



ELLIS COUNTY & DISTRICT ATTORNEY

PATRICK M. WILSON

ELLIS COUNTY COURTS BUILDING • 109 S. JACKSON • WAXAHACHIE, TX 75165 • (972) 825-5035 • FAX (972) 825-5047

FOR IMMEDIATE RELEASE

Contact: Ann Montgomery, 972-825-5035 (ann.montgomery@co.ellis.tx.us)

Please see the below statement issued by Ellis County and District Attorney Patrick Wilson. No further statements will be issued in regards to this matter.

The right to a fair trial is a basic principle of our criminal justice system. That right applies equally to the accused and to the people of the State of Texas.

On August 1, 2016, my office, on behalf of a victim of domestic violence and the State of Texas, filed a Motion for Restriction of Extrajudicial Statements in Ellis County Court at Law #2. On the same date, after a hearing at which both the State and the defense had the opportunity to make arguments to the court, the motion was granted by Judge A. Gene Calvert, Jr. Trial commenced and was concluded on August 4, after the jury was unable to reach a verdict. On that date, the court again addressed the State's motion to ensure continuation of the order until retrial of the case. There has been no appeal of the order.

On August 11, 2016, my office, on behalf of a child victim of sexual assault and the State of Texas, filed a similar Motion for Restriction of Extrajudicial Statements in the 40th Judicial District Court of Ellis County. On August 12, after a hearing at which both the State and the defense had an opportunity to make arguments to the court, Judge Bob Carroll granted the motion. Defense counsel agreed to be bound by the court's order.

The trial in that cause commenced with jury selection on Monday, August 15. The trial was delayed after an insufficient number of potential jurors appeared in court. Only after trial commenced, and two business days after the hearing on the State's motion, did defense counsel suggest his interest in appealing the court's order.

Many false, inaccurate, and misleading statements have been made about the above events. Included with this statement are the following: 1) The motion filed in Ellis County Court at Law #2, 2) the motion filed in the 40th Judicial District Court of Ellis County, 3) the complete transcript of the August 12 hearing before Judge Bob Carroll, and 4) Rules 3.06 and 3.07 of the Texas Disciplinary Rules of Professional Conduct, which are the ethical rules governing all attorneys in the State of Texas.

A transcript of the proceedings held in Ellis County Court at Law Number 2 will be made available when received.

FILED

AUG 01 2016

**COUNTY CLERK
ELLIS COUNTY, TEXAS**

CAUSE NO. 1511811 CR

THE STATE OF TEXAS

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VS.

JOEL PAYTE MATHIS

IN THE COUNTY COURT

AT LAW NUMBER 2

ELLIS COUNTY, TEXAS

MOTION FOR RESTRICTION OF EXTRAJUDICIAL STATEMENTS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, the State of Texas, by and through the Assistant County and District Attorney, Nicole Dempsey, in the above styled and numbered cause and files its MOTION FOR RESTRICTION OF EXTRAJUDICIAL STATEMENTS. This cause is presently set for trial on August 1st, 2016 at 9:00am. The movant asks that this motion be granted and would show the court the following:

1. Griffith & Associates, attorneys for the Defendant in the case at bar, is a well-known criminal defense firm with its principal office located in Waxahachie, Texas.
2. Griffith & Associates controls a dedicated "Facebook" page by the same name. Over the course of the previous calendar year, this page has had hundreds of views, comments, "likes", and "shares" by various members of the Ellis County community as well as surrounding communities.
3. Over the course of the previous calendar year, attorneys employed by Griffith & Associates or agents acting at their direction have made postings on this particular page that appear to have occurred while Griffith & Associates was currently in jury trial. These postings either exposed details about the case that the jury on those particular cases were not entitled to hear or expressed

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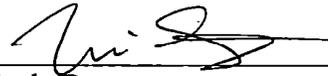
personal opinions about the proceedings that are inadmissible at trial. (See attached pre-trial exhibits 1-6)

4. There is a substantial likelihood that this and other forms of extrajudicial statements made by the Defendant's counsel could impair the rights of the Defendant, the State, and the public to a fair trial by an impartial jury. Accordingly, the State respectfully asks that the Court take limited steps to protect the rights of all parties to a fair trial.

