

Further, when he was serving on City Council (prior to the 2017 mayoral election), Richard Molina was approached by the District Attorney's aunt, Mary Alice Palacios, who invited him to lunch. At the lunch, Mary Alice Palacios revealed that she wanted Molina's vote to terminate the City's relationship with its then-current Health Insurance Agent of Record, Ronnie Guerra, and hire Gilberto Gonzalez of FBMC Benefits Management to take over the lucrative contract for managing the City's employee health insurance plans. Mary Alice Palacios noted that she and Buddy Palacios (her nephew, and a first cousin to the District Attorney) would be sub-contractors under Gilberto Gonzalez's firm. Molina listened; then he voted no. There were no problems with Ronnie Guerra's services, and Mary Alice had no experience justifying her services in such capacity. While Molina voted against the change, a majority of the City Council under Mayor Richard Garcia voted to give the contract to Gilberto Gonzalez's firm. Mary Alice Palacios worked as a subcontractor gaining substantial compensation under the contract.

The fortunes of Mary Alice Palacios, and the extended Palacios family, changed substantially when Molina challenged Richard Garcia for mayor, and won, along with a new council majority. First, the District Attorney's brother-in-law, J.R. Betancourt, had declined to seek re-election in the face of Molina's vocal allegations of conflicts of interest. Molina won the election for mayor, directly displacing Richard Garcia. The District Attorney's cousin, Ricky Palacios, resigned as City Attorney. Then, on January 30, 2018, the new Council, led by Molina, voted to terminate the services of Gilberto Gonzalez's firm, thus terminating Mary Alice Palacios's lucrative contract working in an industry in which she had little if any prior experience. *See* Exh. A (Agenda item no. V.C.). While Terry Palacios (who had not been on the 2017 ballot) retained his position as municipal judge, Molina's election presented a direct threat to his tenure as well, because Molina had campaigned on the promise to submit charter amendments to the voters to

change the municipal judge from an elected to an appointed position, and impose term limits on councilmembers (including mayor) and municipal judge.

b. District Attorney’s aunt files complaint that sparks investigation

In late May 2018, the news broke that the Texas Rangers arrested three Molina supporters for alleged illegal voting. Exh. B. In the initial reporting, District Attorney Rodriguez was not shy about taking credit for the investigation leading to these arrests. He was reported as saying that “his office has been investigating alleged fraud surrounding the mayoral election in which Richard Molina unseated long-term incumbent Richard Garcia for the past *four to five months*,” *id.* (emphasis added), that is, since December 2017 or January 2018. Rodriguez reportedly said that “[w]e had received information *and we had started working on it*, and *eventually* the Texas Rangers got involved and the Attorney General’s office.” *Id.* (emphasis added). Rodriguez apparently did not volunteer or confirm the identity of the source of any “information” his office “received.” But when news agencies turned up a document reflecting that Mary Alice Palacios had filed a “request for investigation” with the Secretary of State (which was noted as referred to the Attorney General’s office on January 22, 2018) (Exh. C), Rodriguez acknowledged she was the source. Exh. D (May 30, 2018). A *Monitor* reporter, after interviewing him, reported that “Rodriguez mulled the potential conflict of interest when he was first approached because his aunt filed the complaint that started the investigation, but he decided against recusing himself.” *Id.*

II. Motion to Disqualify District Attorney Rodriguez and His Assistants

A prosecutor’s voluntary recusal and legal disqualification are distinct concepts under Texas law. *See Coleman v. State*, 246 S.W.3d 76, 81 (Tex. Crim. App. 2008) (discussing distinction). “The recusal procedure ‘allows the district attorney to avoid conflicts of interest and even the appearance of impropriety by deciding not to participate in certain cases.’” *In re Ligon*, 408 S.W.3d 888, 892 (Tex. App.—Beaumont 2013) (orig. proc.). The prosecutor is responsible

for making the decision to voluntarily *recuse* himself. *Id.* However, if a conflict is severe enough, the prosecutor is legally disqualified from participating in the prosecution and must be removed by the court. *See Coleman*, 246 S.W.3d at 81; *In re Ligon*, 408 S.W.3d at 891.

