

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**RECEIVED**

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WESTERN DISTRICT OF TEXAS  
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JOHN EDWARD FODDRILL SR §  
Plaintiff §  
v. §  
MICHAEL D. BERNARD, individually and §  
In his official capacity as San Antonio City §  
Attorney, WILLIAM P. McMANUS, §  
individually and in his official capacity as §  
San Antonio Police Chief and the §  
CITY OF SAN ANTONIO §  
Defendants §

NO. 5:13-CV-00051

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**MOTION FOR CONTINUANCE**

COMES NOW the Plaintiff, John Edward Foddrill Sr., and moves this Honorable Court for a continuance of the hearing currently scheduled for August 29, 2013 at 9:00 a.m. (see attachment)

1. The Plaintiff requests a forty-five ( 45) day delay so that he may obtain the services of an attorney to help address the serious matter of the “ fraud upon the court” again committed by the Defendants and their attorneys – Fitzpatrick & Kosanovich - and other issues.
  
2. The Plaintiff asks the Court to take into consideration that the Defendants and their attorneys falsely represented to the court that there is no conspiracy and that there was no perjury when all the evidence they ask to be stricken along with additional evidence to be presented at trial proves otherwise. Evidence submitted by the Plaintiff supports his report that the Defendants and their attorneys – Fitzpatrick & Kosanovich – have defrauded THIS Court by stating in recent documents submitted in THIS case that there is no conspiracy . ( see July 2, 2013 document, p2, paragraph 4 ) They defraud THIS court with

their untrue statement "There was no perjury". ( see July 2, 2013 document, page 5 , note at bottom of page )

3. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court." In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."
  
4. "Fraud upon the court" has been defined to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 *Moore's Federal Practice*, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

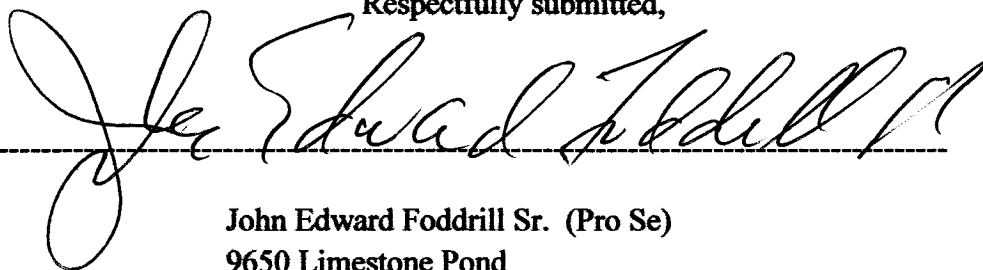
5. It is also clear and well-settled law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. See also: *Trim v. Trim*, 33 So.3d 471, 478(¶ 19) (Miss.2010), *JACQUELYN B. NJAI, Appellee/Appellant, vs.MR. HOMER FLOYD, ET AL, Appellant/Appellees* Case No.: 10-1062, RELATED CASE #08-2366DC. Civil No. 07-1506, *Kerwit Med. Prods., Inc. v. N. & H. Instruments, Inc.*, 616 F.2d 833, 837 (11th Cir. 1980), *Greiner v. City of Champlin*, 152 F.3d 787, 789 (8th Cir. 1998), *Hazel-Atlas*, 322 U.S. at 244., *Demjanjuk v. Petrovsky*, 10 F.3d 338, 348 (6th Cir. 1993), *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1<sup>st</sup> Cir. 1989), *Gleason v. Jandrucko*, 860 F.2d

556, 559 (2d Cir. 1989), *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978), *Oxford Clothes XX, Inc. v. Expeditors Int'l, Inc.*, 127 F.3d 574, 578 (7th Cir. 1997), *Dixon v. Commissioner*, No. 00-70858, 2003 U.S. App. LEXIS 4831, at \*11-12 (9th Cir. Mar. 18, 2003)

### **Conclusion and Prayer**

For the reasons stated herein, Plaintiff requests that the Court grant the Motion for a continuance.

Respectfully submitted,

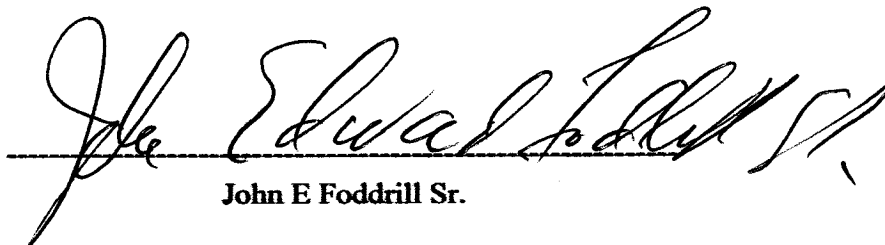


John Edward Foddrill Sr. (Pro Se)  
9650 Limestone Pond  
San Antonio TX 78254  
210-824-3502

### **CERTIFICATE OF SERVICE**

I hereby certify that two copies of the foregoing response were hand delivered to the U.S. District Clerk's Office at 655 E. Cesar E. Chavez Blvd., Room G65 San Antonio, Texas 78206 and a single copy was mailed by certified U S Mail # 7010 3090 0002 7075 1541 on August 8, 2013 to:

Shawn Fitzpatrick  
Fitzpatrick & Kosanovich  
P O Box 831121  
San Antonio TX 78283-1121



John E Foddrill Sr.

## ATTACHMENT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JOHN EDWARD FODDRILL, SR.,

*Plaintiff,*

v.

CITY OF SAN ANTONIO, WILLIAM  
MCMANUS, and MICHAEL BERNARD,

*Defendants.*

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Civil Action No. SA-13-CV-51-XR

**ORDER**

A hearing is set for this case on **Thursday, August 29, 2013 at 9:00 a.m.** The hearing will take place at the John H. Wood Jr. United States Courthouse, Courtroom 3, located at 655 East Cesar E. Chavez Boulevard, San Antonio, Texas 78206. Plaintiff John Edward Foddrill Sr. and defense counsel must appear in person. The parties should be prepared to discuss all pending motions as well as the status of this case.

It is so ORDERED.

SIGNED this 30th day of July, 2013.



**XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JOHN EDWARD FODDRILL SR

Plaintiff

v.

MICHAEL D. BERNARD, individually and  
In his official capacity as San Antonio City  
Attorney, WILLIAM P. McMANUS,  
individually and in his official capacity as  
San Antonio Police Chief and the  
CITY OF SAN ANTONIO

Defendants

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NO. 5:13-CV-00051

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THIS MATTER HAVING COME BEFORE THE COURT upon the Motion of Plaintiff John Edward Foddrill Sr. to continue the hearing scheduled on the 29<sup>th</sup> day of August 2013, and the Court having considered said Motion and being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

The Motion is allowed. The hearing is reset for the \_\_\_\_\_ day of \_\_\_\_\_, 2013, at \_\_\_\_\_ in Courtroom \_\_\_\_\_ located at 655 East Cesar Chavez Blvd, San Antonio, TX 78206.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_ 2013.

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United States District Judge Xavier Rodriguez