WHEREFORE, PREMISES CONSIDERED, the State prays that the Court enter its order restricting extrajudicial statements of the parties in this case.

Respectively submitted,

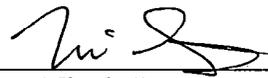
PATRICK M. WILSON
County & District Attorney



Nicole Dempsey
Assistant County & District Attorney
SBT: 24082077
109 S. Jackson
Waxahachie, TX 75165
972/825-5035
972/825-5047 (facsimile)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was sent by hand, email, fax, or mail to Griffith & Associates, attorneys of record for the Defendant, on the 1st day of August, 2016.



Nicole Dempsey
Assistant County & District Attorney

CAUSE NO. 1511811 CR

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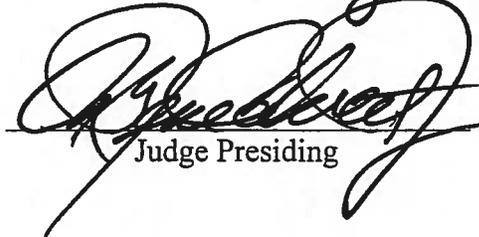
ORDER ON STATE'S MOTION FOR RESTRICTION OF EXTRAJUDICIAL STATEMENTS

On this day came to be heard the foregoing State's MOTION FOR RESTRICTION OF EXTRAJUDICIAL STATEMENTS, and after having been considered by the Court and the Court having found good cause, the said Motion is:

GRANTED: This ORDER is binding on Defendant and all attorneys for the State and the defense and on all employees, representatives, and agents of such attorneys. This ORDER shall remain in effect for the pendency of this trial or until further order of the Court.

DENIED

Signed this 1 day of August, 2016.


Judge Presiding

From to restrict extrajudicial statements, please see previous matter.



Griffith & Associates

January 25 ·

Sorry, it has been awhile since this last posting. I have been in trial fighting for a man's life and start another trial today and then another in 2 weeks.

It reminds me of my calling from God. I see God, directing me in my fights for justice. I see God in everything, including my clients. They are scorned, chastised, maligned and cast aside. These are the people Jesus sought out and helped. I imagine He has this plan for me long before I was born. So many paths could have led in different directions but He was always guiding me down the path He had set out for me. I have followed.

The path you want and the path God has for you may not be the same. Have faith, God knows and we don't always know.

I will continue to walk down His path and advocate for the same people He advocated for.

LOVE, COMPASSION, and Passion is the answer, all based in Faith, Hope, Love and Passion.

Have a great week to all of you. Look for a chance to make a difference in your life or someone else's. This is our calling, in different ways for different people.

Love always!

Like	Comment	Share
2K		Top Comments
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STATE'S EXHIBIT
PT 1



Griffith & Associates

March 24 ·

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Like · Reply · 7 · March 25 at 12:49am

1 Reply

View 280 more comments

STATE'S EXHIBIT
PT 2



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May 18 ·

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Like · Reply · 17 · May 18 at 4:01pm

4 Replies



Mary Herrera Amen.. It's all going to be ok.. Brother. Prayers that GODs will be done going up. Have Faith its already taken care of. JESUS reads our hearts he knows before we take another step, which way we are headed. No worries. GOD is with you...and look at how many of us stand behind you. Amen..

Like · Reply · 8 · May 18 at 10:15pm

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STATE'S EXHIBIT
PT3



Griffith & Associates
May 17 ·

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STATE'S EXHIBIT
PT 4



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STATE'S EXHIBIT
PT 5



Griffith & Associates

November 9, 2015

Today I embark on a trial with a young man's future in my hands. I pray that the Father place his compassion, passion and words in my heart. I pray that He makes me the advocate I need to be to get true justice for my client. I pray He cloak me in his embrace and that I understand that all I need to do is be honest, be real, be passionate and listen. Amen.

STATE'S EXHIBIT

PT 6

CAUSE NO. 38498 CR

FILED FOR RECORD
2016 AUG 11 PM 1:45

THE STATE OF TEXAS

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IN THE DISTRICT COURT

VS.