a. Standard for disqualification

The Thirteenth Court of Appeals has recognized that “[t]he absence of an impartial and disinterested prosecutor has been held to violate a criminal defendant’s due process right to a fundamentally fair trial.” *In re Guerra*, 235 S.W.3d 392, 429 (Tex. App.—Corpus Christi 2007) (orig. proc.). “Put another way, the due process rights of a criminal defendant are violated when a prosecuting attorney who has a conflict of interest relevant to the defendant’s case prosecutes the defendant.” *Id.* Disqualification is required where the conflict or relevant interest of the prosecutor rises to the level of a due process violation. *State ex rel. Eidson v. Edwards*, 793 S.W.2d 1, 6 (Tex. Crim. App. 1990) (en banc); *In re Guerra*, *supra*. The question whether a sufficient conflict of interest exists depends on the circumstances of the individual case. *In re Guerra*, 235 S.W.3d at 429. The party seeking disqualification has the burden of presenting evidence establishing the existence of disqualifying bias or prejudice, and “mere allegations of wrongdoing will not suffice.” *Id.*

The Thirteenth Court of Appeals explained what prosecutorial “impartiality” means in this context. “‘Partiality’ ... is similar to a conflict of interest in the sense that the prosecutor has a personal interest or stake in the outcome of the criminal prosecution.” *In re Guerra*, 235 S.W.3d at 430. This “refers not to personal zeal but to a situation where the personal interests of the prosecutor generate a structural conflict of interest.” *Id.* The Court of Appeals cited article 2.01 of the Code of Criminal Procedure – providing that the “primary duty of all prosecuting attorneys” is “not to convict, but to see that justice is done” – and explained that “any interest that is inconsistent with such duty “is a conflict that could potentially violate a defendant’s right to

fundamental fairness.” *Id.* While economic interests may require disqualification, intolerable conflicts are not limited to those involving the prosecutor’s pecuniary interests. “[A] conflict arising from a prosecutor’s non-economic, personal interest in the case can violate a defendant’s right to due process.” *Id.*

The parties and the court all have an interest in ensuring a disinterested prosecution, because, as the Court of Criminal Appeals has warned, “violation of the rules will subject [a conflicted prosecutor’s] cases to reversal on appeal when his unprofessional conduct results in a denial of due process to a defendant.” *Eidson*, 793 S.W.2d at 6.

b. District Attorney Rodriguez has personal interests in the prosecution of Molina that require disqualification.

District Attorney Rodriguez has an intolerable conflict of interest. Rodriguez is investigating and prosecuting Molina for alleged election offenses arising from the same election that brought Richard Molina to the mayor’s office, who, along with a new council majority, terminated the City contract under which Mary Alice Palacios was working. Further, faced with Molina in the mayor’s office and a new majority on Council, the District Attorney’s cousin resigned his lucrative position as Edinburg City Attorney, and his brother-in-law had already been displaced from the Council in the face of Molina’s criticism for conflicts of interest. Even the District Attorney’s uncle, Terry Palacios, found his tenure as municipal judge placed in jeopardy by Molina’s campaign promises to present charter amendments that would impose term limits and require appointment rather than election. Thus, Molina’s election was directly responsible for two Palacios family members losing lucrative contracts with the City of Edinburg, the loss of a council seat for the District Attorney’s brother-in-law and the loss of support from a controlling majority, and the potential loss of Terry Palacios’s long-held municipal judgeship. On top of all of that, the complaint on which the investigation is based was filed by Mary Alice Palacios.

Rodriguez is legally disqualified from the prosecution in these circumstances. “A prosecutor should not be subject to influences that undermine confidence that the prosecution can be conducted in a disinterested fashion.” *In re Guerra*, 235 S.W.3d at 431. A prosecutor’s first duty is to see that justice is done, and follow the facts where they lead, not to secure a conviction, and Molina is constitutionally entitled to a disinterested prosecutor. This is not a situation in which the defendant and prosecutor are merely from opposing political parties. Here, the District Attorney’s own close family members lost positions of power and influence, and lucrative contracts, as a direct result *of the election being investigated*. If the prosecution were to be successful, the District Attorney’s family members stand to potentially regain their positions and contracts. Rodriguez thus has personal influences that present an intolerable potential for prejudice to Molina.

