CAUSE NO. D-1-GN-23-008361

THE TEXAS DEPARTMENT OF INSURANCE, *Plaintiff,*	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS *Defendant.*	§	455th JUDICIAL DISTRICT

SPECIAL DEPUTY RECEIVER'S MOTION TO STRIKE THE TESTIMONY OF ANGELA O'NEAL

TO THE HONORABLE JUDGE OF THIS COURT:

CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Bright Healthcare Insurance Company of Texas (the "SDR" and "BHICOT," respectively), files its Motion to Strike the Testimony of Angela O'Neal (the "SDR Motion to Strike").

1. The SDR moves the Special Master to sustain its objection to the testimony of Maynard Nexus attorney Angela O'Neal ("Ms. O'Neal") and to strike from the record the testimony she provided on September 30, 2024. This motion is filed under Rule 3.08 of the Texas Disciplinary Rules of Professional Conduct ("DR 3.08"), which states: "(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client", subject to certain exceptions which are not relevant here. *See* SDR Attachment 1 - DR 3.08. The Rule applies across law firms. *See Id*. at (c) ("Without the client's informed consent, a lawyer may not act as advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by paragraphs (a) or (b) from serving as advocate.").

2. "Angela O'Neal is an attorney at Maynard Nexsen, one of the law firms representing BHM in this matter." *See* SDR Attachment 2 - Bright Health Management's Response to Objections to Declaration of Angela O'Neal ("BHM O'Neal Response") at p. 1. She did claim that her client was "Maynard Nexsen," not BHM, but her invoice contradicts those statements. *See* SDR Attachment 3 - BHM Exhibit 11. The invoice identifies the "Client Matter" as "BRIGHT HEALTH GROUP." She references a meeting with "case team and client" on December 22, 2023. *See Id.* She identified the "case team" as attorneys Soltero and Alcantar. In the BHM O'Neal Response, BHM states, "[i]n this case, she [O'Neal] has been part of the team that has collected, gathered, uploaded, and analyzed the data provided in response to the SDR's requests." *See* SDR Attachment 2 - BHM O'Neal Response at p. 1.

3. Comment 4 to DR 3.08 is relevant here:

> In all other circumstances, the principal concern over allowing a lawyer to serve as both an advocate and witness for a client is the possible confusion that those dual roles could create for the finder of fact. Normally those dual roles are unlikely to create exceptional difficulties when the lawyer's testimony is limited to the areas set out in sub-paragraphs (a)(1)-(4) of this Rule. If, however, the lawyer's testimony concerns a controversial or contested matter, combining the roles of advocate and witness can unfairly prejudice the opposing party. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

4. The appearance of a testifying advocate tends to cast doubt on the ethics and propriety of the judicial system. *Aghili v. Banks,* 63 S.W.3d 812, 818 (Tex.App.—uston [14th

Dist.] 2001, pet. denied) (op. on reh'g). The court in *In re Guidry*, 316 S.W.3d 729, 738 (Tex. App.Houston [14th Dist.] 2010, no writ) stated:

> [a] witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof. … The rule reflects the concern that an opposing party may be handicapped in challenging the credibility of a testifying lawyer. ... Other possible justifications for the rule include: (1) a testifying lawyer may be a less effective witness because he is more easily impeachable for interest; (2) a lawyer-witness may have to argue his own credibility; (3) while the role of a witness is to objectively relate facts, the role of an advocate is to advance his client's cause; and (4) an appearance of impropriety may be created when a lawyer testifies on behalf of his client.

(citations omitted).

5. Much of the case law on DR 3.08 involves efforts to disqualify counsel. This is not the situation here. Instead, the SDR seeks to strike the testimony of a witness that raises all the issues outlined in Comment 4, including the possibility of disqualification. Courts routinely bar testimonial evidence submitted by counsel of record under DR 3.08. The leading case on this issue is *Mauze v. Curry,* 861 S.W.2d 869, 870 (Tex.1993). There, the Texas Supreme Court held that the trial court abused its discretion in failing to disqualify the plaintiff's attorney who testified as an expert witness in an affidavit to defeat the defendant's motion for summary judgment in a legal malpractice case. *See Mauze*, 861 S.W.2d at 870. In his affidavit, Bevil, plaintiff's counsel, opined that defendant George W. Mauze's negligence caused the plaintiff's injuries. *Id.* at 869. Bevil's affidavit was the only expert testimony regarding malpractice and causation. *Id.* Mauze filed a

motion to disqualify Bevil, which the trial court denied. *Id.* at 869–70. The Supreme Court held that the trial court abused its discretion in admitting the affidavit because Bevil's testimony did not fall within any of the exceptions under Rule 3.08. *Id.* at 870.

