

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**HAL MCKINNEY, AS MANAGING
MEMBER OF ARDENT 1, LLC
Plaintiff,**

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CASE NO. 6-15-cv-335-WSS

V.

**CITY OF ROCKDALE
Defendant.**

NOTICE OF APPEARANCE

COMES NOW, Sheehy, Lovelace & Mayfield, P.C., hereby gives notice that Christian J. Hack and Philip E. McCleery have been retained by Plaintiff, Hal McKinney, as Managing Member of Argent 1, LLC, to represent the Plaintiff in this case.

Respectfully submitted,

/s/ Christian J. Hack

Christian J. Hack #24041032
Philip E. McCleery #13395000
SHEEHY, LOVELACE & MAYFIELD, P.C.
510 N. Valley Mills Drive, Suite 500
Waco, Texas 76710
chack@slmpc.com
Telephone No.: (254) 772-8022
Facsimile No.: (254) 772-9297

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by e-service on the 12 day of July, 2016, to the following:

Roy L. Barrett
Joe Rivera
NAMAN, HOWELL, SMITH & LEE, PLLC
400 Austin Avenue, Suite 800
P. O. Box 1470
Waco TX 76703-1470

/s/ Christian J. Hack

Christian J. Hack

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
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**HAL MCKINNEY, AS MANAGING
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Plaintiff,**

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CASE NO. 6-15-cv-335-WSS_

V.

**CITY OF ROCKDALE
Defendant.**

PLAINTIFF’S MOTION FOR NEW TRIAL

Now comes plaintiff, H. Hal McKinney, individually and as sole managing member of Ardent 1, LLC and, pursuant to Rule 59, Federal Rules of Civil Procedure, makes this motion for new trial and for grounds (the “Motion”) would show the Court as follows:

1. This Court entered a Summary Judgment in favor of Defendant, City of Rockdale on June 14, 2016 (“Defendant’s MSJ” or “MSJ”). [Dkt. # 37] This Motion is timely in that it is filed within 28 days of entry of Judgment, and as stated in the Court’s order authorizing withdrawal of Plaintiff’s former attorney, James Grissom. [Dkt. # 40]

2. The City of Rockdale filed its MSJ on March 3, 2016. [Dkt# 22] on March 18, 2016 this Court granted an unopposed Motion for extension of time for Plaintiff to respond to the MSJ.

3. Plaintiff filed a response to the Defendant’s MSJ on March 30, 2016. [Dkt # 26] In response to the MSJ, Plaintiff sought additional time to conduct further discovery to more completely respond.

4. On April 27, 2016 the Court granted a continuance giving Plaintiff an additional thirty (30) days to conduct discovery and submit relevant summary judgment proof in support of Plaintiff’s response to Defendant’s MSJ. [Dkt. # 32]

5. Plaintiff's then counsel, James Grissom, filed no additional documents or other summary judgment proof in support of Plaintiff's opposition to Defendant's MSJ during the thirty days granted by the Court. Rather, on the 30th day, May 27, 2016, Plaintiff's counsel sought an additional nine (9) days to file evidence in support of Plaintiffs' response to Defendant's MSJ. [Dkt. # 34]

6. Again the Court granted Plaintiff additional time, giving Plaintiff until June 5, 2016, to fully respond to Defendant's MSJ. [Dkt. # 36]

7. No further documents or summary judgment evidence was filed on behalf of Plaintiff and the Court granted Defendant's Motion for Summary Judgment on June 14, 2016. [Dkt. # 37]

8. This Court recognized that Plaintiff's response to Defendant's MSJ was inadequate and incomplete, and on three occasions granted Plaintiff's counsel additional time to file or supplement his response, including authorizing Plaintiff time to complete additional discovery, including depositions. [Dkt #s 25, 32 and 36] However, except for an initial incomplete response filed on March 30, 2016, Plaintiff's counsel utterly failed to file any further support or summary judgment evidence.

