



## 1 APPEARANCES

2 Mr. Douglas Kirk  
3 1850 Old Sattler Road  
4 Canyon Lake, Texas 78132  
5 830.237.7313  
6 dougkirk@gvtc.com  
7 Appearing Pro Se

8 Mr. Kirk Swinney  
9 SBOT NO. 19588400  
10 Low Swinney Evans & James, PLLC  
11 623 South Baker Circle  
12 Leander, Texas 78641  
13 Telephone: 512.379.5800  
14 kswinney@lsejlaw.com  
15 Attorney for the Defendant  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Heather Holden, CSR  
hholdencsr@gmail.com  
210.912.5884

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VOLUME 1

Hearing on Motion to Compel

July 10, 2019

	PAGE	VOL.
Opening Statement by Mr. Swinney .....	4	1
Opening Statement by Mr. Kirk .....	10	1
Court's Ruling .....	14	1
Court's Ruling .....	19	1
Reporter's Certificate .....	29	1

## 1 P R O C E E D I N G S

2 THE COURT: 18-1576.

3 MR. SWINNEY: How are you today?

4 THE COURT: Good.

5 MR. KIRK: Another day in paradise, right?

6 THE COURT: It is. I guess I take it the  
7 appraisal district has the motion to compel?

8 MR. SWINNEY: That is correct, Judge.

9 THE COURT: Set for today as well? What  
10 are we seeking to compel?11 MR. SWINNEY: Your Honor, this is a second  
12 motion to compel and for sanctions and contempt to  
13 compel the inspection of the property at issue. I have  
14 a booklet of auth -- not authorities, but essential  
15 documents, Your Honor, if you would like to see them.16 The plaintiff -- or the defendant, rather,  
17 filed a request for inspection on this --18 THE COURT: I take it you provided  
19 Mr. Kirk an identical copy?

20 MR. SWINNEY: I have.

21 THE COURT: Okay. Very good.

22 MR. SWINNEY: That's correct.

23 MR. KIRK: Thank you.

24 MR. SWINNEY: I had a request for  
25 inspection of documents to which the plaintiff objected.

1 They're following. There was -- and this is found at  
2 Tab 1 of the notebook, Your Honor. Appraisal District  
3 filed a motion to compel. That was, of course, opposed.  
4 There was a hearing. The transcript of the hearing is  
5 at Tab 3. And it's not just a real long hearing, but  
6 over toward the back is the essential Page 52. And  
7 following are the essentials of the Court's order  
8 with -- I'll try to summarize this rather than read it  
9 word for word. It's several pages, Your Honor.

10 But the Court ordered that three people  
11 could participate in the inspection. And we would not  
12 have a peace officer there, but we could call one if we  
13 need to. Plaintiff asked for it to be on a Sunday. You  
14 specifically refused to force the appraisal district to  
15 do it on Sunday. This is Page 53 now. And on into Page  
16 54 where they talk about taking pictures, and you  
17 allowed that on Page 53 and Page 54.

18 There is ten days notice, saying he can do  
19 it the week of the 19th through the 25th. And we were  
20 supposed to give notice of who would participate, which  
21 we did, limited to two hours. That's Line 19 of Page  
22 54. Line 25, Just pick the date, give him the name, et  
23 cetera.

24 Mr. Kirk requested it be at 1:00 p.m.,  
25 which we agreed. Mr. Kirk says he has a lot of

1 conditions, want them to sign a liability and so on.  
2 The Court responds, I'm ordering the inspection. I  
3 mean, if there's a bit of -- you know, as an order of  
4 the Court, I think that pretty much sufficiently covers  
5 you in that regard. There following, gave Mr. Kirk  
6 notice of the date and time.

7 I sent a Rule 11 agreement. That  
8 correspondence is found under Tab 5. The second page  
9 there is the pretty short Rule 11 agreement which we  
10 forwarded over which I think Your Honor will find in  
11 compliance with the -- with the direction of the Court.

