

Supreme Court, U.S.  
FILED  
JAN 29 2019  
OFFICE OF THE CLERK

No. 18-7163

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**Kent & Tonya Mayfield, et al.,  
PLAINTIFFS, APPELLEES, APPELLANTS, PETITIONERS**

v.

**Harvey County Sheriff's Dept. et al.,  
DEFENDANTS, APPELLANTS, APPELLEES, RESPONDENTS**

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**ON APPEAL FROM THE 10<sup>TH</sup> CIRCUIT COURT OF APPEALS  
PENDING PETITION FOR WRIT OF CERTIORARI**

Case No. 0:17-cv-03197

**SUPPLEMENTAL BRIEF  
—MOTION FOR INJUNCTION DUE TO FRAUDULENT MISREPRESENTATION—**

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## **MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

The petitioners ask leave to file the attached motion in both the 10<sup>th</sup> Circuit Court of Appeals and the Supreme Court of the United States without prepayment of costs and to proceed *in forma pauperis*. Plaintiffs have previously been granted leave to proceed in the above two Federal Courts and are currently awaiting review by the S.C. in the pending petition for writ of Certiorari.

### **JURISDICTION**

Since the newly discovered evidence of Fraudulent Misrepresentation occurred in both the 10<sup>th</sup> Circuit Court of Appeals and the United States Supreme Court, both entities have authority to address the violations. The Plaintiffs submit to the expertise and experience of the courts professionals, we have presented the evidence of fraud to all parties involved and await the Courts appropriate action to the violations.

### **STATEMENT OF THE FACTS**

1. On September 11, 2017 Plaintiffs filed their request for an appeal with the 10<sup>th</sup> Circuit Court of Appeals. Case No. 17-3197 Due to the Constitutional Conflict created by the judgement of the District Court of Kansas, the Plaintiffs in accordance to Fed. R. App. P. Rule 5.1 (a)(1)and(2) notified the Kansas Attorney General, Derek Schmidt, of the potential conflict. The notice was sent to the office of the Kansas Attorney General through certified mail. Under Rule 5.1 (b) the 10<sup>th</sup> Circuit Court was required to certify to the A.G. that the Ks Statute in question may be in conflict with the 4<sup>th</sup> Amendment under 28 .S.C. 2403.
2. Toby Crouse of the law firm Foulston Siefkin LLP, entered his appearance as the lead attorney for the Defendants. Wendell F. Cowan, Jr. also entered his appearance for the above appeal. Both attorneys are members of the Foulston Siefkin law firm and used the same mailing address:

Foulston Siefkin L.P-OP  
32 Corporate Woods, Suite 600  
9225 Indian Creek Parkway  
Overland Park, KS 66210-2000

3. Former Kansas Solicitor General, Stephen McAllister was appointed by D. Trump to be the U.S. Attorney for Kansas on January 25, 2018. Derek Schmidt the current Kansas Attorney General on Jan. 26, 2018, appointed Toby Crouse as the new Kansas Solicitor General.
4. Despite being notified of the Constitutional Conflict, Derek Schmidt did not enter an appearance for the Appeal at the 10<sup>th</sup> Circuit.
5. Toby Crouse continued his representation of the Harvey County Sheriff's Dept. defendants throughout the litigation, briefing on behalf of the Foulston Seifkin law firm.
6. Toby Crouse, Ks Solicitor General properly entered his appearance in a brief to the Supreme Court of the State of Kansas on May 7, 2018. Case No. 15-113267-S

Entered as:

Toby Crouse, #20030  
Solicitor General of Kansas  
120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612-1597  
Telephone: (785) 296-2215  
Fax: (785) 291-3767  
E-mail: [toby.crouse@ag.ks.gov](mailto:toby.crouse@ag.ks.gov)  
*Attorney for Appellant State of Kansas*

7. Toby Crouse was acting Solicitor General for the State of Kansas for seven months during the briefing of the appeal. Mr. Crouse did not disclose to the Court of Appeals or the Plaintiffs of his official position with the State during any time of the litigation in violation of both F.R.C.P. Rule 11 (a)(b) and 10<sup>th</sup> Cir. Fed. R. App. P. Rule 46.1
8. The legal firm of Foulston Siefkin did not notify the court or the Plaintiffs of Toby Crouse's official position with the State.
9. The office of the Attorney General did not notify that their Solicitor General was briefing on behalf of the Harvey County Sheriff's Dept. defendants.