9. After Defendant's MSJ was Granted, Plaintiff became aware of the fact that his counsel had failed to respond the Defendant's MSJ, despite the fact that this Court, on two occasions, gave additional him time to do so. [See Exhibit "A", Plaintiff's Affidavit attached hereto and made a part hereof for all purposes.]

10. Plaintiff having no knowledge of these events, initially learned that the Court had entered an MSJ against Plaintiff on June 16, 2016, when Plaintiff was notified by the Rockdale Reporter newspaper of the Court's ruling. [Pltf. Affd.]

11. Plaintiff, during the time in questions, was unaware that on or about April 26, 2016, his then lawyer, James Grissom had been arrested and charged with felonies including forgery of a government document, tampering with the governmental record, misapplication of fiduciary property, simulating legal process and deceptive trade practice. [Pltf. Affd.]

12. Plaintiff's attorney was arrested on or about the same day the Court granted the initial thirty (30) day extension to fully and properly respond to Defendant's Motion for Summary Judgment. [Dkt. #32, Pltf. Affd.] See Exhibit "B". Mr. Grissom purposefully withheld this fact from Plaintiff. In withholding his arrest for serious felonious arrests from Plaintiff, deprived Plaintiff of the right to seek new counsel at that time.

13. Following Plaintiff's lawyer's arrest, no further support in opposition to Defendant's MSJ was ever filed by Plaintiff's attorney.

14. Additionally, Plaintiff was never advised by his attorney of the fact that his attorney had sought additional extensions of time after the initial thirty day extension, in which to file meaningful support in opposition to the MSJ. Even with that additional time Mr. Grissom failed to file supplemental summary judgement evidence. [Pltf. Affd.]

15. During the initial thirty day continuance, Plaintiff communicated with his attorney(s) about the status of discovery and the amended or supplemental response to Defendant's MSJ that Mr. Grissom was allegedly preparing. Plaintiff was assured on each occasion that the attorney would timely file additional pleading in opposition to Defendant's Motion. [See Pltf. Affd. and emails attached thereto.]

16. Once notified by the newspaper of the entry of a judgment against him, Plaintiff made repeated, unsuccessful attempts to contact his attorney or lawyers in his office to discuss the matter. [Pltf. Affd. and emails attached thereto.]

17. Ultimately, Plaintiff terminated the services of his attorney(s) who then filed a motion to withdraw, which was granted on July 7, 2016. [Dkt #s 39, 40] Mr. Grissom failed to advise the Court in his motion to withdraw of his felony arrests.

18. Plaintiff has now retained the undersigned attorneys to represent him in this case and to present this Motion for New Trial.

19. The undersigned attorneys having been retained just three days prior to the Court's losing jurisdiction in absence of a Motion for New Trial and have not had an opportunity to thoroughly review the record and the facts in this matter prior to filing this motion. Additionally, Plaintiff has not been able to obtain all of the records in this case from his former attorney(s), including, but not limited to the transcripts of certain depositions taken in this case in May of 2016, which depositions were authorized by the Court in previously noted orders.

20. A review of the record reflects this Court's appreciation for the fact that Plaintiff's response to the Defendant's MSJ was inadequate and incomplete in as much as the court granted three orders for additional time to conduct additional discovery and file a supplementary response.

21. The pleadings in this case and the affidavit of the Plaintiff attached hereto make it clear that Plaintiff has sustained substantial loss, damage and destruction of his mineral properties as a result of regulatory actions by the city of Rockdale. This Court has the authority to grant a new trial at this stage of the proceedings on equitable or other grounds to give the Plaintiff an opportunity to present his case, an opportunity which was lost only as a result of the inattention of his counsel. The Court may in the exercise of discretion grant a new trial upon a showing that substantial justice has not been done. *Sibley v. Lemaire*, 184 F.3d 481, 487-488 (5th Cir. 1999); *Finley v. Florida Parrish Juvenile Detention Center*; 2013 WL 4710404, USDC E.D. Louisiana, 2013.