6. Many other courts have struck attorney testimony under DR 3.08. For example, in *Southtex 66 Pipeline Co., Ld. v Spoor*, 238 S.W.3d 538, 543-544 (Tex. App.—Houston [14th Dist.], 2007, review den'd), the Court of Appeals reversed a summary judgment based, in part, on an affidavit submitted by counsel for the moving party. In *Aghili*, cited above, the Court of Appeals held:

> Thus, a lawyer who represents clients as an advocate before a court should be incompetent to provide evidence in the matter unless one of the exceptions to Rule 3.08 applies.
>
> Accordingly, we hold that the trial court had the authority to strike Banks's affidavit as incompetent. Given Banks's extensive role in selling appellants' homes and in appearing as an advocate for the owners' association, management company, and at times (arguably) for the buyer, he should not have been permitted to testify by affidavit in the summary judgment proceeding. The trial court abused its discretion in overruling appellants' objection to the affidavit.

Aghili, 63 S.W.3d at 819.

7. The Court in *Estes v. Leifeste*, 2024 WL 3679556 at p. 3 (Tex. App.—San Antonio, Aug. 7, 2024, no writ hist), likewise reversed a judgment based, in part, on summary judgment affidavits submitted by a party's counsel. "The use of the disputed property for grazing and the visibility of the modified boundary fence were potentially important to Leifeste's adverse possession claim. As Estes's counsel, Yeager was an inappropriate person to testify about these facts. Plus, none of rule 3.08(a)'s exceptions apply. Accordingly, the trial court abused its

discretion by denying Leifeste's motion to strike Exhibit "D.'" Id.; *See also, Reliance Capital, Inc. v. G.R. Hmaidan, Inc*, 2006 WL 1389539 at p. 3-4 (Tex. App.—Houston [14th Dist.], Mary 28, 2006, no writ) (striking attorney affidavit).

8. Like so many aspects of this matter, Ms. O'Neal's status is solely the result of BHM's decisions. There was no need to use Ms. O'Neal as an expert witness. She even testified that there were many competent firms, not part of BHM's law firm, to separate the records. Until BHM hired her, she did not possess unique information about BHM's obligation to turn over BHICOT books and records. Instead of retaining an outside expert, BHM hired another lawyer from Maynard Nexsen to argue, in the guise of testimony, that due to BHM's deliberate commingling, it would take vast amounts of time and money for BHM to turn over BHICOT's books and records.

9. DR 3.08's exceptions do not apply in this case. Ms. O'Neal's testimony relates to contested issues. Her testimony is not a "formality," and substantial evidence has been admitted in opposition. Ms. O'Neal is not testifying on the nature and value of legal services rendered in the case. She testified about the "millions" of dollars that BHM allegedly claims it will have to spend on Maynard Nexsen to comply with the Permanent Injunction, Management Services Agreement, and the provisions of the Texas Insurer Receivership Act. Ms. O'Neal is not a party or appearing pro se. BHM submits Ms. O'Neal's testimony to establish what it argues is an essential fact (otherwise, her testimony is not relevant). The SDR does not concede that BHM's alleged costs to turn over the books and records for which it has already been paid over $89,000,000 is relevant. But, clearly, BHM does.

10. Failure to strike Ms. O'Neal's testimony creates precisely the consequences described in DR 3.08 and the case law. The first possible consequence is a motion to disqualify the Maynard Nexsen firm. The SDR has not yet determined whether it will seek disqualification

for this reason. Next, she testified that her opinions are based, at least in part, on what the "case team" and "client" told her. The SDR is entitled to compel the production of Ms. O'Neal's work notes for this engagement, which she testified are in a spiral-bound notebook. The SDR is entitled to hear what she was told by the "case team" and "client" and an opportunity to cross-examine her regarding anything revealed in that notebook.

11. In conclusion, hiring your law partner to testify as an expert witness that your firm needs to be paid "millions" of dollars to review commingled fiduciary books and records is barred by DR 3.08. Ms. O'Neal's testimony should be stricken.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Special Deputy Receiver respectfully requests that this Court:

1. sustain the SDR's objection to the testimony of Angela O'Neal;

2. strike the testimony of Angela O'Neal; and

3. grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Greg Pierce

Gregory A. Pierce
State Bar No. 15994250
P.O. Box 40
Austin, Texas 78767
Tel: (512) 474-2154
gpierce@gpiercelaw.com

-and-

Christopher Fuller
State Bar No. 07515500
FULLER LAW GROUP
4612 Ridge Oak Drive
Austin, Texas 78731
Telephone: (512) 470-9544
cfuller@fullerlaw.org