12 On Tab 6, Mr. Kirk responds and basically  
13 says we're going to have to sign this nondisclosure  
14 agreement, a background check, make sure we're not  
15 members of the Communist Party, Democratic Socialist  
16 Party, Students for Democratic Action, Democratic Party,  
17 Republican Party, Libertarian Party, Green Party, Tea  
18 Party --

19 COURT REPORTER: Please help me.

20 MR. SWINNEY: I'm sorry. It's a bunch of  
21 parties. I'll give you the document.

22 A nondisclosure agreement and then a  
23 series of fees; \$4,560 for deactivation of a security  
24 system paid in advance; an inspection security and  
25 observation team fee of \$600, paid in three checks of

1 \$200 each; a liability insurance fee in the amount of  
2 \$3,000. It must be paid in advance; \$500 to give to the  
3 security team; and a \$100,000 bond, which he plans to  
4 cash in advance at his sole discretion, may or may not  
5 give back.

6 A number of other conditions. We've got  
7 to remain on foot, got to be on a Sunday. No talking,  
8 can't touch anything, no cell phones, one camera, so on.  
9 The camera is to be turned over to the security team for  
10 30 minutes, so on. All this has to be done and signed  
11 by noon, May 16th and so on. We've got to provide proof  
12 of U.S. citizenship. I think we're all citizens, but,  
13 you know. No audio recording and so on, so on.

14 Just extensive -- extensive criteria not  
15 ordered by this Court. The fees add up to \$108,660.  
16 Granted, \$100,000 of it is a bond that he may or may not  
17 choose to return in his sole discretion. To that, I  
18 responded with, No. See our prior Rule 11 agreement.  
19 And so we filed this second motion to compel, Your  
20 Honor.

21 And the bottom line is -- and that's at  
22 Tab 2 by the way, Your Honor, the second motion to  
23 compel. I've also added to it an affidavit of attorney  
24 fees. And the bottom line is -- well, I guess I need to  
25 testify to the attorney fees. May I do that, Your

1 Honor?

2 THE COURT: Yes, sir.

3 MR. SWINNEY: I'm representing myself as  
4 an officer of the court or take the oath?

5 THE COURT: You're an officer of the  
6 court.

7 MR. SWINNEY: All right. Your Honor,  
8 according to the affidavit, which is several pages deep,  
9 under Tab 2, I have been representing appraisal  
10 districts for 29 years. For some years prior to that, I  
11 also represented condemnation, as in nuisance  
12 condemnation and eminent domain-type condemnation.

13 My partner, Ryan James, has devoted the  
14 past six years in representing appraisal districts.  
15 Attached records are my billings through June to the  
16 appraisal district. I had -- did have some legal  
17 assistance. They all operated under either mine or  
18 Mr. James' direction; that the listed charges are  
19 accurate and complete up through the date of this  
20 affidavit.

21 We charge \$180 an hour for experienced  
22 attorneys. We didn't use any junior attorneys on this  
23 one. They charge \$100 an hour, and paralegals \$75 and  
24 \$90, which I believe is well within the normal rates, or  
25 less than the normal rates in Comal County for attorney



1 representation. I believe that would be more in the  
2 line of \$200, \$220, perhaps. Everyone has appropriate  
3 knowledge of the system.

4 Mr. James and I were responsible for  
5 supervising, all that done by an attorney. Spent a  
6 total of 43 hours in the bringing of the first motion to  
7 compel, the hearing on that motion, the attempts to  
8 arrange the inspection, the bringing of the second  
9 motion to compel. And we believe all of those fees were  
10 quite reasonable and necessary. Based on the fee  
11 arrangement, the bill for that work so far was \$6498.50,  
12 \$71.10 in expenses, for a total of \$6569.