22. This Motion is made in the interest of justice and not for purposes of harassment.

23. The undersigned has advised counsel for the City of Rockdale of the filing of this Motion on behalf of Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff makes this motion for a new trial and asks the Court grant the following relief:

1. Grant Plaintiff's Motion for New Trial;
2. Set aside the Judgment that was entered on June 14, 2016, against Plaintiff;
3. Allow Plaintiff sixty (60) days to file a supplementary response to Defendant's Motion and/or file additional summary judgment evidence for consideration by the Court; and
4. Grant any and all other relief which Plaintiff may be entitled to at law or in equity.

Respectfully submitted,

/s/ Christian J. Hack

Christian J. Hack #24041032
Philip E. McCleery #13395000
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ATTORNEY FOR PLAINTIFF

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I hereby certify that a true and correct copy of the above and foregoing document was sent by e-service on the 12th day of July, 2016, to the following:

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P. O. Box 1470
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/s/ Christian J. Hack

Christian J. Hack

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
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**HAL MCKINNEY, AS MANAGING
MEMBER OF ARDENT 1, LLC
Plaintiff,**

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CASE NO. 6-15-cv-335-WSS_

V.

**CITY OF ROCKDALE
Defendant.**

AFFIDAVIT OF H. HAL MCKINNEY

My name is H. Hal McKinney, a resident of Rockdale in Milam County, Texas. I am over the age of 21 years and I have personal knowledge of the matters of facts set forth herein. All are true and correct. I am competent to make this affidavit which is presented to the Court in support of my motion for new trial in the above-referenced case.

“I am the sole member and manager of Ardent 1, LLC.

I have been made aware that the court entered a take nothing summary judgment against me in this case on June 14, 2016. I was only notified of this when advised by the Rockdale Reporter newspaper on June 16, 2016. Mr. Grissom failed to advise me of this. Thereafter, I had repeated communications with Attorney Grissom and his co-counsel, Francisco Rodriguez about what needed to be done in the case.

I am also aware that on April 27, 2016, the Court granted a continuance giving my attorney 30 days additional time to respond to Defendants motion for summary judgment. I have been advised that my attorney needed additional time to respond to the Defendant’s summary judgment motion because his initial response was incomplete.

During the period from April 27, 2016 until May 27, 2016 I had numerous telephone conferences and emails with my attorney who assured me on each occasion when we discussed the matter that he would timely respond to the summary judgment motion. During this time, the depositions of three Rockdale officials were taken to develop necessary evidence. No additional response was filed, and plaintiffs’ counsel again requested additional time to respond. Again, the court granted him additional time until June 5, 2016, but during this additional period, nothing was filed.

I recently learned, based upon news reports obtained by Googling Grissom that my then attorney, James Grissom, was arrested and charged with forgery of a government instrument, tampering with a governmental record, misapplication of fiduciary property, simulating legal process and deceptive trade practice. This arrest occurred at about the same day the court granted

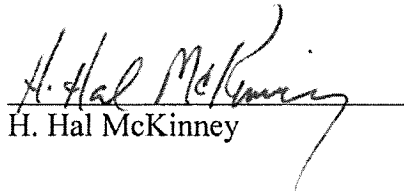
the 30 additional days to respond on April 27, 2016. Mr. Grissom purposefully withheld any information regarding his arrest from me.

Having learned of the charges against my attorney and the fact that he never provided any additional response to the summary judgment motion, coupled with the fact that he repeatedly misled me, I terminated his services. Mr. Rodriguez stopped responding to my communications about taking up my case. Attorney James Grisson filed a motion to withdraw from the case which was granted by the Court on July 7, 2016. Mr. Rodriguez initially indicated he would take over the case, but stopped responding to calls or emails. See emails attached.

On or about July 7, 2016 I retained attorney Christian J. Hack and the firm of Sheehy Loveless Mayfield PC to represent me in this case. My attorneys have advised me that they intend to request a new trial on my behalf and if granted, will have the opportunity to fully investigate this case and to seek relief for my damages if any is legally available.