Attorneys for CANTILO & BENNETT, L.L.P.,
Special Deputy Receiver of
Bright Healthcare Insurance Company of Texas

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the *Special Deputy Receiver's Motion to Strike the Testimony of Angela O'Neal* was sent in accordance with TEX. INS. CODE § 443.007(d) on October 7, 2024 to:

Via Email: specialmasterclerk@tdi.texas.gov
Tom Collins, Receivership Master
c/o Special Master's Clerk
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Edwin.Hartsfield@tdi.texas.gov
Edwin Hartsfield
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: John.Walker@tdi.texas.gov
John Walker
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Vane.Hugo@tdi.texas.gov
Vane Hugo
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Sandra.Salazar@tdi.texas.gov
Sandra Salazar
General Counsel Division
Office of Financial Counsel
TEXAS DEPARTMENT OF INSURANCE
PO Box 12030
Austin, TX 78711-2030

Via e-Service: Shawn.Martin@tdi.texas.gov
Shawn Martin
General Counsel Division
Office of Financial Counsel
TEXAS DEPARTMENT OF INSURANCE
PO Box 12030
Austin, TX 78711-2030

Via e-Service: Zachary.Rhines@oag.texas.gov
Zachary L. Rhines
Assistant Attorney General
General Litigation Division
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548, Mail Stop 01901
Austin, Texas 78711-2548
Counsel for Texas Department of Insurance

Via e-Service: jrixen@rixenlaw.com
Jacqueline Rixen
RIXENLAW
8500 North Mopac Expy, Suite 605
Austin, Texas 78759
Counsel for the Texas Life and Health Insurance Guaranty Association

Via e-Service: sstrickland@mwlaw.com
Stanton Strickland
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, P.L.L.C.
500 W. 5th Street, Ste. 1150
Austin, Texas 78701
Counsel for Bright Health Management, Inc.

Via First Class Mail
INTERNAL REVENUE SERVICE
Special Procedures Branch
300 East 8th Street, Suite 352
Mail Stop 5026AUS
Austin, Texas 78701

Via Email: Milan.Shah@cms.hhs.gov
Via Email: Kelly.Drury@cms.hhs.gov
Milan Shah
Kelly Drury
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
7501 Wisconsin Ave
Bethesda, MD 21814

Via Email: ASimon@fmdlegal.com
Via Email: Bgould@fmdlegal.com
Adrianne J. Simon
Blake Gould
Fultz Maddox Dickens PLC
101 South Fifth Street, 27th Floor
Louisville, KY 40202
Counsel for THC Houston, LLC d/b/a Kindred Hospital Houston Northwest

Via e-Service: csoltero@maynardnexsen.com
Via e-Service: lalcantar@maynardnexsen.com
Carlos R. Soltero
Lisa Poole Alcantar
Maynard Nexsen
2500 Bee Caves Road
Building 1, Ste 150
Austin, Texas 78746
Counsel for Bright Health Management, Inc.

/s/ Greg Pierce
Gregory A. Pierce

Attachment 1

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle G. Attorneys
Title 2, Subtitle G--Appendices
Appendix a State Bar Rules (Refs & Annos)
Article X. Discipline and Suspension of Members
Section 9. Texas Disciplinary Rules of Professional Conduct (Refs & Annos)
III. Advocate

V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 3.08

Rule 3.08. Lawyer as Witness

Currentness

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client, unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(3) the testimony relates to the nature and value of legal services rendered in the case;

(4) the lawyer is a party to the action and is appearing pro se; or

(5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the matter and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer believes that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client consents after full disclosure.

(c) Without the client's informed consent, a lawyer may not act as advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by paragraphs (a) or (b) from serving as advocate. If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.

Credits

Adopted by order of Oct. 17, 1989, eff. Jan. 1, 1990. Amended by order of June 15, 1994, eff. Oct. 1, 1994.

Editors' Notes

COMMENT:

2019 Main Volume

1. A lawyer who is considering accepting or continuing employment in a contemplated or pending adjudicatory proceeding in which that lawyer knows or believes that he or she may be a necessary witness is obligated by this Rule to consider the possible consequences of those dual roles for both the lawyer's own client and for opposing parties.

2. One important variable in this context is the anticipated tenor of the lawyer's testimony. If that testimony will be substantially adverse to the client, paragraphs (b) and (c) provide the governing standard. In other situations, paragraphs (a) and (c) control.

