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OPINION COMMITTEE



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KENDALL COUNTY ATTORNEY

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Robert K. Eason, Jr.
Assistant County Attorney

FILE # 12-45917-08
I.D. # 45917

November 14, 2008

The Honorable Greg Abbott
Attorney General
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

RQ-0764-GA

Subject: Request for Opinion re: Court Ordered Amendment to Death Certificate

Dear General Abbott:

Following the death of an individual in her precinct, former Justice of the Peace of Precinct 1, Kendall County, Texas, Nancy White determined the cause of the decedent's death was suicide. Subsequently, in a suit between the decedent's widow and his insurance provider, the Kendall County Court at Law Judge hearing the cause issued an order that, among other things, directed the Texas Department of State Health Services (TDSHS) to "take all actions necessary to amend the death certificate" to reflect "homicide" as the cause of death. The TDSHS forwarded the County Court at Law Judge's Order to the current Justice of the Peace for Precinct 1, Kendall County, directing him to "file the medical amendment."

We respectfully request an opinion from your office on the following issues:

1. Whether a justice of the peace in a county without a medical examiner can be required to amend the death certificate of a deceased to reflect "homicide" as the cause of death, where the justice of the peace of that county had previously determined, following a full inquest and autopsy, that the cause of death was "suicide."
2. Whether a county court at law judge has the authority to order the Vital Statistics Unit of the Texas Department of State Health Services, a non-party, to "take all actions necessary to amend the death certificate" of a deceased to reflect "homicide" as the cause of death.

3. Whether a county court at law judge's order requiring the Texas Department of State Health Services to "take all actions necessary to amend the death certificate" has any force or effect over the actions of the justice of the peace responsible for conducting the inquest.

BACKGROUND

On the morning of April 16, 2003, U.S. Air Force Col. Philip Shue died in a one-car crash on Interstate Highway 10 in Boerne, Texas.¹ Col. Shue was an Air Force psychiatrist stationed at Wilford Hall Medical Center, in San Antonio, Texas.² Shue's 1995 Mercury Tracer drove off the highway, crossed the frontage road, and proceeded up a small incline before hitting a tree with the right front bumper.³ The air bag deployed upon impact and Col. Shue's vehicle continued approximately 21 yards to the left before hitting another tree on the driver's side.⁴ The details of Col. Shue's condition after the crash were bizarre: first responders to the scene found duct tape wrapped around both of Shue's wrists and over the top portions of his combat boots; both of Shue's nipples had been sliced off; the top digit of his left pinky finger was missing; and there was a gaping, vertical incision down the center of his chest surrounded by five smaller scratch wounds.⁵

Kendall County Precinct 1 Justice of the Peace Nancy White ordered that an autopsy be done on Col. Shue's body by well-known Bexar County Medical Examiner Dr. Vincent DiMaio and three members of his staff.⁶ Dr. DiMaio concluded in the autopsy report dated April 17, 2003, that Shue's death was a suicide, stating:

"There is no evidence at any time that he tried to brake his car. The incised wound of his chest and incised nipples are not part of the trauma of the accident. It is unclear if the traumatic amputation of the distal 5th finger is from the accident or not. He has a reported history of psychiatric problems. There is no evidence that any other individual was involved in his death or the infliction of his incised wounds."⁷

Dr. DiMaio also discovered a high concentration of the anesthetic lidocaine in Col. Shue's blood, leading him to believe the colonel had deadened his chest before self-inflicting the larger wound. Dr. DiMaio explained that the smaller scratches around the gaping wound were consistent with "hesitation marks"—scratches often made as a would-be suicide works up the nerve to cut deeper.⁸ However, despite the medical examiner's findings, some in the community believed that Col. Philip Shue's death was

¹ See San Antonio Express News, online website from June 18, 2008, last retrieved from http://www.mysanantonio.com/news/MYSA061808_Shue_EN_166c183f_html14570.html on October 2, 2008.

² *Id.*

³ See The Hill Country Recorder, p. 10A, May 12, 2004.