Ardent 1, LLC is the owner of mineral properties in the city of Rockdale and its extraterritorial jurisdiction. I have been attempting to develop these minerals since 2004 but because of actions of the city of Rockdale I have been unable to do so and therefore, my property has been substantially destroyed.”

Further affiant sayath naught.

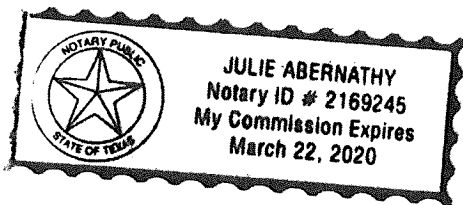

H. Hal McKinney

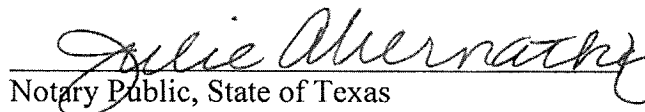
THE STATE OF TEXAS

COUNTY OF McLENNAN

BEFORE ME, Julie Abernathy, on this day personally appeared H. HAL McKINNEY, known to me by valid driver's license, to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that the information above is true and correct.

GIVEN UNDER my hand and seal of office this 11th day of July, 2016.




Notary Public, State of Texas

New Reply Delete Archive Jun

H. Hal McKinney

[Jim Grissom]

REPOSE

Folders



[Draft] H. Hal McKinney 6/07/16

To: Jim Grissom

[Continue writing](#) | [Delete](#)

Jim, I'm getting impatient. I have chased you for a week and you have ignored me.

New Reply Delete Archive Junk

H. Hal McKinney

[Jim Grissom]

ROCKDALE

Folders



H. Hal McKinney 6/18/16

To: Jim Grissom

starting to get quizzed, or you going to file for new hearing or appeal? The article sai July 12th @ to do so.

New Reply Delete Archive Jun

H. Hal McKinney

[Jim Grissom]

mess

Folders



[Draft] H. Hal McKinney 6/21/16
To: Jim Grissom

[Continue writing](#) | [Delete](#)

You have created a mess. Fraud really? Missed deadline?

New Reply Delete Archive Junk

H. Hal McKinney

[Jim Grissom]

suits

Folders



H. Hal McKinney 6/23/16

To: Jim Grissom Cc: frankr@mcallenlawfirm.com

I do not want you to represent me any more. You have screwed up both the Rockdal (missing file date) and Dymke Case (failing to perform). I thought it would be simple for you to let Frank and Daughter take over the Federal Suit. I will find some else for the Rockdale.

New Reply Delete Archive Jun

H. Hal McKinney

[Jim Grissom]

Fed

Folders



H. Hal McKinney 6/29/16

To: Jim Grissom

Please let frank have all the files.

Sent from my iPhone

New Reply Delete Archive Jun

H. Hal McKinney

[Jim Grissom]

Re: Fed

Folders



Jim Grissom 6/29/16

To: H. Hal McKinney

Ok.

On Jun 29, 2016 9:19 AM, "H. Hal McKinney" <adelante2@msn.com> wrote:

Please let frank have all the files.

Sent from my iPhone

New Reply Delete Archive Junk

H. Hal McKinney

[Jim Grissom]

FW: Fed

Folders



H. Hal McKinney 6/29/16

To: frankr@mcallenlawfirm.com

You should receive the data on the Federal Rockdale Suit.

Date: Wed, 29 Jun 2016 13:12:16 -0500

Subject: Re: Fed

From: jpplawyer01@gmail.com

To: adelante2@msn.com

Ok.

On Jun 29, 2016 9:19 AM, "H. Hal McKinney" <adelante2@msn.com> wrote:

Please let frank have all the files.

Sent from my iPhone

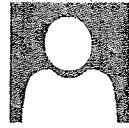
New Reply Delete Archive Jun

H. Hal McKinney

[Jim Grissom]

Folders

Re: Fed



Frank Rodriguez Add to contacts 6/30/16

To: H. Hal McKinney

Yes. Jim confirmed.