13 I'm estimating -- it looks like I'm going  
14 to be a little low, but for yesterday and today, it adds  
15 another \$1,100 to the bill. And in the event of an  
16 appeal, we're requesting a \$7,500 contingent award  
17 through the Court of Appeals, \$5,000 to the Supreme  
18 Court, and \$150 if I have to monitor a writ of  
19 certiorari to the United States Supreme Court. And like  
20 I say, I've attached those records.

21 I'm here to represent they are true and  
22 correct copies of the originals, if there is such a  
23 thing as an original these days, Your Honor. PDFs.  
24 I've also represented that the documents that I've  
25 included provided by Mr. Kirk are true and correct

1 copies of what they have provided. So ends my  
2 testimony.

3 THE COURT: Do you have any questions of  
4 him regarding his attorney's fees?

5 MR. KIRK: No, sir.

6 THE COURT: Okay. All right. Just any  
7 response then as to the motion to compel?

8 MR. KIRK: Yes, sir. A rather lengthy  
9 one, if you don't mind.

10 THE COURT: I don't know what you mean,  
11 lengthy.

12 MR. KIRK: Lengthy. Well, it will take a  
13 little while. I have some documents as well, and I'm  
14 going to go through these.

15 Basically, this comes down to three  
16 different things that took place. The Rule 11 agreement  
17 that Mr. Swinney offered was not in good faith. And I'm  
18 going to have to read some of this so that we can tie it  
19 to the documents.

20 He said, In order to comply with the court  
21 directive -- that's just a segment -- the Comal  
22 Appraisal District shall be allowed to inspect and  
23 photograph the property -- the subject property of this  
24 litigation, both the interior and exterior of all  
25 buildings beginning at 1:00 p.m., May 21st, 2019. The

1 inspection shall last no longer than two hours. Persons  
2 attending the deposition on behalf of the Comal  
3 Appraisal District shall be Craig Zgabay, Rufino Lozano,  
4 and Kirk Swinney. It's very important that you remember  
5 Rufino Lozano.

6 So the motion to compel, the hearing that  
7 took place on April 18th, we establish certain things,  
8 and the transcript bears that out. The inspection date  
9 could be between May 19th and May 25th. That's what the  
10 Court said. The Court did say, I'm not going to order  
11 it on May 19th, but it can be. That was a Sunday.  
12 That's what I requested. And the Court said, If you  
13 want to, okay.

14 Photography was discussed. Defense  
15 attorney, Ryan James, said that there would not be any  
16 videotaping. That's in the transcript on Page 7, Line  
17 25. The parties, Ryan James, stated that the plaintiff  
18 had been given the names, which I had been. And names  
19 were: Jennifer Salazar, Craig Zgabay, and attorneys  
20 Kick Swinney, Ryan James, Peter William Low, and Ryan  
21 Evans. That was in the notice of inspection,  
22 photographing and videotaping of the premises.

23 And so defense attorney Ryan James said  
24 only one of the attorneys would attend, but did not  
25 suggest anyone other than Jennifer Salazar and Craig

1 Zgabay. So tie back to the Rule 11 agreement, we  
2 suddenly get a Rufino Lozano. Never mentioned before.  
3 The length was established to be two hours. There's no  
4 dispute there. The starting time was established to be  
5 1:00. There's no dispute there.

6 I asked for a background check. And the  
7 Court, on Page 54, Lines 20 to 25, said, Yeah, if you  
8 want to. So I believe that that means I can do a  
9 background check.

10 Security was an issue. Defense attorney  
11 Ryan James asked for security. And the Court said, No,  
12 I'm not going to order that, but if you need assistance,  
13 you can get it. That sort of thing. And that's on the  
14 transcript, Page 52, Lines 15 to 25. Also Page 53, Line  
15 1; Page 54, Lines 5 to 6; Page 54, Lines 7 to 8.

