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No. 10-16-00427-CR

IN THE COURT OF APPEALS FOR THE TENTH JUDICIAL DISTRICT OF TEXAS, AT WACO

In re Matthew Alan Clendennen, Relator

On Petition for Writ of Mandamus

Brief for the Texas Criminal Defense Lawyers Association as *Amicus Curiae* Supporting Relator

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Identity of Parties and Counsel

Pursuant to Rule 38.1(a), Rules of Appellate Procedure ("Tex.R.App.Pro."), the following is a complete list of the names and addresses of all parties to the trial court's final judgment and their counsel in the trial court, as well as appellate counsel, so the members of the Court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision in the case and so that the Clerk of the Court may properly notify the parties to the trial court's final judgment or their counsel, if any, of the judgment and all orders of the Court of Appeals.

Relator

Matthew Alan Clendennen

Represented by:

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Broden & Mickelsen
2600 State Street
Dallas, Texas 75204

Respondent

Hon. Matt Johnson
Presiding Judge, 54th District Court
501 Washington Ave., Suite 305
Waco, Texas 76701

Real Party in Interest - The State of Texas

Represented by:

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Appellate Chief
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Amicus Curiae - Texas Criminal Defense Lawyers Association

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Statement of the Case

The parties have adequately stated the nature of the case.

Issues Presented

By Relator: Whether Mr. Clendennen is denied due process by allowing the McLennan County District Attorney's Office to prosecute him in this case given the fact that the elected District Attorney as well as some of his assistants will be necessary witnesses at trial and given that the elected District Attorney has a huge financial interest in the outcome of these prosecutions.

Stated another way, whether Respondent abused his discretion in denying Mr.Clendennen's Motion to Disqualify McLennan County District Attorney's Office and Appoint an Attorney Pro Tem.

By the State: Did the Trial Court abuse its discretion by denying "Relator's Motion to Disqualify McLennan County District Attorney's Office and Appoint an Attorney Pro Tem?"

By Amicus Curiae: Whether Relator will be denied due process if the elected District Attorney and his staff are permitted to continue representation of the State in the instant prosecution.

Statement Pursuant to Rule 11, Tex.R.App.Pro.

The Texas Criminal Defense Lawyers Association ("TCDLA") is a non-profit, voluntary membership organization dedicated to the protection of those individual rights guaranteed by the state and federal constitutions, and to the constant improvement of the administration of criminal justice in the State of Texas. Founded in 1971, TCDLA currently has a membership of over 3,400 and offers a statewide forum for criminal defense counsel, providing a voice in the state legislative process in support of procedural fairness in criminal defense and forfeiture cases, as well as seeking to assist the courts by acting as *amicus curiae*.

Neither TCDLA nor any of the attorneys representing TCDLA have received any fee or other compensation for preparing this brief, which brief complies with all applicable provisions of the Rules of Appellate Procedure, and copies have been served on all parties listed above.

Note About Abbreviations

Appellant refers to the Reporter's Record of the August 8, 2016, hearing on the motion to disqualify as "RR" followed by the volume, page and line numbers: e.g., "(RR Vol. 3, P. 47, L. 12-15)." The Code of Criminal Procedure is referred to as "C.Cr.P." throughout the brief.

No. 10-16-00427-CR

IN THE COURT OF APPEALS FOR THE TENTH JUDICIAL DISTRICT OF TEXAS, AT WACO

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Brief for the Texas Criminal Defense Lawyers Association as *Amicus Curiae* Supporting Relator

TO THE HONORABLE TENTH COURT OF APPEALS:

COMES NOW, the Texas Criminal Defense Lawyers Association, *Amicus Curae*, and respectfully submits this *amicus curiae* brief supporting Relator. Relator's case is one of a total of 177 criminal prosecutions arising out of an incident at the "Twin Peaks" restaurant in Waco, Texas, on May 17, 2015. These prosecutions have already imposed a considerable burden on the individual defendants and their counsel as well as on both law enforcement and the administration of criminal justice within McLennan County. Moreover, the conduct of these prosecutions

arising out a single incident has already occasioned both local and national concern.[1] TCDLA, mindful of its purpose of both ensuring individual rights and the furtherance of the administration of criminal justice, would therefore show the Court as follows:

Facts of the Case

TCDLA takes no position on the facts, other than to note that nothing in the State's response takes issue with the facts as alleged by Relator. Thus, TCDLA shall rely on Relator's statement of facts in this brief.

