

NO. 2006-CRM-0000

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

**DEFENDANT’S MOTION TO CLARIFY ROLE
OF THE WEBB COUNTY DISTRICT ATTORNEY’S OFFICE**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to clarify the role of the Webb County District Attorney’s Office in this case, and for good cause shows the following:

I.

On July 11, 2006, Webb County District Attorney Jose M. Rubio, Jr. moved to “recuse himself from participating in any further prosecution” of this case, asserting that the ability of his office “to effectively prosecute this case has been compromised.” *See* Motion To Appoint Attorney Pro Tem. This Court granted that motion and appointed Susan D. Reed as Attorney Pro Tem pursuant to article 2.07 of the Texas Code of Criminal Procedure on July 14, 2006. The Court overruled the Defendant’s Objection To Appointment Of Attorney Pro Tem on September 11, 2006. [SF.-37] At that hearing, District Attorney Rubio testified that he filed the motion to recuse himself because he felt that, “for this case to be prosecuted effectively, to the full extent of the law, it would be better to have an independent prosecutor handle the case” [SF.-27]

II.

When an attorney pro tem is appointed, she “assumes the duties of the elected

district attorney and in effect replaces the latter in performing germane functions of the office for purposes contemplated by the appointment.” *Stephens v. State*, 978 S.W. 2d 728, 731 (Tex. App.–San Antonio 1998, pet. ref’d).

III.

If Mr. Rubio was, as he asserted, not able to prosecute this case effectively and independently, “to the full extent of the law,” then it is fair to ask: “What role will the Webb County District Attorney’s Office play now that that office has been recused and replaced by Susan D. Reed? The defense asserts that the Webb County District Attorney’s Office should have no role in this case whatsoever, in view of the recusal. Specifically, it should not offer prosecutors, investigators, staff, office space, supplies, or any other assistance, directly, or indirectly, to the office of the attorney pro tem during the course of these proceedings. We request that this Court so order. In the alternative, the defense requests that this Court specifically delineate just what assistance it will permit the office of Jose M. Rubio, Jr. to provide the office of Susan D. Reed.

IV.

The defense also requests that the Court determine what assistance, if any, has been provided by the recused office since the date it was recused.

Respectfully submitted:

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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's Motion To Clarify Role Of The Webb County District Attorney's Office has been mailed to Ms. Christina Playton, 300 Dolorosa Street, San Antonio, Texas, on this the ____ day of December, 2006.

MARK STEVENS

ORDER

On this the ____ day of _____, 2006, came to be considered Defendant's Motion To Clarify Role Of The Webb County District Attorney's Office, and said motion is hereby

(GRANTED)

(DENIED)

JUDGE PRESIDING