Sent from my iPhone

On Jun 29, 2016, at 9:58 PM, H. Hal McKinney <adelante2@msn.com> wrote:

You should receive the data on the Federal Rockdale Suit.

Date: Wed, 29 Jun 2016 13:12:16 -0500

Subject: Re: Fed

From: jpglawyer01@gmail.com

To: adelante2@msn.com

Ok.

On Jun 29, 2016 9:19 AM, "H. Hal McKinney" <adelante2@msn.com> wrote:

Please let frank have all the files.

Sent from my iPhone

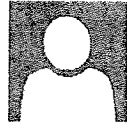
New Reply Delete Archive Junk

H. Hal McKinney

[Jim Grissom]

Folders

Fwd: I shared "CITY OF ROCKDALE" with you in OneDrive



Frank Rodriguez Add to contacts 7/02/16

To: adelante2@msn.com

Got this file this morning. Will review today and tomorrow.

Sent from my iPhone

Begin forwarded message:

From: james grissom <outlook_b339be2cf82e3266@outlook.com>
Date: July 2, 2016 at 6:29:55 AM CDT
To: <frankr@mcallenlawfirm.com>
Subject: I shared "CITY OF ROCKDALE" with you in OneDrive
Reply-To: <jpglawyer01@gmail.com>



CITY OF ROCKDALE

There are 20 items in this folder.

You can add this folder to your own OneDrive. Learn how.

[View in OneDrive](#)



Free online storage for your files. Check it out.

Get the OneDrive mobile app. Available for Android | iOS | Windows

Microsoft respects your privacy. To learn more, please read our [Privacy Statement](#).

Microsoft Corporation, One Microsoft Way, Redmond, WA, 98052

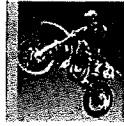
New Reply Delete Archive Junk

H. Hal McKinney

[Jim Grissom]

Folders

RE: I shared "CITY OF ROCKDALE" with you in OneDrive



H. Hal McKinney 7/05/16

To: Frank Rodriguez

Please let me know if your going to file an appeal, thanks. Hal

From: frankr@mcallenlawfirm.com
To: adelante2@msn.com
Subject: Fwd: I shared "CITY OF ROCKDALE" with you in OneDrive
Date: Sat, 2 Jul 2016 14:30:10 +0000

Got this file this morning. Will review today and tomorrow.

Sent from my iPhone

Begin forwarded message:

From: james grissom <outlook_b339be2cf82e3266@outlook.com>
Date: July 2, 2016 at 6:29:55 AM CDT
To: <frankr@mcallenlawfirm.com>
Subject: I shared "CITY OF ROCKDALE" with you in OneDrive
Reply-To: <jpglawyer01@gmail.com>

CITY OF ROCKDALE

There are 20 items in this folder.
You can add this folder to your own OneDrive. [Learn how.](#)

[View in OneDrive](#)



Free online storage for your files. Check it out.
Get the OneDrive mobile app. Available for [Android](#) | [iOS](#) | [Windows](#)

Microsoft respects your privacy. To learn more, please read our [Privacy Statement](#).

Microsoft Corporation. One Microsoft Way. Redmond, WA. 98052

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EXHIBIT B

http://www.themonitor.com/news/attorney-arrested-in-forged-documents-case/article_5a2f554e-0bc1-11e6-920b-6ba5dd5a380b.html

