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### Cleary v. District Court of Eighteenth Judicial Dist.

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SUPREME COURT, STATE OF COLORADO

Case No. 85 SA 41

ORIGINAL PROCEEDING, DISTRICT COURT, ARAPAHOE COUNTY, NO. 84CR488 - COLORADO

FILED IN THE  
SUPREME COURT  
OF COLORADO  
MAR 6 1985

REPLY TO ANSWER TO ORDER TO SHOW CAUSE

David W. Brezina

ROBERT ALLAN CLEARY,

Petitioner,

vs.

THE DISTRICT COURT IN AND FOR THE EIGHTEENTH JUDICIAL DISTRICT  
AND JOHN P. GATELY, ONE OF THE JUDGES THEREOF,

Respondents.

The Petitioner, Robert Allan Cleary, by and through his attorneys, the Law Firm of Jeffrey A. Springer, P.C., having received the Respondents' Answer to Order to Show Cause on February 26, 1985, hereby replies to that Answer as follows:

1. The Respondent Court in its Answer seems to suggest that since Mr. Steinberg was assigned to the Respondent Court on the date that the Cleary Criminal Information was filed, he had "substantial responsibility" for the handling of that case. In response, attached hereto and incorporated herein by reference as Exhibit "H" is the Affidavit of Harvey A. Steinberg dated March 6, 1985. As the Affidavit makes clear, Mr. Steinberg may technically have been assigned to the Respondent's court on the date of the filing of the Information, but had no responsibilities, supervisory or otherwise, for the handling of the People v. Cleary matter.

2. Accordingly, not only did Mr. Steinberg have absolutely no contact with anyone concerning the case of People v. Robert Allan Cleary during his tenure as a Deputy District Attorney, but also Mr. Steinberg had no responsibilities nor duties to prosecute criminal actions in the Respondent Court after May 1, 1984.

3. Moreover, it should be noted that Mr. Cleary did not appear in court or in Division 2 of the Arapahoe County District Court until May 16, 1984, subsequent to the date of Mr. Steinberg's transfer to the Criminal Complaints Division (See District Court's Minute Order sheet attached to the Petition for Writ of Prohibition as Exhibit "B").

4. Imputation of knowledge to Mr. Steinberg under these circumstances is not warranted.

WHEREFORE, Petitioner prays that this Honorable Court make its rule to show cause absolute and prohibit the Respondent court from disqualifying the Law Firm of Jeffrey A. Springer, P.C. from representing him in the matter of People v. Robert Allan Cleary, 84 CR 488.

DATED THIS 6TH DAY OF MARCH, 1985

Respectfully submitted,

JEFFREY A. SPRINGER, P.C.

BY: 

Jeffrey A. Springer, No. 6793  
1600 Broadway, Suite 1500  
Denver, CO 80202  
(303) 861-2800

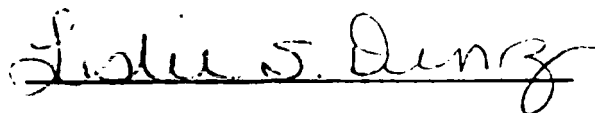
CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Reply to Answer to Order to Show Cause was mailed, postage prepaid, this 6th day of March, 1985, addressed to the following:

Honorable John P. Gately  
2069 W. Littleton Blvd.  
Littleton, CO 80120

Ann McEntire  
2100 W. Littleton Blvd.  
Littleton, CO 80120

Clerk of the District Court  
Arapahoe County Courthouse  
2069 W. Littleton Blvd.  
Littleton, CO 80120



SUPREME COURT, STATE OF COLORADO  
Case No. 85 SA 41  
ORIGINAL PROCEEDING, DISTRICT COURT, ARAPAHOE COUNTY, NO. 84CR488

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AFFIDAVIT OF HARVEY A. STEINBERG

---

ROBERT ALLAN CLEARY,

Petitioner,

vs.

THE DISTRICT COURT IN AND FOR THE EIGHTEENTH JUDICIAL DISTRICT  
AND JOHN P. GATELY, ONE OF THE JUDGES THEREOF,

Respondents.

---

I, Harvey A. Steinberg, having first been duly sworn do state under oath as follows:

1. That I was employed as a Deputy District Attorney for the Eighteenth Judicial District at the time of the filing of People v. Robert Cleary, 84 CR 488.

2. That I had absolutely no contact with the investigation, review or filing processes of the case.

3. For a period of about two years prior to April 22, 1984, I was assigned to Division 2, Judge Gately's Division.

4. I was never the Senior Deputy District Attorney nor Chief Deputy District Attorney with responsibilities for supervision in that division.

5. During my assignment to Division 2, there was at least another full-time deputy assigned to that division, as well as other deputies who would appear from time to time in that division.

6. Cases were assigned on a random basis and each deputy was responsible for their own cases.

7. On or about April 18, 1984, I was informed that I would be rotated out of Division 2 to be assigned duties as the deputy responsible for filing criminal complaints.

8. Before taking over the Complaints Division, I was assigned to commence a one week trial on April 23, 1984 as a special prosecutor in El Paso County.

9. As of the week of April 23, 1984, I did not have responsibilities in Division 2, but as with all other Deputy District Attorneys, was available to assist, if needed.

10. However, I was in Colorado Springs April 23, 24 and 25 on a trailing trial docket. On April 25, 1984, the El Paso County District Court continued my trial until April 30, 1984.

11. I returned to Colorado Springs on or about April 30, 1984 for trial which proceeded from April 30, 1984 to May 4, 1984. Following my return to Arapahoe County, I had no further responsibilities in Judge Gately's court.

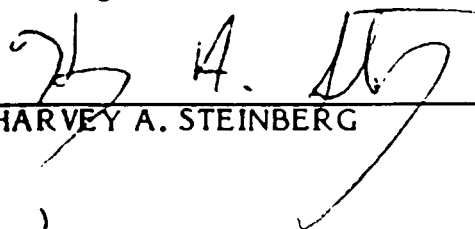
12. The case of People v. Robert Cleary was filed on April 27, 1984 by Deputy District Attorney Sheila Carrigan. Prior to its filing, the case had been signed and approved by Deputy District Attorney Linda Creagon.

13. I had no contact with either deputy regarding the approval or filing of the case.

14. In fact, I did not become aware of the case's existence until I had terminated my employment with the District Attorney's office and was told that Mr. Cleary had an interview with the Law Firm of Jeffrey A. Springer, P.C.

15. I was never in Division 2 for any appearance made by the Defendant Cleary. I never discussed anything about his case with the Judge, his staff, members of any law enforcement agency, the District Attorney's Office, or anyone, while employed in the District Attorney's office.

16. Further the affiant sayeth naught.

  
HARVEY A. STEINBERG

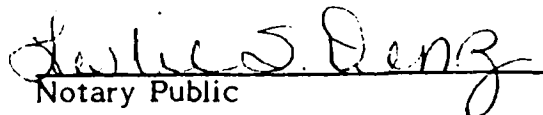
STATE OF COLORADO  
COUNTY OF DENVER

)  
) ss.  
)

Subscribed and sworn to before me this 6th day of March 1985, by Harvey A. Steinberg, as being true and correct to the best of his knowledge, information and belief.

Witness my hand and official seal.

My commission expires: 6/7/86

  
Notary Public

1600 Broadway, Suite 1500  
Denver, CO 80202  
Address