40TH JUDICIAL DISTRICT

MELANIE HUBBARD
DISTRICT CLERK
ELLIS COUNTY, TX

GILBERTO RAMIREZ GONZALEZ

ELLIS COUNTY, TEXAS

COPY

MOTION FOR RESTRICTION OF EXTRAJUDICIAL STATEMENTS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, the State of Texas, by and through her County and District Attorney in an for Ellis County in the above styled and numbered cause and moves the Court to instruct the defendant, his lawyers, and witnesses for the defense to refrain from making extrajudicial statements pertaining to this case on social media during the pendency of the trial on the merits. This cause is presently set for trial on August 15th, 2016 at 9:00am. The movant asks that this motion be granted and would show the court the following:

1. Griffith & Associates, attorneys for the Defendant in the case at bar, is a well-known criminal defense firm with its principal office located in Waxahachie, Texas.
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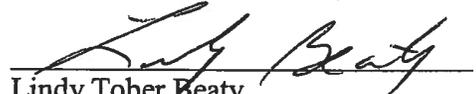
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4. There is a substantial likelihood that this and other forms of extrajudicial statements made by the Defendant's counsel could impair the rights of the Defendant, the State, and the public to a fair trial by an impartial jury. Accordingly, the State respectfully asks that the Court instruct the defendant his lawyers and their agents, and the defense witnesses to refrain from making extrajudicial statements pertaining to this case on social media during the pendency of the trial on the merits.

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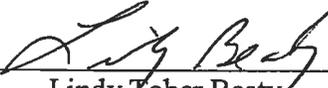
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Lindy Tober Beaty
Assistant County & District Attorney
SBT: 24013641
109 S. Jackson
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Lindy Tober Beaty
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CAUSE NO. 38498 CR

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	§	
VS.	§	40 TH JUDICIAL DISTRICT
	§	
GILBERTO RAMIREZ GONZALEZ	§	ELLIS COUNTY, TEXAS

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On this day came to be heard the foregoing State's MOTION FOR RESTRICTION OF EXTRAJUDICIAL STATEMENTS, and after having been considered by the Court and the Court having found good cause, the said Motion is:

___ **GRANTED:** This ORDER shall remain in effect for the pendency of this trial or until further order of the Court.

___ **DENIED**

Signed this _____ day of _____, 2016.

Judge Presiding

STATE'S EXHIBIT
PT 1

 Griffith & Associates
January 25

Sorry, it has been awhile since this last posting. I have been in trial fighting for a man's life and start another trial today and then another in 2 weeks.

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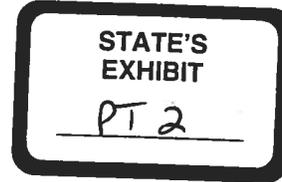


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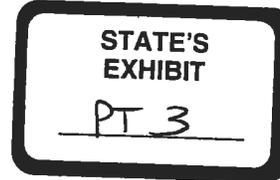
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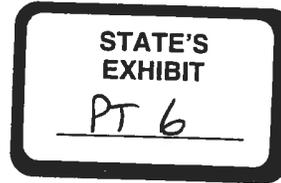
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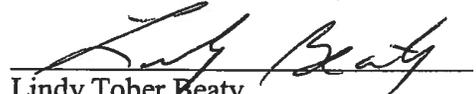
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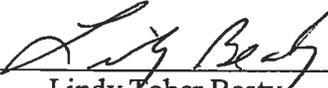
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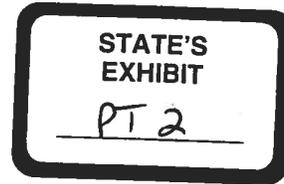


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Deborah LaRosa Petite You see there is another reason I never went to law school.. I hate all the legalese!! Praise God.. You are sooo right!! The issues of the heart oh, Father may you well up in the hearts and minds of those in that courtroom. May you compel them with your overwhelming mercy and grace and let them be feel your presence in that courtroom. Bind the power of the enemy and send your angels charge over your son and his client this day . We praise you for you are more awesome than words could ever explain.. In Jesus name I pray, Amen.

