

NO. 01-09-00438-CV

*In the
Court of Appeals
For The
First District of Texas*

IN RE HOWARD K. STERN

**Original Proceeding from the 280th Judicial District Court
Harris County, Texas
Cause No. 2008-24181**

**Reply to Response of Relator to Real Party in Interest Virgie Arthur's
Submission of Additional Materials for Inclusion in the Record to
Supplement her Response to Petition for Writ of Mandamus**

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ATTORNEYS FOR REAL PARTY IN INTEREST, VIRGIE ARTHUR

TO THE HONORABLE JUSTICES OF THIS COURT:

Real Party in Interest, Virgie Arthur, files this her Reply to Response of Relator to Real Party in Interest Virgie Arthur's Submission of Additional Materials for Inclusion in the Record to Supplement her Response to Petition for Writ of Mandamus ("the Response"), in support of which she shows as follows.

ARGUMENT AND AUTHORITIES

Relator Howard K. Stern argues in his Response that Arthur seeks to supplement the record with "irrelevant" materials relating to his sister Bonnie Stern's actions in destroying evidence, but this Court already has granted Arthur leave to supplement with Bonnie Stern materials. Further supplementation with updated materials on that same point is permitted by TEX. R. APP. P. Rule 52.7. Indeed, failure to supplement would run the risk of leaving this Court with the erroneous impression that Relator wishes to foster, *i.e.* that the allegations of destruction of evidence by Bonnie Stern are unproven, even though the trial court has found them to be true. For example, in his Response, Relator refers to the actions of his sister as her "alleged" actions, despite the finding of the trial court that Bonnie Stern did indeed destroy evidence.¹

Relator further argues that Arthur has improperly attempted to impute his sister's actions to him. Actually, in her supplemental response to the petition for writ of

¹ Relator also insinuated that Arthur wrongly had withheld from this Court two sworn declarations of an IT contractor whom Bonnie Stern had engaged to prepare her electronic media for transfer to the special master, "which purportedly refute and explain a number of the special master's allegations against Ms. Stern." Response of Relator to Real Party in Interest Virgie Arthur's Motion for Leave to Supplement and her Supplement to Response to Petition for Writ of Mandamus, n. 1. Relator failed to inform this Court, however, that the IT man's declarations were not a part of the trial court's record at the time when Arthur filed her supplemental response to the mandamus petition on June 10, 2009. At any rate, in adopting the special master's findings, the trial court obviously did not regard the IT contractor's declarations as having refuted the special master's findings.

mandamus, Arthur did not attempt to impute Bonnie's actions to Howard but simply used Bonnie's actions as an example of what nefarious litigants will try to get away with if a trial court cannot order them to turn over their computers to a special master for examination.

Now that Relator has mentioned it, however, the actions of one conspirator in the course and furtherance of a conspiracy are attributable to another conspirator. "Once a conspiracy is proven, each co-conspirator 'is responsible for all acts done by any of the conspirators in furtherance of the unlawful combination.'" *Carroll v. Timmers Chevrolet, Inc.*, 592 S.W.2d 922, 925 (Tex. 1979) (quoting *State v. Standard Oil Co.*, 107 S.W.2d 550, 559 (1937)). Because the conspiracy to defame Arthur and the attempts to cover up that conspiracy obviously are continuing to the present -- as shown by the actions of Bonnie Stern and the other co-conspirators who have staged a burglary to make a computer disappear and have claimed that a computer was tampered with in a bank vault -- the actions of Bonnie Stern are attributable to her brother and co-conspirator, Relator Howard Stern.

CONCLUSION AND PRAYER

Real Party in Interest Virgie Arthur prays that the Court accept the supplemental record she filed on August 3, 2009.

Filed August 5, 2009

Respectfully submitted,




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CERTIFICATE OF SERVICE

On the 5TH day of August, 2009, Plaintiff served the foregoing Reply to Response of Relator to Real Party in Interest Virgie Arthur's Submission of Additional Materials for Inclusion in the Record to Supplement her Response to Petition for Writ of Mandamus underlying action as follows:



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