

AUGUST TERM

HARRIS COUNTY GRAND JURY

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
185th JUDICIAL DISTRICT

Order Appointing Attorney *Pro Tem*

On October 25, 2011, the foreperson of the Harris County Grand Jury for the 185th District Court, August Term, and the members of the Grand Jury appeared as a body before the Court.

Without divulging a particular accusation before them, they asked this Court to appoint an attorney *pro tem* to represent the State of Texas in the grand jury’s investigations of possible criminal conduct by members of the Harris County District Attorney’s Office.

The law indicates that a “grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or which they shall be informed by the attorney representing the State, or any other credible person.” TEX. CODE CRIM. PROC. art. 20.09. Over 140 years ago, the Texas Supreme Court held:

It is a part of the duty of the district attorney to prepare judgments under the direction of the grand jury; but the powers and duties of the grand jury do not cease because there may happen to be no district attorney. In case of a vacancy in the office of district attorney, or in case of the district attorney's temporary disability to act, or *in any particular case where there might exist special reasons why he should not act*, any other competent person might act in the preparation of indictments, by the authorization of the court. *In re Guerra*, 235 S.W.3d 392, 414 (Tex. App.- Corpus Christi, 2007, no pet.)

The District Attorney has not voluntarily disqualified herself in this matter. Precedent, however, indicates that “a trial court may disqualify a district attorney or his staff on the basis of a conflict of interest that . . . rises to the level of a due process violation. *See Guerra*, 235 S.W.3d at 392, citing *State ex rel. Hill v. Pirtle*, 887 S.W. 2d 921, 927 (1994). In such a situation, the district attorney should not act and is disqualified to act. Likewise, in a case in which a grand jury intends to investigate possible criminal conduct by a district attorney or members of her office, a conflict of interest exists. Such a conflict would rise to the level of a due process violation if the district attorney and her officer were allowed to

participate in that grand jury investigation and proceedings. When faced with such circumstances, case law indicates that a court may find that the "district attorney is 'deemed disqualified to act' for purposes of article 2.07(a) of the code of criminal procedure, and disqualification need not solely arise from the attorney's own motion to recuse under subsection (b-1)." See *In re Guerra*, 235 S.W. 3d at 414-15. Such is the case here. There are special reasons why the District Attorney should not act and why she is disqualified to act in this matter.


After considering the Grand Jury's request and the applicable law, the Court **FINDS** the Harris County District Attorney and her office are disqualified from participating in the grand jury's investigation of possible criminal conduct by members of the Harris County District Attorney's Office.

Accordingly, this Court **FINDS** that James L. Mount, of Harris County, Texas, and a member of the State Bar of Texas, is in all respects qualified to serve as Attorney *Pro Tem* in this cause. James L. Mount has filed a Statement of Office with the Secretary of State of Texas prior to the administration of the Oath of Office. The Statement of Office and Oath of Office are attached to this Order.

This Court **ORDERS** James L. Mount of Harris County, Texas, SBN 14602200, appointed Attorney *Pro Tem* to assist the Harris County Grand Jury for the 185th District Court, August Term, in its investigations, and if necessary, prosecution of any criminal conduct by members of the Harris County District Attorney's Office. James L. Mount shall serve as the Attorney *Pro Tem* in this matter with all the rights, powers, duties, and immunities of the District Attorney of Harris County, Texas.

The Court further **ORDERS** the District Clerk of Harris County, Texas, enter this Order with James L. Mount's Statement of Office and Oath of Office in the minutes of this Court.

SIGNED and ENTERED October 26, 2011



PRESIDING JUDGE
185th District Court, Harris County, Texas