Like · Reply · 17 · May 18 at 4:01pm

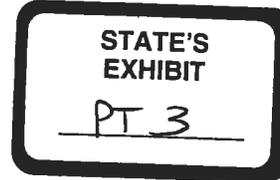
4 Replies



Mary Herrera Amen.. It's all going to be ok.. Brother. Prayers that GODs will be done going up. Have Faith its already taken care of. JESUS reads our hearts he knows before we take another step, which way we are headed. No worries. GOD is with you...and look at how many of us stand behind you. Amen!.

Like · Reply · 8 · May 18 at 10:15pm

[View 109 more comments](#)



 Griffith & Associates
May 17 ·

I was in trial today. A witness testified and as I listened to this witness for the Government I did not even write anything down. He was really hurting our case, so instead of writing I listened and I prayed. Peace came over me and in only 5 questions he became our witness. These were not my 5 questions, they were 5 questions straight from the God I prayed to.

Like Comment Share

2.1K

Top Comments

73 shares

189 Comments



Write a comment...



Patsy Bixler I always pray for Griffith & Associates twice a day. God is listening to you, and the ones that pray for you. Blessings.

Like · Reply · 12 · May 17 at 6:00pm



Griffith & Associates Thank you so much.

Like · Reply · 1 · May 17 at 7:49pm

[View more replies](#)



Diana Kimbrough AMEN! If God be for us, who can be against us? May OUR HEAVENLY FATHER Continue to BLESS YOU and Your prayers!

Like · Reply · 14 · May 17 at 6:47pm

[View 187 more comments](#)

STATE'S
EXHIBIT

PT 4



Griffith & Associates

January 11 ·

Trial begins today for an innocent man. I ask that you all lift me up in prayer. That I may hear with God's ears, that I speak with His words and that the jury will be filled with His grace to give my client justice and send him home.

Like

Comment

Share

2.8K

Top Comments

401 Comments

STATE'S
EXHIBIT

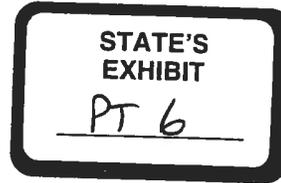
PT 5



Griffith & Associates

November 9, 2015

Today I embark on a trial with a young man's future in my hands. I pray that the Father place his compassion, passion and words in my heart. I pray that He makes me the advocate I need to be to get true justice for my client. I pray He cloak me in his embrace and that I understand that all I need to do is be honest, be real, be passionate and listen. Amen.



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09:28:27

C H R O N O L O G I C A L I N D E X

Trial Announcement

Motion for Restriction of Extrajudicial Statements

August 12, 2016

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1 P R O C E E D I N G S

2 (Beginning of excerpt.)

09:28:22 3 THE COURT: Any other motions on the part of
09:28:24 4 the State?

09:28:24 5 MS. BEATY: Yes, Your Honor. We filed an
09:28:26 6 additional Motion for Restriction of Extrajudicial
09:28:30 7 Statements.

09:28:32 8 THE COURT: I'm looking at a document titled
09:28:34 9 Motion for Restriction of Extrajudicial Statements. If
09:28:38 10 you would, Counsel, please give me a few moments to
09:28:42 11 review it.

09:28:42 12 MS. BEATY: Sure, Your Honor.

09:32:33 13 THE COURT: State may proceed.

09:32:34 14 MS. BEATY: Yes, Your Honor. What we're
09:32:36 15 simply requesting is that during the pendency of this
09:32:38 16 case that, actually both sides really, not make any
09:32:42 17 comments on social media or anything that would be open
09:32:45 18 to the public and to potential jury members regarding
09:32:49 19 the witnesses in the case, how the case is proceeding,
09:32:52 20 their perceptions of the case one way or the other, so
09:32:54 21 as not to taint any jury that we may have sitting on the
09:32:57 22 case. We ask the jurors to do the same thing and not
09:33:01 23 Google things and look up things, so I don't think it's
09:33:04 24 unreasonable that both sides would be ordered to not
09:33:06 25 post anything on social media regarding the trial and

09:33:10 1 witnesses as the case is proceeding.

09:33:16 2 THE COURT: Well, Counsel, talk with me
09:33:18 3 about impact. If nobody looks at this social media,
09:33:23 4 then there's no impact, or do hundreds of people or
09:33:26 5 thousands of people? What are we looking at here in
09:33:29 6 terms of scope?

