



RHR

**RUBEN G. REYES**  
District Judge

STATE OF TEXAS  
72ND JUDICIAL DISTRICT OF TEXAS  
(Lubbock County Courthouse – Third Floor)  
P.O. Box 10536  
Lubbock, Texas 79408-3536  
(806) 775-1023 Telephone  
(806) 775-7996 Fax

**REBECCA DUVAL**  
Official Court Reporter

**JUDY P. HALFORD**  
Court Coordinator

January 22, 2016

Via e-file

Via e-file

Marquette Wolfe  
Ted B. Lyon & Associates, PC  
18601 LBJ Freeway, Ste. 525  
Mesquite, TX 75150

Timothy T. Pridmore  
R. Michael McCauley, Jr.  
McWhorter, Cobb & Johnson, LLP  
P.O. Box 2547  
Lubbock, TX 79408-1499

Re: Cause No. 2012-504,105; *Ken Teel, et al v. Titeflex, et al*; 72<sup>nd</sup> District Court of Lubbock County, Texas; Re: Ruling on Sanctions Motions

Dear Mr. Wolfe & Mr. Pridmore:

The Court makes the following ruling with regard to the Sanctions Motions referenced as numbers 50-54 on the Court's Motion List. The Court takes into consideration the motions, argument and briefing of counsel as well as the evidence presented – including but not limited to the conflicting testimony and credibility of the witnesses.

The Court grants the Motions for Sanctions only as they relate to William Brewer III. It should be noted that the manner in which Mr. Brewer has responded to the sanctions motions and allegations therein is concerning to this Court. Mr. Brewer's demeanor was nonchalant and uncaring. Additionally, Mr. Brewer was repeatedly evasive in answering questions when he was on the witness stand. This Court sustained multiple objections for non-responsiveness, instructed Mr. Brewer to answer the questions being asked of him by counsel, and before taking more aggressive steps, this Court took a recess during Mr. Brewer's examination seeking the assistance of Mr. Brewer's attorney. The Court asked Mr. Pridmore to step outside the courtroom and advise Mr. Brewer to follow the Court's instructions and be responsive to questions being asked of him. It was the desire and hope of this Court to highlight to Mr. Brewer that the matter at hand was of extreme importance with potentially grave consequences.

The Court wishes to highlight in this letter some of the evidence which serves as the basis its ruling. Mr. Brewer admits instructing and guiding the pollster on the purpose and composition of the poll, i.e. the customer told the retailer what the customer desired. Additionally, evidence revealed the pollster contacted parties and attorney-represented, as well as unrepresented, witnesses involved with the pending litigation. Review of the database (Exhibit 4) further revealed family of this Judge as well as the Judge's staff being on the database call list. John Grace, assistant city attorney, testified his review of city employees/officials being contacted by the pollster led him to the conclusion the poll was "targeting" city employees/officials associated with the pending litigation.

Mr. Brewer testified he is the person who manages, directs and oversees all Bickel & Brewer operations including but not limited to all lawyers, non-lawyer employees and consultants. Mr. Brewer admits he, and members of his staff, reviewed and approved the poll questions. Testimony of Bickel & Brewer staff corroborated Mr. Brewer. After reviewing questions in the poll, the Court finds several questions were designed to influence or alter the opinion or attitude of the person being polled – some questions being tantamount to commitment opinions.

The Court finds Mr. Brewer's actions were not merely a negligent act, a mistake or the result of poor judgment, and Mr. Brewer's explanation that he bears clean hands because the poll was a blind study conducted by a third party vendor is insulting to this Court. The Court further finds Mr. Brewer's attempt to avoid responsibility and accountability for his conduct to be at the very least unpersuasive and at the worst in bad faith, unprofessional and unethical.

The Court finds Mr. Brewer's conduct disrespectful to the judicial system and threatening to the integrity of the judicial system. Mr. Brewer's conduct falls in the category of misconduct which is highly prejudicial and inimical to a fair trial by an impartial jury.

The Court is mindful of Mr. Pridmore's letter of June 4, 2015 which included "several standing orders . . . related to surveys." What is instructive of these standing orders from Chief Judge Ron Clark, Judge Rodney Gilstrap, Judge Leonard Davis and Judge Michael Schneider is that these orders actually serve as an excellent blueprint for the manner by which a proper survey/poll should be conducted. While Judge Gilstrap "discourages the parties from conducting . . . studies in which any mock jurors or similar participants reside in the division where the case is pending" IF a study is to be conducted, specific procedures are to be followed by counsel – none of which were followed in the matter pending before this Court. Judge Clark mandates a minimum of one (1) month notice to the Court prior to pre-trial conference as to the commission of any study AND said notice "shall include a brief description of the study's methodology" – again such was not done in the case pending before this Court. Common to all four (4) standing orders is the requirement that the name and address of each participant in the study be retained by counsel and supplied to the Court – again not done herein. This Court is further mindful of the legal authority cited in the briefing by all counsel, including but not limited to the *Primrose* case – noting first that *Primrose* involved a mock trial and not a poll and further that the safeguards taken by counsel in the *Primrose* case were not undertaken here.