3. A lawyer who is considering both representing a client in an adjudicatory proceeding and serving as a witness in that proceeding may possess information pertinent to the representation that would be substantially adverse to the client were it to be disclosed. A lawyer who believes that he or she will be compelled to furnish testimony concerning such matters should not continue to act as an advocate for his or her client except with the client's informed consent, because of the substantial likelihood that such adverse testimony would damage the lawyer's ability to represent the client effectively.

4. In all other circumstances, the principal concern over allowing a lawyer to serve as both an advocate and witness for a client is the possible confusion that those dual roles could create for the finder of fact. Normally those dual roles are unlikely to create exceptional difficulties when the lawyer's testimony is limited to the areas set out in sub-paragraphs (a)(1)-(4) of this Rule. If, however, the lawyer's testimony concerns a controversial or contested matter, combining the roles of advocate and witness can unfairly prejudice the opposing party. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

5. Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that similar considerations apply if a lawyer's testimony relates solely to a matter of formality and there is no reason to believe that substantial opposing evidence will be offered. In each of those situations requiring the involvement of another lawyer would be a costly procedure that would serve no significant countervailing purpose.

6. Sub-paragraph (a)(3) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel

to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony. Sub-paragraph (a)(4) makes it clear that this Rule is not intended to affect a lawyer's right to self representation.

7. Apart from these four exceptions, sub-paragraph (a)(5) recognizes an additional exception based upon a balancing of the interests of the client and those of the opposing party. In implementing this exception, it is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. For example, sub-paragraph (a)(5) requires that a lawyer relying on that sub-paragraph as a basis for serving as both an advocate and a witness for a party give timely notification of that fact to opposing counsel. That requirement serves two purposes. First, it prevents the testifying lawyer from creating a "substantial hardship," where none once existed, by virtue of a lengthy representation of the client in the matter at hand. Second, it puts opposing parties on notice of the situation, thus enabling them to make any desired response at the earliest opportunity.

8. This rule does not prohibit the lawyer who may or will be a witness from participating in the preparation of a matter for presentation to a tribunal. To minimize the possibility of unfair prejudice to an opposing party, however, the Rule prohibits any testifying lawyer who could not serve as an advocate from taking an active role before the tribunal in the presentation of the matter. See paragraph (c). Even in those situations, however, another lawyer in the testifying lawyer's firm may act as an advocate, provided the client's informed consent is obtained.

9. Rule 3.08 sets out a disciplinary standard and is not well suited to use as a standard for procedural disqualification. As a disciplinary rule it serves two principal purposes. The first is to insure that a client's case is not compromised by being represented by a lawyer who could be a more effective witness for the client by not also serving as an advocate. See paragraph (a). The second is to insure that a client is not burdened by counsel who may have to offer testimony that is substantially adverse to the client's cause. See paragraph (b).

10. This Rule may furnish some guidance in those procedural disqualification disputes where the party seeking disqualification can demonstrate actual prejudice to itself resulting from the opposing lawyer's service in the dual roles. However, it should not be used as a tactical weapon to deprive the opposing party of the right to be represented by the lawyer of his or her choice. For example, a lawyer should not seek to disqualify an opposing lawyer under this Rule merely because the opposing lawyer's dual roles may involve an improper conflict of interest with respect to the opposing lawyer's client, for that is a matter to be resolved between lawyer and client or in a subsequent disciplinary proceeding. Likewise, a lawyer should not seek to disqualify an opposing lawyer by unnecessarily calling that lawyer as a witness. Such unintended applications of this Rule, if allowed, would subvert its true purpose by converting it into a mere tactical weapon in litigation.

Notes of Decisions (153)

V. T. C. A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9 Rule 3.08, TX ST RPC Rule 3.08
Current with amendments received through September 15, 2024. Some rules may be more current, see credits for details.

Attachment 2

CAUSE NO. D-1-GN-23-008361

TEXAS DEPARTMENT OF INSURANCE *Plaintiff,*	§	IN THE DISTRICT COURT
v.	§	TRAVIS COUNTY, TEXAS
BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS *Defendant.*	§	455TH JUDICIAL DISTRICT

BRIGHT HEALTH MANAGEMENT'S RESPONSE TO OBJECTIONS TO DECLARATION OF ANGELA O'NEAL

TO THE HONORABLE DISTRICT JUDGE:

Non-party Bright Health Management, Inc. ("BHM") files this Response to the Special Deputy Receiver ("SDR") of Bright Healthcare Insurance Company of Texas's ("BHICOT") Objections to the Declaration of Angela O'Neal, a witness who BHM expects will testify live at the hearing in this matter, and would show the Court as follows:

Some context may help. Angela O'Neal is an attorney at Maynard Nexsen, one of the law firms representing BHM in this matter. *See* Exhibit 1, Web Bio of Angela O'Neal. Ms. O'Neal has considerable experience and knowledge about ESI discovery, and is currently the Director of NEXTRA Solutions which specializes in e-discovery for clients across the United States. In this case, she has been part of the team that has collected, gathered, uploaded, and analyzed the data provided in response to the SDR's requests.