09:33:29 7 MS. BEATY: Well, right. As we said in our
09:33:31 8 -- in our motion, there's been hundreds of views on the
09:33:36 9 comment. Comments are made during the course of any
09:33:39 10 trial. We're not just talking about, you know, ten
09:33:41 11 people that are putting likes on here. We're talking
09:33:43 12 about hundreds of people that are looking at the page.

09:33:46 13 THE COURT: And for the record, you're
09:33:48 14 talking about Facebook?

09:33:49 15 MS. BEATY: Facebook in particular, yes,
09:33:51 16 Your Honor.

09:33:51 17 THE COURT: My general understanding is that
09:33:55 18 Facebook has a number of integrated and interconnected
09:34:01 19 feeds that go in multiple directions so --

09:34:01 20 MS. BEATY: Sure. So --

09:34:05 21 THE COURT: -- my concern would be is that
09:34:05 22 the impact is geometrically amplified.

09:34:11 23 MS. BEATY: Well, sure. So even, let's say
09:34:13 24 -- let's say none of our jurors are actually going to
09:34:15 25 the page, right, but they have a friend that is. That's

09:34:18 1 going to show up on the friend's page and then somehow
09:34:21 2 link them as well. So, you know, you're talking about
09:34:24 3 -- it doesn't even have to be the particular juror going
09:34:26 4 to the page. They can still have access to the page by
09:34:28 5 one of their friends linking to the page. You know what
09:34:32 6 I'm saying?

09:34:33 7 THE COURT: So even though we direct a jury
09:34:38 8 not to conduct any fact investigation, not to conduct
09:34:44 9 any internet research regarding the subject matter of
09:34:49 10 the trial, and further instruct them not to Google any
09:34:54 11 name or subject matter and so forth, we could even,
09:35:05 12 hypothetically, attempt to instruct them do not view
09:35:08 13 social media in connection with this case.

09:35:11 14 However, what I hear you saying, is that
09:35:14 15 despite all of the instructions by the Trial Court, we
09:35:19 16 potentially could have a juror in the jury deliberation
09:35:22 17 room or here in the courthouse be viewing a Facebook
09:35:28 18 page and inadvertently that juror actually sees realtime
09:35:34 19 narration from Counsel about the subject matter in the
09:35:38 20 jury trial.

09:35:38 21 MS. BEATY: Sure. I'm not saying that it
09:35:40 22 would be an intentional act on any part of the juror,
09:35:42 23 but easily there could be something that would
09:35:46 24 inadvertently come up on their -- any type of social
09:35:47 25 media really. I mean, we're mostly talking about

09:35:51 1 Facebook, but there's also Twitter, there's also
09:35:52 2 Instagram, there's all kinds of things social media wise
09:35:54 3 and other apps that I'm still probably unfamiliar with
09:35:58 4 where people could have access to realtime information
09:36:00 5 going on, and sort of things behind the scenes as well
09:36:04 6 that they are not privy to and shouldn't be privy to.

09:36:08 7 THE COURT: Defense?

09:36:10 8 MR. GRIFFITH: Yes, Your Honor. First off,
09:36:13 9 I don't mind being limited to explaining that I'm in
09:36:19 10 trial, I've asked God to direct my questions, to fill my
09:36:28 11 heart and to allow me to be the attorney I need to be
09:36:31 12 for my client. Any restriction on that appears to be a
09:36:38 13 combination of First Amendment infringements. One,
09:36:43 14 freedom of religion, and, two, freedom of speech.

09:36:46 15 I'm not talking about, if I'm limited to
09:36:49 16 that, I'm not talking about any particular witness or
09:36:52 17 what occurred in court. All I'm posting on social media
09:36:56 18 is that I'm an attorney who prays before trial and prays
09:37:01 19 during trial. Now, to restrict me from doing that, I
09:37:08 20 believe the State is asking the Court to sanction a
09:37:12 21 violation of my First Amendment right, freedom of speech
09:37:17 22 and also freedom of religion.

09:37:23 23 I mean, since when would me saying I bring
09:37:25 24 God in the courtroom affect a verdict? And since when
09:37:30 25 am I not entitled as an attorney, as an executive or as

09:37:35 1 a judge saying I certainly, you know, seek God's counsel
09:37:46 2 in decisions I make in hoping that the result is
09:37:48 3 justice?