⁴ *Id.*

⁵ *Id.*

⁶ See The Boerne Star, online website from August 15, 2006, last retrieved from <http://www.boernestar.com/articles/2006/08/15/news/news02.txt>, on October 2, 2008.

⁷ See Autopsy Report of Philip Michael Shue, Case No. 2003-0678, April 17, 2003, at 10:00 a.m., Bexar County Medical Examiner's Office, 7337 Louis Pasteur, San Antonio, Texas 78229-4565.

⁸ See *People Magazine*, *Mishap or Murder?*, by Pam Lambert, Aug. 18, 2003, Vol. 60, No. 7, last retrieved from <http://www.people.com/people/archive/article/0,,20140814,00.html>, on October 2, 2008.

the result of a homicide rather than suicide. As a result, Precinct 1 Justice of the Peace White collected information from various sources and continued to deliberate the cause of Col. Shue's death, not making a final determination until two years later.⁹ On June 15, 2005, Justice of the Peace Nancy White declared that Col. Philip Shue, 54, committed suicide, and in a statement, explained her final conclusion was "based on the totality of the circumstances and information" then available.¹⁰

SUIT BETWEEN SHUE'S WIDOW AND HIS INSURANCE PROVIDER

While the justice of the peace's official ruling on Col. Shue's cause of death was still pending in 2003, Tracy Shue, Col. Shue's widow [and second wife], filed suit in Kendall County Court at Law to prevent the Colonel's first wife—Nancy Shue—from collecting the proceeds on Col. Shue's life insurance policies.¹¹ Tracy Shue's court filings indicated that she did not believe her husband had committed suicide, and to support her claim, she intended to show her husband had received anonymous letters in May of 1999 warning him that Nancy Shue—Philip's first wife and insurance beneficiary—wanted him dead.¹² Tracy Shue's suit also involved USAA Life Insurance Co. (USAA), where her husband maintained a \$500,000 policy, which the first Mrs. Shue was due to receive as beneficiary as a result of their divorce settlement. Tracy Shue accused USAA of negligence and wrongful death for not investigating concerns that Col. Shue raised in 1999 regarding his ex-wife, Nancy Shue, and her plot to kill him for insurance proceeds she owned on his life.¹³ USAA, which had advised Col. Shue to alert police in 1999, denied breaching any duty to Shue and contended it had adhered to the law and insurance industry regulations.

COUNTY COURT AT LAW JUDGE'S RULING

Kendall County Court at Law Judge Bill Palmer presided over the suit between Tracy Shue and USAA. In a jury trial that was expected to last up to six weeks, both parties reached a surprise agreement after only the second week of trial. The court dismissed the jury, and the parties submitted all matters to Judge Palmer for resolution.¹⁴

Although Judge Palmer agreed with USAA that it owed no duty to Tracy Shue or the Estate of Col. Shue, the court "sent shockwaves" through the small town of Boerne, Texas, by announcing judgment that Col. Philip Shue did not commit suicide after all,

⁹See The Boerne Star, online website from August 15, 2006, last retrieved from <http://www.boernestar.com/articles/2006/08/15/news/news02.txt>, on October 2, 2008.

¹⁰See The Arlington National Cemetery Website, online website from October 28, 2005, last retrieved from <http://www.arlingtoncemetery.net/pmshue.htm>, on October 2, 2008.

¹¹Id. at p.2

¹²Id.

¹³See San Antonio Express News, *Judge Rules Col. Shue was Murdered; USAA met its obligations after his Death*, online website addition from June 18, 2008, last retrieved from http://www.mysanantonio.com/news/MYSA_061908_01B_shue_18d32fb0_html15194.html, on October 2, 2008.

