

Cause No. 2008-09382

In re CHARLES ROSENTHAL, JR.,
HARRIS COUNTY DISTRICT
ATTORNEY AND
SHERIFF TOMMY THOMAS

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IN THE 164
JUDICIAL DISTRICT COURT
OF
HARRIS COUNTY, TEXAS
JURY TRIAL REQUESTED

**ORIGINAL PETITION TO REMOVE HARRIS COUNTY DISTRICT
ATTORNEY CHARLES ROSENTHAL, JR. AND SHERIFF TOMMY THOMAS,
AND MOTION FOR AN *EX-PARTE* HEARING REQUESTING AN
ORDER TO ISSUE CITATIONS AND MOTION FOR TEMPORARY
REMOVAL AND JURY TRIAL REQUESTED**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Petitioner Erik Ibarra, a citizen of the State of Texas and a resident of Harris County who has lived for at least six months in the county in which the petition is filed and who is not currently under indictment in the county.

I. Parties.

1. Petitioner is a resident of Harris County for the last six months.
2. District Attorney Charles Rosenthal, Jr. is a Harris County resident and may be served with process at 1201 Franklin, Suite 600 Houston, Texas 77002.
3. Sheriff Tommy Thomas is a resident of Harris County and may be served with process at 1200 Baker St. Houston, Texas 77002.

II. Plain Statement.

4. Under chapter 87, a district judge may remove a county officer (e.g., a district

attorney, sheriff) from office for incompetence, official misconduct, or intoxication.

See TEX. LOC. GOV'T CODE ANN. §§ 87.012- 013 (Vernon 1999).

5. Petitioner avers that Mr. Rosenthal should be removed for intoxication, incompetence or official misconduct. A series of e-mails sent by or to Mr. Rosenthal's county computer from June to October 2007 demonstrates his lack of judgment and his professional incompetence and/or official misconduct. In a very diverse community such as Harris County, Mr. Rosenthal has seen fit to engage in racially derogatory "jokes." He permits and approves the use of racially derogatory remarks such as "Canadian" of the "N" word. In a progressive urban county, Mr. Rosenthal has found the sexual assault of women to be "funny." According to county records, Mr. Rosenthal has employed his mistress as his secretary and paid her \$75,000/year and given her a county car. Recently, on or about January 2008, Mr. Rosenthal gave his mistress an \$11,000/year raise. From 2001 to 2007, Mr. Rosenthal used his county equipment to carry on his affair with his mistress.

6. In the alternative, Petitioners aver that Mr. Rosenthal should be removed on the grounds of intoxication. Upon information and belief, from 2001 to 2007, Mr. Rosenthal drinks at the office while performing his duties and may be intoxicated when making his decisions as district attorney. If Mr. Rosenthal is alleging as a defense for his acts of perjury that he was intoxicated, then he should be removed from office.

7. Finally, Mr. Rosenthal has admitted to using county equipment and county employees to engage in political activities and fundraising during the fall of 2007. These activities violate the law of this State and warrant his immediate removal.

8. Petitioner avers that Sheriff Tommy Thomas should be removed for incompetency and/or official misconduct. Mr. Thomas has violated the law by accepting benefits in violation of the law for his ranch. During the time period 2005 to 2007, Mr. Thomas accepted benefits from those doing business with the County and doing business with the Sheriff's Department. Specifically, the Sheriff accepted free or below market services from architects doing business with the County.

The Sheriff broke the law by accepting gifts from those doing business and seeking business from the County; specifically seeking contracts related to the County jail.

9. Further, the Sheriff is incompetent in failing to investigate the multiple criminal acts and civil rights violations of Shawn and Erik Ibarra. On October 21, 2004, the Sheriff officially ratified the illegal acts of his deputies indicating the illegal policy he authorized in violation of the law. The Sheriff violated state and federal law in regards to Shawn Ibarra, Marie Ibarra and Erik Ibarra. On January 8, 2008, the Sheriff was asked to investigate possible criminal activity on the part of the District Attorney. The Sheriff has refused to investigate said acts. The Sheriff refuses to investigate his friend, the District Attorney. On October 21, 2004, the Sheriff refused to investigate his deputies who committed perjury and tampered with evidence and filed false government documents. The Sheriff indicated defiance of his oath of office and showed contempt for the Constitution and the Bill of Rights. The Sheriff even stated he would not uphold the First Amendment of the United States Constitution because of his person feelings. The Sheriff continues to employ deputies despite the fact he has been presented with evidence that they lied under oath and destroyed evidence. Said conduct is itself official misconduct and at the least exhibits incompetence. Said grounds exist for the Sheriff's

removal from office.

