



The Supreme Court of Texas

CHIEF JUSTICE
WALLACE B. JEFFERSON

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November 4, 2005

Mr. Ronald Earle
Travis County District Attorney
P.O. Box 1748
Austin, Texas 78767-1748

Mr. Dick DeGuerin
1018 Preston Avenue
Houston, Texas 77002-1818

Dear Mr. Earle and Mr. DeGuerin:

Yesterday I assigned the Honorable Pat Priest, Senior District Judge of Bexar County, to the 331st District Court of Travis County, Texas, to preside over Cause No. DI-DC-05-904161, *State v. Thomas Dale Delay*. I have since received the State's motion asking me to recuse myself in this matter. The motion is denied and my appointment of Judge Priest stands.

It is imperative that I act in this matter, without regard to criticism that may follow, because the statutory obligation to assign in these circumstances ends with my office. I have found no statute or rule that requires recusal in fulfilling this mandate. Moreover, I have a duty to ensure that the judicial process is not paralyzed any time a recusal motion challenges a judicial officer who is performing a purely administrative function. I have satisfied this responsibility by making an assignment; the duty now falls to the assigned judge to consider the merits of the underlying controversy.

The parties have a remedy if it is shown that the assigned judge cannot preside fairly and impartially. The recourse is to challenge not the power to assign, but the assignment itself.

Sincerely,

/x/

Wallace B. Jefferson
Chief Justice

cc: Honorable Pat Priest
Honorable Bob Perkins
Honorable B.B. Schraub
Honorable Amalia Rodriguez-Mendoza