



IN THE  
TENTH COURT OF APPEALS

---

No. 10-10-00459-CR

IN RE HUBERT WARREN

---

Original Proceeding

---

---

ORDER

---

---

Hubert Warren filed a petition for writ of mandamus against former District Judge Gene Knize. This Court denied the petition on January 12, 2011. Warren filed a motion for disqualification.<sup>1</sup>

Warren seeks to disqualify Chief Justice Tom Gray, Justice Rex Davis, and Justice Bill Vance.<sup>2</sup> The motion for disqualification is primarily based upon constitutional grounds. Constitutional disqualification may be raised at any stage of the proceeding

---

<sup>1</sup> The motion for disqualification lacks proof of service. A copy of all documents presented to the Court must be served on all parties to the proceeding and must contain proof of service. TEX. R. APP. P. 9.5. In order to expedite disposition, Rule 9.5 is suspended for this case. TEX. R. APP. P. 2.

<sup>2</sup> Justice Vance left the court in 2008. Therefore, the motion for disqualification of Justice Vance is dismissed as moot.

and cannot be waived. *Spigener v. Wallis*, 80 S.W. 3d 174, 180 (Tex. App.—Waco, no pet.).

Chief Justice Gray and Justice Davis are not disqualified under article V, section 11 of the Texas Constitution, *i.e.*, they do not have an interest in the subject matter of the controversy, they are not related to a party by affinity or consanguinity within the third degree, and they have not been counsel in the case. TEX. CONST. art. V § 11; TEX. R. APP. P. 16.1; TEX. R. CIV. P. 18(b) 1; *see McCullough v. Kitzman*, 50 S.W.3d 87, 88 (Tex.App.—Waco 2001, pet. den'd). The motion for disqualification is denied with respect to Chief Justice Gray and Justice Davis.

AL SCOGGINS  
Justice

Before Justice Scoggins,  
(Chief Justice Gray and Justice Davis not participating)  
Motion denied  
Order issued and filed March 16, 2011  
Do not publish