16 So those pages that Mr. Swinney pointed  
17 out toward the end of the transcript are very important.  
18 I asked for a liability release. The Court said, No,  
19 I'm not going to order that. However, the Court did not  
20 say that I can't protect myself. The Court indicated  
21 that, Well, you're not going to have a problem, because  
22 I'm ordering it.

23 Well, I called USAA, which is my insurance  
24 company. And they said, No, you're not protected if the  
25 Court makes an order and somebody comes on your property

1 and hurts themselves. You need liability coverage.  
2 Which is what I thought. As a former employee of USAA,  
3 I kind of knew that. So I went and got a liability  
4 insurance quote, which is part of the record here. And  
5 that quote -- I don't have it in front of me, but it was  
6 like 1,300 bucks plus 2,000 some-odd dollars deductible.  
7 That's how I arrived at the \$3,000.

8 THE COURT: Well, the points is, they're  
9 not -- there is an invitee or a licensee. I think the  
10 only -- personally, my reflection would be, the only  
11 duty you would owe them as a land owner would be not to  
12 maliciously cause some injury to them as a trespasser at  
13 best. I mean, because you have an -- they're not --  
14 they're there by court order. They're not there by your  
15 invitation. They're not there by your license to them.

16 MR. KIRK: Okay. Understood. Simple  
17 solution. Just have them sign a liability release.  
18 With respect to cost --

19 THE COURT: But it's not necessary, and I  
20 said they don't have to do that.

21 MR. KIRK: I understand, sir.

22 The cost, I made the statement that it  
23 would be expensive; that there would be certain costs  
24 that would be incurred, including deactivation of  
25 passive deterrence system. I don't think people

1 understand what that is. A passive deterrent system is  
2 a vast array of trip wires and other items that need to  
3 be deactivated so that nobody gets hurt. I'm willing to  
4 do that, but it takes time. And I expect to be paid for  
5 my time to not only deactivate, but to have --

6 THE COURT: I'll give you the time to  
7 deactivate it, but they don't have to pay for it.

8 MR. KIRK: Okay. The -- another subject,  
9 interior. The Rule 11 agreement said they want to  
10 inspect the interior of every building. That was never  
11 mentioned in the hearing. The only thing that was  
12 mentioned in the hearing regarding inspecting the  
13 interior of anything is that the witness said that he  
14 needed to see the kitchen. So this was news being put  
15 in the Rule 11 agreement.

16 Then in the Rule 11 agreement, the defense  
17 says there's a deposition involved. And I found that to  
18 be very strange because the defense does not state  
19 whether there's a deposition -- a deposition is going to  
20 be written or oral, who the witness is going to be,  
21 where the deposition will take place. And finally --

22 THE COURT: Is that a typo or is it  
23 supposed to be just the inspection?

24 MR. SWINNEY: Correct.

25 THE COURT: It's not going to be a

1 deposition.

2 MR. KIRK: Well, hopefully not, because it  
3 wasn't noticed properly.

4 THE COURT: Okay. Well, it's not going to  
5 happen.

6 MR. KIRK: Okay. Thank you.

7 THE COURT: No deposition.

8 MR. KIRK: The Court signed an order on  
9 May 14th. In some of the pleadings, Mr. Swinney says  
10 there is no court order. He says that in the Rule 11  
11 agreement; he says that in the second motion to compel.  
12 He says that in the amended motion to compel, which he  
13 sent me last night, that there was no court order. And  
14 that's not true. There was a court order. The Court  
15 signed it.

16 So now the next thing that we need to look  
17 at is the email exchange that took place. We did have  
18 an exchange. Mr. Swinney has presented you some of  
19 those documents. I have presented you all of the  
20 documents. And there's a big difference.

21 On April 29th, Mr. Swinney said to me, Per  
22 the Court's instruction, please see the attached  
23 proposed agreement regarding the inspection of your  
24 property. Please let me know at your earliest  
25 opportunity whether the proposal will be acceptable.