09:37:50 4 THE COURT: My concern is direct or indirect
09:37:57 5 case references. Further concern about qualitative
09:38:09 6 assessments or qualitative statements regarding the
09:38:16 7 progress of the trial and the nature, scope and the
09:38:19 8 extent of what is occurring at trial. And further
09:38:25 9 concern about the narration or narrative statements and
09:38:33 10 philosophy of what is taking place in court.

09:38:35 11 Now, that's very different than to say,
09:38:39 12 hypothetically, Tuesday, May 15th, 2016, we're in trial.
09:38:45 13 Pray for me. That's a lot different than talking about
09:38:52 14 how you are attempting to cross-examine a witness in a
09:39:01 15 particular case seeking divine intervention.

09:39:09 16 MR. GRIFFITH: I'm not seeking divine
09:39:10 17 intervention. I'm --

09:39:11 18 THE COURT: No, I'm talking about making
09:39:14 19 statements in the context of the case. Witness number
09:39:17 20 three, Tom Smith, is on the witness stand.

09:39:20 21 MR. GRIFFITH: I think I just said, I don't
09:39:22 22 have any problem not posting that, but for them, based
09:39:28 23 on this motion and asking the Court to sanction the
09:39:31 24 motion, all I'm asking is that I be continued because I
09:39:35 25 feel like prayers by the people that follow my -- the

09:39:42 1 firm's website help me. I'm sorry. That's the way I
09:39:46 2 feel.

09:39:46 3 And I wouldn't make any particular reference
09:39:49 4 to anything other than I'm in trial. I've said my
09:39:55 5 prayer that God follows me in the courtroom. I ask that
09:39:57 6 you also say those prayers.

09:40:02 7 THE COURT: Any type of specific restriction
09:40:11 8 on counsel's social media activities will need to be
09:40:20 9 narrowly tailored and carefully crafted. It sounds like
09:40:24 10 there may even need to be some policing going on. In my
09:40:39 11 mind, it's one of those things where I know it when I
09:40:42 12 see it, and I want to err on the side of caution of not
09:40:51 13 inadvertently influencing the jury or a juror who is
09:40:56 14 participating in the decision-making process.

09:40:59 15 MR. GRIFFITH: May I pose a question to the
09:41:01 16 Court? Let's say I started jury selection and, you
09:41:07 17 know, I'm asking them to talk about personal things, and
09:41:12 18 I said, listen, I'm going to ask y'all to talk about
09:41:15 19 personal things so I feel it's fair that I give you
09:41:18 20 something personal. I pray that God fill my heart and
09:41:28 21 direct me in the words that I ask during this trial.
09:41:32 22 Now, what is improper about that other than I've
09:41:37 23 mentioned the word God?

09:42:01 24 THE COURT: I think what we may need to know
09:42:07 25 is whether you intend to have some type of ongoing, off

09:42:16 1 and on throughout the day posting or it's simply going
09:42:21 2 to be I'm going to work today, I'm in trial, pray for
09:42:30 3 me. That's a lot different than back and forth realtime
09:42:38 4 narrations that potentially could be construed as
09:42:56 5 providing realtime assessments or evaluations in
09:43:02 6 connection with the case.

09:43:04 7 MR. GRIFFITH: I have no problem being
09:43:06 8 limited to the restrictions the Court just said, as long
09:43:09 9 as I can also say, trial today. I started the day on my
09:43:17 10 knees praying that God be with me in court. I ask for
09:43:21 11 the same prayers from you. It's okay for a lawyer --

09:43:27 12 THE COURT: Ms. Beaty, I think if Counsel
09:43:34 13 stays within those bounds, I think that that is either
09:43:43 14 permissible or something that's not objectionable.

09:43:49 15 MS. BEATY: Right. What we're talking about
09:43:50 16 is commenting on how a witness did or didn't do or what
09:43:54 17 they're going to do or what he's going to do to a
09:43:56 18 witness or anything like that.

09:43:57 19 THE COURT: That's what I meant by their
09:43:59 20 realtime live narration, sure.

09:44:01 21 MR. GRIFFITH: And I would agree to be bound
09:44:03 22 from posting that during this trial.

