

highly critical of the use of plea bargains to resolve allegations of sex crimes in the county. The defendant, Terry Blum, was made the focal point and poster-child for this report's criticisms of the Sedgwick County court system, and his earlier plea agreement specifically. This plea was negotiated between Mr. Blum (through his appointed counsel Mr. Jason Smart), and Ms. Shannon Wilson, counsel for the State of Kansas.

ARGUMENTS AND AUTHORITIES

K.S.A. § 19-711 authorizes a court to “appoint an attorney to act as county attorney” in the event of the “disability” of the county attorney and his or her deputies. Attorney General Opinion No. 03-4 (Feb. 18, 2003). This includes disqualification because of attorney ethics concerns. State v. Cope, 30 Kan. App. 2d 893, 50 P.3d 513 (2002). The reference in K.S.A. § 19-711 to a “county attorney” includes district attorneys and their assistants and deputy attorneys. K.S.A. § 22a-107 (“[w]henver in any of the statutes of this state the term “county attorney” is used, it shall be construed to include district attorneys.”). Therefore, in those circumstances where a court determines that a district attorney's office is ethically disqualified from prosecuting a matter, the court may appoint a special prosecutor. State v. Baker, 249 Kan. 431, 443, 819 P.2d 1173, 1182 (1991).

It is important to the public and the accused, that the discretionary functions of the prosecutor be exercised with “the highest degree of integrity and impartiality, and with the appearance of the same.” Cope, 30 Kan. App. 2d at 895 (citing People v. Eubanks, 14 Cal.4th 580, 588–89, 59 Cal.Rptr.2d 200, 927 P.2d 310 (1996)). Consequently, a prosecutor should be disqualified when they have a “significant personal interest in the litigation” sufficient to impair the prosecutor's duty to act impartially toward both the State *and* the accused. Id., at 897. While the district attorney is given broad discretion, the trial judge is ultimately responsible for trial decisions—including the decision to disqualify an attorney. Id.

I. The Sedgwick County DA's Office Should be Disqualified Because their Integrity and Professionalism in Handling Mr. Blum's Case Specifically Was Publically Attacked by KSN

One circumstance where a disqualification is often appropriate is when the integrity of the district attorney's office itself is attacked. *Id.*, at 896 (citing Commonwealth v. Reynolds, 16 Mass.App. 662, 454 N.E.2d 512 (1983)). This sort of attack is precisely what has occurred here as the KSN Investigates piece called into question the integrity and professionalism of the Sedgwick County DA in entering into plea agreements with Mr. Blum's plea and his subsequent motion to withdraw this plea specifically targeted for increased criticisms. The DA's office has thus been put into an untenable position i.e. if they do not oppose Mr. Blum's motion to withdraw his plea then they are, once again, allowing Mr. Blum to take advantage of the legal system; conversely, if they do oppose Mr. Blum's motion then they will be perceived as ratifying the very process of plea negotiations which was the target of KSN's ire.

Further, it should be noted that Mr. Blum has also been used as the vehicle, the impetus, for these criticisms of the Sedgwick County DA. As a result there is a "reasonable possibility" that personal animosity and a desire to punish Mr. Blum for this embarrassment and criticisms will motivate the Sedgwick County DA's office, and it "may not exercise its discretionary function in an evenhanded manner." Cope, 30 Kan. App. 2d at 895. This calls for the disqualification of the Sedgwick County DA as such circumstances make it "unlikely" that he will receive fair treatment during all subsequent portions of his prosecution. *Id.*, at 896.

II. Even If the Sedgwick County DA's Office is Not Disqualified, Shannon Wilson Should Be Disqualified Because She Will Likely Be A Necessary Witness Under Kansas Rule of Professional Conduct 3.7(a)

The Kansas Rule of Professional Conduct 3.7(a) prohibits a lawyer from acting "as an advocate at a trial in which the lawyer is likely to be a necessary witness." KRPC 3.7(a). An attorney is a "necessary" witness under the rule if the testimony will likely be relevant, material,

and otherwise unobtainable. LeaseAmerica Corp. v. Stewart, 19 Kan. App. 2d 740, 747, 876 P.2d 184, 190 (1994). Under this rule, Shannon Wilson—the State’s counsel—should be disqualified from serving as the State’s advocate during Mr. Blum’s hearing on his motion to withdraw his *Alford* plea because she meets this definition of a “necessary” witness on a contested issue.