1                   Then on May 8th, Mr. Swinney said, Will  
2 the Rule 11 regarding the inspection be acceptable? If  
3 not, would you propose a different date? So I wrote  
4 back and I said, May 19th, 2019, 1:00 p.m., attach to  
5 the documents that will need to be signed returned by  
6 noon, May 16th.

7                   On May 13th, Mr. Swinney wrote, Your  
8 response is perhaps the single most unreasonable  
9 proposal I have ever seen and is, of course, rejected.  
10 The defendant reiterates, The attached Rule 11  
11 agreements are reasonably embodying the direction of the  
12 Court on these matters. If you choose not to sign and  
13 return it to me by tomorrow afternoon at 3:00 p.m., I  
14 will assume that you will not agree to it and will  
15 accordingly cancel plans to inspect on May 21st. The  
16 defendant will then again move to compel the inspection  
17 and seek appropriate sanctions.

18                   So I responded, Your Honor. I note that  
19 you did not return signed documents to me May 16th as I  
20 had requested relative to the inspection. Is there  
21 something in particular that you cannot agree to in the  
22 proposed agreement? We have common ground based upon  
23 the Judge's order. Three people: Craig Zgabay,  
24 Jennifer Salazar, Kirk Swinney, beginning at 1:00 p.m.  
25 for two hours on a day of the week of May 19th through



1 May 25th. You proposed May 21st. I proposed May 19th.

2 Mr. Swinney responded; I previously  
3 responded. So in other words, my offer to discuss was  
4 rejected too. So now we have a second motion to compel.

5 In that motion to compel, it stated, On  
6 April 18th, the motion of the defendant, this Court  
7 directed the plaintiff to allow the defendant and its  
8 appraiser to inspect the property that is the subject of  
9 this litigation at a date agreed upon by the parties.  
10 The parties -- sir, the parties did not agree upon a  
11 date, and the defendant --

12 THE COURT: Okay. Well, that's fine.  
13 I'll pick a date.

14 MR. KIRK: Yes, sir. I wish you would.

15 -- shut off the negotiations without so  
16 much as a counterproposal to the date suggested by  
17 plaintiff. The plaintiff's suggestion was within the  
18 Court's order. The May 19th was within the Court's  
19 order. The motion to compel also said the Court did not  
20 issue a written order, but clearly directed the  
21 plaintiff to allow the inspection within limitations of  
22 who would be there and how long. And yet, we have in  
23 the record a court order signed by the judge on  
24 May 14th. So that's just -- that statement is just  
25 wrong.

1                   The motion to compel said the Court  
2 specifically refrained from ordering a weekend. In  
3 fact, the Court said -- this is a quote: "And if they  
4 want to do it on the 19th of May, which is a Sunday,  
5 they can do it." The motion to compel also said the  
6 plaintiff has failed and refused to comply with that  
7 directive.

8                   My statement, The plaintiff did not refuse  
9 to comply with the Court order. It was the defendant  
10 who wrote, quote: "I will assume that you will not  
11 agree to it and will accordingly cancel plans to inspect  
12 on May 21st." Defendant then refused to negotiate and  
13 walked away from the discussion and refused to entertain  
14 plaintiff's common ground basis for solving the problem.

15                   The plaintiff said in the email, Is there  
16 something in particular that you cannot agree to in the  
17 proposed agreement? And the defendant responded, I  
18 previously responded. Another line from the motion to  
19 compel, The plaintiff has responded with the attached  
20 communication demanding far more than allowed by the  
21 Court or than any reasonable person might expect. I  
22 think plaintiff's documents are perfectly reasonable in  
23 protecting the plaintiff and are within the court order.

24                   He goes on to say, Inclusive of extensive  
25 invasion of the privacy of the participants. I guess

1 he's referring to my request for a background check.