09:44:08 23 THE COURT: Okay. Then we go forward on
09:44:11 24 that basis. So I am granting the State's Motion for
09:44:19 25 Restriction of Extrajudicial Statements in part as per

09:44:21 1 the record. So here's where we go. Here's our flight
09:44:29 2 path. The defense can be cautious in its morning
09:44:40 3 posting. The State will likely have an investigator or
09:44:52 4 another assistant DA checking the social media site, I
09:44:55 5 assume. And as long as it's reasonable and consistent
09:45:02 6 with the Trial Court's ruling, we go forward. We may
09:45:04 7 not need a formal order. If --

09:45:09 8 MR. GRIFFITH: I'm not --

09:45:10 9 THE COURT: -- the State's review of social
09:45:12 10 media thinks that the line's been crossed, you'll need
09:45:18 11 to bring that matter to the attention of the Trial
09:45:20 12 Court. And at that point we may need to recess, I need
09:45:24 13 to roll up my sleeves and craft a very specific, a very
09:45:30 14 tight order so that there can be no inadvertent crossing
09:45:39 15 of the line. Are we okay with proceeding informally on
09:45:39 16 that basis?

09:45:43 17 MS. BEATY: Yes, Your Honor.

09:45:44 18 MR. GRIFFITH: Yes. And I can tell the
09:45:45 19 Court as an officer of the court, I'm not going to cross
09:45:48 20 that line.

09:45:48 21 THE COURT: I understand. I am simply
09:45:53 22 looking and have read the six exhibits attached. I
09:45:58 23 understand the State's concern. That's why I ruled
09:46:00 24 partly in their favor, and I think everybody understands
09:46:11 25 the parameters. Now the only thing I want to add is

09:46:13 1 this. I rarely look at social media, so neither side
09:46:27 2 can have an expectation that I'm going to be policing
09:46:31 3 these, because I'm not.

09:46:33 4 MS. BEATY: Right.

09:46:34 5 THE COURT: So either side or both sides
09:46:35 6 will need to bring the matters to my attention. Very
09:46:38 7 good. Anything else on this particular issue?

09:46:40 8 MS. BEATY: No, Your Honor.

09:46:40 9 MR. GRIFFITH: No.

09:46:42 10 THE COURT: Very good. One moment, please.
09:47:45 11 Any other motions on the part of the State?

09:47:46 12 MS. BEATY: No, Your Honor.

13 (End of excerpt.)

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1 STATE OF TEXAS)

2 COUNTY OF ELLIS)

3 I, Michele McManus, Official Court Reporter,
4 in and for the 40th District Court of Ellis County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings requested
8 in writing by counsel for the parties to be included in
9 this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's
13 Record of the proceedings truly and correctly reflects
14 the exhibits, if any, admitted by the respective
15 parties.

16 I further certify that the total cost for
17 the preparation of this Reporter's Record is \$80.50 and
18 will be paid by Ellis County & District Attorney.

19 WITNESS MY OFFICIAL HAND this the 16th day
20 of August, 2016.

/s/Michele McManus

21 _____
22 MICHELE McMANUS, TEXAS CSR NO. 3567
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D I S C L O S U R E

Note: Supreme Court Rule adopted and promulgated in conformity with Chapter 52 of the Government Code, V.T.C.A.

Please be advised that pursuant to Supreme Court Rule IV, B.4, with regards to disclosure, I, to the best of my knowledge, have no existing or past financial, business, professional, family, or social relationships with any of the parties or their attorneys which might reasonably create an appearance of partiality, except as follows:

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are frequently handled in that way. As long as such contacts are not prohibited by law or applicable rules of practice or procedure, and as long as paragraph (a) of this Rule is adhered to, such ex parte contacts will not serve as a basis for discipline.

5. For limitations on the circumstances and the manner in which lawyers may communicate or cause another to communicate with veniremen or jurors, see Rule 3.06.

Rule 3.06 Maintaining Integrity of Jury System

(a) A lawyer shall not:

(1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venireman or juror; or

(2) seek to influence a venireman or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected or any juror or alternate juror, except in the course of official proceedings.

