRAVIS COUNTY ATTORNEY
P.O. Box 1748
Austin, Texas 78767
512-854-9415
512-854-9816 (fax)

By:



James W. Collins
State Bar No. 04611500
Executive Assistant County Attorney

ATTORNEY FOR PLAINTIFF