In awarding the amounts below the court additionally finds:

1. Mr. Brewer's conduct taken in its entirety is an abusive litigation practice that harms the integrity of the justice system and the jury trial process;
2. Mr. Brewer's conduct was designed to improperly influence a jury pool and or venire panel via the dissemination of information without regard to its truthfulness or accuracy;
3. The net effect of Mr. Brewer's conduct was to impact the rights of parties to a trial by an impartial jury of their peers;
4. Mr. Brewer's conduct negatively affected the due process and seventh (7<sup>th</sup>) amendment protection due to the litigants in the case before the Court;
5. The conduct of Mr. Brewer includes the actions of those under his authority, direction as well as those acting as his agents;
6. The database of names from the pool included in part court personnel, their spouses, City Council and their spouses, City Managers, witnesses and their spouses, designated third parties and their spouses without regard to these individuals being represented by counsel or not;
7. The polling efforts were not random nor merely coincidental;
8. Mr. Brewer's failure to provide a list of parties and witnesses whom should not be contacted was grossly negligent and his attempt to avoid responsibility by deferring such responsibility to a third party vendor hired by his firm is conduct unbecoming an officer of the court;
9. The polling questions were not an appropriate and legitimate pre-trial preparation tool;
10. The conduct of Br. Brewer was intentional and in bad faith and abusive of the legal system and the judicial process specifically.

Accordingly, the Court finds the following sanctions to be just and not unconstitutionally excessive and no more severe than necessary to accomplish a legitimate end – namely, deterrence, punishment and compliance.

Attorney's fees are awarded as follows:

Defendant Lennox -- Attorney fees \$29,500.00 plus expenses \$3,500.00;

If appealed to Court of Appeals: \$5,000.00 plus \$2,800.00 for oral argument plus \$1,000.00 for expenses;

If appealed to Supreme Court: \$5,000.00 plus \$2,500.00 for oral argument plus \$1,000.00 for expenses.

Page four  
Letter to Wolfe & Pridmore  
Letter dated January 22, 2016

Defendant Turner & Witt -- Attorney fees \$11,032.00 plus expenses \$1,919.76;  
If appealed to Court of Appeals: \$1,400.00 plus \$1,120.00 for oral argument;  
If appealed to Supreme Court: \$2,800.00 plus \$1,120.00 for oral argument plus \$750.00 for expenses.

Defendant Strong Custom Builders -- Attorney fees \$8,170.00 plus expenses \$554.83;  
If appealed to Court of Appeals: \$2,000.00 plus \$1,000.00 for oral argument.

Defendant Thermo Dynamic -- Attorney fees \$16,038.00 plus expenses \$3,738.68;  
If appealed to Court of Appeals: \$4,125.00 plus \$2,475.00 for oral argument.

Subrogee State Farm -- Attorney fees \$27,312.00;  
If appealed to Court of Appeals: \$2,500.00 plus \$2,500.00 for oral argument.

Plaintiffs Teel and Rushing -- Attorney fees \$31,650.00;  
If appealed to Court of Appeals: \$2,500.00 plus \$2,000.00 for oral argument.

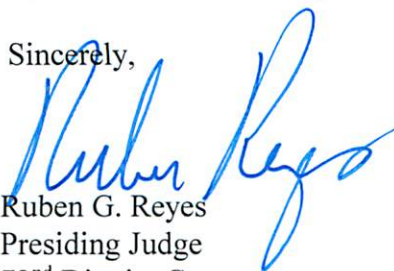
The Court further orders Mr. Brewer to successfully complete ten (10) additional hours of ethics CLE and file certificates reflecting successful completion of such no later than December 31, 2016.

As there seemed to be some question in the briefing about the burden of proof standard, the Court bases its ruling on a preponderance of the evidence standard but would also say the ruling is equally supported by an elevated clear and convincing standard.

This ruling is limited to the specifics of the sanction motions presented to the Court – meaning that the Court is not commenting on the broader issue of lawyers utilizing polling, focus groups or mock trials; but rather this ruling speaks only to the poll used by Mr. Brewer and the manner of its implementation and utilization in the case before the Court.

Copy of this letter is being mailed to the State Bar of Texas Chief Disciplinary Counsel's Office for any action that office may wish to consider, if any, regarding Mr. Brewer.

Sincerely,



Ruben G. Reyes  
Presiding Judge  
72<sup>nd</sup> District Court  
Lubbock/Crosby Co.

RGR/jh

Cc: Attorneys for Teel, et al v. Titeflex, et al – via e-file