

IN RE:	§	IN THE DISTRICT COURT
	§	
IRA E. TOBOLOWSKY,	§	DALLAS COUNTY, TEXAS
	§	
Petitioner,	§	95th JUDICIAL DISTRICT

**ORDER ON (1) PETITIONER'S SECOND AMENDED VERIFIED
RULE 202 PETITION; (2) RESPONDENTS' PLEAS TO THE JURISDICTION;
AND (3) RESPONDENT CITY OF DALLAS' MOTION FOR CONTINUANCE**

On the 28th day of December 2018, at an oral hearing before the Court, came to be considered Petitioner's Second Amended Verified Rule 202 Petition, requesting issuance of subpoena's duces tecum for the investigation of potential claims, as well as Respondents' Pleas to the Jurisdiction, respectively, and Respondent City of Dallas / Dallas Police Department's Motion for a Continuance of the hearing on Petitioner's Second Amended Verified Rule 202 Petition. Petitioner appeared through counsel, Michael Tobolowsky. Respondent City of Dallas / the Dallas Police Department appeared through counsel, Justin Roy and Charles Estee of the Dallas City Attorney's Office, and Respondent County of Dallas / Dallas County Medical Examiner appeared through counsel, Barbara Nicholas of the Dallas County District Attorney's Office, civil division.

The Court, after considering Respondent City of Dallas / Dallas Police Department's Motion for Continuance, other papers on file, and argument of counsel, finds that the Motion for Continuance should be in all things denied. It is, therefore,

ORDERED, ADJUDGED, and DECREED that Respondent City of Dallas / Dallas Police Department's Motion for Continuance is hereby **DENIED**.

The Court, after considering Respondents' respective pleas to the jurisdiction, other papers on file, and argument of counsel, finds that both pleas to the jurisdiction should be in all things denied and overruled. It is, therefore,

ORDERED, ADJUDGED, and DECREED that Respondents' pleas to the jurisdiction are both hereby **DENIED AND OVERRULED**.

Finally, after considering Petitioner's Second Amended Verified Rule 202 Petition, Respondents' Responses thereto, other papers on file, evidence presented at the oral hearing, as well as the argument of counsel, the Court finds that the Second Amended Verified Rule 202 Petition should be granted in part and denied in part as set forth below.

IT IS ORDERED, ADJUDGED, and DECREED that Petitioner's Second Amended Verified Rule 202 Petition, as it pertains to Respondent Dallas County / Dallas County Medical Examiner, is hereby **DISMISSED WITHOUT PREJUDICE**.

THE COURT FINDS that the likely benefit of allowing Petitioner to take the requested deposition and obtain the requested documents to investigate potential claims arising out of or relating to the death of Ira E. Tobolowsky outweighs the burden or expense of the procedure.

THE COURT FUTHER FINDS that Respondent City of Dallas / Dallas Police Department failed to establish the law enforcement privilege and, thus, the law enforcement privilege does not protect from production the deposition and documents requested by Petitioner from Respondent City of Dallas / Dallas Police Department. It is, therefore,

ORDERED, ADJUDGED, and DECREED that Petitioner's Second Amended Verified Rule 202 Petition, as it pertains to Respondent City of Dallas / Dallas Police Department, is hereby **GRANTED** in its entirety. It is further,

ORDERED, ADJUDGED, and DECREED that Respondent City of Dallas / Dallas Police Department shall present a Custodian of Records for a deposition on written questions at which time such Custodian of Records shall answer questions sufficient to authenticate and establish a predicate

for admissibility of the following items, which Respondent City of Dallas / Dallas Police Department must produce to Petitioner prior to or at the deposition on written questions ordered above:

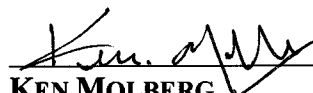
- a. All surveillance video or other footage associated with or related to the death of Ira E. Tobolowsky and/or the investigation thereof;
- b. All forensic reports, including attachments and supplements thereto, related to the death of Ira E. Tobolowsky and the investigation thereof;
- c. All interviews conducted by the Dallas Police Department of "persons of interest" in connection with the death of Ira E. Tobolowsky;
- d. All recorded statements taken by any officers, detectives, or other members of the Dallas Police Department relating to the death of Ira E. Tobolowsky;
- e. All interviews conducted by the Dallas Police Department of witnesses and/or possible witnesses to seek information related to the investigation into the death of Ira E. Tobolowsky;
- f. A copy of all items obtained pursuant to search warrants issued in the investigation into the death of Ira E. Tobolowsky, which are capable of being copied without harm or contamination;
- g. All photographs taken by or in the possession of the Dallas Police Department, which relate to the death of Ira E. Tobolowsky and/or the investigation thereof; and
- h. A complete copy of the Dallas Police Department's entire investigative file for the death of Ira E. Tobolowsky, including all attachments and supplements thereto.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Petitioner shall obtain the above-ordered deposition on written questions and production of documents by serving Respondent City of Dallas / Dallas Police Department with a subpoena *duces tecum* in accordance with this Order and the Texas Rules of Civil Procedure. It is further,

ORDERED, ADJUDGED, and DECREED that the subpoena *duces tecum* served on Respondent City of Dallas / Dallas Police Department by Petitioner shall require Respondent City of Dallas / Dallas Police Department to fully comply with the demands therein by no later than 21 days following service thereof. It is further,

ORDERED, ADJUDGED, and DECREED that all other relief requested which is not granted herein, is hereby **DENIED**.

SIGNED this 30th day of December, 2018.



KEN MOLBERG
Judge, 95th District Court