

DWI Case: Request Forwarded to Administrative Judge

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otherwise eligible to receive a pretrial diversion offer because he has not been previously arrested for a DWI, he was not involved in an accident in this case, and he has no previous criminal record, Judge Celandar refused to approve the offer of pretrial diversion. Judge Celandar has previously approved offers of pretrial diversion in other similar cases in Gaines County.

"...Celandar has a personal bias prejudice concerning the subject matter of this case. Judge Celandar was likewise arrested for a DWI in Andrews County after he had been elected as County Judge in Gaines County. Judge Celandar received probation for said offense."

In response to the "Motion to Recuse" request, Celandar issued an "Order Referring Case to Presiding Judge" on Monday of this past week (Dec. 3).

"On Dec. 3, the Court considered the Motion to Recuse of Brian L. Kingston, Defendant, and is of the opinion that, pursuant to Rule 18A (f)(1)(B) of the Texas Rules of Civil Procedure, the Motion should be referred to a judge to be assigned by the presiding judge of this administrative judicial district, in order to determine whether the Motion should be granted," said the document. "It is, therefore, ordered that proceedings in the above-entitled and numbered cause are stayed until a judge has been appointed as provided by this Order."

The referral was sent to the Honorable Dean Rucker, Presiding Judge, Seventh Administrative Judicial Region of Texas.

Documents Confirm Celandar's DWI

Court documents obtained by the *Seminole Sentinel* confirmed information defense attorneys representing 106th District Attorney Brian Kingston claimed in a late-November motion filed, requesting the removal of Gaines County Judge Lance T. Celandar from the bench in Kingston's 2011 driving while intoxicated case.

"It's best I don't make any comments in regard to this (matter) at this time," said Celandar in a Friday morning telephone interview with the *Sentinel*.

According to Andrews County Court documents, Celandar "judicially confessed" to committing the offense of driving while intoxicated — a Class B misdemeanor charge — following his arrest on the charge in Andrews County on Aug. 1, 2010.

Celandar, in the case, received a sentence of 180 days in jail, a \$750 fine and a driver's license suspension of 365 days.

However, Celandar and his attorney, William R. Bowden, Jr. of Odessa, requested and received an application for community supervision, which resulted in Celandar receiving a one year probation sentence, a fine of \$750, an assessment

of \$517 in court costs, and 24 hours of community service.

The first term Gaines County Judge won the April 2010 Republican nomination for the seat over then incumbent Judge Tom Keyes, and was unopposed in the November 2010 general election process.

Celandar was sworn into office as the Gaines County Judge in January 2011, just over five months after his DWI arrest in Andrews County and weeks following his Dec. 21, 2010 plea agreement before the Honorable Richard H. Dolgener, Andrews County Judge.

He was discharged from his community supervision on Dec. 29, 2011, according to Court documents.

History of the Kingston Case

Kingston's case has been down a winding road since his Sept. 9, 2011 arrest, according to court documents obtained by the *Seminole Sentinel* through the Gaines County Clerk's Office.

In mid-September of this year, special prosecutor Tracey Bright Scown requested and was granted a "Motion to Withdraw with Order on State's Motion to Withdraw as Special Prosecutor," in the case against Kingston.

"I have spent numerous hours on this case and have had difficulty traveling to Gaines County to accommodate the Court's docket," said Scown in her "Motion to Withdraw" filing, obtained by the *Sentinel*.

Scown was appointed as a special prosecutor for the case in December 2011 to replace Gaines County Attorney Joe Nagy.

The case, according to Court documents observed by the *Sentinel*, had been approved several continuances, which were agreed upon by both prosecutors and defense attorneys in the case.

"I expected to conclude the case on June 5, 2012 with a guilty plea," she continued. "As a result of information that I received from the (Gaines County) Court on June 4, 2012, that the Court would not approve any diversion agreement in this case, I expect this case to involve two days of jury trial and several days of witness preparation."

"Because of a heavy caseload in my private practice, including jury trials set in the upcoming months, I do not believe that I can accommodate the Court's docket in order to get this case resolved in a timely, judicial manner."

Denver City attorney Warren New, according to Court documents dated Aug. 24, was appointed by Gaines County Judge Lance Celandar to preside over the prosecution of the case.

In briefing the "Motion to Withdraw," Scown wrote the following:

"As the special prosecutor in this case, I have spent several hours reviewing all law enforcement reports and records, talking to prosecutors in surrounding counties

concerning plea offers in similar cases of this type, talking with defense counsel concerning plea bargains, talking to concerned citizens from the community and talking to advocates for and against leniency for this defendant.

"I have 18 years of experience as a prosecutor in Ector County. My area of specialty was the prosecution of DWIs."

"After much research, I was made aware that the counties in this area, that offer a pre-trial diversion program consistently offer it as a plea bargain to first offenders. The information in this case includes an enhancement paragraph which makes the offense a Class A misdemeanor. The enhancement paragraph for a DWI, making the offense a Class A for higher BAC is relatively new, so other prosecutors were not able to tell me if they would offer the pre-trial diversion on the Class A, but did say they would consider the offer depending on the facts of the case."

"I am aware of the special statutes concerning DWI that will not allow a deferred prosecution. However, deferred is allowed on all other Class A misdemeanors and felonies. I considered this in this case because the BAC report, traffic violations, victims that may have been involved, any restitution owed, the defendant's education and work history. I attempted to contact the arresting officer, but after leaving messages for him, he did not return my calls."