Her declaration provides evidence of some of the findings and provides fair notice to the SDR of her anticipated testimony at the hearing.

1. **The SDR's hearsay objections should be overruled.**

Ms. O'Neal is anticipated to testify live at the hearing to resolve the matters before the Court, thereby curing any general hearsay objection. In the context of discovery disputes like the

ones before the Court, declarations or affidavits are routinely used and considered as the rules expressly authorize. See e.g., TEX. R. CIV. P. 193.4(a) (in connection with privilege objections, "***The evidence may be testimony*** presented at the hearing ***or affidavits*** served at least seven days before the hearing or at such other reasonable time as the court permits.") (emphasis added). Either way, to the extent the hearsay objection pertains to the use of a declaration/affidavit, notably the SDR also filed declarations/affidavits in support of its requested relief. This objection lacks merit and should be overruled.

Regarding the complaint that the attachments referenced in the declaration were "not attached or provided", the SDR is incorrect because they have now been provided to the SDR and are included here as Attachment 1.

To the extent to objection relates to either the fact that legal guidance was provided or that the requested production would be a "considerable burden for BHM", Ms. O'Neal's statements are not hearsay but statements based on her personal knowledge and her role as director of the document management solutions provide by NEXTRA Solutions for BHM. *See* Declaration.

2. Ms. O'Neal's Declaration is based on personal knowledge.

Also meritless is the SDR's objection that the declaration is not based on Ms. O'Neal's personal knowledge. Notably, Rule 602 provides that "Evidence to prove personal knowledge may consist of the witness's own testimony." TEX. R. EVID. 602. Ms. O'Neal's declaration specifically states that she has "personal knowledge of all facts stated herein and affirms that they are true and correct." Declaration, ¶ 1. Because she has sworn that the facts reflect her personal knowledge, the Declaration has probative value and the SDR's objection should be overruled.

3. Ms. O'Neal does have relevant expertise.

Apart from being a licensed attorney, Ms. O'Neal has over 12 years of experience in litigation support and electronic discovery. She is proficient in the use of Relativity and TAR tools and has managed complex E-discovery projects involving multi-terabyte datasets leading numerous high-profile projects that range from data collection and preservation to document review, analysis, and production. Ms. O'Neal is an active participant in the E-discovery community and has been a speaker at prominent industry events and conferences where she has shared her insights on evolving E-discovery trends, data privacy, and compliance challenges.

4. The privilege objections lack merit and should be overruled.

As would be expected when reviewing interrelated information for production in response to a document request, Ms. O'Neal is able to conduct searches using names or terms which can confirm the potential privileged nature of information (e.g., documents containing the names or emails of attorneys representing BHM). She is not "purport[ing] to testify regarding anything gleaned from a review of BHICOT's privileged communications" as asserted by the SDR in its Objections. *See* ¶ 4. Ms. O'Neal's testimony for the issues before the Court are not regarding privileged information of BHICOT, but rather to describe the extensive production of documents in response to the SDR's requests and to establish that other parties including BHM have the right to contest the disclosure of their privileged information that is located on the same servers and ESI storage vessels as some of the BHICOT documents.

As with the Craig Objections, the SDR's Objections against Ms. O'Neal fail to identify even a single sentence within Ms. O'Neal's Declaration that the SDR reasonably believes constitutes any unauthorized or improper disclosure ***of BHICOT's*** attorney-client information. A fair review of Ms. O'Neal's Declaration reveals no BHICOT confidential or attorney-client

information. The SDR's Motion and the SDR's objections under Texas Rules of Evidence 501 and 503 lack merit and should be overruled.

Like the other "make work" objections and filings of the SDR, these objections lack merit and should be overruled.

Dated: September 3, 2024

Respectfully submitted,

MAYNARD NEXSEN

By: */s/ Carlos R. Soltero*

Carlos R. Soltero
csoltero@maynardnexsen.com
Texas State Bar No. 00791702
Lisa Poole Alcantar
LAlcantar@maynardnexsen.com
Texas State Bar No. 24069284
2500 Bee Cave Road
Building One, Suite 150
Austin, Texas 78746
(512) 422-1559 Telephone
(512) 359-7996 Facsimile

Stanton K. Strickland
sstrickland@mwlaw.com
Texas State Bar No. 00786392
500 W. 5th Street, Ste. 1150
Austin, TX 78701
Mitchell, Williams, Selig, Gates &
Woodyard, P.L.L.C.
512.480.5123 Telephone
512.322.0301 Facsimile

Attorneys for Bright Health Management, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of this document was served upon all counsel of record by e-filing/e-service on September 3, 2024.

