

NO. 2006-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 341st JUDICIAL DISTRICT
JOE SMITH) WEBB COUNTY, TEXAS

**DEFENDANT'S OBJECTION TO
APPOINTMENT OF ATTORNEY PRO TEM**

TO THE HONORABLE JUDGE OF SAID COURT:

I.

District Attorney Joe M. Rubio called undersigned counsel on July 11, 2006 and advised that he intended to file a motion to recuse himself in the case. Later that day, Mr. Rubio's office faxed a written copy of its Motion To Appoint Attorney Pro Tem.

II.

The state's motion is defective because it does not state any legal reason recognized by article 2.07(b)(1) of the Texas Code of Criminal Procedure that would justify Mr. Rubio's recusal, or the appointment of another in his place. Although it may be that Mr. Rubio should be recused, there is a proper way to raise and determine this issue, and the state's motion does not do it properly. Undersigned counsel intended to file response to the state's motion, but, because of two evidentiary hearings on July 13 and July 14, 2006, he was unable to complete the motion until late in the day on July 14.

III.

Our response would have objected to the state's motion as written and would have requested that this Court hold a hearing, and that it neither recuse Mr. Rubio, nor appoint an attorney pro tem unless and until the state met its statutory burden under Texas law in open court. Just after completing this response, though, counsel checked his fax machine and discovered this Court's Order Appointing Attorney Pro Tem.

IV.

Defendant Joe Smith objects to the appointment of an attorney pro tem at this time. Pursuant to article 2.07(b)(1), appointment of an attorney pro tem is justified only when the elected district attorney is "disqualified to act," or "absent from the county or district," or "otherwise unable to perform the duties of his office." While it may be that recusal is appropriate, the conclusory motion filed in this case, which is unsupported by any evidence, is an insufficient basis upon which to recuse Mr. Rubio and appoint an attorney pro tem. We request that this Court rescind its Order Appointing Attorney Pro Tem, dated July 14, 2006, and that the Court hold a hearing to determine whether there is a statutory reason for recusing the Webb County District Attorney's Office in this case.

Respectfully submitted:

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Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copies of this motion has been delivered to the Webb and Bexar County District Attorney's Offices on this the 17th day of July, 2006.

MARK STEVENS

ORDER

On this the _____ day of _____, 2006, came to be considered Defendant's Objection To Appointment Of Attorney Pro Tem, and said motion is hereby

(GRANTED)

(DENIED)

JUDGE PRESIDING