Specifically, Ms. Wilson was the counsel for the State during Mr. Blum’s original plea negotiations in this case, the same plea he is now seeking to withdraw as not voluntary, knowing and intelligently entered into. The Court’s disposition of Mr. Blum’s motion to withdraw this plea will necessarily involve Ms. Wilson testifying as to the voluntary, knowing, and intelligent nature of this plea. Obviously, this testimony is relevant and material. Her testimony would also be unobtainable. The other party to these plea negotiations, Mr. Jason Smartt—Mr. Blum’s defense attorney during his plea negotiations—has moved to quash the State’s subpoena and as a result may be unavailable to offer testimony. Even if he were to testify, Mr. Smartt’s testimony could not be an adequate substitute for Ms. Wilson’s own unique perception of these events. The state is the party that moved to subpoena Mr. Smartt as a necessary witness in this action. This is because he was one of the three parties to this negotiated plea; the other two being Mr. Blum and Ms. Wilson.

Further, Mr. Smartt’s testimony is an insufficient substitute for that of Ms. Wilson’s because he has a stake in the Court’s determination of Mr. Blum’s motion to withdraw his plea; i.e. if he is found to have coerced Mr. Blum—or otherwise allowed him enter into a plea unknowingly or unintelligently—then Mr. Smartt would potentially face disciplinary action.

Finally, the prohibition of Rule 3.7(a) in allowing an attorney to serve as both an advocate and a necessary witness is subject to only three narrow exceptions:

- (1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or
(3) disqualification of the lawyer would work substantial hardship on the client.
KRPC 3.7(a)(1-3).

None of these exceptions are applicable here. Clearly, Ms. Wilson's testimony is relevant to an issue in dispute—the knowing and voluntary nature of Mr. Blum's plea. The second exception is similarly inapplicable; it contemplates instead the testimony of Mr. Smartt in rendering his legal services to Mr. Blum, and Ms. Wilson is clearly not testifying regarding her own legal services in the matter but only what she observed in the course of those duties.

Finally, the third exception is facially inapplicable here as it relates to cases where the client themselves is seeking to introduce their own attorney's testimony. Here, Mr. Blum is moving for the opposing counsel's disqualification. Even if a factual situation like the one now before this Court was contemplated in this section, there is no substantial hardship on the part of Ms. Wilson's client—the citizens of Kansas—here. State v. Cope, 30 Kan. App. 2d 893, 895, 50 P.3d 513, 515 (2002). This clientele and the duty of the Ms. Wilson and the Sedgwick County DA's office to see that substantive justice is done—includes Mr. Blum. See Id., (stating that the duty of prosecution to act with the highest degree of integrity and impartiality is owed equally to individuals suspected or accused of crimes. We have outlined the procedures already in place for substitute prosecutrix, involving no substantial hardship to the District Attorney's case or their office.

Given these facts, Ms. Wilson is clearly a necessary witness here and meets none of the three exceptions under Rule 3.7(a). This calls for her disqualification in the prosecution of Mr. Blum. State v. Dimaplas, 267 Kan. 65, 71, 978 P.2d 891, 895 (1999).

CONCLUSION

WHEREFORE, and by the reason of the foregoing, Mr. Blum asks that the Court grant his motion and disqualify the Sedgwick County DA's office from prosecuting Mr. Blum's case moving forward under K.S.A. § 19-711; or in the alternative, this Court should disqualify Shannon Wilson from Mr. Blum's hearing on his Motion to withdraw his *Alford* plea because of her role as a necessary witness under Kansas Rule of Professional Responsibility 3.7(a).

Respectfully Submitted,



Jennifer Chaffee, #21543

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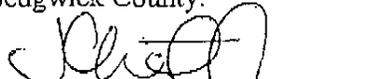
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Attorney for Mr. Blum

NOTICE OF HEARING

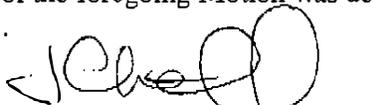
Please take notice that the Motion to Withdraw Plea has been scheduled in this matter for June 12, 2015 at 9.00 a.m. at the District Court of Sedgwick County.



Jennifer Chaffee, #21543

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was delivered by fax to the District Attorney, on the 3d day of June 2015.



Jennifer Chaffee, #21543