2 The background check was authorized by the Court.

3 Nondisclosure agreement --

4 THE COURT: I said you could do one if you  
5 wanted to.

6 MR. KIRK: Yes, sir. I'm trying to.

7 THE COURT: Okay. But they don't have to  
8 fill out your document.

9 MR. KIRK: Well, they can say, No, we're  
10 not filling it out.

11 THE COURT: Okay. Well, I'm ordering they  
12 don't have to fill it out. I mean, if you've got their  
13 names and you want to endeavor, go for it.

14 MR. KIRK: He was concerned in the motion  
15 to compel that I asked for a nondisclosure agreement.  
16 And yet a nondisclosure agreement is within the spirit  
17 of Rule 192.6(b)(5) of the Texas Rules of Civil  
18 Procedure.

19 In my nondisclosure agreement, I said,  
20 Yeah, you guys look at what you want, but only limit it  
21 to discussions in court, preparation for your case and  
22 discussions in court. And then, of course, he talked  
23 about exorbitant fees. Plaintiff told the Court the  
24 inspection would be expensive, and nobody questioned  
25 how, why, or how much.

1           The passive deterrence system was  
2 specifically mentioned. Plaintiff said, I don't want  
3 anybody on my property. I've been burglarized at least  
4 six -- at least six times. I have a tremendous amount  
5 of passive deterrent systems on that property, and to  
6 let somebody come on that property means I have to shut  
7 that all down. That's annoying. It's a burden. It's  
8 not necessary, and it's going to cost.

9           Frankly, it goes to cost the appraisal  
10 district, or the defendant, in order for me to do all  
11 that. That's in the transcript, Page 49, Lines 7 to 15.

12           So he was also concerned in his motion to  
13 compel about the \$600 security fee. And yet, the  
14 defendant asked for security and agreed to pay for it.  
15 That was on Page 52, Line 24.

16           \$3,000 for a liability insurance policy.  
17 We've already discussed that. The quote is in the  
18 documents that I handed you.

19           \$500 for damages. I clearly stated that  
20 this is refundable, and the surety bond, I clearly  
21 stated that that was refundable. He also demand -- oh,  
22 the motion to compel said he also demanded multiple  
23 other unreasonable and unnecessary limitations. And my  
24 response, Plaintiff and the property owner of this  
25 residential homestead considers all conditions

1 reasonable and necessary as stated.

2 To summarize, he walked away. We were  
3 talking about the date. We didn't agree on the date and  
4 he walked way. It was his way or the highway. We  
5 had -- on a seven-day period, we had five other days we  
6 could have done it.

7 MR. SWINNEY: May I respond, Your Honor?

8 THE COURT: Yes, sir.

9 MR. SWINNEY: If there was an order from  
10 the prior hearing, I've never seen it, Your Honor. So  
11 if there was, I just missed that. But I don't think we  
12 received it.

13 With regard to the other matters, I think  
14 they sort of speak for themselves. I'm going to let  
15 those lie.

16 I've been doing similar things for 35  
17 years, and I have never paid one penny for the privilege  
18 of inspecting a property that was the subject of a  
19 litigation. When you put a property into the purview of  
20 litigation, you just -- and its value, you've got to  
21 expect an inspection. And to oppose it is just  
22 unreasonable in itself. To oppose it with a \$108,660  
23 deposit required goes so far beyond reasonability, it's  
24 just offensive. Yeah, I walked away from that deal or I  
25 told him -- I'm not going to start negotiating down from

1 \$108,660 and other onerous positions.

2 What the defendant would like the Court to  
3 do is order a specific date and time for the inspection.  
4 I've got an order that leaves blanks in it. I have a  
5 series of dates here where all three persons on this  
6 side of the fence can be there. And --

7 THE COURT: I guess let me look at it.

8 MR. SWINNEY: These are scribbled notes,  
9 Your Honor. But let me -- they're right down -- at  
10 bottom is the dates we can all be there. I don't know  
11 about the plaintiff, of course.