Issue as Framed by *Amicus Curae* Restated

> Whether Relator will be denied due process if the elected District Attorney and his staff are permitted to continue representation of the State in the instant prosecution.

Jurisdiction

This Court has the jurisdiction and authority to entertain Relator's application under Article V § 6, Texas Constitution.

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[1] *See, e.g.*, Tommy Witherspoon, *Twin Peaks shootout: One year later, many questions with trials likely months away*, Waco Herald Tribune, May 17, 2016; Manny Fernandez and David Montgomery, *One Year After Shootout, Waco's Bikers Struggle to Move On,* New York Times, May 17, 2016.

TCDLA would show the Court that the Constitution gives the Courts of Appeals the general appellate jurisdiction to which we have referred and "*such other jurisdiction, original and appellate, as may be prescribed by law.*" As to mandamus, the law before 1983 gave the Courts of Appeals mandamus jurisdiction and authority in certain election matters,[2] and authority to issue the writ of mandamus to protect its appellate jurisdiction[3] or to compel a judge of the district or county court to proceed to trial and judgment in a cause.[4] Otherwise the "Court of Civil Appeals ha[d] no power to mandamus the district court." See ***Crofts v. Eighth Court of Civil Appeals***, 362 S.W.2d 101, 104 (Tex.1962).

In 1983, shortly after the Courts of Appeals were given jurisdiction of appeals in criminal cases, an act of the legislature expanded their mandamus jurisdiction. It gave them general

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[2] See Act of June 8, 1981, 67th Leg., R.S., ch. 291, § 20, 1981 Tex. Gen. Laws 761, 773

[3] See Act of April 13, 1892, 22d Leg., C.S., ch. 15, § 6, 1892 Tex. Gen. Laws 389, 390 (formerly VERNON'S ANN. CIV. STAT. art. 1823), amended by Act of June 19, 1983, 69th Leg., R.S., ch. 839, § 3, 1983 Tex. Gen. Laws 4767, 4768-4769.

[4] See ***Id***.

mandamus authority to enforce their jurisdictions, and general mandamus authority against district and county judges in their districts.[5] The Court of Criminal Appeals has held that the 1983 act gave the Courts of Appeals mandamus jurisdiction in criminal law matters that is concurrent with the jurisdiction of the Court of Criminal Appeals. ***Dickens v. Second Court of Appeals***, 727 S.W.2d 542, 546 (Tex.Cr.App. 1987). Additionally, although jurisdiction for mandamus would lie with either the Court of Appeals or the Court of Criminal Appeals, the Court of Criminal Appeals has suggested that one seeking mandamus relief should first seek relief in the Court of Appeals, "unless there is a compelling reason not to do so." See ***Ex parte Ybarra***, 149 S.W.3d 147 (Tex.Cr.App. 2004).

Arguments & Authorities

To be entitled to mandamus relief, the relator must show that: (1) he has no adequate remedy at law, and (2) what he seeks to compel is a ministerial act. With respect to the second

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[5] See Act of April 13, 1892, *supra* FN3.

requirement, the relator must show a clear right to the relief sought. A clear right to relief is shown when the facts and circumstances dictate but one rational decision "under unequivocal, well-settled (i.e., from extant statutory, constitutional, or case law sources), and clearly controlling legal principles." ***In re State ex rel. Tharp***, 393 S.W.3d 751, 754 (Tex.Cr.App. 2012). The Court of Criminal Appeals has stated that a relator may satisfy the ministerial act requirement by demonstrating "a clear right to the relief sought." See ***Stotts v. Wisser***, 894 S.W.2d 366, 367 (Tex.Cr.App. 1995); ***Banales v. Thirteenth Court of Appeals***, 93 S.W.3d 833 (Tex.Cr.App. 2002).

I. **Relator Does Not Have an Adequate Remedy at Law**

If Relator cannot compel the recusal / disqualification of the elected District Attorney ("DA") and his office, then his only remedy would be to submit to trial by jury, hope for an acquittal, and, if convicted, to seek relief on appeal. For the reasons stated in several cases from the Court of Criminal Appeals, and as set out below, appeal is not an adequate legal remedy. The Supreme Court

of Texas recognized the futility of appeal as an adequate remedy at law such as to defeat the issuance of a writ of mandamus in a case involving, as does this case, an attorney with readily apparent conflicting loyalties. In ***National Medical Enterprises, Inc. v. Godbey***, 924 S.W.2d 123, 133 (Tex. 1996), that Honorable Court wrote:

> In the several cases in which we have granted mandamus relief to disqualify counsel we have not addressed the prerequisite that relief by appeal be inadequate. This omission is attributable, not to oversight and certainly not to a view that inadequate appellate relief is not a prerequisite in disqualification cases, but to the obviousness of the issue. Plainly, NME is not required to simply hope that the pending case is concluded without disclosure of its confidences, nor is Cronen required to wait until any damage will have been done and will be irremediable. A new criminal investigation into Cronen's activities, sparked by discovery in the pending case, cannot be reversed on appeal of this case. Moreover, the injury to the legal profession from representation by lawyers who are disqualified cannot be cured by appeal.[6]

The Court of Criminal Appeals has previously found that appeal was not an adequate remedy at law, and, thus, granted leave to file mandamus petitions in pre-trial settings involving the

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[6] Internal citations omitted from quotation.

attorney-client relationship. See ***Stearnes v. Clinton***, 780 S.W.2d 216 (Tex.Cr.App. 1989). Similarly, it has found that appeal was not an adequate remedy at law in regards to a trial court's post-trial rulings. See ***Buntion v. Harmon***, 827 S.W.2d 945 (Tex.Cr.App. 1982); see also, ***Stotts***, 894 S.W.2d at 367.

Surely the wisdom of the State's two highest courts, expressed in the cases cited above, demonstrate that, as in those cases, it would be entirely inequitable to require Relator to endure a criminal trial, under these circumstances, and when the appellate process will not be adequate to reveal the unfair prejudice caused to Relator by a prosecutor who, because of his conflicting interests, cannot be guaranteed to exercise his prosecutorial discretion in a fair-minded way. Relator therefore has no other adequate remedy than to seek mandamus relief.

II. **Ministerial Acts / Entitlement to Relief**

There are instances when a prosecutor must recuse himself from the prosecution of an individual. See ***Eidson v. Edwards***, 793 S.W.2d 1, 6 (Tex.Cr.App. 1990); ***State ex rel Hill v. Pirtle***,

887 S.W.2d 921 (Tex.Cr.App. 1994). While prosecutors are subject to the Rules of Professional Responsibility,[7] they must normally police themselves at the trial court level because of their status as independent members of the judicial branch of government. ***Eidson***, 793 S.W.2d at 7. However, a defendant is not left without recourse if the prosecutor's failure to remove himself from a case violates the defendants due process rights under the Fourteenth Amendment of the United States Constitution and Article I, Section 19 of the Texas Constitution. ***Eidson***, 793 S.W.2d at 7, citing ***Ex parte Spain***, 589 S.W.2d 132 (Tex.Cr.App. 1979); ***Ex parte Morgan***, 616 S.W.2d 625 (Tex.Cr.App. 1981).

In ***Eidson***, itself, an attorney ("Adair") in the DA's office had previously represented the defendant ("Clayton") in a capital murder case. The DA's office, following orders from the Judge of the court in which the prosecution was pending, set up what has

[7] Now called the "Texas Disciplinary Rules of Professional Conduct." See ***State Bar of Texas v. Evans***, 774 S.W.2d 656 (Tex. 1989).

often been referred to as a "Chinese wall,"[8] to isolate the attorney involved from the prosecution. In a hearing on a defense motion to recuse the DA's office, the trial court judge found that Adair had complied with the court's instructions and had in no way revealed confidences to his associates in the DA's office or participated in the prosecution of Clayton in any improper way by helping to prepare for the disqualification hearing. Although Adair and the DA promised to continue Adair's disassociation with the prosecution, the judge disqualified the entire District Attorney's office "*to avoid the appearance of impropriety*." See ***Eidson***, 793 S.W.2d at 3.

The Court of Criminal Appeals reversed that decision, holding, in a plurality opinion, that, under the facts of that case, the trial judge was without the authority to disqualify the DA and/or his entire office. Important to the instant case, the Court held that "If there is a conflict of interests on the part of the district attorney or

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[8] A "Chinese wall" is a method of screening an attorney with a conflict of interest from the rest of the firm's involvement in a particular case. See e.g., ***Cheng v. GAF Corp***, 631 F.2d 1052, 1057 (2nd Cir. 1980).

his assistants however, the responsibility of recusal lies with them . . .." ***Eidson***, 793 S.W.2d at 6. Further, prosecutors "must police themselves at the trial court level . . .." ***Eidson***, 793 S.W.2d at 7. Nonetheless, "[w]e do not wish to imply that a defendant would be left without recourse if the prosecution's failure to recuse itself violated his due process rights." ***Eidson***, 793 S.W.2d at 6.