10. Further, in Jan. to May 2007, the Sheriff gained special advantage for his son Brent Thomas who was arrested for possession of cocaine. Despite multiple previous felony/misdemeanor charges, Thomas was given deferred prosecution and a **\$500 fine** for said possession which violated the District Attorney's Office Policy regarding same. The Sheriff abused his office to achieve special consideration for his son.

11. In addition, in 2007, Mr. Thomas has himself sent and received racial e-mails he calls "jokes." These "jokes" exhibit incompetence in his office as Sheriff.

12. Furthermore, on February 1, 2008, Mr. Rosenthal has admitted to lying under oath here in Harris County Texas. Said acts constitute a crime. Either said act constituted official misconduct or any excuse is intoxication or incompetence.

13. Furthermore, Sheriff Thomas has received benefits in 2007 to his weekend ranch from contractors who do business with the County. Accepting free or below market "gifts" from campaign contributors and County contractors is official misconduct.

14. Together, Mr. Thomas and Mr. Rosenthal have broken the law and exhibited incompetence such that they should be removed from office. Mr. Thomas in 2001 to 2008, violated the State Gift Law, "a public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency" by accepting said gifts from inmates. Sheriff Thomas has violated that law and aided and abetted friends of his in violating the law. Sheriff Thomas has exchanged benefits for

large campaign contributor, Charlie Bertani, and permitted Bertani to falsely represent himself as a county employee and to permit Bertani to obtain a benefit as a county employee in exchange for the Sheriff's friendship and his political contributions to the Sheriff.

III. Motion for an Order to Issue Citation.

15. On an *Ex parte* basis, pursuant to TEX. LOC. GOV'T CODE ANN. § 87.016 (a) & (d),¹ Petitioner requests the Court order issuance of a citation and service by certified copy of this Original Petition to Rosenthal and Thomas and required then to file an answer as required.² Petitioner asks for an immediate trial setting so that these matters may be resolved as soon as possible.

IV. Jury Trial Requested.

Petitioner requests trial by jury and hereby tenders the jury fee.

V. Motion for Temporary Relief and a Hearing on the Temporary Removal.

Pursuant to TEX. LOC. GOV'T CODE ANN. § 87.017(a) Petitioner seeks the temporary removal of Mr. Rosenthal and Mr. Thomas from office pending trial of this matter.³ After the Court orders the issuance of the citation and service via certified

¹ Section 87.016 -- Citation and Order:

(a) After a petition for removal is filled, the person filing the petition shall apply to the district judge in writing for an order requiring a citation and a certified copy of the petition to be served on the official. TEX. LOC. GOV'T CODE ANN. § 87.016 (a).

² Section 87.016(d) -- Citation of Officer:

(d) The citation shall order the officer to appear and answer the petition on a date, fixed by the judge, after the fifth day after the date the citation is served. The time is computed as it is in other suits.

³ Section 87.017 -- Suspension Pending Trial; Temporary Appointee:

(a) After the issuance of the order requiring citation of the officer, the district judge may

copy of the petition, Petitioner ask the Court, *ex-parte*, to remove these officials on a temporary basis until the resolution of this matter. In the alternative, Petitioner requests the Court to set a hearing on the Temporary Removal of Mr. Rosenthal and Mr. Thomas. The public needs assurance that the highest law enforcement offices for 3.9 million people will be faithfully executed while this matter is pending. Surely there are two people that can hold said offices on a temporary basis to allow these officials to devote their time to defending themselves in this suit. Both office-holders have primary assistants that basically run their offices: the First Assistant in the District Attorney's Office and the Chief Deputy in the Sheriff's Department. These individuals should be well qualified to fulfill the duties required.

PRAYER

WHEREFORE, Petitioner requests the Court enter an order requesting the Clerk of the Court to issue a citation so that Mr. Rosenthal and Mr. Thomas each will be given a time certain to respond to these allegations and to serve each of them with a certified copy of the petition. Petitioner also requests the Court to temporarily remove Mr. Rosenthal and Mr. Thomas from office pending trial of this matter; and then set this matter for a jury trial before a jury of Mr. Rosenthal's and Mr. Thomas' peers so that justice may be done with such other orders as the court deems appropriate.

temporarily suspend the officer and may appoint another person to perform the duties of the office. TEX. LOC. GOV'T CODE ANN. § 87.017.

