

IN THE 346TH JUDICIAL DISTRICT COURT
OF EL PASO COUNTY

THE STATE OF TEXAS	§	
EX REL. OMAR CARMONA	§	
	§	
Plaintiff	§	
	§	
v.	§	
	§	CAUSE NO. 2022DCV2472
YVONNE ROSALES	§	
In Her Official Capacity as	§	
District Attorney of the 34 th	§	
Judicial District	§	
	§	
Respondent	§	

**RESPONDENT’S FIRST AMENDED
NOTICE OF POTENTIAL CONFLICT**

COMES NOW, Yvonne Rosales, Respondent, by and through her attorneys, Luis Yañez and Francisco F. Macias, and files this, her first amended notice of potential conflict seeking to disqualify Jo Anne Bernal, County Attorney, and would show the Honorable Court as follows:

I. Relevant procedural history

A Petition to Remove District Attorney of the 34th Judicial District Attorney Yvonne Rosales and Jury Demand was filed by Omar Carmona, on August 24, 2022. This case was assigned to the 346th Judicial District Court. Thereafter Judge Baca recused herself, and the Honorable Judge Tyron Lewis has been appointed to preside over this case.

Normally, the County attorney is required to represent the State in a petition for removal of a District Attorney, but in this case Respondent believes that a conflict of interest exists which could disqualify the El Paso County Attorney from representing the State in this matter.

Specifically, one of the Assistant El Paso County Attorneys who is employed by the County Attorney's office, Dana Carmona, is the wife of Omar Carmona, the Plaintiff in this case.

Furthermore, the El Paso County Attorney's Office now employs several attorneys who were not retained by the current administration. Those employees include, but are not limited to Nancy Casas, Jennifer Vandebosch, and Cheri Railey.

It is the position of Respondent that the motive for filing this petition is retaliation against Yvonne Rosales, in her capacity as District Attorney, in not allowing Dana Carmona, wife of Petitioner, to continue her employment as an assistant district attorney, along with Ms. Carmona's colleagues mentioned above. The El Paso County Attorney should have immediately recognized this conflict and recused herself.

Petitioner would further allege that County Attorney has a conflict because some of her employees and family members have been conspiring to politically attack and remove DA Rosales. It was recently discovered that this conspiracy involves Robert "Bob" Moore through El Paso Matters organization along with attorneys Justin Underwood and Omar Carmona. The above-named individuals routinely appear in attack stories against DA Rosales. These stories include information unlawfully obtained through the inappropriate use of the Texas Public Information Act. Some of the above-named individuals also engaged in a conversation on the El Paso Matters Facebook page that focused on removing DA Rosales through a removal petition (see Exhibit A).

Two days later, Omar Carmona filed the petition. As a result of the ongoing political attacks and unlawful use of El Paso Matters, a 501(c)(3) organization, a formal complaint has

been filed again El Paso Matters and Robert Moore for deceptive fundraising practices and violations of federal law.

II. Applicable law

Based on the allegations set out above, this case is analogous to a situation in which a complaining witness in a criminal case being prosecuted by the County Attorney's office is the spouse of an assistant County Attorney. Rule of Professional Conduct 1.06(b) states, "In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person: [...] (2) reasonably appears to be or become adversely limited by the [...] lawyer's [...] own interests. V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 1.06. The State of Texas is the client, when a County Attorney joins in pursuing a Petition for Removal. The State is urging that the County Attorney not do so, as the claims in the Petition are without merit and would not justify the effective overturning of an election and the will of the voters regardless. The interests of the State of Texas, i.e. to have a removal suit properly analyzed, prosecuted or dismissed by an independent County Attorney, appears to be adverse to the interests of an attorney who's spouse has actually filed the petition. Thus, Dana Carmona would certainly be disqualified from representing the State of Texas in this case.

Since a County Attorney's office is a "firm" under the Texas Disciplinary rules, if the El Paso County Attorney is prohibited by Rule 1.09 or Rule 1.06 from representing the State in a manner adverse to Official A, then all other lawyers in the County Attorney's office would likewise be prohibited from such representation of the State. See definition of "Firm" in Texas Disciplinary Rules of Professional Conduct, Terminology; Rule 1.09(c) and Rule 1.06(f); Professional Ethics Committee Opinion 539 (February 2002). Therefore, the County Attorney

could be argued to be disqualified from representing the State in a civil removal action. This rule is not mandatory in reverse, I.e. an assistant county attorney having the conflict, as in this case, but it is a consideration in terms of potentially creating an appearance of impropriety.

The County Attorney ordinarily represents the State in a civil removal action. TEX. LOC. GOV'T CODE ANN. § 87.018(d)-(e). However, in the event that the county attorney is disqualified, the judge presiding over the case can appoint the Texas Attorney General's office, or other attorney to act as prosecutor pro tem. In *Re Murray*, 268 S.W.3d 279 (Ct. App – Waco 2008). Such appointment does not give the appointed attorney the authority to institute removal proceedings, but merely authorizes said attorney to act as a substitute where the county or district attorney was unable to act. In *Re Murray*, 268 S.W.3d 279 (Ct. App – Waco 2008); In *Re Guerra*, 235 S.W.3d 392, 409 (Ct. App. – Corpus Christi 2007). The inherent power of a District Judge presiding over the case authorizes the appointment of an attorney *pro tem* to represent the State, where the district or county attorney cannot act. *See id.* at 414; *see also* *Trigg v. State*, 49 Tex. 645, 675 (1878).

PRAYER

WHEREFORE, Respondent prays that County Attorney, Joanne Bernal, declare that she is disqualified from the case and an attorney pro tem be appointed to represent the State in this case. The Respondent further prays that she receive any and all relief to which she may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on September 2, 2022, a copy of the Respondent’s motion to Disqualify County Attorney was emailed, through an electronic-filing-service provider, to Omar Carmona, the Plaintiff in this case, and to the El Paso County Attorney’s Office.

Respectfully submitted,

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Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Luis Yañez on behalf of Francisco F. Macias

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Envelope ID: 67949109

Status as of 9/6/2022 9:12 AM MST

Associated Case Party: Omar Carmona

Name	BarNumber	Email	TimestampSubmitted	Status
Omar Carmona		omar@clmfirm.com	9/2/2022 11:46:47 PM	SENT

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This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Luis Yañez on behalf of Francisco F. Macias

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