Later opinions made clear that a trial court certainly has the authority to disqualify a prosecutor from a particular case, when the facts warrant it. For example, ***Pirtle*** correctly viewed the specific holding in ***Eidson***, not as an absolute bar to disqualification of a prosecutor or his staff but, rather, as standing for the proposition that, "A trial court may not disqualify a district attorney or his staff on the basis of a conflict of interest that does not rise to the level of a due process violation." ***Pirtle***, 887 S.W.2d at 927.

Additionally, ***Pirtle***, can be read for no proposition other than a trial court most assuredly has the power to disqualify a prosecutor, and, perhaps in the right circumstances, his entire

office, and that ***Eidson*** should not be read as dictating that the judge cannot, for good cause arising to a due process violation, disqualify a prosecutor from a particular case. ***Pirtle***, 887 S.W.2d at 927.

Subsequent decisions have also recognized the authority of a trial court to disqualify a prosecutor under the appropriate circumstances. Appellant respectfully suggests that this case represents such circumstances. See, e.g., ***In re Ligon***, 408 S.W.3d 888 (Tex.App. - Beaumont 2013), in which a district attorney sought mandamus relief after being disqualified in the trial court on the basis that he was the complainant in the case, and would be a trial witness. "In these circumstances, the trial court could reasonably conclude that the actual and obvious structural conflict amounted to a denial of due process and a legal disqualification." ***Ligon***, at 896; see also ***Fluellen v. State***, 104 S.W.3d 152 (Tex.App. - Texarkana 2003). In ***Fluellen***, the defendant claimed that he was denied due process when the trial court refused to disqualify the prosecutor, based on a previous

encounter during which "words were exchanged" between the prosecutor and the defendant. See ***Fluellen***, 104 S.W.3d 151. Citing both ***Eidson*** and ***Pirtle***, 887 S.W.2d at 927, the Court held that a "trial court may not disqualify a district attorney or his staff on the basis of a conflict of interest that does not rise to the level of a due process violation." ***Fluellen***, 104 S.W.3d 151. Relying on language from ***Eidson*** that "there are instances when a prosecutor must recuse himself . . .," the Court addressed the issue from the standpoint that the prosecutor's involvement in a case would violate the Fourteenth Amendment, "if the prosecution's failure to recuse itself violated Fluellen's due process rights, such conviction would violate the Fourteenth Amendment to the United States Constitution." ***Fluellen***, 104 S.W.3d 151.

Similarly, in ***In re State of Texas***, No. 08-16-00156-CR (Tex.App. - El Paso; November 30, 2016), while recognizing that a violation of the defendant's due process rights may arise when a prosecutor is a necessary witness in a case, the Court held that the district attorney's limited presence at a case staffing meeting

and observation of a witness interview did not rise to that level. ***In re State of Texas***, slip op. at 6-8; c.f., ***Gonzalez v. State***, 117 S.W.3d 831 (Tex.Cr.App. 2003)(disqualification of defense counsel justified by fair and orderly administration of justice, when counsel had personal knowledge directly bearing on the guilt or innocence of his client and on the credibility of the State's key witness).

Based on the above and foregoing, TCDLA suggests that it is clear that a prosecutor and/or his/her office must be disqualified, and that, upon a motion to do so, a district court must disqualify the prosecutor and/or his/her office, whenever he/she refuses to agree to recusal and where his/her continued presence in the case threatens a violation of due process. That is the situation in the instant case.

A. **Prosecutor Reyna's and/or His Assistants as Witnesses**.

For the reasons stated above, TCDLA relies on Relator's recitation of the facts. As set out in Relator's mandamus application, there are several reasons why Prosecutor Reyna

and/or members of his staff will be material witnesses during the trial of Relator's case.

First, Prosecutor Reyna's testimony is essential for the jury to understand the course of the investigation in this case. Before Prosecutor Reyna attempted to substitute his judgment for the combined judgments of Acting Chief Lanning, Detective Price and the other two assistant chiefs on the scene, motorcyclists in Relator's position were simply considered to be witnesses who would be questioned and released (RR 196-197, 202).

