

CAUSE NO.

10-17346

10 NOV -1 PM 3:47  
CLERK OF DISTRICT COURT  
DALLAS COUNTY TEXAS

JUDGE CARLOS CORTEZ,  
PLAINTIFF

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

v.

OF

COYT RANDAL (RANDY) JOHNSTON,  
DEFENDANT

DALLAS COUNTY, TEXAS

## PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW JUDGE CARLOS CORTEZ, by counsel, and files this Original Petition, and for cause of action would show this Court the following:

### I. Discovery Control Plan

1.01 Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, discovery in this case should be conducted under Level 3 of this Rule.

### II. Parties

2.01 Plaintiff, Judge Carlos Cortez, is a citizen, and resident of Dallas County, Texas.

2.02 Defendant Coyt Randal (Randy) Johnston ("Defendant Johnston") is a citizen and resident of Dallas County, Texas. He can be served with process at his office and principal place of business at Johnston•Tobey, P.C., 3308 Oak Grove, Dallas, TX 75204, or where he may be found in Dallas County, Texas; or elsewhere.

### III. Jurisdiction and Venue

3.01 Jurisdiction and venue are proper in Dallas County, Texas pursuant to Tex. Civ. Prac. and Rem. Code §15.017 as Plaintiff Cortez and Defendant Johnston are both domiciled in Dallas, Dallas County, Texas.

## IV. Facts

**4.01** Plaintiff is the elected Judge of the 44<sup>th</sup> State Civil District Court of Dallas County, Texas.

**4.02** Plaintiff is an incumbent for re-election on November 2, 2010 to the position of Judge of the 44<sup>th</sup> State Civil District Court.

**4.03** Prior to May 13, 2009, in an effort to help defeat Judge Carlos Cortez in his re-election to the 44<sup>th</sup> State Civil District Court and to attract a political opponent against Plaintiff Judge Carlos Cortez, Defendant Johnston filed a complaint with the Texas State Commission on Judicial Conduct ("SCJC").

**4.03.1** Defendant Johnston, after consultation and in cooperation with Judge Craig Smith, Judge Lorraine Raggio and Judge Martin Lowy, took that action in the hopes that the Commission would commence a public action against Plaintiff (prior to the filing deadline for candidates to file to run for judge) which action by the Commission would lead to a political opponent against Plaintiff Judge Carlos Cortez and that the political opponent would prevail against Plaintiff Judge Carlos Cortez.

**4.03.2** Defendant Johnston testified in his Court Ordered TRCP Rule 202 deposition on October 22, 2020, that the "rumors" he "relied upon" to include in his "complaint" filed with the SCJC came from none other than him and three Dallas County District Judges (who are friends of his: Judge Craig Smith, Judge Lorraine Raggio, and Judge Martin Lowy). To be perfectly clear, Defendant Johnston decided to file a complaint to the SCJC about rumors that he, Judge Craig Smith, Judge Lorraine Raggio, and Judge Martin Lowy created themselves about Judge Carlos Cortez and moreover, did so admittedly with not one of them having any personal knowledge of the truth of these self-created rumors.

**4.03.3** In addition to being close personal friends of Defendant Johnston, these three Judges have expressed personal grudges and resentment against Judge Carlos Cortez, and they consulted with Defendant Johnston in an attempt to defame and defeat Judge Cortez in the upcoming 2010 election.

**4.04** In the letter that Defendant Johnston filed with the SCJC on or about May 13, 2009, Defendant Johnston admitted that he had no personal knowledge of the matters alleged and

that he could not testify to the truth of the allegations, yet Defendant Johnston nevertheless published these unsubstantiated allegations to hundreds of lawyers, judges and to the media as further outlined below.

**4.05** In the letter that Defendant Johnston filed with the Commission, Defendant Johnston made defamatory statements against Plaintiff Judge Carlos Cortez with knowledge that the statements were false and/or were made with reckless disregard of whether the statements were false or not in the furtherance of his own personal interest, and in the furtherance of the interest of the above named judges who were close personal friends of his and who also had personal grudges against Judge Carlos Cortez, as a tactic and plan to recruit a political opponent.

