

CAUSE NO. 08-6-23, 828-A

FILED

THE STATE OF TEXAS * IN THE DISTRICT COURT
VS. * OF
RALPH BUENTELLO * VICTORIA COUNTY, TEXAS

09 APR 2009 PM 2:11

Cathy Street

CLERK
VICTORIA COUNTY, TEXAS

CAUSE NO. 08-6-23,829-A

THE STATE OF TEXAS * IN THE DISTRICT COURT
VS. * OF
DAVID ATMAR SMITH * VICTORIA COUNTY, TEXAS

CAUSE NO. 08-6-23,830-A

THE STATE OF TEXAS * IN THE DISTRICT COURT
VS. * OF
HOWARD BRUCE URE * VICTORIA COUNTY, TEXAS

Order on Motion to Disqualify District Attorney

and Appoint an Attorney Pro Tem


On this day came on to be heard the above motion. This motion had been filed in Cause No 08-6-23,830-A (State v. Ure) but subsequently the other Defendants joined on the motion. Judge Robert C. Cheshire had previously heard the motion on October 27, 2008 and denied the motion, essentially finding that under current case law the trial court was unable to disqualify a District Attorney based solely on a violation of the State Bar Rules. Since that time Judge Cheshire has voluntarily recused himself and I have assigned this case to myself under Government Code Sections 24.303 and 74.092. At the time of his ruling, Judge Cheshire announced that he would be reviewing certain grand jury testimony in camera. This court has reviewed that testimony, the file, transcripts of prior hearings, and the State's witness list.

Based on the information available to the Court, including the allegations in this motion, the pleadings filed by the State and statements made by Mr. Steve Tyler in open court, this court finds that to allow Mr. Tyler to continue to prosecute these cases as District Attorney would violate the due process rights of the Defendants. As set out in the motion these cases involve a political dispute and deep-seated personality conflicts between city officials and the District Attorney. The dispute has been magnified by the

sensationalism of the local newspaper. This Court finds that not only would Mr. Tyler be a witness in these cases, but would be serving a dual role as prosecutor and victim before the jury. As admitted in open court, Mr. Tyler is attempting to prove, as the basis of the materiality element of aggravated perjury, that he was the victim of a conspiracy by city officials and the newspaper to embarrass him and ruin his career. Consequently, not only would the State Bar Rules be implicated because Mr. Tyler's testimony would be required, the due process rights of the Defendants would be violated by a District Attorney acting as both prosecutor and victim during the trial.

Therefore, it is ordered that Mr. Steve Tyler and his assistants are disqualified from prosecuting the above-captioned matters. (Canady vs. State, 100 S.W. 3rd, 28, 31 (Tex.App – Waco 2003, no pet.). This Court will be contacting the Texas District and County Attorneys' Association for assistance in the appointment of an Attorney Pro Tem in these cases.

Signed this 30th day of April, 2009.



Judge Presiding