/s/ Carlos Soltero
Carlos R. Soltero

Exhibit One

MAYNARDNEXSEN

Angela O'Neal*

DIRECTOR OF NEXTRA SOLUTIONS

Columbia, SC

t. 803.253.8210

Email

Practices

Electronic Discovery & Information Management

Data & Intellectual Assets

E-Commerce

Emerging Technology

Technology Disputes & Litigation

Corporate Governance

Intellectual Property Law

Title IX

Education

University of Tennessee
(2000, J.D.)

University of Virginia
(1995, B.A.)

As the Director of Nextra Solutions, Angela O'Neal manages the Firm's attorneys and clients' electronic discovery and document review needs. Angela works with attorneys and clients to develop a customized and defensible eDiscovery workflow, including collection, processing, production, and review. With her diverse experience in law, athletics, corporations, and non-profits, Angela brings her knowledge of business operations and strategic planning to the firm's information management and advisory service.

Before leading Nextra Solutions, Angela worked as a Contract Attorney and Team Lead at a national electronic discovery firm. There she reviewed and analyzed confidential documents and sensitive records to make recommendations pertinent to the case. She was also a member of the quality control team charged with facilitating efficient and consistent document production and providing feedback to the document review team. During this time, Angela gained extensive experience in the electronic discovery of complex civil litigation involving government investigations, health care, patent infringement, pharmaceuticals, and product liability.

Angela has also worked in operations. She has served as the Director of Women's Basketball Operations and Assistant Athletics Director for the University of Kentucky as well as the Director of Women's Basketball Operations for USC. As the Assistant Director of Enforcement for the NCAA, Angela was responsible for investigating and processing major violations of NCAA rules and interviewing top prospects to ensure there were no rule violations.

Angela is skilled in electronic discovery platforms, including Clarvergence, CloudNine Concordance, and Relativity.

Recognition

→ *Columbia Business Report*, 2023 Women of Influence

News

08.04.2023 | NEWS FROM MAYNARD NEXSEN

Nextra Solutions featured in *Law.com* article

07.11.2023 | NEWS FROM MAYNARD NEXSEN

Angela O'Neal Recognized in Columbia Business Report's 2023 Women of Influence List

02.10.2021 | VIDEO

Black History Month Spotlight: Douglas Wilder

Insights

09.04.2020

WEBINAR: Tracking COVID-19 Litigation with Nextra Solutions

06.25.2020

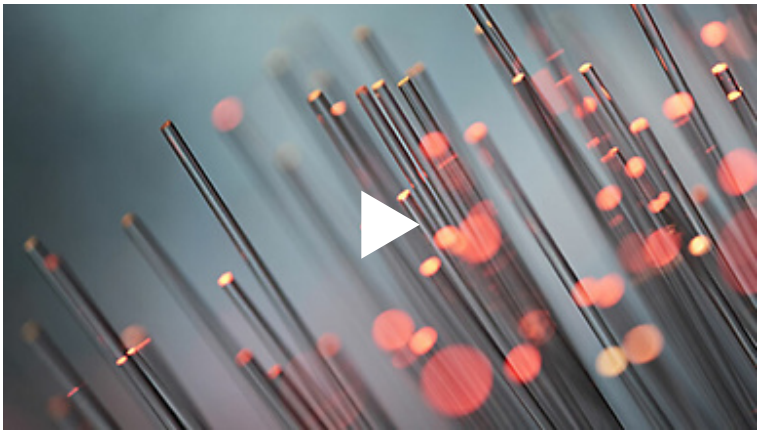
Data Governance: Too Risky to Treat Like a Buzzword

Efficient Contract Management for Businesses

More Info ›

Information Governance

The growth of electronically stored information has soared since the COVID-19 pandemic and the importance of an information governance plan has grown. Nextra Solutions Director, Angela O'Neal, shares how Nexsen Pruet's eDiscovery subsidiary can identify and offer customized solutions to data driven problems that brings value and improves our clients' data governance practices and procedures.



How Businesses Can Appropriately Handle Data Governance

The COVID-19 pandemic accelerated the use of digital platforms for organizations of all sizes. As businesses experience waves of data like never before, data governance is more important now than ever. Angela O'Neal, the director of Nextra Solutions, discusses how businesses can appropriately handle data governance.