**4.06** Months passed without any publicity about Defendant Johnston's filed complaint with the Commission. (Judicial investigations of filed complaints are required by the Judicial Conduct Commission to be kept confidential which affords constitutional and statutory protections until and unless formal proceedings are instituted against the Judge).

**4.07** The filing deadline for judicial candidates approached and the Commission had taken no formal action against Plaintiff Judge Carlos Cortez, nor had any potential candidate collected signatures or raised money to defeat Plaintiff Judge Carlos Cortez for either the upcoming 2010 Primary or General Elections. Defendant Johnston became desperate. At the 11<sup>th</sup> hour and just weeks before the filing deadline for judicial candidates approached, Defendant Johnston gave a copy of the confidential complaint filed with the Commission to Defendant Johnston's contacts/friends at the news media in Dallas County, including but not limited to the Texas Lawyer, Dallas Observer, WFAA Channel 8 News, and the Dallas Morning News, so that the news media would immediately do a story against Plaintiff Judge Carlos Cortez prior to the candidate filing deadline. Defendant Johnston's attempts to diminish Plaintiff Judge Carlos Cortez's chances of re-election were done maliciously, improperly and unethically in an attempt to defame Plaintiff Judge Carlos Cortez, and to mislead and deceive potential candidates into running against Plaintiff as well as intentionally mislead and deceive Dallas County voters.

**4.08** Defendant Johnston's malicious and defamatory attack against Plaintiff Judge Carlos Cortez continued on October 29, 2009, when Defendant Johnston e-mailed a copy of the previously filed confidential complaint (which had been filed with the Texas Commission on Judicial Conduct six months prior on May 13, 2009) to over a hundred of Fellows of the Dallas Chapter of the American Board of Trial Advocates ("ABOTA").

**4.09** Defendant Johnston's e-mail was also apparently forwarded, and/or the contents repeated by some of the ABOTA members to countless other lawyers and citizens in the Dallas legal community in addition to the public in general.

**4.10** Plaintiff Judge Carlos Cortez comes forward and now files suit against Defendant Johnston for the unfounded and dishonest allegations specifically about "hiring prostitutes" and "using drugs" which are so untrue and so libelous in the ABOTA broadcasting.

**4.11** It is unknown at this time to whom this e-mail and a copy of Defendant Johnston's complaint were sent in addition to the ABOTA members.

## **V. Liability**

### **COUNT # 1 - DEFAMATION:**

**5.01** Defendant Johnston's intentional acts were done with actual malice on his part, constitute defamation per se, and include, but are not limited to the following:

- a. publicizing through e-mail and otherwise to others a false statement about Plaintiff Judge Carlos Cortez;
- b. creating an unreasonable risk that the defamatory statement will be communicated to a third party;
- c. creating and publishing a defamatory statement that referred to Plaintiff Judge Carlos Cortez; and
- d. creating and publishing a false statement to injure Plaintiff Judge Carlos Cortez and expose him to public hatred, contempt or ridicule, or financial injury.

**5.02** The conduct of Defendant Johnston was a proximate and producing cause in the defamation of and damages to the Plaintiff Judge Carlos Cortez.

**5.03** Defendant Johnston's acts were committed with actual malice and when viewed objectively from the standpoint of Defendant Johnston at the time of its occurrence, involved an extreme degree of risk to Plaintiff Judge Carlos Cortez, considering the probability and magnitude of the potential harm to Plaintiff Judge Carlos Cortez and of which Defendant Johnston had actual, subjective awareness but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff Judge Carlos Cortez.