10. The position of Solicitor General for the State requires Toby Crouse to evaluate Constitutional Conflicts between Kansas Statutes and Constitutional Law and to be prepared to argue these matters before the Courts, including the Court of Appeals and the United States Supreme Court.

11. 10<sup>th</sup> Cir. Fed. R. App. P. Rule 46.1 (A) Requires the Entry of Appearance (C) Requires notice of change of address and obligation to keep account information correct.

(D) Requires Certificate of Interested Parties (1) Certificate listing names of all interested parties so that judges may evaluate possible disqualifications or recusals.

Rule 46.5 (A) Imposes Sanctions for increased costs to Plaintiffs. (D) Sanctions if documents are signed in violation

- (1) Affirmance of Appeal
- (2) Monetary Sanctions
- (3) Initiation of Disciplinary Actions

Rule 46 (c) also requires all parties involved be notified of a change of address.

Rule 46 (b) Suspension or Disbarment (1) Standard- A member of the court's bar is subject to suspension or disbarment by the court if the member: (B) is guilty of conduct unbecoming a member of the courts bar.

12. Case No. 17-3197 was decided on Aug. 30, 2018 upholding the reverse granting of qualified immunity and summary judgement in favor of the Defendants.

13. Kent and Tonya Mayfield filed a Petition for Writ of Certiorari to the Supreme Court of the United States and was docketed on Dec. 21, 2018, file No. 18-7163

14. Toby Crouse entered his appearance as Counsel for the Record for all respondents to the Supreme Court of the United States on Dec. 27, 2018. He entered his appearance as:

Toby Crouse from the Firm; Crouse LLC.  
11184 Antioch, No. 253  
Overland Park, Kansas 66210  
913-957-6832  
tcrouse@crousellc.com

Mr. Crouse again chose to fraudulently conceal his official position for the State of Kansas as the Solicitor General.

15. On Jan. 10, 2019 Case No. 18-7163 of the United States Supreme Court, was distributed for Conference of Feb. 15, 2019
16. Toby Crouse has filed multiple disingenuous representations to the official custody of both the Clerk of the Court for the 10<sup>th</sup> Circuit court of Appeals and the Supreme Court of the United States and has created a fraudulent permanent record that documents his illegal misrepresentation.
17. Toby Crouse has committed Fraud upon the Court. He has failed to disclose his position as Kansas Solicitor General at both the 10<sup>th</sup> Circuit Court of Appeals and the United States Supreme Court. These actions amount to Fraudulent Concealment of Evidence and Fraudulent Misrepresentation of his Official position as the Solicitor General of Kansas.
18. It is the Courts duty and fundamental responsibility to address attorney misconduct and are obligated to take measures against unethical conduct occurring in connection with any proceeding before it. *American Airlines*, 972 F.2d 605, 611, (5<sup>th</sup> Cir. 1992)
19. Toby Crouse abused the Rules of Professional conduct requiring him to disclose information relating to the representation. Failure to disclose is fraudulent conduct. The misconduct is prejudicial to the lawyer's ability to objectively assess the ramifications and future liability of the Constitutional Conflict.
20. Toby Crouse's own involvement in the case is adverse to the Solicitor General's responsibility to assess the Constitutional Conflict objectively and risks harm to the public interest.
21. The Fraudulent misrepresentation is in violation of Rule 1.7 concerning conflict of interest. [8] Conflict of Interest exists if there is a significant risk that a lawyers ability to consider, recommend or carry out an appropriate course of action will be limited as a result of the lawyers other responsibilities or interests. The lawyer's personal interest in the outcome of the case prevents him from providing a neutral assessment as the Solicitor General adversely affecting his professional duty.
22. Toby Crouse did not inform either court of the possible conflict of interest and did not include any explanation of the implications of the common representation and the

advantages and/or risks involved. The lawyer could not believe that continued false representation in the case was appropriate.

