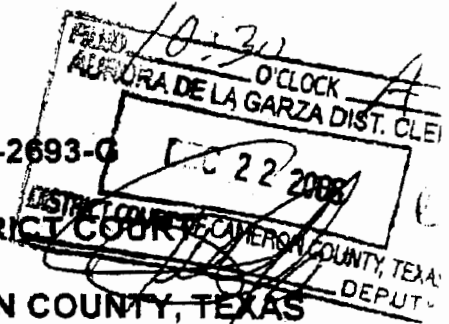


CAUSE NO. 2006-CR-2672-G & 2006-CR-2693-G



STATE OF TEXAS

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IN THE DISTRICT COURT OF CAMERON COUNTY, TEXAS

v.

OF CAMERON COUNTY, TEXAS

ARTHUR DANIEL HAYES

404TH JUDICIAL DISTRICT

STATE'S MOTION TO RESTRICT PUBLICITY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the **STATE OF TEXAS**, and files this Motion to Restrict Publicity, and in support thereof, would show this Court as follows:

I.

On December 13, 2006, the Defendant Arthur Daniel Hayes was indicted by a Cameron County Grand Jury in the above-referenced cause numbers for the offenses of Practicing Medicine Without a License (3 counts), Medicaid Fraud, Theft, and Sexual Assault. Almost immediately, the local media reported the story and began requesting that counsel for both the State and the Defendant provide interviews. Today, December 21, 2006, Mr. Bob Bennett, counsel for the defendant sent a message via electronic-mail to various media outlets, wherein he makes "extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication" and further Mr. Bennett knew or reasonably should have known that these statements "will have a substantial likelihood of materially prejudicing an adjudicatory proceeding," clearly in violation of Rule 3.07 of the Texas Rules of Disciplinary Conduct. See TEX. DISCIPLINARY R. PROF'L

CONDUCT 3.07, reprinted in TEX. GOV'T. CODE, tit. 2, subtit. G, app. A (TEX. STATE BAR R. art. 10 sec. 9). A copy of Mr. Bennett's E-Mail message is attached hereto as Exhibit "A".

In addition to local media outlets reporting this story, national media reporters have also been calling, asking that the counsel herein comment on this story.

II.

Further, Mr. Bennett has made unfounded allegations that the Defendant's race has played a part in this prosecution. Such remarks and allegations in addition to being completely unfounded are made solely for the purpose of prejudicing potential jurors against the State.

III.

The State acknowledges that this Court has a duty to preserve the defendant's right to a fair trial by an impartial jury and, if possible, to ensure that potential jurors will not be prejudiced by pretrial publicity. This Court should also be mindful of the First Amendment rights of the parties, counsel for the parties, the media, as well as the Open Courts Provision of the Texas Constitution. In an effort to balance these sometimes competing interests, other courts have found that prior restraint may be imposed only in extraordinary circumstances, and only if there is the threat of imminent, severe harm. Accordingly, before issuing a gag order, this court must find that extensive media coverage will harm the judicial process.

The State asks this Court takes judicial notice of 1) the unusually emotional

nature of the issues involved in this case; 2) the extensive media coverage this case has already generated; and 3) the various and numerous media interviews with and/or press releases from counsel for the parties that have been published and/or broadcast by the media. The State further asserts that counsels' willingness to give interviews and press releases to the media would only serve to increase the volume of pre-trial publicity. If counsel for the parties continue to provide press releases and grant interviews to the media, the pre-trial publicity will likely interfere with the defendant's right to a fair trial by an impartial jury. The State asserts that no less restrictive means exists to treat the specific threat to the judicial process generated by this pre-trial publicity. The State respectfully suggests that an order restricting extra-judicial commentary by counsel for the parties is necessary to preserve all venue options and a delay in proceedings would not lessen the publicity generated by this case

CONCLUSION AND PRAYER

WHEREFORE, the **STATE OF TEXAS** respectfully prays that this Court grant this to restrict publicity and enter an order which restricts publicity by ordering the following:

1. All attorneys involved in this case shall strictly adhere to the letter and spirit of the provisions of the Texas Code of Professional Responsibility governing comments to the media. Specifically, all attorneys shall refrain from making "extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an

adjudicatory proceeding." TEX. DISCIPLINARY R. PROF'L CONDUCT 3.07, reprinted in TEX. GOV'T. CODE, tit. 2, subtit. G, app. A (TEX. STATE BAR R. art. 10 sec. 9);

2. All attorneys, their staffs, and law enforcement officers involved in this case shall not discuss this case with the media;

3. Witnesses shall not discuss this case with the media when they have previously given statements:

- a. to law enforcement personnel,
- b. to representative of the District Attorney's Office; or
- c. who have testified in investigative or adjudicative proceedings;

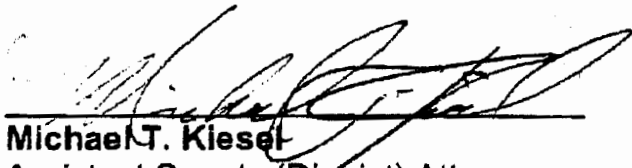
4. Witnesses who give statements to law enforcement personnel, representatives of the District Attorney's Office, or who testify in investigative or adjudicative proceedings after the date of entry of this order shall not discuss this case with the media.

The State further requests all relief to which it is entitled.

Respectfully submitted,

ARMANDO R. VILLALOBOS
 Cameron County (District) Attorney
 974 East Harrison Street
 Brownsville, Texas 78520-7123
 Phone: (956) 544-0849
 Fax: (956) 544-0869

By:

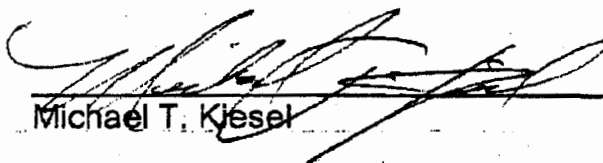


Michael T. Kiesel
 Assistant County (District) Attorney
 State Bar No. 11389500
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 Assistant County (District) Attorney
 State Bar No. 24014424

Attorneys for the State of Texas

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing State's Motion to Restrict Publicity was served upon the Defendant's Attorney of Record, Mr. Noe D. Garza, Jr., 954 East Van Buren Street, Texas 78520 and Mr. Bob Bennett, 515 Louisiana Avenue, Suite 200, Houston, Texas, 77002 on December 21st, 2006.


Michael T. Kiesel