12 THE COURT: Do you have any current  
13 vacation plans or anything, Mr. Kirk?

14 MR. SWINNEY: I do not, sir.

15 THE COURT: Mr. Kirk?

16 MR. KIRK: What month are we talking  
17 about?

18 THE COURT: Probably July.

19 MR. KIRK: Okay. I do have some things  
20 that I have to do. I've been subpoenaed to court on the  
21 15th of July. What dates are we looking at?

22 THE COURT: You tell me if you have  
23 certain dates that you cannot.

24 MR. KIRK: Okay. Well, the 15th. And  
25 that's with the District Attorney's Office. I don't

1 know how many days that will last. Probably just one or  
2 two. That's with a criminal case that I'm a witness in.  
3 I have -- on the 12th of July, I have a property protest  
4 with the Comal Appraisal District. On the 22nd of July,  
5 I have a protest with the Bexar County Appraisal  
6 District. Typically, Mondays and Tuesdays are engaged  
7 in my newspaper endeavors, which you're familiar with  
8 the last 23 years. Those two days have been booked. So  
9 if you -- if you look at Wednesdays, Thursdays, Fridays,  
10 Saturdays, or Sundays, those work generally for me.

11 THE COURT: All right. Well, how about  
12 1:00 p.m. on July 31st? It's a Wednesday.

13 MR. KIRK: Acceptable.

14 THE COURT: Okay. And then the three  
15 people that we're speaking of?

16 MR. SWINNEY: We were planning to bring  
17 Mr. Zgabay, of course, the appraiser; Mr. Lozano, the  
18 chief appraiser; and probably myself. I'll plan to be  
19 there, Your Honor.

20 THE COURT: Okay. Those three folks. If  
21 they want security, they can bring it, but it's their  
22 call if they want security. You don't get to set up and  
23 charge them for the security that they have the  
24 discretion to obtain or not. They're not going to know  
25 what buildings inside or out they need to go into until

1 they get there. So they can do that.

2 MR. KIRK: So, sir, I'm asking this  
3 question: Do they have access to every building?

4 THE COURT: Yes. Within two hours on that  
5 date between 1:00 and 3:00.

6 MR. KIRK: Okay. I just want to warn  
7 Mr. Swinney, there's a lot of keys involved. Okay? So  
8 I'll just bring all the keys.

9 THE COURT: Okay. They'll choose whether  
10 they need to go in some building or not.

11 MR. SWINNEY: I have a formal order, Your  
12 Honor.

13 THE COURT: Okay. Well, Mr. Swinney, for  
14 the purposes of the litigation, is there an objection to  
15 a nondisclosure? I'm just curious.

16 MR. SWINNEY: We can agree to an  
17 appropriate nondisclosure agreement. We will keep this  
18 within the confines of the appraisal district,  
19 Mr. Zgabay, and, of course, the Court.

20 MR. KIRK: May I ask a question? Who's  
21 Mr. Zgabay?

22 MR. SWINNEY: He's the appraiser.

23 MR. KIRK: So am I saying his name wrong,  
24 Zgabay?

25 THE COURT: I've said Zgabay. Other



1 people have said it other ways.

2 MR. SWINNEY: I'm sorry. I'm just  
3 repeating what I've heard him say. And I may be  
4 repeating it wrong.

5 MR. KIRK: So he's the gentleman we met  
6 before?

7 MR. SWINNEY: I wasn't here that day.

8 MR. KIRK: In the last hearing, right,  
9 Your Honor?

10 THE COURT: I believe so, yes.

11 MR. KIRK: Okay. So I didn't understand  
12 the name.

13 Your Honor, may I ask a question?

14 THE COURT: Yes, sir.

15 MR. KIRK: He's also stating in here  
16 photographing and video records, whereas Mr. Ryan James  
17 said they didn't need to do videotape.