Podcasts

07.30.2024 | **Taking the Pulse: A Health Care & Life Sciences Video Podcast - Episode 200: Athlete Mental Health and Physical Conditioning With Dawn Staley**

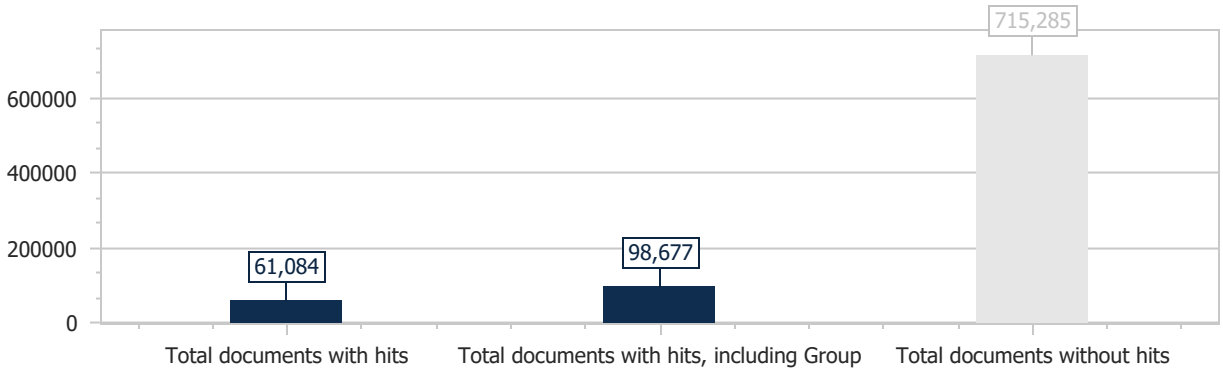
04.25.2024 | **Work This Way: Labor & Employment Law Podcast | Episode 15: eDiscovery for Employers with Angela O'Neal, Nextra Solutions Director**

Attachment One

068486.00002 Bright Health of Texas (PROCESS)

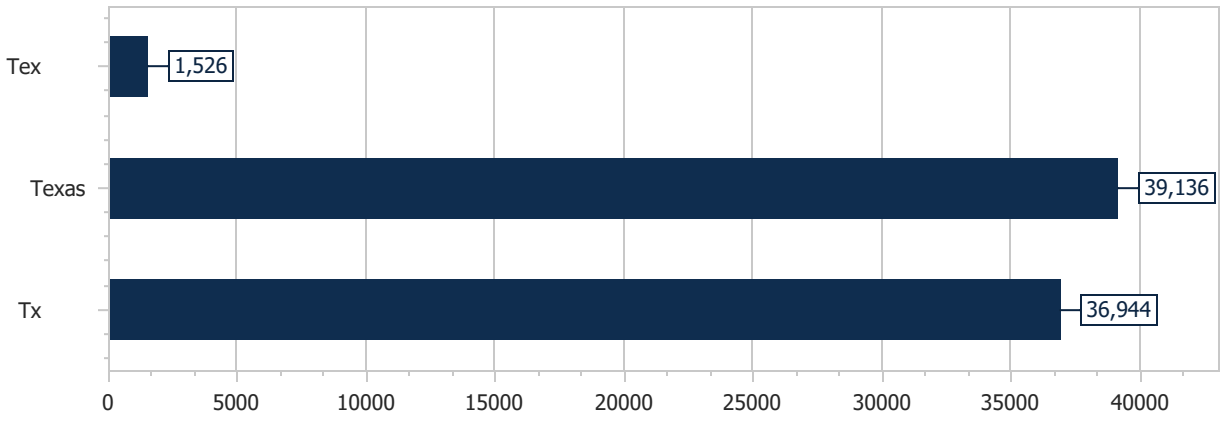
Search Terms Report

Report Name: Texas _ 20240102 **Searchable Set:** All Documents



Results Summary

Documents in searchable set	Total documents with hits	Total documents with hits, including Group	Total documents without hits
776,369	61,084	98,677	715,285



Terms Summary

Term	Documents with hits	Documents with hits, including group	Unique hits
Tex	1,526	4,156	260
Texas	39,136	67,757	23,367
Tx	36,944	63,438	21,606

Attachment 3

BHM Exhibit 11

Nextra Solutions
1230 Main Street, Suite 700
Columbia, SC 29201
803.253.2227

INVOICE

INVOICE # 5677
DATE 09/01/24
DUE DATE 10/01/24
TERMS Net 30

BILL TO

Rachel Padget
Maynard Nexsen
2500 Bee Caves Road
Building 1, Suite 150
Austin, TX 78746

