

NO. \_\_\_\_\_

IN THE MATTER OF A ) IN THE DISTRICT COURT  
GRAND JURY INVESTIGATION ) 226TH JUDICIAL DISTRICT  
JULY/AUGUST 2018 TERM ) BEXAR COUNTY, TEXAS

**MOTION TO QUASH GRAND JURY SUMMONS**

TO THE HONORABLE JUDGE OF THE PRESIDING COURT:

Jo Smith moves to quash her summons to appear before the Bexar County Grand Jury for the following reasons:

I.

The summons orders Ms. Smith to appear and testify before the Bexar County Grand Jury on July 14, 2018, at 9:00 a.m.

II.

Ms. Smith is a lawyer. She was formerly an attorney for one of the targets of this grand jury investigation.

III.

The “general rule of privilege” found in Rule 503(b)(1) of the Texas Rules of Evidence gives to the client “a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. . . .” This grand jury summons should be quashed to protect the attorney-client privilege between Ms. Smith and the target that is mandated by Rule 503(b)(1). Alternatively, Ms. Smith requests that this

Court order the prosecutors not to ask her any questions that concern confidential attorney-client communications that are privileged under Rule 503(b)(1).

#### IV.

The “special rule of privilege in criminal cases,” recognized in Rule 503(b)(2) of the Texas Rules of Evidence, states:

In criminal cases, a client has a privilege to prevent the lawyer or lawyer's representative from disclosing any other fact which came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.

Rule 503(b)(2) is broader than Rule 503(b)(1), covering not merely confidential communications, but also any fact that came to the attorney’s knowledge by reason of the professional relationship. This grand jury summons should be quashed to protect the special rule of privilege established between Ms. Smith and the target under Rule 503(b)(2). Alternatively, Ms. Smith requests that this Court order the prosecutors not to ask her any question that concerns any fact that might have come to her knowledge by reason of her attorney-client relationship with the target.

#### V.

Rule 1.05 of the Rules of Professional Responsibility generally forbids a lawyer to disclose “confidential information” or to use such information to the client’s disadvantage.

"Confidential information" includes both "privileged information" and "unprivileged client information."  
"Privileged information" refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of

Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates.

"Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

TEX. GOV'T CODE ANN. , Title II, Subtitle G, Appendix A, Article X, § 9, Rule 105(a).

This grand jury summons should be quashed to ensure that Ms. Smith can fulfill her ethical obligations to her client under Rule 105. Alternatively, Ms. Smith requests that this Court order the prosecutors not to ask her to disclose any information relating to the target or furnished by the target during the course of or by reason of the target's representation. Nor should they ask her for information to be used to the disadvantage of the target.

## VI.

The attorney-client privilege belongs, in the first instance, to the client. *See* TEX. R. EVID. 503(c). Under the Texas Rules of Evidence, Ms. Smith "is presumed to have authority to claim the privilege but only on behalf of the client." *Id*(emphasis supplied).

Because the privilege belongs primarily to the target, he should have the right to assert it in his own behalf, and not merely through his former lawyer. The target in this case is a lawyer himself, and can be expected to have his own theories about what information is privileged and not subject to disclosure. His position as to what information and facts are privileged might differ from Ms. Smith. He might also have a different belief about when the attorney-client relationship began and ended. It is

altogether proper, therefore, that the target of this investigation be consulted on the existence and scope of his professional relationship with Ms. Smith. The target should also have standing to assert the privilege concerning information and facts that he believes are covered by the privilege.

Ms. Smith would like to advise the target that she believes the prosecutors and the grand jury are seeking information and facts from her that are arguably covered by the attorney-client privilege, so that he can assert the privilege in his own behalf. In this case, though, she has been given the following admonition on the face of the grand jury summons:

Because there is an ongoing criminal investigation, you are not to disclose the existence of this summons nor any material requested pursuant to this summons other than under the direction of a Court of competent jurisdiction.

Ms. Smith requests that this Court authorize her to contact the target so that she can consult with him and seek his opinion about any information or facts she might be asked to provide in violation of the rules of evidence and professional responsibility. Although the face of the summons purports to forbid her from doing so, she believes that it is entirely proper that the target should be notified of this summons so that he can provide his input to her, and, if he chooses, so that he can intervene in the proceedings before the grand jury. Should this Court authorize her to contact the target, she requests that she be given sufficient time for the target to meaningfully consult with her and to assert his interests, should he so desire.

WHEREFORE, premises considered, Smith Smith prays that the Court quash the Grand Jury Summons in this case, and that the Court grant her further relief as requested in this motion, and in the interests of justice.

Respectfully submitted:

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Attorney for Jo Smith

**CERTIFICATE OF SERVICE**

I certify that a copy of this Motion To Quash Grand Jury Summons was delivered to the Bexar County District Attorney, on this the 13th day of July, 2018.

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MARK STEVENS

**ORDER**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, came on to be considered Jo Smith's Motion To Quash Grand Jury Summons and said Motion is hereby (GRANTED) (DENIED).

SIGNED on the date set forth above.

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JUDGE PRESIDING