<
PREVIOUS

Delays mount at State Department for Clinton records

>

TOP STORY

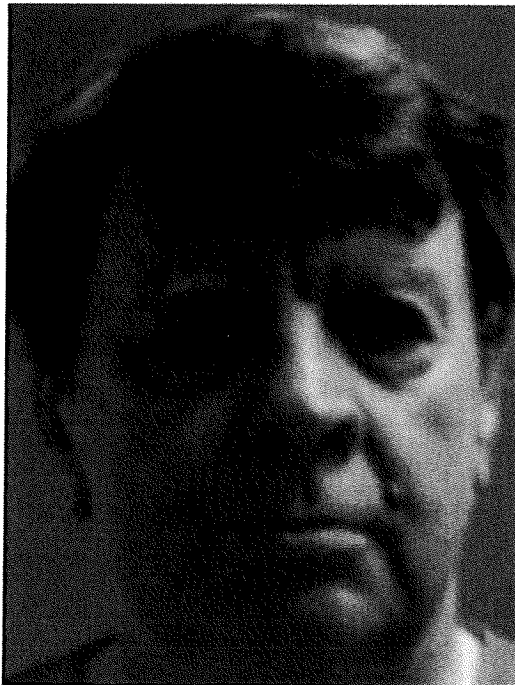
Attorney arrested in forged documents case

Lawyer previously represented client in Panama Unit false arrest lawsuit

LORENZO ZAZUETA-CASTRO | STAFF WRITER

Follow @lorenzozazueta

Apr 26, 2016



Courtesy of Hidalgo County Sheriff's Office

James P. Grissom

EDINBURG — An attorney who represented a client in a lawsuit against the city of Mission and Hidalgo County in connection with a Panama Unit arrest case was arrested Tuesday, according to jail records.

James Patrick Grissom, 68, of Pharr, is charged with multiple counts including forgery of a government instrument, tampering with a governmental record, misapplication of fiduciary property, simulating legal process and deceptive trade practice, according to jail records.

Grissom, who has an office based in McAllen, has been practicing law in Texas for more than 26 years, according the state bar website.

An investigation into Grissom was launched in February after a woman claimed he had defrauded her after she hired him to represent her in a lawsuit in June of 2015 related to a used vehicle she had purchased, Hidalgo County Sheriff's Office spokesman J.P. Rodriguez said.

Rodriguez said the victim, who was not identified, paid Grissom an upfront fee of \$2,500 last June to file the lawsuit and was told in August of that same year that she had won a judgment in the lawsuit in the amount of \$19,000.

Six months later, Grissom reportedly sent the victim an email copy of the judgment but when she went to the county courthouse to obtain a certified copy, court officials told the woman the document did not exist in their records, Rodriguez said.

During the course of the investigation sheriff's investigators determined Grissom had sent a forged document to his client and that a judge had not signed the document or ever filed it in county court, Rodriguez said.

"The guy that she was suing was never contacted, didn't receive paperwork," Rodriguez said. "The same month our investigator starts working the case, collecting evidence, speaking with witnesses — he developed sufficient probable cause to file charges against (Grissom)."

Tuesday, Grissom was formally arraigned and had his bond set at \$36,000, according to jail records.

In a separate case, Grissom represented a Mission woman who claimed members of the Panama Unit falsely arrested her.

Elizabeth Moore was arrested Feb. 13, 2012, by members of the now notorious joint narcotics unit during a family dinner after “the door was kicked in and a group of men entered the home with guns drawn, pointing them at everyone and shouting at everybody to get on the ground,” according to the lawsuit.

Moore sued the city of Mission and Hidalgo County claiming damages for pain, suffering and legal expenses, as a result of the arrest, according to the lawsuit.

U.S. District Judge Micaela Alvarez dismissed the civil lawsuit last October citing a two-year statute of limitations and an “egregious error” by Grissom.

Moore was one of at least four plaintiffs who have sued the city and county for claims of false arrest or being forced to sign false statements by the Panama Unit, which was composed of sheriff’s deputies and Mission police detectives before it was disbanded in 2012.

To this point, the only successful lawsuit against the county tied to the Panama Unit was settled last April when the county approved a \$150,000 settlement for Santos Rodriguez Jr., Maria De Jesus Olvera, Jessica Muñoz and Jesus Andres Muñoz for damages related to a home invasion by unit members in December 2012.

If convicted of the most serious charge, forgery of government document, a third-degree felony, Grissom faces between two and 10 years in prison.

The Texas State Bar publicly sanctioned Grissom in September 2011, according to the state bar website.

lzazueta@themonitor.com

Lorenzo Zazueta