(c) During the trial of a case, a lawyer not connected therewith shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

(d) After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(e) All restrictions imposed by this Rule upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(f) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

(g) As used in this Rule, the terms matter and pending have the meanings specified in Rule 3.05(c).

Comment:

1. To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the

trial, communication by a lawyer with jurors is not prohibited by this Rule so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Contacts with discharged jurors, however, are governed by procedural rules the violation of which could subject a lawyer to discipline under Rule 3.04. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

2. Vexatious or harassing investigations of jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

3. Communications with or investigations of members of families of veniremen or jurors by a lawyer or by any one on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

4. Because of the extremely serious nature of any actions that threaten the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct. If such improper actions were taken by or on behalf of a lawyer, either the reporting lawyer or the court normally should initiate appropriate disciplinary proceedings. See Rules 1.05, 8.03, 8.04.

Rule 3.07 Trial Publicity

(a) In the course of representing a client, a lawyer shall not make an extrajudicial statement 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. A lawyer shall not counsel or assist another person to make such a statement.

(b) A lawyer ordinarily will violate paragraph (a), and the likelihood of a violation increases if the adjudication is ongoing or imminent, by making an extrajudicial statement of the type referred to in that paragraph when the statement refers to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness; or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense; the existence or contents of any confession, admission, or statement given by a defendant or suspect; or that person's refusal or failure to make a statement;

(3) the performance, refusal to perform, or results of any examination or test; the refusal or failure of a person to allow or submit to an examination or test; or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

(c) A lawyer ordinarily will not violate paragraph (a) by making an extrajudicial statement of the type referred to in that paragraph when the lawyer merely states:

- (1) the general nature of the claim or defense;
- (2) the information contained in a public record;
- (3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense, claim or defense involved;
- (4) except when prohibited by law, the identity of the persons involved in the matter;
- (5) the scheduling or result of any step in litigation;
- (6) a request for assistance in obtaining evidence, and information necessary thereto;
- (7) a warning of danger concerning the behavior of a person involved, when there is a reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (8) if a criminal case:
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

Comment:

1. Paragraph (a) is premised on the idea that preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial. This is particularly so where trial by jury or lay judge is involved. If there were no such limits, the results would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. Thus, paragraph (a) provides that in the course of representing a client, a lawyer's right to free speech is subordinate to the constitutional requirements of a fair trial. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures

aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

2. Because no body of rules can simultaneously satisfy all interests of fair trial and all those of free expression, some balancing of those interests is required. It is difficult to strike that balance. The formula embodied in this Rule, prohibiting those extrajudicial statements that the lawyer knows or reasonably should know have a reasonable likelihood of materially prejudicing an adjudicatory proceeding, is intended to incorporate the degree of concern for the first amendment rights of lawyers, listeners, and the media necessary to pass constitutional muster. The obligations imposed upon a lawyer by this Rule are subordinate to those rights. If a particular statement would be inappropriate for a lawyer to make, however, the lawyer is as readily subject to discipline for counseling or assisting another person to make it as he or she would be for doing so directly. See paragraph (a).

3. The existence of material prejudice normally depends on the circumstances in which a particular statement is made. For example, an otherwise objectionable statement may be excusable if reasonably calculated to counter the unfair prejudicial effect of another public statement. Applicable constitutional principles require that the disciplinary standard in this area retain the flexibility needed to take such unique considerations into account.

4. Although they are not standards of discipline, paragraphs (b) and (c) seek to give some guidance concerning what types of statements are or are not apt to violate paragraph (a). Paragraph (b) sets forth conditions under which statements of the types listed in subparagraphs (b)(1) through (5) would likely violate paragraph (a) in the absence of exceptional extenuating circumstances. Paragraph (c) on the other hand, describes statements that are unlikely to violate paragraph (a) in the absence of exceptional aggravating circumstances. Neither paragraph (b) nor paragraph (c) is an exhaustive listing.

5. Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.04(c)(1) and (d) govern a lawyer's duty with respect to such Rules. Frequently, a lawyer's obligations to the client under Rule 1.05 also will prevent the disclosure of confidential information.

Rule 3.08 Lawyer as Witness

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client, unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;
- (3) the testimony relates to the nature and value of legal services rendered in the case;