CLIENT MATTER

BRIGHT HEALTH GROUP

DESCRIPTION	QTY	RATE	AMOUNT
DATA HOSTING			
January 2024 -Early Case Assessment	322.36	$6.00	$1934.16
February 2024 -Early Case Assessment	322.36	$6.00	$1934.16
March 2024 - Early Case Assessment	322.36	$6.00	$1934.16
April 2024 - Early Case Assessment	322.36	$6.00	$1934.16
May 2024 - Early Case Assessment	322.36	$6.00	$1934.16
June 2024 - Early Case Assessment	322.36	$6.00	$1934.16
July 2024 - Early Case Assessment	322.36	$6.00	$1934.16
August 2024 - Early Case Assessment	322.36	$6.00	$1934.16
PROJECT MANAGEMENT			
12/22/23 Scoping call with case team and client. Discuss collection, file transfer process, culling and managed review	.4	$415.00	$166.00
12/31/23 eDiscovery case set-up	1	$1500.00	$1500.00
08/01/24 Identify and prepare searches per case team request for review sampling	.39	$415.00	$161.85
08/04/24 Create and prepare updated privilege search term reports, update workspace template for coding, finalize search and submit for processing.	.80	$415.00	$332.00
08/30/24 Internal call with case team to discuss production and privilege logs.	.25	$415.00	$103.75

CUMULATIVE TOTAL BILLED **$17,736.88**

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Greg Pierce on behalf of Greg Pierce
Bar No. 15994250
gpierce@gpiercelaw.com
Envelope ID: 92889892
Filing Code Description: Motion (No Fee)
Filing Description: SPECIAL DEPUTY RECEIVER'S MOTION TO STRIKE THE TESTIMONY OF ANGELA O'NEAL
Status as of 10/7/2024 6:28 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Fuller	7515500	cfuller@fullerlaw.org	10/7/2024 4:50:55 PM	SENT
Gregory Pierce	15994250	gpierce@gpiercelaw.com	10/7/2024 4:50:55 PM	SENT
Patricia Muniz		pmuniz@inquestresources.com	10/7/2024 4:50:55 PM	SENT
Brian Falligant		bfalligant@inquestresources.com	10/7/2024 4:50:55 PM	SENT
Milan Shah		Milan.Shah@cms.hhs.gov	10/7/2024 4:50:55 PM	SENT
Kelly Drury		Kelly.Drury@cms.hhs.gov	10/7/2024 4:50:55 PM	SENT
Adrianne Simon		ASimon@fmdlegal.com	10/7/2024 4:50:55 PM	SENT
Blake Gould		Bgould@fmdlegal.com	10/7/2024 4:50:55 PM	SENT
Carlos Soltero	791702	csoltero@maynardnexsen.com	10/7/2024 4:50:55 PM	SENT
Lisa Alcantar	24069284	lalcantar@maynardnexsen.com	10/7/2024 4:50:55 PM	SENT

Associated Case Party: BRIGHT HEALTH MANAGEMENT, INC.

Name	BarNumber	Email	TimestampSubmitted	Status
Rachael Padgett	24065861	rpadgett@maynardnexsen.com	10/7/2024 4:50:55 PM	SENT

Associated Case Party: BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Stanton Strickland	786392	sstrickland@mwlaw.com	10/7/2024 4:50:55 PM	SENT

Associated Case Party: Texas Life & Health Insurance Guaranty Association

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Greg Pierce on behalf of Greg Pierce
Bar No. 15994250
gpierce@gpiercelaw.com
Envelope ID: 92889892
Filing Code Description: Motion (No Fee)
Filing Description: SPECIAL DEPUTY RECEIVER'S MOTION TO STRIKE THE TESTIMONY OF ANGELA O'NEAL
Status as of 10/7/2024 6:28 PM CST

Associated Case Party: Texas Life & Health Insurance Guaranty Association

Name	BarNumber	Email	TimestampSubmitted	Status
Jacqueline Rixen	16962550	jrixen@rixenlaw.com	10/7/2024 4:50:55 PM	SENT

Associated Case Party: TEXAS DEPARTMENT OF INSURANCE

Name	BarNumber	Email	TimestampSubmitted	Status
Zachary Rhines	24116957	zachary.rhines@oag.texas.gov	10/7/2024 4:50:55 PM	SENT
Special Master Clerk		specialmasterclerk@tdi.texas.gov	10/7/2024 4:50:55 PM	SENT
Shawn Martin		Shawn.Martin@tdi.texas.gov	10/7/2024 4:50:55 PM	SENT