



2. Texas Disciplinary Rule 3.06 of Professional Conduct is entitled “Maintaining Integrity of Jury System”. Section 3.06(d) provides in pertinent part:

After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not...make comments to a member of that jury that are calculated merely to harass or embarrass a juror or to influence his actions in future jury service (emphasis added).

3. Comment 1 of Rule 3.06 provides, in pertinent part, that:

[to] safeguard the impartiality that is essential to the judicial process,...jurors should be protected against extraneous influences...after the trial, communication by a lawyer with jurors is not prohibited by this Rule so long as he refrains from...making comments that intend to harass or embarrass a juror or to influence action of the juror in future cases (emphasis added).

4. Comment 1 for Rule 3.09 provides in pertinent part that:

special responsibilities of a prosecutor provides first and foremost that “a prosecutor has a responsibility to see that justice is done and not simply to be an advocate. This responsibility carries with it a number of specific obligations among these is... [that] a prosecutor is obliged to see that the Defendant is accorded procedural justice [and] that the Defendant’s guilt is decided upon the basis of sufficient evidence...[and not evidence of predisposition]”.

5. Accordingly, where a case ends in a not guilty finding or where a jury is discharged because it is hung, and, where a Defendant had a prior criminal history, it is a violation of the Texas Disciplinary Rules of Professional Conduct for a prosecutor to disclose, intentionally or recklessly, that a defendant had a criminal history because it will create a presumptive predisposition in the minds of those jurors that any future criminal defendant likely has a criminal history too, and, that the future defendant was likely pre-disposed to commit the crime in issue.

6. Comment 4 to Section 3.06(d) is clear that a violation of the aforementioned rule is a serious matter. It says, in pertinent part, that:

[b]ecause of the extremely serious nature of any actions that threaten the integrity of the jury system, the lawyer who learns of improper conduct...towards...a juror...should make a prompt report to the court regarding such conduct. If such improper actions were taken by...a [prosecuting] lawyer, either the reporting lawyer or the court normally should initiate appropriate disciplinary proceedings (emphasis added).

7. Hence, it is equally clear that where a prosecutor makes such a disclosure that both the defense lawyer and the judge are obligated to initiate a disciplinary proceeding. Here it is far more comfortable to avoid the problem all together by having the court issue a precautionary order to maintain the integrity of the jury system by protecting future jurors. Moreover there is no harm to the State by the issuance of the requested order.

**PRAYER**

8. WHEREFORE PREMISES CONSIDERED, should this case end in a “not guilty” or discharge of a hung jury, this Honorable Court is respectfully asked to instruct the prosecutors herein not disclose the Defendant’s prior criminal history. The Court is also asked to order the prosecutors to instruct their fellow prosecutors, agents, and employees not to make this same disclosure.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Motion for has been furnished to the Assistant District Attorney presently assigned to this case, on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
J. GARY TRICHTER

CAUSE NO. 002009

STATE OF TEXAS	§	IN THE COUNTY CRIMINAL
VS.	§	COURT AT LAW NO. ____
CITIZEN PILGRIM	§	HARRIS COUNTY, TEXAS

**ORDER**

On this \_\_\_\_day of \_\_\_\_\_, 2009, the Court considered the Defendant's Motion to Protect the Fairness of Future Juries, and the Court having heard from both the State and the Defense, GRANTS the Motion in total. Therefore, the Prosecution is ORDERED not to mention the Defendant's prior criminal history in the event that this case results in a not guilty finding or the jury is discharged because it is hung and cannot decide.

\_\_\_\_\_  
PRESIDING JUDGE