

2019534887
CAUSE NO. _____

CF

In re:

DOLCEFINO COMMUNICATIONS
LLC DBA DOLCEFINO CONSULTING,

Relator.

IN THE DISTRICT COURT

LUBBOCK COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORIGINAL PETITION FOR WRIT OF MANDAMUS

Relator Dolcefino Communications LLC dba Dolcefino Consulting (“Relator” or “Dolcefino”) files this Original Petition for Writ of Mandamus and respectfully shows as follows:

I. DISCOVERY LEVEL AND PARTIES

1. Relator does not intend to conduct discovery at this time.
2. Relator is plaintiff in Cause No. 2018528740, *Dolcefino Communications, LLC d/b/a Dolcefino Consulting v. Texas Tech University*, in the 99th Judicial District Court of Lubbock County, Texas (the “Lawsuit”).
3. Texas Tech University (“Texas Tech”), as the defendant in the Lawsuit, is the Real Party in Interest for purposes of these proceedings, and may be served with process by serving its attorney, Enrique M. Varela, Assistant Attorney General, Office of

the Attorney General, General Litigation Division, P.O. Box 12548, Capital Station, Austin, Texas 78711-2548.

4. Respondent, the Hon. Kelly G. Moore, is the Presiding Judge of the Ninth Administrative Region, and may be served with process at 500 W. Main, Room 204W Brownfield, Texas 79316.

II. VENUE AND JURISDICTION

5. Venue is proper in this County. This action relates to the assignment of a district judge to hear a lawsuit that has been duly filed and pursued in this County, without objection to venue.

6. This court has personal jurisdiction over the parties because Relator, Respondent, and Real Party in Interest are all citizens of Texas.

7. This court has subject matter jurisdiction to grant the requested relief. Section 24.011 of the Texas Government Code, entitled “Writ Power,” says: “*A judge of a district court may, either in termtime or vacation, grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs necessary to the enforcement of the court's jurisdiction.*” (emphasis added). Conversely, the Amarillo Court of Appeals has ruled—twice—that it is not the proper court to issue a writ of mandamus against Respondent in his capacity as presiding judge of this region. See *In re: Hettler*, 110 S.W.3d 152 (Tex. App.—Amarillo 2003, orig. proceeding); *In re:*

Valladolid, Nos. 07-06-0173-CV & 07-06-0174-CV (Tex. App.—Amarillo July 18, 2006, orig. proceeding).

III. FACTUAL BACKGROUND

8. Relator brought the Lawsuit to compel proper responses by Texas Tech to information requests under the Texas Open Record Act, relating to Texas Tech's mistreatment of and firing of Coach Mike Leach.

9. Hon. William Sowder presided over the Lawsuit when filed. He ruled for Relator on a number of requests, after which Texas Tech stayed all proceedings by appealing to the Amarillo Court of Appeals.

10. After the Amarillo Court of Appeals resolved that appeal, it issued its mandate on February 12, 2019. (Exhibit "A" hereto) By so doing, that Court returned jurisdiction over the Lawsuit to the 99th District Court of Lubbock County.

11. Unexpectedly, Judge Sowder *sua sponte* recused himself on February 27, 2019. (Exhibit "B" hereto) His recusal order also said: "The Presiding Judge of the 9th Administrative Judicial Region is requested to assign another judge to sit in this case."

12. No assignment was made.

13. Relator, through its counsel, spoke to the Lubbock County District Clerk's office to ask about the assignment on March 25, 2019. Relator was informed that that office was "still working on it."

14. No assignment was made.

15. Relator, through its counsel, then sent a follow-up letter to the Lubbock County District Clerk on March 25, 20119, requesting assignment of a new judge. (Exhibit "C" hereto)

16. No assignment was made.

17. No assignment has been made as of the filing of this Petition.

IV. PETITION FOR WRIT OF MANDAMUS

18. Respondent has a ministerial duty to appoint a new judge after a recusal. Respondent has been repeatedly asked to carry out that duty and he has not done so. A writ of mandamus should issue to compel that reassignment.

V. PRAYER FOR RELIEF

19. For the reasons stated, Relator requests that this Court issue a writ of mandamus to compel the assignment of a new judge to preside over the Lawsuit, and for all other relief to which Relator may be entitled that is consistent with such a writ.

DATE: April 8, 2019

Respectfully submitted,

/s/ Michael K. Hurst

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A



Court of Appeals

BRIAN QUINN
Chief Justice

JAMES T. CAMPBELL
Justice

PATRICK A. PIRTLE
Justice

JUDY C. PARKER
Justice

VIVIAN LONG
Clerk

Seventh District of Texas
Patterson County Courts Building
501 S. Fillmore, Suite 2-A
Amarillo, Texas 79101-2449
www.txcourts.gov/7thcoa.aspx

MAILING ADDRESS:
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February 12, 2019

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RE: Case Number: 07-18-00225-CV, Trial Court Case Number: 2018-528,740
Style: Texas Tech University v. Dolcefino Communications, LLC dba Dolcefino Consulting

Dear Counsel:

The Court has issued mandate in the captioned cause.

Very truly yours,

Vivian Long

VIVIAN LONG, CLERK

xc: Honorable William C. Sowder (DELIVERED VIA E-MAIL)
Barbara Sucsy (DELIVERED VIA E-MAIL)

EXHIBIT B

NO. 2018-528,740

TB


DOLCEFINO COMMUNICATIONS, § IN THE 99TH DISTRICT COURT
LLC DBA §
DOLCEFINO CONSULTING, §
VS § OF LUBBOCK COUNTY, TEXAS
TEXAS TECH UNIVERSITY

ORDER OF RECUSAL

Upon the Court's own motion, the undersigned Judge recuses himself from the above-entitled and numbered cause.

The Presiding Judge of the 9th Administrative Judicial Region is requested to assign another judge to sit in this case.

SIGNED: February 27, 2019



JUDGE PRESIDING

EXHIBIT C

TB

THE **PETTIT** LAW FIRM

2101 Cedar Springs, Suite 1540 | Dallas, Texas 75201
Phone: 214-329-0151 | Fax: 214-329-4076

March 25, 2019

Via Electronic Filing

Lubbock County District Clerk
904 Broadway
Lubbock, TX 79401

Re: Request for Judge; 2018528740; *DOLCEFINO COMMUNICATIONS, LLC DBA DOLCEFINO CONSULTING v. TEXAS TECH UNIVERSITY AND DR. LAWRENCE SCHOVANEC, IN HIS OFFICIAL CAPACITY AS THE PRESIDENT OF TEXAS TECH UNIVERSITY*

Dear Clerk:

On February 27, 2019, Judge William C. Sowder signed an Order of Recusal in the above-referenced case. To date, we have not yet received any confirmation on who the new judge will be. Please advise when we can expect same.

Thank you.

Very truly yours,



Julie Pettit

CC: All counsel of record, via electronic filing