¹⁴Id.

but was murdered.¹⁵ Judge Palmer, in the Judgment of the Court, made the following findings of fact and conclusions of law in support of his judgment:

The April 16, 2003 death of Colonel Philip Shue was a homicide ... [And] regardless of the manner of death, USAA ... owed no duties to Tracy Shue or the Estate of Col. Philip Shue ... The court further finds that by following the relevant policies and procedures, USAA Life Insurance Company fulfilled any and all obligations and responsibilities related to the insurance policy.¹⁶

Judge Palmer signed the judgment on June 17, 2008, and at the request of Tracy Shue, the judge signed an Order instructing the Texas state agency in charge of death statistics to amend Col. Shue's death certificate to reflect "homicide," as follows:

Pursuant to the final Judgment of the Court signed June 17, 2008, which is attached as Exhibit A and incorporated by reference, finding that the April 16, 2003 death of Colonel Philip Shue ("Colonel Shue") was a homicide, the Court directs the Texas Department of State Health Services, Vital Statistics Unit to take all actions necessary to amend the death certificate of Colonel Shue to reflect "homicide" as Colonel Shue's manner of death, including but not limited to filing an Amendment to Medical Certificate of Death specifying the manner of death of Colonel Shue as "homicide."¹⁷

Jason Davis, attorney for Tracy Shue, wrote a letter to the Chief and State Registrar, Ms. Geraldine Harris, Bureau of Vital Statistics, at the Texas Department of State Health Services (TDSHS) on July 28, 2008, containing a copy of Judge Palmer's signed Order and requesting a copy of the "amended death certificate" to be returned to him once the TDSHS has taken "all actions necessary to amend the death certificate of Colonel Philip Shue to reflect 'homicide' as the manner of death."

In turn, the Vital Statistics Department manager Ms. Debbie Domel, in a letter dated August 12, 2008, wrote to former Justice of the Peace Nancy White: "in regards to the enclosed court order from the County Court at Law, Kendall County, Texas ... We have been advised by our Office of General Counsel to forward the order to you as the Medical Certifier to file the medical amendment." This letter led current Kendall County Precinct 1 Justice of the Peace Lawrence James to inquire whether he, as Justice of the Peace of the precinct where Col. Philip Shue died, must abide by the county court at law judge's order directing the Texas Department of State Health Services to take steps necessary to amend Col. Shue's death certificate.¹⁸

¹⁵ See San Antonio Express News, *Judge Rules Col. Shue was Murdered; USAA met its obligations after his Death*, online website addition from June 18, 2008, last retrieved from http://www.mysanantonio.com/news/MYSA_061908_01B_shue_18d32fb0_html5194.html, on October 2, 2008.

¹⁶ See Judgment of the Court, *Shue v. USAA Life Insurance Co.*, No. 03-271-CCL, In the County Court at Law of Kendall County, Texas, Honorable Bill Palmer, presiding.

¹⁷ See Order, *Shue v. USAA Life Insurance Co.*, No. 03-271-CCL, In the County Court at Law of Kendall County, Texas, Honorable Bill Palmer, presiding.

¹⁸ See Letter from Lawrence James, Justice of the Peace, Precinct 1, Kendall County, Texas, to Don Allee, Kendall County Attorney. (Copy with attachments enclosed.)

Question 1 (Restated)

Whether a justice of the peace in a county without a medical examiner can be required to amend the death certificate of a deceased to reflect "homicide" as the cause of death, where the justice of the peace of that county had previously determined, following an inquest and autopsy that the cause of death was "suicide."

Subchapter A of chapter 49 of the Code of Criminal Procedure applies to an inquest into a death occurring in a county that does not have a medical examiner. Tex. Code Crim. Proc. art. 49.02. In a county without a medical examiner, a justice of the peace of that county is charged with the duty of conducting the inquest of the death of a person who dies in that county. Tex. Code Crim. Proc. art. 49.04. "Inquest" is defined as "an investigation into the cause and circumstances of the death of a person, and a determination, made with or without a formal court hearing, as to whether the death was caused by an unlawful act or omission." Tex. Code Crim. Proc. art. 49.01(2).

If circumstances warrant a hearing, the justice of the peace is authorized to conduct "a formal court hearing held to determine whether the death of a person was caused by an unlawful act or omission and, if the death was caused by an unlawful act or omission, to obtain evidence to form the basis of a criminal prosecution." Tex. Code Crim. Proc. art. 49.01(3). The inquest shall be conducted by the justice of the peace immediately, or as soon as practicable after the justice of the peace is notified of the death. *Id.* at 49.05. The hearing can be held with or without a jury unless the district attorney requests that the hearing be held with a jury. *Id.* at 49.14(b).