This "question and release" plan was developed from the considered judgment of professional law enforcement officials with decades of experience until Prosecutor Reyna went over their heads to advocate for the arrest of all Bandidos, Cossacks and their support club members (RR 95, 96, 101, 196-197, 202). In part, Prosecutor Reyna based this advocacy on what he himself was allegedly observing at the scene (RR 142). Moreover, he communicated these percipient observations to Chief Stroman who was over 1,000 miles from the scene (RR 142).

Thus, Prosecutor Reyna would be the key witness, if not the only witness, to explain what he observed that caused him to disregard the law enforcement officials on the scene, go over their heads, and advocate for the arrest of individuals in Relator's position. In other words, Prosecutor Reyna is the key witness to testify to the 180 degree change in the course of the investigation, how Relator's role changed in the blink of an eye from witness to suspect, and the circumstances surrounding Relator's arrest. See the testimony of Detective Price, in which he agreed that how the investigators would proceed was based on the information the District Attorney was given (RR 27).

Second, Detective Chavez, the lead investigator in this case, testified that he could not answer various questions about the investigation. He indicated the questions would have to be direct to Assistant Prosecutor Mark Parker (RR 91, 129).

Third, it may become necessary for Relator to question Detective Chavez's credibility as the lead investigator on this case and the "author" of the arrest warrant affidavit. This would almost

assuredly be done through the testimony of Prosecutor Reyna and Assistant Prosecutor Parker. Both testified to a conversation that Prosecutor Reyna allegedly had with Detective Chavez in connection with the preparation of the arrest warrant affidavit (RR 163-165, 236, 239). Detective Chavez said, flat out, that, not only did this conversation not occur, but he did not even see Prosecutor Reyna that evening (RR 89, 224).

It would be hard to argue that, in light of the conversation Prosecutor Reyna claims he had with Detective Chavez regarding the affidavit, Detective Chavez could simply be mistaken about not having talked to or seen Prosecutor Reyna that night. Therefore, if the testimony of Prosecutor Reyna and Assistant Prosecutor Parker is truthful, a reasonable person would be forced to conclude that the lead investigator in this case, Manuel Detective Chavez, has lied under oath regarding a portion of his investigation in this case. Obviously, that would be an area that Relator would explore at any trial and it would be up to a jury to judge the credibility of Prosecutor Reyna and his assistants

compared to the credibility of Detective Chavez.

Fourth, there is an absolute need for the testimony of Assistant Prosecutor Mark Parker on any suppression issues that might be submitted to the jury pursuant to Article 38.23, C.Cr.P. Likewise, Detective Chavez testified that he did not have personal knowledge of many of the "facts" Assistant Prosecutor Parker included in the arrest warrant affidavit and that he was told these were "facts" by Assistant Prosecutor Parker. Thus, only Parker can testify as to how false claims, such as the false claim that the Cossacks Motorcycle Club was listed in the DPS Gang Database, came to be in the sworn affidavit. Detective Chavez made this clear in this testimony (RR 88). If it is determined that the facts included by Assistant Prosecutor Parker and given to Detective Chavez are not true, any fruit flowing from the arrest warrant would be subject to suppression.

As noted in ***Ligon***, when a prosecutor has multiple roles - in that case, as prosecutor, witness and interested party - and may testify before the jury, confusion would most likely result. ***Ligon***,

at 891-892, citing ***In re Guerra***, 235 S.W.3d 392, 410 (Tex.App. - Corpus Christi 2007). Such confusion may substantially affect the jury's verdict, and the fact of these competing roles, presents "an 'intolerable' potential to compromise the fundamental fairness guaranteed defendants by the due process clause." See ***Young v. United States ex rel. Vuitton et Fils. S.A.***, 481 U.S. 787, 807 (1987)(n.18)(prosecutor's competing roles "deemed intolerable").

B. **Prosecutor Reyna's Financial Interests**.

With regard to Relator's claim that Prosecutor Reyna "has a huge financial interest in the outcome of these prosecutions," the facts as alleged by Relator demonstrate a financial interest sufficient to require Reyna's disqualification. The conflict of interests created by Relator's civil rights case - which sues prosecutor Reyna and other defendants in both their personal and their official capacities - infringes the limits that the due process clause imposes on the natural partisanship of a prosecutor.

Prosecutors are not the representatives of "an ordinary party to a controversy, but of a sovereignty whose obligation to govern

impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." ***Berger v. United States***, 295 U.S. 78, 88 (1935). A prosecutor may act "with earnestness and vigor -- indeed, he should do so. But [it] is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." ***Berger***, 295 U.S. at 88; see also Article 2.01, C.Cr.P.