Respectfully submitted

LLOYD KELLEY & ASSOCIATES

By: 

LLOYD E. KELLEY

State Bar No. 11203180

2726 Bissonnet, Suite 240,

PMB#12

Houston, Texas 77005

Telephone: 281-492-7766

Telecopier: 281-652-5973

COUNSEL FOR PLAINTIFF

VERIFICATION

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, personally appeared Erik Ibarra, who, being by me duly sworn, deposed as follows:

“My name is Erik Ibarra and I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify. I have been a citizen of Texas and I live in Harris County for at least the previous 6 months.

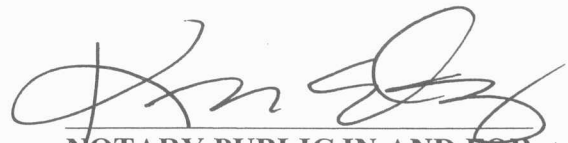
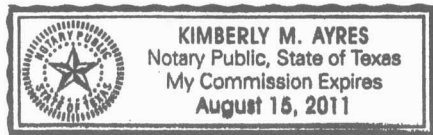
I am calling for the removal of Mr. Rosenthal from his office of District Attorney on the grounds of incompetence and official misconduct.

I am calling for the removal of Mr. Thomas from his office of Sheriff on the grounds of incompetence and/or official misconduct.

Further affiant sayeth not.



SUBSCRIBED AND SWORN TO before me on the 14th day of February, 2008.



NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
Kimberly M. Ayres

Cause No. 2008-09382

In re CHARLES ROSENTHAL, JR.
HARRIS COUNTY DISTRICT
ATTORNEY AND
SHERIFF TOMMY THOMAS

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IN THE 164TH

JUDICIAL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JURY TRIAL REQUESTED

**ORDER DIRECTING THE DISTRICT CLERK TO ISSUE CITATIONS AND A
CERTIFIED COPY OF THE ORIGINAL PETITION TO REMOVE HARRIS
COUNTY DISTRICT ATTORNEY CHARLES ROSENTHAL, JR. AND
SHERIFF TOMMY THOMAS**

Pending before the Court is Petitioner's motion for the District Clerk to issue citation to District Attorney Charles Rosenthal, Jr. and Sheriff Tommy Thomas. The Court requests the District Clerk to issue citations to Mr. Rosenthal and Mr. Thomas forthwith and to serve a certified copy of the original petition on each of them.

IT IS THEREFORE ORDERED THAT the District Clerk shall prepare and issue citations to Charles A. Rosenthal, Harris County District Attorney and Tommy Thomas, Harris County Sheriff and to serve on these officials a certified copy of the Original Petition to Remove.

IT IS FURTHER ORDERED THAT Mr. Thomas and Mr. Rosenthal shall provide an answer to said petition no later than the _____ day of _____ 2008.

SIGNED THIS _____ day of _____ 2008.

JUDGE PRESIDING

Cause No. 2008-09382

In re CHARLES ROSENTHAL, JR.
HARRIS COUNTY DISTRICT
ATTORNEY AND
SHERIFF TOMMY THOMAS

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IN THE 164TH
JUDICIAL DISTRICT COURT OF
HARRIS COUNTY, TEXAS
JURY TRIAL REQUESTED

**ORDER GRANTING HEARING ON TEMPORARY REMOVAL OF HARRIS
COUNTY DISTRICT ATTORNEY CHARLES ROSENTHAL, JR. AND
SHERIFF TOMMY THOMAS**

Pending before the Court is Petitioner's Motion for Temporarily Removal of
District Attorney Charles Rosenthal, Jr. and Sheriff Tommy Thomas.

The Clerk shall set a removal hearing on February __, 2008 in which the Court shall
determine the grounds to remove Mr. Rosenthal and Mr. Thomas.

IT IS THEREFORE ORDERED THAT the Clerk shall set a hearing on February __,
2008 in which the Court shall determine whether District Attorney Charles Rosenthal, Jr.
and Sheriff Tommy Thomas should be temporarily removed.

SIGNED THIS _____ day of _____ 2008.

JUDGE PRESIDING