"The purpose of such inquest under our law is merely to detect crime, and to take the preliminary steps to secure a trial of the supposed offender." *Boehme v. Sovereign Camp Woodmen of the World*, 84 S.W. 422 (1905) (contrasting statutory Texas inquest law with inquests at common law); see also *Inquests*, 44 Tex. Jur.3d 8 (1985) (explaining that the sole purpose of an inquest hearing is to detect crime). The Supreme Court of Texas, in *Boehme v. Sovereign Camp Woodmen*, stated that—unlike a common law coroner's inquest—our statutes provide no means for traversing a finding, "nor is any method whatever secured for the correction of an erroneous finding." See *Boehme*, 84 S.W. at 378-79; see also *Nelson v. Pickett*, 332 S.W.2d 129 (Tex. Civ. App.—El Paso, 1960) (holding justice of the peace could not be compelled to make a complete investigation to determine cause of death of deceased because the justice of the peace conducted an inquest and performed the acts required by Texas law).

Because an inquest and autopsy were done by Kendall County Precinct 1 Justice of the Peace Nancy White, based on *Boehme* and the Code of Criminal Procedure, should the county court at law judge's order to change the cause of death determination be given any deference? The question becomes even more perplexing because of the Legislature's decision in 1987 to take away from county court at law judges the authority to conduct an inquest in the first place. Prior to 1987, article 49.07 of the Code of Criminal Procedure explicitly permitted a county court at law judge to conduct an inquest in the event the local justice of the peace was unavailable. However, in 1987, the Legislature deleted the terminology authorizing an alternate official to conduct an

inquest. See Tex. Code Crim. Proc. art. 49.07 (Vernon 1979), amended by Act of May 21, 1987, 70th Leg., R.S., ch. 529, § 1, 1987 Tex. Gen. Laws 2138, 2144-45; see also House Research Org., Bill Analysis, Tex. H.B. 1104, 70th Leg., R.S. (1987) (stating that 1987 bill proposes some substantive changes to inquest statutes). As a result, a county court at law judge may no longer conduct inquests, and where a justice of the peace is unavailable, the county court at law judge may not conduct the inquest, but instead must appoint a temporary justice of the peace in accordance with section 27.055(b) of the Government Code to conduct the inquest. See Tex. Code Crim. Proc. art. 49.07(c)(1)-(2); Tex. Gov't Code Ann. § 27.055(b) (Vernon Supp. 1999).

Justice of the Peace Nancy White's determination that Colonel Philip Shue committed suicide was made in accordance with article 49 of the Texas Code of Criminal Procedure, and according to the Texas Supreme Court in *Boehme*, our statutes provide no means for overruling such a finding. As such, Kendall County Court at Law Judge Bill Palmer's order to amend the justice of the peace's determination appears to be in error, especially in light of the 1987 amendments removing the county court at law judge's authority to conduct an inquest in the first place.

Question 2 (Restated)

Whether a county court at law judge has the authority to order the Vital Statistics Unit of the Texas Department of State Health Services, a non-party, to "take all actions necessary to amend the death certificate" of a deceased to reflect "homicide" as the cause of death.

The order requiring the Texas Department of State Health Services (TDSHS) to "take all actions necessary to amend [Col. Shue's] death certificate" poses two problems: First, did the county court at law judge have the authority to compel the performance of the act; and second, did the court's jurisdiction encompass the TDSHS, a non-party to the suit between Tracy Shue and USAA Insurance, Co.