Rodriguez’s family interests are sufficient by themselves, but on top of that, the criminal complainant is none other than his own aunt, who is one of the very family members who lost a valuable position as a city vendor.

Even Rodriguez himself has publicly acknowledged the impropriety here. He admitted to a reporter that “if it was just our office conducting the investigation and making decisions ... then I would have said, ‘No. We can’t do this.’” Exh. D (May 30, 2018). But his excuses for not voluntarily recusing only further undermine his credibility and impartiality. Rodriguez said in the May 30, 2018 report that he “decided against recusing himself” because, he claimed, state law enforcement were leading the investigation. Exh. D. In a later *Monitor* story, Rodriguez went further, claiming that the Attorney General’s office made the initial *decision* to investigate Mary Alice Palacios’s complaint. Exh. E (Naxi Lopez, DA under pressure to probe more voter fraud cases, *The Monitor* (Mar. 10, 2019)). This, of course, conflicts with Rodriguez’s initial statements, reported in the May 24, 2018 *Monitor* story immediately after the first three arrests, that *his office*

had “received information and started working on it, and *eventually*” the state authorities “got involved.” Rodriguez began to distance himself from these initial comments only after questions about conflicts of interest started flowing in.

Rodriguez’s repeated excuse for his office’s involvement—claiming that the Attorney General’s office is leading and his office is only assisting²—is a candid *acknowledgment* of a conflict of interest. If there were no conflict, Rodriguez would not have to justify his involvement by trying to minimize it. And this claim of a minimal, supporting role for the Hidalgo County District Attorney’s office is not only in tension with Rodriguez’s initial comments (that his office received information and began the investigation), but further belied by the facts as this investigation and case has progressed. Rodriguez’s office, and primarily Chief Assistant Criminal District Attorney Michael Garza, are playing the lead, not a supporting, role. Michael Garza, not any attorney from Austin, has been the one questioning and seeking deals with defendants in the cases arising from this investigation. And Rodriguez’s office has appeared in the hearings and filed the pleadings, motions, and notices, usually without any appearance from the Attorney General’s office, including the surprise motion filed last week, seeking an emergency hearing during early voting, without any prior conference with the undersigned.

In short, Rodriguez himself acknowledges the presence of an intolerable conflict, but declined to recuse by claiming that his role is limited and the Attorney General is leading. However, the facts do not support Rodriguez’s claims. Rodriguez is leading this investigation and prosecution.

Rodriguez’s involvement is a violation of Molina’s due process rights to a disinterested prosecutor. “The due process rights of a ... defendant are violated when a prosecuting attorney

² Exhibits D (*Monitor*, May 30, 2018) and E (*Monitor*, Mar. 10, 2019).

who has a conflict of interest relevant to the defendant's case prosecutes the defendant." *In re Guerra*, 235 S.W.3d at 429. The Court should have no hesitation disqualifying Rodriguez, and the rest of his office, from any involvement in investigating or prosecuting this matter. *See id.* at 429 n.173, 432 (disqualifying attorney pro tem even though he had already decided to delegate trial of any case against relator to a subordinate); *In re Ligon*, 408 S.W.3d at 896 (noting that, as assistant district attorneys are appointed by the district attorney, "[f]ollowing uniform case-law, the trial court could reasonably rule that because the District Attorney is disqualified, all Assistant District Attorneys in the district are also disqualified"). Rodriguez himself has indicated that the Attorney General's office could handle the prosecution itself. Exh. D ("We have been assisting them and I have even made statements to the AG's office and the Texas Rangers that at any point if you feel my involvement is hindering, compromising or causing a conflict, then please let us know and we would be more than happy for the attorney general's office to take over the prosecution."). Rodriguez's disqualification for his obvious and admitted conflicts is required to safeguard Molina's due process rights, and failure to ensure a disinterested prosecutor would only taint the prosecution's and the court's work in this case in any appeal.

III. Prayer

Molina respectfully requests that the Court disqualify Hidalgo County District Attorney Rodriguez and his office from any participation in the investigation or prosecution of this case, which is necessary to avoid a violation of Molina's due process rights and to ensure public confidence in this prosecution.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document, with any accompanying exhibits and proposed order, has been forwarded to all counsel of record in this action by way of the court's electronic filing system, on October 20, 2021, as follows:

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