23. The deception obscures the resources available to the Defense for counsel and changes the potential for possible settlement opportunities.
24. The conflict of interest prohibits proper evaluation of the societal impact of the expansion of State Statutes and Law that directly conflict with our Constitutional Protections.

#### **MOTION FOR INJUNCTION DUE TO FRUADULENT MISREPRESENTAION**

Kent and Tonya Mayfield brought this section 42, 1983 claim for multiple civil rights violations against the named members of the Harvey County Sheriff's Dept. filed Sept. 12, 2014. This action was brought to the Federal Courts due to the shocking lack of accountability. The biased protection of the officers involved and the municipality is blatantly obvious in the rulings handed down by the District Court of Kansas. After defeating the qualified immunity defense in the 10<sup>th</sup> Circuit Court of Appeals, Case No. 15-3074 June 20, 2016, the Mayfields prepared for trial and began the Discovery process. Toby Crouse along with Sharon Rye, both of Foulston Siefkin, were counsel for the Defendants. During the Discovery process the Plaintiffs were denied multiple items of evidence that were both requested and ordered to be compelled by the Court. Any one of these court ordered items would have been detrimental to the Defendants case if revealed to the Court. The defense attorneys failed to compel their clients to provide the inculpatory evidence. These items included all three official police vehicles dash cameras, record of ammunition spent, complete unaltered dispatch audio specifically audio of RV tag request that corresponded with written document placing deputies on the Mayfield's property prior to 911 call that supposedly initiated chain of events, and dispatch audio removed with Deputy Jim Bethards voicing his angst at being '...griped out for shooting that guys dog.' All but the last item were never provided (The attorneys missed the deadline of the court order and later produced a copy of the missing audio only after the Plaintiffs provided their un-redacted dispatch recording obtained prior to the suit through the F.O.I.A.. The missing audio and

identified others point to obvious obstructions of justice. The Plaintiffs immediately filed Motions for Sanctions but were ignored by the Court despite the contempt of court by the Defendants and their Counsel. *Motion to Compel Evidence and Impose Sanctions for Non-Compliance* (Doc 104) The Judicial misconduct was noted and of course also ignored. The Pro-Se Plaintiffs may be paupers, but they are not fools. Motions for Reconsideration were filed when dispatch audio was discovered placing Corporal Boese at the residence when the Deputies were illegally searching the private residence and when they shot the Mayfields' dog, Majka Tikaani. This audio recording was presented to the Magistrate and proved the testimony of all three law enforcement officers was fabricated since they all claimed the Corporal did not arrive until over an hour later. The Motion for Reconsideration was dismissed. The attorneys for the Harvey County Sheriff's Dept. were fully aware of their clients attempts to 'cover up' their despicable actions, yet they chose to continue on and allow the false testimony under the threat of perjury. Toby Crouse and Sharon Rye allowed the misleading evidence to prejudice the case. Rule 3.9 A lawyer should not offer evidence which he knows the court should reject. Canon 22 of Ethics addresses active deception. Rule 41 EC7-26 Prohibits the use of false or fraudulent testimony. (a) A lawyer shall not knowingly offer evidence that the lawyer knows to be false. Rule 3.3 (b) A lawyer's duty of candor to the court overrides the duty to maintain client confidentiality. The lawyers had a duty to disclose known false evidence. A lawyer must present all material facts regardless of the effect on the clients' position. Model Code DR 7-102 A lawyer who receives information clearly establishing their client perpetrated fraud shall reveal the fraud to the affected persons. Rule 11.8 Representing a client within the bounds of the law knowingly failed to disclose that which he is required to by law to reveal. Lawyer used perjured testimony and used false evidence. Toby Crouse engaged in conduct involving dishonesty, fraud, deceit and misrepresentation. He has displayed a pattern of repeated offenses showing an indifference to his legal obligation. Toby Crouse's position of Solicitor General of Kansas demands he uphold the legal process and his fraudulent failure to comply with the discloser obligation is basis for invoking the disciplinary assessment. His actions are further evidence of a breach of the applicable standard of conduct. The positional conflict should have moved Mr.