1. Judge Palmer's Authority to Compel the State Agency to Act

Section 22.002(c) of the Government Code states: "Only the supreme court has the authority to issue a writ of mandamus or injunction . . . against any of the officers of the executive departments of the government of this state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform." *Id.*

In general, district courts have no jurisdiction over executive officers and any exception to this rule would require express statutory authorization by the legislature naming district courts as the proper forum. See *A&T Consultants v. Sharp*, 904 S.W.2d 668, 672 (Tex. 1995) (citing Tex. Gov't Code § 552.353(b)(3)). Under the current statutory scheme, in order for an executive officer to be compelled to perform duties imposed by law, the proper means of obtaining that order would be to seek mandamus from the Supreme Court of Texas. See, e.g., *Houston Chronicle Pub. Co. v. Mattox*, 767 S.W.2d 695 (Tex. 1989) (orig. proceeding) (seeking to compel the attorney general to render an open records opinion); *Jessen Assocs., Inc. v. Bullock*, 531 S.W.2d 593 (Tex. 1975) (orig. proceeding) (seeking to compel the comptroller to issue a warrant for

payment of architects' services); *Bullock v. Calvert*, 480 S.W.2d 367 (Tex. 1972) (orig. proceeding) (seeking to require the comptroller to pay the costs of a party primary election); *Trinity River Auth. v. Carr*, 386 S.W.2d 790 (Tex. 1965) (orig. proceeding) (seeking to force the attorney general to approve a river authority's revenue bonds); *Gordon v. Lake*, 163 Tex. 392, 356 S.W.2d 138 (Tex. 1962) (orig. proceeding) (seeking to compel the secretary of state to file a corporate charter); *County of Cameron v. Wilson*, 160 Tex. 25, 326 S.W.2d 162 (Tex. 1959) (orig. proceeding) (seeking to require the attorney general to approve the issuance of county revenue bonds); *Union Cent. Life Ins. Co. v. Mann*, 138 Tex. 242, 158 S.W.2d 477 (Tex. 1941) (orig. proceeding) (seeking to force the attorney general and comptroller to refund illegally-assessed taxes the petitioner had paid on policy premiums it received); *Manion v. Lockhart*, 131 Tex. 175, 114 S.W.2d 216 (Tex. 1938) (orig. proceeding) (seeking to compel the treasurer to pay escheated funds to an heir); *Corsicana Cotton Mills, Inc. v. Sheppard*, 123 Tex. 352, 71 S.W.2d 247 (Tex. 1934) (orig. proceeding) (seeking to compel the comptroller and treasurer to refund erroneously paid franchise taxes); *Jernigan v. Finley*, 90 Tex. 205, 38 S.W. 24 (Tex. 1896) (orig. proceeding) (seeking to force the comptroller to issue a warrant for county school funds).

Kendall County Court at Law Judge Bill Palmer's order compels the TDSHS to "take all actions necessary to amend the death certificate of Colonel Shue to reflect 'homicide' as Colonel Shue's manner of death, including but not limited to filing an Amendment to Medical Certification of Certificate of Death specifying the manner of death of Colonel Shue as 'homicide.'" However, it seems that in light of section 22.002 of the Government Code, and exhaustive case law on the subject, the trial court's directive to the TDSHS to perform a "judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform," was a command which could only be made by writ of mandamus to the Supreme Court of Texas and even then only on order by *that* Honorable Court.

2. The County Court at Law's Lack of Jurisdiction over The Texas Department of Safety and Health Services as a Non-Party to the Lawsuit

In the lawsuit between Tracy Shue and USAA Insurance Co., the Texas Department of Safety and Health Services was ordered, as a non-party, to take "all actions necessary" to amend Col. Shue's death certificate in accordance with Judge Palmer's order. This causes a second question to arise regarding the trial court's authority to compel the TDSHS.

A trial court lacks jurisdiction over a party unless the party is properly before the court in the pending controversy as authorized by procedural statutes and rules. *In re Mask*, 198 S.W.3d 231 (Tex. App.—San Antonio 2001, orig. proceeding). A judgment or order is void when it is apparent that the court rendering it lacked jurisdiction of either the parties or the subject matter of the lawsuit. *In re Bokeloh*, 21 S.W.3d 784, 794 (Tex. App.—Houston [14th Dist.] 2000, orig. proceeding). Generally, a trial court does not have jurisdiction to enter a judgment or order against a person or entity unless the record shows proper service of citation on the person, or an appearance by the person, or a written memorandum of waiver at the time the judgment or order was entered. *In re Mask*, 198 S.W.3d at 234. Language in a judgment stating that the judgment included but was not limited to the named parties, and which thus appeared to refer to

nonparties, conflicts with Tex. R. Civ. P. 124. See *Dorman v. Rogers*, 2008 Tex. App. LEXIS 3346 (Tex. App.—Beaumont May 8 2008); Tex. R. Civ. P. 124 (“in no case shall judgment be rendered against any defendant unless upon service, or acceptance or waiver of process”).