18 MR. SWINNEY: We can strike that, Your  
19 Honor.

20 MR. KIRK: Thank you. Now we're  
21 negotiating. Thank you very much.

22 THE COURT: Just an order to let the  
23 record reflect that I am certainly exercising some  
24 discretion. Although I am going to order attorney's  
25 fees, I'm going to reduce it by \$3,000 to \$4,669.60.

1 But we just need to get this done.

2 MR. KIRK: Your Honor, may I request a  
3 further explanation on that?

4 THE COURT: It's what's allowed by the  
5 law. When people have to go to these or this extent to  
6 reasonably comply with what I believe were relatively  
7 straightforward orders regarding the inspection.

8 MR. KIRK: May I respond, please?

9 THE COURT: Well, I think I heard your  
10 response. But you're wanting them to put up a \$100,000  
11 bond.

12 MR. KIRK: Yes, sir.

13 THE COURT: And purchase some insurance as  
14 well as answer a bunch of questions regarding their  
15 political affiliation, which may be important to you and  
16 I don't discredit that in any way, but it's not part of  
17 the normal process. I mean, it's something that's  
18 just -- it's way outside the norm for an inspection when  
19 they are the defendants of the lawsuit that -- regarding  
20 a piece of property that is the subject of a litigation.  
21 They're entitled to inspect it.

22 MR. KIRK: And, sir, may I respond?

23 THE COURT: Yes, sir.

24 MR. KIRK: Thank you. Mr. Swinney is the  
25 one who walked away. We were discussing the date.

1 THE COURT: But we'd already had a hearing  
2 and we had ordered it.

3 MR. KIRK: Yes, sir. And I was willing to  
4 do it during that five-day -- or seven-day period. And  
5 he said no, because he picked one day, I picked another.  
6 And he said, No. I think he should have negotiated.

7 THE COURT: No.

8 MR. KIRK: All right. Thank you.

9 THE COURT: I mean, I --

10 MR. KIRK: I just feel I should shut up.  
11 I feel like him asking for attorney fees when he's the  
12 one that stopped the deal is --

13 THE COURT: It wasn't intended to be a  
14 deal. It was a court -- we took the range of dates that  
15 was acceptable to everybody and allowed him to pick one  
16 of those days. But I'll also extend the time to pay the  
17 attorney's fees to 90 instead of 60. So I made that  
18 addition in the record as well.

19 That's the other copy of that same thing.

20 MR. SWINNEY: Thank you, Your Honor.

21 THE COURT: I didn't alter that.

22 Here's your copy.

23 MR. KIRK: Thank you.

24 THE COURT: Here's your proposed dates as  
25 well as your binder.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(End of Proceedings.)

1 STATE OF TEXAS

2 COUNTY OF COMAL

3 I, HEATHER HOLDEN, Deputy Court Reporter in and for the  
4 433RD District Court of COMAL County, State of Texas, do  
5 hereby certify that the above and foregoing contains a true  
6 and correct transcription of all portions of evidence and  
7 other proceedings requested in writing by counsel for the  
8 parties to be included in this volume of the Reporter's Record  
9 in the above-styled and numbered cause, all of which occurred  
10 in open court or in Chambers and were reported by me.

11 I further certify that this Reporter's Record of the  
12 proceedings truly and correctly reflects the exhibits, if any,  
13 offered by the respective parties.

14 I further certify that the total cost for the preparation  
15 of this Reporter's Record is \$143.75 and was paid by Douglas  
16 Kirk.

17 WITNESS MY OFFICIAL HAND on this, the 21st day of July,  
18 2019.

19 /s/ Heather Holden

20

21

22

23

24

25

---

HEATHER HOLDEN, CSR  
Texas CSR 9051  
Deputy Court Reporter  
433rd District Court  
144 Clemens Avenue  
New Braunfels, Texas 78130  
Expiration: 12/31/19

Heather Holden, CSR  
hholdencsr@gmail.com  
210.912.5884