"I was not aware that any restrictions would be placed on plea bargains until June 4, 2012. I was aware that this Court was very cautious in approving plea bargains and so I was prepared to tell the Court of special conditions included in this plea bargain that I recommended in order to ensure that justice was done, including as follows: The defendant not operate any vehicle without an interlock device properly installed during the terms of the supervision; The defendant complete an alcohol dependency test approved by the probation department and follow any recommendations, and; the defendant forfeit his Texas driving permit for the period of supervision and not drive pursuant to any work permit in any counties except those of his employment."

"I was aware that the voters had already required him to relinquish his office."

"Because of very zealous communication to my office from Mr. Kingston's opponent in the DA's race (Mike Munk), I am concerned that the (Gaines County) Court is under scrutiny from constituents in Gaines county of which I am unaware. I believed my role as special prosecutor was to evaluate the case from the standpoint of someone not involved in this pressure. I felt that the offer I was prepared to ask the Court to approve was fair and just."

"I believe that this case may need to go to a jury, at this point. I understand that this Court is very judicious in trying matters in a timely manner. I am concerned that other criminal trials that I have set in the next few months may prevent me from preparing and being available to the Court."

"Therefore, premised considered, I am asking the Court to allow me to withdraw and appoint another special counsel."

A motion filed on Aug. 24 by Kingston's attorney, C.H. Brockett,

Jr., requesting Kingston's case to be moved to the 106th Judicial District Court was denied by Celandar on the same day, according to additional Court documents.

Brockett, in his filing, requested to move citing Article 4.17 of the Texas Code of Criminal Procedure and the following reasons: 1.) Kingston has not entered a not guilty plea in the case; 2.) the offense charged is a Class B misdemeanor, which is punishable by confinement in jail; and 3.) the presiding judge, The Honorable County Judge Lance T. Celandar, is not licensed as an attorney in the State of Texas.

Kingston, 54, of O'Donnell was arrested for allegedly driving while intoxicated following a traffic stop six miles east of Seminole conducted by deputies from the Gaines County Sheriff's Dept. and Texas Dept. of Public Safety troopers on the evening of Sept. 9, 2011.

According to incident reports obtained by the *Sentinel* in relation to the incident, emergency dispatchers with the Gaines County Law Enforcement Center received a call in reference to a suspicious pick-up truck with a possible intoxicated driver traveling west bound along U.S. Hwy 180 (Lamesa Hwy), roughly 16 miles east of Seminole.

Gaines County Deputies, who

were initially dispatched to the call, made contact with the suspect vehicle roughly six miles east of Seminole on U.S. 180.

Texas DPS troopers, who were called to the scene to assist, eventually placed the driver, identified as Kingston, under arrest following their traffic stop investigation process.

According to information provided from a probable cause arrest affidavit, DPS troopers placed Kingston under arrest after "smelling alcohol on (Kingston's) breath," Kingston's "admittance to drinking alcohol," a "poor standardized field sobriety testing," "blood shot, red glossy eyes," "slow slurred speech," and a "refused intoxilyzer" evaluation.

The probable cause arrest

affidavit also stated Kingston had a blood alcohol content level of .203, according to a preliminary breath test (PBT) conducted on the scene. Kingston, also according to GCLEC blotter information, was transported to Memorial Hospital for a blood alcohol content warrant, in relation to the charge.

Kingston is in his first term as the 106th District Attorney, in which he prosecutes felony criminal cases in Gaines, Dawson, Garza and Lynn counties.

He was defeated by Munk in a May Republican Party Primary elections process. Munk was unopposed in the November election and will assume the role of 106th District Attorney on January 1, 2013.

Obituary

Billy G. (Bill) Benson

Family and friends gathered to celebrate the life of Bill Benson with memorial services 10:30 a.m. Monday, Dec. 3, 2012 at First Baptist Church, Ford Memorial Chapel. Our beloved Bill went to be with the Lord on Wednesday, Nov. 28, 2012.

He was born on June 3, 1930 in Tahoka, the youngest of nine children, to the late J.P. and Trannie Benson. In 1935, they moved to Brownfield and ten years later he moved to Santa Rosa, Calif., graduating from high school in May, 1947. After graduation from high school, Bill joined the National Guard. In 1952, he enlisted in the US Air Force and became a Helicopter Engineer and Technician and served World Wide as needed in Japan, Eniwetok, Philippines, Okinawa, Viet Nam, Thailand, Korea and two tours in Washington, D.C. with the presidential helicopters. Bill worked typhoon and flood relief in Japan in 1959. He was awarded 13 medals and ribbons, including five air Medals. Bill retired from the USAF in 1972 and moved to Seminole and worked as a banker. He married Elizabeth Ann Herron on June 29, 1974 in Idalou and they lived in Lubbock until Aug. 1976 before moving back to Seminole. In Aug. 1990 they returned back to Lubbock, where they lived until his death. He was an extrovert, never meeting a stranger. Bill was aware of world events and was current in many subjects. He was a member of V.F.W. and the Downtown Bible Class.



Bill is survived by his wife; one son and daughter-in-law of Madisonville, Kentucky; three grandchildren; five great-grandchildren and two brothers.

Memorials are suggested to the South Plains Food Bank, 4610 Locust Ave., Lubbock, Texas 79404. To leave words of encouragement to Bill's family and view a tribute of his life visit www.memorialdesigners.net.

Death Notice

NEUFELD

Funeral services for Jacob Neufeld, 46 of Brownfield, were held Thursday, December 6, 2012, Reinlander Mennonite Church, 1 p.m. Burial followed at Gaines County Cemetery. All services under Boyer Funeral Home. Mr. Neufeld passed away November 24, 2012 and was born November 13, 1965.

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