In *Shue v. USAA*, the Texas Department of State Health Services was neither a party nor a witness, and it did not appear or waive service of process in any manner whatsoever. Therefore the trial court’s order requiring the Department to “take all actions necessary to amend the death certificate” seems to have been made without proper jurisdictional authority, and in turn, it appears that an order to current Justice of the Peace Larry James to amend the certificate is based on an illegal order, and therefore not binding.

Question 3 (Restated)

Whether a county court at law judge’s order requiring the Texas Department of State Health Services to “take all actions necessary to amend the death certificate” has any force or effect over the actions of a justice of the peace.

Former Justice Nancy White was succeeded by the current Kendall County Precinct 1 Justice of the Peace Larry James, and Justice James, uncertain how to respond to Judge Palmer’s directive, has instigated this request for the opinion of the Attorney General. Justice of the Peace Larry James, as the official responsible for determining the cause of death for persons who die in his precinct, is in a peculiar situation where he may be required to amend his predecessor’s final determination regarding Col. Philip Shue’s cause of death.

Texas Code of Criminal Procedure, article 49.041 states that a justice of the peace “*may* reopen an inquest if, based on information provided by a credible person or facts within the knowledge of the justice of the peace, the justice of the peace determines that reopening the inquest may reveal a different cause or different circumstances of death.” Tex. Code Crim. Proc. art. 49.041 (Vernon Supp. 2002) (emphasis added). In light of this, it seems as if the decision to re-evaluate Col. Shue’s cause of death is left to the sole discretion of the justice of the peace, not the county court at law. “The justice of the peace is therefore vested with the power to determine whether such a reopening should occur, and this decision is subject to an abuse of discretion standard.” *Mestiza v. DeLeon*, 2002 Tex. App. LEXIS 4248, at *7 (Tex. App.—Corpus Christi, 2002) (unpublished opinion).

Again, Justice of the Peace Larry James, in accordance with Article 49.041, has the discretion to reopen the inquest into the cause of Col. Shue’s death, and Judge Palmer’s order requiring the Texas Department of State Health Services to amend the death certificate seems to violate the statutory mandate giving all such authority to the justice of the peace.

SUMMARY AND CONCLUSION

In summary, the County Attorney of Kendall County respectfully asks the Texas Attorney General's Office to give its opinion regarding the following questions: (1) Whether a justice of the peace in a county without a medical examiner can be required to amend the death certificate of a deceased to reflect "homicide" as the cause of death, where the justice of the peace of that county had previously determined, following a full inquest and autopsy, that the cause of death was "suicide;" (2) whether a county court at law judge has the authority to order the Vital Statistics Unit of the Texas Department of State Health Services to "take all actions necessary to amend the death certificate" of a deceased to reflect "homicide" as the cause of death; and (3) whether a county court at law judge's order requiring the Texas Department of State Health Services to "take all actions necessary to amend the death certificate" has any force or effect over the actions of the justice of the peace.

Your consideration of our request is greatly appreciated.

Sincerely,



Don Allee
Kendall County Attorney

Lawrence James
Justice of the Peace
Precinct 1
Kendall County, Texas



204 E. San Antonio
Mail: 201 E. San Antonio, #20A
Boerne, Texas 78006

830-249-9343, ext. 334
830-249-7046 Fax

Don Allee
Kendall County Attorney

Mr. Allee,

RE: Request for Attorney General's Opinion

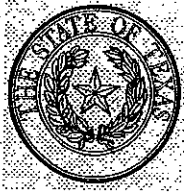
Attached is a letter from the Texas Department of State Health Services indicating that their Office of General Counsel, advised them to forward the order from the Kendall County Court at Law, directing that the Medical Certification of Death in the matter of Colonel Philip Shue be amended. The order states, "take all actions necessary to amend the death certificate of Colonel Shue to reflect Homicide." Other items that were sent by that office are attached.