Crouse to withdraw from the case and his failure to address the obvious conflict should result in sanctions initiated by the Courts, suspensions, imposition of costs and the retaking of multi-state ethics exams and/or disbarment.

Darius Pinex was killed by Chicago police in 2011. Steve Greensburg, attorney for the Pinex family wrote,

“There’s just total disregard for the truth, and it runs to the highest levels...There is a culture to cover up and win at all costs.” The judgement was reversed due to the intentional concealment of a dispatch call revealing inculpatory evidence. The attorney was sanctioned and disciplined. “After hiding information, despite there being numerous times when circumstances dictated he say something about it, Marsh said nothing, and even made misleading statements to the court when the issue arose.” Dist. Judge Edmond Chang. Attorney Thomas Aumun had failed to make a reasonable effort to find the dispatch recording during the initial discovery process.

*Estate of Darius Pinex v. Raol Mosqueda and Gildardo Sierra* Case No. 1:11-cv-07487

#### **NOTICE OF INTENT TO REQUEST SANCTIONS**

Depending upon the injunctive actions of the Courts, and in compliance with federal rules, the Plaintiffs, Petitioners announce their intent to file a Motion to Impose Sanctions and a Motion to vacate the Judgement of the District Court of Kansas. Plaintiffs will move for Relief from the Judgement, request the granting of their Summary Judgement as a matter of law, claiming newly discovered evidence of Fraudulent Representation by the State Attorney General and the acting Solicitor General severely interfered with the judicial process. 10<sup>th</sup> Cir. Rule 32 (a)(2) (E) Attorneys must identify the party or parties for whom the brief is filed (F) must include the proper name, office and address including email.

## **SUMMARY**

Kent and Tonya Mayfield, Pro-se Plaintiffs would like to remind the Courts that we are honored and gracious to have the opportunity to brief our grievances through the Federal Courts of our district and for the allowance of our complaint to be reviewed by our Supreme Court Justices and their inspiring pool of law clerks. Our fortune of being U.S. citizens is not taken for granted. We are grateful that our Country allows a forum to hear our complaint despite our lack of monetary resources and formal legal training. We have the best form of judicial process that is the model for the world, but its function and integrity is reliant upon its ability to adhere to its own rules and hold all participants accountable for any intentional violations. We the Pro-se Plaintiffs do not take pleasure in exposing the Judicial and Attorney malpractice, but realize at this juncture that the documentation of the violations and their appropriate remedies are essential for the accountability and integrity of our legal system to succeed as a fair and just branch of our Government that is founded on the Truth. We understand the courts reluctance to sanction or otherwise punish judges and lawyers for misconduct in order to protect their reputations, but without these checks and balances our judicial system will succumb to an agenda based entity that favors the rich and powerful and ignores the rights of the common people that share the same American dream. The Government for the People should never put the liberties of the Individual Citizens below the intrinsic interest of the powers to be.

The case of Mayfield, et al., v. Harvey County Sheriff's Dept. et al., is paramount to the crisis we face today. Government officials should be held to a higher expectation of maintaining a just society that considers the rights of all who pass before its authority. Without a fair and just system of accountability at all levels, there will always be civil unrest and potential for abuse. The pillars of ethics cannot hold up the ceiling of justice if the foundation is compromised by corruption.