No. 83-CR-194-A

STATE OF TEXAS
VS.
CARLOS DELUNA

IN THE DISTRICT COURT
28TH JUDICIAL DISTRICT
NUECES COUNTY, TEXAS

MOTION TO DISQUALIFY COUNSELS
AND FOR APPELLANT TO PROCEED
BY HIMSELF AS COUNSEL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CARLOS DELUNA, by AND THROUGH HIMSELF, in the above entitled and numbered cause and files this his Motion to Disqualify Counsel and to proceed by himself as counsel and would show unto the court the following:

I

It is axiomatic, at least since the decision of the United States Supreme Court in Faretta v. California, 422 U.S. 806, 95 Sect. 2525, 45 L. Ed 2d 562 (1975), that an accused may dispense with the right to be represented by counsel all together and proceed pro se. On the issue of waiver of counsel the Court of Criminal Appeals, stated Lisney v. State, 574 S.W. 2d 114 (1978); and Renfro v. State, 574 S.W. 2d ### 1196 (1979), the applicable rules regarding waiver of counsel. In Jordan v. State, 571 S.W. 2d 883 (1978) it was said there that when the issue of waiver of counsel was approached, an accuse may waive his right to counsel if such waiver is made voluntarily with knowledge of the consequences there of. Barbour v. State, 551 S.W. 2d 371 (1977); Thomas v. State 550 S.W. 2d 64 (1977). Privett v. State 635 S.W. 2d 746 (1982). It is true that when an accused chooses to have an attorney manage and present his case law and tradition may allocate to the attorney the power to make binding decisions of trial

strategy as well as in the appellate stages. Henry v. Mississippi, 379 U.S. 443, 85 Sect. 564 Brookhart v. Janis, 384 U.S. 186 Sect. 1245: Fay v. Noia, 372 U.S. 391, 83 Sect. 822. This allegation can only be justified however, by the appellants land or accused consent at the outset and any time the accuse decides to dispense with the right to be represented by counsel altogether and decides to represent himself the states courts are obligated to honor that exercise out of the respect for the individual which is the lifeblood of the law. Hawkins v. State, 613 S.W. 2d 720 (1981): Illinois v. Allen, 397 U.S. 337, 90 Sect. 1057, 25 L. Ed. 2d 353.

In Gueslin v. State, 600 S.W. 2d 309 (1980) and Pruett v. State, 635 S.W. 2d 746 (1982), it was observed that prior to a state court making a decision on a motion to proceed pro se said courts are required to hold an evidentiary hearing during which the trial court must make the accuse aware of the dangers and disadvantages of self-representation, and the trial court must develop evidence as to wether the accuses decision to waive Counsel on appeal or trial and desires to proceed pro se is knowingly and intelligently made, Webb v. State, 533 S.W. 2d 780 (1976). In this connection the Record must clearly *~~State~~ and reflect that the accuse knows what he is doing and his choice is made with eyes open Faretta v. California, 422 U.S. at 835, 95 Sect. at 2541; Goodman v. State 591 S.W. 2d 498 (1980); Burks v. State, 588 S.W 2d 496 (1979); Maynard v. Meachum, 545 F. 2d 273 (1976); Irvine v. State, 555 & S.W. 2d 760 (1977).

*show

It is therefore submitted that in light of the ongoing malicious conduct of counsel and his teral court. set Forth above, this court in the interest of justice should disqualify counsel and permit the appellant to represent himself. This court will be committing plain error and a travesty of Justice if this court refuses to accord the appellant the relief he is seeking. Accordingly, it has been irrevocably made clear that the appellant does not want ~~that~~ the court appointed lawyer to represent him, that there is fraction between the counsel and appellant, due to the counsel misconduct that the appellant would rather now represent himself, this court has the supervisory power and the Code of ~~Criminal~~ Judicial Conduct Canon 3 (B) (3) to initiate appropriate disciplinary measures against any attorney for unprofessional conduct of which the trial judge may become aware. that the various Bar Associations and their Grievance committees do not constitute the only proper forum for investigation of a claim of professional misconduct. On the contrary, the courts have not only the supervisory power but also the duty and responsibility to disqualify counsel for unethical conduct prejudicial to his client.
General Motors Corp. v. City of New York, 501 F.2d 639; Silver Chrysler Plymouth Inc. v. Chrysler Motors Corp., 496 F.2d 800 (1978); Cohen v. Beneficial Industrial Loan Corp. 337 U.S. 541, 69 Sect. 1221, 93 L. Ed. 1528 (1949). the disqualification of attorney Mr. Ponder is required under Canons 4, 7, 8 and 9 of the State Bar Act. Art. 320 a-1 Vernons Ann Civil St. because said counsel is not representing his client competently, nor zealously within the bounds of the law

is not improving the legal system and the appearance of impropriety is therefore present in his representation. Further disqualification is required under Canon 5 because [redacted] sought to be called as a witness to defend these accusations of misconduct against him.

In Woods v. Covington County Bank, 537 F.2d 804 (5th Cir 1976), it was established a two part standard for determining wether an attorney should be disqualified under Canon 9, supra.

(1.) there must be "at least a reasonable possibility that some specifically identifiable impropriety did in fact occur". 537 F. 2d at 813. In the chief case in point this has already been shown.

(2) The second step was that the court must also find that the likelihood of public suspicion or obloquy outweigh the social interest which will be served by a lawyers continued participation in a particular case". 537 F 2d at 813. Arguably this requirement is present in this particular case.

This court cannot and should not cast aside ethical responsibilities without firm support from the Judicial Branch, if so, the canons of ethics would be only reverberating generalities. This court has a public interest and owes the appellant said duty. These interest requires this court to exercise its supervisory power and leadership, to ensure that nothing, not even the appearance of impropriety, is is permitted to tarnish the judicial process.

Thus, disqualification in this particular case is in order. The court cannot act contrary to the public and the appellants interest and permit counsel to remain simply under the allegation that this court appointed counsel, to justify the continuance of ~~this~~ a breach of the Code of Professional Responsibility. The courts power ~~to~~ and duty to regulate the conduct of attorney's practicing before it, in accordance with the canons, cannot be defeated by the supervisor himself.

Wherefore, Premises Considered, Appellant prays this Honorable Court disqualify ~~Mr. Bruce~~ Mr. Hector D. Pena, James Lawhon Pondor as the attorney of record and permit Jimmy Hernandez to proceed by himself as counsel, and for such other and further relief, ..both special and general at law or in equity, to wich the appellant may show himself justly entitled.

Respectfully submitted

Carlos De Luna

CARLOS DE LUNA

SUBSCRIBED AND SWORN TO BEFORE ME this the 12th day of September 1983.

[signature]

Notary Public, State of Texas

My commission expires:
11-30-84