The risk that "improper methods" will be employed, or that a prosecutor's discretion will be exercised in ways that will be other than fair-minded, is present when a financial or personal motive may distort the prosecutor's judgment. See, e.g., ***Shaw v. Garrison***, 467 F.2d 113 (5th Cir. 1972)(where prosecutor had a "significant financial interest in the continued prosecution" because of a book contract, prosecution brought for harassment purposes could be enjoined); see also ***Guerra*****,** 235 S.W.3d at 415,where the Court held that denying the district attorney the

opportunity to participate in a grand jury's investigation into his own conduct served to preserve the integrity of the court and aid in the administration of justice.

The Court in ***Guerra*** found that a due process violation occurs where the prosecutor's personal interest generates a "structural" conflict, where the potential for misconduct generated by a prosecutor's personal interest or partiality is deemed intolerable. ***Guerra***, 235 S.W.3d at 430. Similarly, in ***Ligon***, the Court found that a district attorney had a personal interest in the prosecution, because he was the complainant, as well as being a witness in the case, and that the trial court could have rationally concluded that relator's competing roles, as both district attorney, witness and complainant, presented an "intolerable" potential to compromise "the fundamental fairness guaranteed defendants by the due process clause." ***Ligon***, 408 S.W.3d at 896, citing ***Young***, 481 U.S. at 807 (n.18)(deeming prosecutor's competing roles potentially "intolerable"); ***Marshall v. Jerrico, Inc.***, 446 U.S. 238, 249-250 (1980)("scheme injecting a personal interest, financial or

otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions"); ***Ganger v. Peyton***, 379 F.2d 709, 713-714 (4th Cir. 1967)("the conduct of this prosecuting attorney in attempting at once to serve two masters, the people of the Commonwealth and [the defendant's wife in a divorce proceeding] violates the requirement of fundamental fairness assured by the Due Process Clause of the Fourteenth Amendment"); ***Wright v. United States***, 732 F.2d 1048, 1056 (2nd Cir. 1984)(a prosecutor "is not disinterested if he has, or is under the influence of others who have, an axe to grind against the defendant").[9]

Prosecutor Reyna's conflict of interest here, already noted by the federal district court presiding over Relator's civil rights case as being "very clear,"[10] creates an intolerable potential for

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[9] See also 28 U.S.C. § 528 (requiring United States Attorney General to promulgate rules requiring disqualification of any United States attorney from participating in an investigation or prosecution "if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof.")

[10] See Mandamus Petition at 30-31.

misconduct, violating Relator's due process rights. See ***Ligon***, 408 S.W.3d at 892; ***Guerra***, 235 S.W.3d at 430-432. Since prevailing against Relator in these criminal proceedings would enhance prosecutor Reyna's chances of evading financial responsibility for civil rights violations arising out of the same facts, the threat to fundamental fairness here is not speculative but is such that an "actual and obvious" conflict of interest exists, amounting to a denial of due process and to a legal disqualification from these proceedings that should be acted upon now, rather than awaiting the outcome of trial. ***Ligon***, 408 S.W.3d at 896.

Conclusion

Relator will be denied due process if the elected District Attorney and his staff are permitted to continue representation of the State in the instant prosecution. The mandamus petition should be granted.

Prayer

WHEREFORE, PREMISES CONSIDERED, the Texas Criminal Defense Lawyers Association, *amicus curiae* in the above styled and numbered cause respectfully prays that, for the reasons set out herein, the Court will issue its order staying all proceedings in case number 2015-1955-2 in the 54th District Court of McLennan County, until such time as this Court has had the opportunity to address the merits of the claims stated herein; and, in due course, to direct Respondent Johnson to issue an order disqualifying Prosecutor Reyna from the prosecution against Relator.

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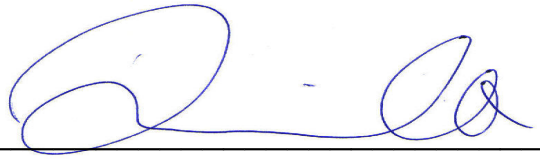

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Certificate of Compliance and Delivery

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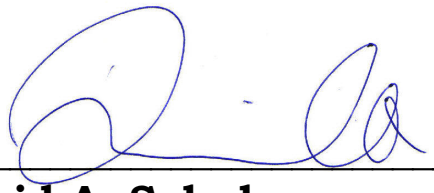

David A. Schulman