## **COUNT # 2 - EXTORTION:**

**5.04** Unbelievably, Defendant Johnston, through his attorney and authorized agent, Thomas M. Melsheimer, has now also attempted blackmail, has threatened, and committed the tort of extortion by violating 18 USC 875(d) which reads as follows:

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee, or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

**5.05** On Monday, October 25, 2010, Defendant Johnston's attorney and authorized agent, Thomas M. Melsheimer e-mailed a clear threat of extortion to Judge Carlos Cortez. Defendant Johnston's attorney, Mr. Melsheimer, stated that if Plaintiff Judge Carlos Cortez ever filed a lawsuit against Defendant Johnston seeking damages, Defendant Johnston and Mr. Melsheimer would not file a general denial but rather would file an Answer that would contain derogatory and humiliating allegations against Plaintiff Judge Carlos Cortez. Defendant Johnston's attorney, Mr. Melsheimer, further inferred that these derogatory and humiliating allegations would be purposefully interjected into the public domain by Defendant Johnston and Mr. Melsheimer using Defendant Johnston's close contacts/friends with the news media in Dallas County, and that this would be done prior to the November 2, 2010 election calculated to inflame the voting public in a further attempt to diminish Plaintiff Judge Carlos Cortez' re-election. Mr. Melsheimer and Defendant Johnston are both sophisticated lawyers who are apparently relying on the legal immunity that "generally" attaches to statements made in court documents, regardless of the truth and veracity of the allegations, and have made these threats to Plaintiff Judge Carlos Cortez in an obvious attempt to dissuade Plaintiff Judge Carlos Cortez from pursuing damages against Defendant Johnston.

## **VI. Damages**

**6.01** Defendant Johnston's acts and omissions were a proximate and producing cause of the publication, the defamation of Plaintiff Judge Carlos Cortez and resultant injuries and damage. Plaintiff Judge Carlos Cortez is entitled to have, and asks the trier of fact to consider what would fairly and reasonably compensate Plaintiff Judge Carlos Cortez for the damages

experienced by Plaintiff because of the defamation resulting from the acts and omissions of the Defendant.

**6.02** The actions of Defendant Johnston in sending a copy of his complaint to the SCJC to over a hundred lawyers and judges in the Dallas community, coupled with the fact that Plaintiff Judge Carlos Cortez was threatened by Mr. Melsheimer, the attorney for Defendant Johnston, that if Judge Cortez sued Defendant Johnston that Mr. Melsheimer would file an Answer filled with derogatory comments about Plaintiff Judge Carlos Cortez and moreover that Defendant Johnston would once again leak it to his contacts/friends at the media prior to the November election to generate another news story were all done intentionally, maliciously and in a continued attempt to diminish Plaintiff Judge Carlos Cortez' re-election efforts and for this petitioner seeks sanctions and additional damages. Mr. Mesheimer was at all times the agent of and attorney for Defendant Johnston. Plaintiff Judge Carlos Cortez asks the trier of fact to assess exemplary damages for the defamation of Plaintiff Judge Carlos Cortez by Defendant Johnston pursuant to §41 of the Tex. Civ. Prac. and Rem. Code. Such exemplary damages include damages awarded as a penalty or by way of punishment considering the following:

- a. the nature of the wrong;
- b. the character of the conduct involved;
- c. the degree of culpability of the wrongdoers;
- d. the situation and sensibilities of the parties concerned;
- e. the extent to which such conduct offends a public sense of justice and propriety;  
and
- f. the net worth of the Defendant.


## **VII. Prayer**

**7.01** WHEREFORE, PREMISES CONSIDERED, Plaintiff Judge Carlos Cortez prays that Defendant Johnston be cited to appear and answer, and that Plaintiff Judge Carlos Cortez recover judgment against the Defendant for his damages (actual and exemplary); costs of Court, pre-judgment interest and post judgment interest at the legal rates on the appropriate elements of damages for the time periods permitted by law; and all other relief, general or special, at law or in equity, to which they are entitled.

Dated this 29<sup>th</sup> day of October, 2010.

Respectfully submitted,

Broadus A. Spivey  
Law Offices of Broadus A. Spivey, P.C.  
48 East Avenue  
Austin, Texas 78701  
512/474-6061 fax:512/474-1605

By:   
Broadus A. Spivey, SBOT # 00000076  
ATTORNEY FOR PLAINTIFF JUDGE CARLOS CORTEZ