I respectfully request that an Attorney General's Opinion be sought.

Thank you,

A handwritten signature in cursive script that reads "Lawrence James".

Lawrence James
Justice of the Peace
Pct. 1
Kendall County



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.
COMMISSIONER

1100 W. 49th Street • Austin, Texas 78756
1-888-963-7111 • <http://www.dshs.state.tx.us>
TDD: 512-458-7708

August 12, 2008

Ms. Nancy White, Justice of the Peace
Precinct 1, Kendall County
204 E. San Antonio
Boerne, Texas 78006

Dear Ms. White:

This letter is in regards to the enclosed court order from the County Court at Law, Kendall County, Texas, Cause #03-271-CCL, directing the filing of a medical amendment to amend the cause of death in the matter of Colonel Philip Shue, date of death April 16, 2003.

We have been advised by our Office of General Counsel to forward the order to you as the Medical Certifier to file the medical amendment. Once completed, it would need to be filed with the Local Registration officials in Kendall County. For your convenience, we have included form VS-174, Amendment to Medical Certification of Certificate of Death.

If you should need further assistance from our office, please feel free to contact me toll free at: 1-888-963-7111 Ext. 7482 or by email at Debbie.domel@dshs.state.tx.us

Sincerely,

A handwritten signature in cursive script that reads "Debbie Domel".

Debbie Domel
Manager
Vital Statistics

Enclosure

CC: Jason Davis
Thompson & Knight, LLP

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

JASON DAVIS

DIRECT DIAL: (512) 469-6134
EMAIL: Jason.Davis@tklaw.com

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RIO DE JANEIRO
VITORIA

July 28, 2008

Ms. Geraldine Harris
Chief and State Registrar
Bureau of Vital Statistics
Texas Department of State Health Services
1100 W. 49th St.
Austin, TX 78756

Via hand delivery

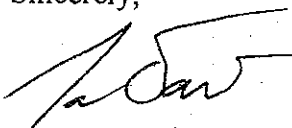
Re: Amendment to medical certification of death for Colonel Philip Shue

Dear Ms. Harris:

At the request of Mr. Connelly, I am attaching a certified copy of the *Order* from the Kendall County Court at Law directing the Texas Department of State Health Services to take all actions necessary to amend the death certificate of Colonel Philip Shue to reflect "homicide" as the manner of death.

Please let me know if any additional steps need to be taken and I would appreciate if your office could forward a copy of the amended death certificate to me at the address shown above.

Sincerely,



Jason Davis

Cc: Mr. Marc Allen Connelly
Deputy General Counsel
Office of General Counsel
Texas Department of State Health Services
1100 W. 49th St.
Austin, TX 78756

Via E-mail: marc.connelly@dshs.state.tx.us

CAUSE NO. 03-271-CCL

**TRACY ANN SHUE
Plaintiff**

IN THE COUNTY COURT

and

**TRACY ANN SHUE
ON BEHALF OF THE ESTATE
OF COLONEL PHILIP SHUE
Intervenor**

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v.

AT LAW

**USAA LIFE INSURANCE COMPANY,
NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY AND
NANCY L. SHUE A/K/A
NANCY TIMPSON
Defendants**

and

**JEFFREY SHUE
Third-Party Defendant**

KENDALL COUNTY, TEXAS

ORDER

Pursuant to the final *Judgment of the Court* signed June 17, 2008, which is attached as **Exhibit A** and incorporated by reference, finding that the April 16, 2003 death of Colonel Philip Shue ("Colonel Shue") was a homicide, the Court directs the Texas Department of State Health Services, Vital Statistics Unit to take all actions necessary to amend the death certificate of Colonel Shue to reflect "homicide" as Colonel Shue's manner of death, including but not limited to filing an Amendment to Medical Certification of Certificate of Death specifying the manner of death of Colonel Shue as "homicide."



SIGNED on this 18 day of July, 2008


THE HONORABLE BILL PALMER

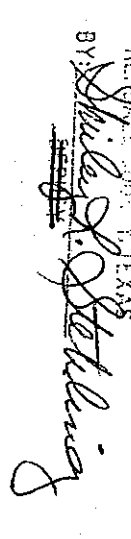

APPROVED AND ENTRY REQUESTED:

THOMPSON & KNIGHT LLP



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State Bar No. 00793592
Schuyler Marshall
State Bar No. 24055910
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Suite 1900
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(512) 469-6100
(512) 469-6180 Facsimile

ATTORNEYS FOR
PLAINTIFF/INTERVENOR
TRACY ANN SHUE

FILED
08 JUL 18 AM 9:02
SHERIFF
KENDAL COUNTY TEXAS
BY: 
SHERIFF CLERK
KENDAL COUNTY TEXAS


NO. 03-271-CCL

TRACY ANN SHUE
Plaintiff

and

TRACY ANN SHUE
ON BEHALF OF THE ESTATE
OF COLONEL PHILIP SHUE
Intervenor,

VS.

USAA LIFE INSURANCE
COMPANY, NORTHWESTERN
MUTUAL LIFE INSURANCE
COMPANY AND NANCY L. SHUE
A/K/A NANCY TIMPSON
Defendants

and

JEFFREY SHUE
Third-Party Defendant

IN THE COUNTY COURT

AT LAW

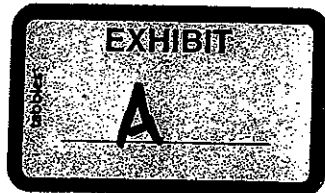
KENDALL COUNTY, TEXAS

JUDGMENT OF THE COURT

On this day came on to be considered the above numbered and entitled cause. This Court makes the following findings of fact and conclusions of law, and based upon such enters the following Judgment:

Findings of Fact and Conclusions of Law:

1. The Court finds that the April 16, 2003 death of Colonel Philip Shue was a homicide.



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 Vol. 122 Pgs. 743-744

 The official seal of the District Court of Kendall County, Texas, featuring a star in the center surrounded by the text "DISTRICT COURT OF KENDALL COUNTY TEXAS".

2. The life insurance policy referenced in this Judgment is USAA Life Insurance Policy No. 0115953004, insuring the life of Colonel Philip Shue (the "Policy"). The Court finds that, as a matter of law, regardless of manner of death, USAA Life Insurance Company owed no duties to Tracy Shue or to the Estate of Col. Philip Shue including, but not limited to: (1) a duty to consider the suitability of the Policy; (2) a duty to investigate the existence of an insurable interest in the owner and beneficiary of the Policy; (3) a duty to investigate any threats upon the life of Philip Shue; or (4) a duty to cancel the Policy. The Court further finds that the relevant policies and procedures of USAA Life Insurance Company satisfy applicable laws, regulations, and industry standards. The Court further finds that by following the relevant policies and procedures, USAA Life Insurance Company fulfilled any and all obligations and responsibilities related to the insurance Policy.

It is, therefore, ORDERED, ADJUDGED and DECREED that Plaintiffs, TRACY ANN SHUE and TRACY ANN SHUE ON BEHALF OF THE ESTATE OF COLONEL PHILIP SHUE recover nothing from Defendant, USAA LIFE INSURANCE COMPANY.

All taxable court costs incurred shall be assessed against the party incurring same.

Any relief not specifically granted in this Order is denied.

SIGNED on this 17 day of June, 2008.

CERTIFICATE
I hereby certify that this
is a true and correct copy
of the original record on
file in my office.

ATTEST: July 25, 2008
SHIRLEY R. STEHLING
District Clerk
KENDALL COUNTY, TEXAS

Josephine Below
Deputy

[Signature]
JUDGE BILL PALMER



BY [Signature]
 DISTRICT CLERK
 KENDALL COUNTY, TEXAS

08 JUL 18 AM 9:04

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