

CAUSE NO. 1261

THE JOHN G. and MARIE STELLA
KENEDY MEMORIAL
FOUNDATION

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IN THE DISTRICT COURT OF

KENEDY COUNTY, TEXAS

105TH JUDICIAL DISTRICT

VS.

SYLVIA MENCHACA BALLI
AGUILERA, ET AL.

MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION
IN SUPPORT OF PENDING MOTION TO CHANGE VENUE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Rosa Maria Aguilar et al. (hereinafter "Movants") and file this, the above entitled Motion in support of their pending Motion to Change Venue and in support thereof, would show unto the Court as follows:

FACTUAL STATEMENT

1. On October 15, 2001 Movants filed two sets of Interrogatories and Requests for Production in support of their pending Motion to Change Venue. Said discovery was filed in the name of Fred Balli and Joe Balli.

2. The Plaintiff, the Kenedy Foundation is rumored to have *spent more than one hundred million dollars (\$100,000,000.00) in Kenedy, Kleberg and Nueces Counties*. The discovery in issue seeks primarily information concerning the amount of money spent by the Kenedy Foundation in each of the "Rule 259 Counties"¹ as well as the amount of acreage controlled by the Plaintiff in each of the Rule 259 Counties, and is therefore relevant and critical to the pending Motion to Change Venue.

¹ Under the facts presented by this unique case, Rule 259(a) of the Texas Rules of Civil Procedure entitled "To What County" requires that the court change venue from Kenedy County to either Hidalgo County, Brooks County, Willacy County, Kleberg County, or Nueces County (hereinafter collectively referred to as the "Rule 259 Counties").

MOTION TO COMPEL

3. On numerous occasions counsel for Movants offered to move this case by agreement to Hidalgo County,² Travis County, or to Dallas County³ yet, no agreement was reached because the Kenedy Foundation is withholding information, which will prove that Movants cannot get a fair trial in Kenedy, Kleberg, or Nueces County and that any argument to the contrary is not defensible position.⁴

4. In an attempt to resolve this issue without wasting the court's valuable time, Movants tendered to opposing counsel the enclosed letter dated November 15, 2001 attached as Exhibit "A" and incorporated herein for all purposes as if set forth at length. Despite the compromise offered in the letter, the Kenedy Foundation has failed and refuses to provide full and complete answers.

5. The Interrogatories and Requests for Production in issue are attached hereto as Exhibit "B" (Fred Ballí) and Exhibit "C" (Joe Ballí) and are incorporated herein for all purposes as if set forth at length.

6. By this Motion, Movants ask the court to order Plaintiff to provide full and complete answers to the discovery in issue (by answering each subpart), and to verify their answers to Interrogatories as required by Rule 197.2(d) of the Texas Rules of Civil Procedure.⁵

² Among the three counties adjacent to Kenedy County (Hidalgo, Brooks and Willacy County) Movants contend the court should choose Hidalgo County because it is the only one of the adjacent counties that is accessible by a commercial airline.

³ If the court decides that a fair trial cannot be had in any of the three counties of the 105th district court (Kenedy, Kleberg or Nueces County) or in any of the counties adjacent to Kenedy County (Hidalgo, Brooks or Willacy County) then Movants contend that the court can change this case from Kenedy County to either Travis County or Dallas County because Rule 259(d)(1) provides that "if a county of proper venue (other than the county of suit) cannot be found, then if from (1) A district court, to any county in the same or an adjoining district *or to any district where an impartial trial can be had.*" (emphasis added).

⁴ Movants believe that once the Plaintiff provides sworn and complete answers to the Interrogatories in issue, it will not be necessary to obtain all the documents requested because it will be undisputable that Movants cannot get a fair trial in any of the counties of 105th district court, which should result in an agreement to change venue to a neutral county such as Hidalgo, Travis or Dallas County.

SANCTIONABLE CONDUCT BY THE KENEDY FOUNDATION

7. At the hearing on June 26, 2001, in response to the pending Special Exceptions, counsel for the Kenedy Foundation represented to the court and all parties that they would file an amended petition within thirty (30) days without the need of an order. Contrary to that representation, the Foundation delayed this case by waiting until October 2, 2001, ninety eight (98) days later.

8. The Kenedy Foundation then waited to serve the 485 parties listed in Exhibit "C" to the Third Amended Petition until after the October 14th joinder deadline under the current docket control order. The majority of these parties were represented by counsel of record and the personal service effected on the clients represented by counsel constitutes harassment.

9. Movants also have a Motion for Protection on file, which asks the court to protect them from answering any discovery until the pending Motion to Change Venue has been ruled upon by this honorable court. Movants filed the Motion for Protection to protect the record in the event of an appeal and specifically because the "compromise" offered by the Kenedy Foundation would only allow Movants to respond to discovery.⁶

CONCLUSION

10. The Kenedy Foundation has delayed this case by engaging in the following sanctionable conduct, to wit: (1) refusing to answer critical discovery concerning the pending venue challenge; (2) misrepresenting to the court the time it would take to file amended pleadings; (3) further delaying this case by joining new parties after the joinder deadline; and (4) filing a frivolous Motion to Compel to divert attention from its own reprehensible conduct.⁷

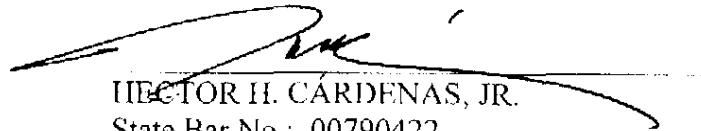
⁵ Movants' will agree to the compromise set forth in Exhibit "A" but reserve the right to require the Plaintiff to provide full and complete answers to Requests for Production (Nos. 2-6 of the Fred Balli set and Nos. 1, 3, 6-9) of the Joe Balli set) until receipt and review of the Plaintiff's amended and sworn answers to Interrogatories.

⁶ See Exhibits "D-1" and "D-2" attached hereto and incorporated herein for all purposes as if set forth at length.

⁷ For purposes of brevity, Movants' response to the Kenedy Foundation's Motion to Compel is set forth as a separate pleading.

WHEREFORE, Movants pray that this matter be set for hearing, and that following the hearing of this Motion, for the entry of an Order requiring the Kenedy Foundation to provide full and complete answers to the Interrogatories and Requests for Production filed in the name of Fred Ballí and Joe Ballí within ten (10) days of the entry of the Court's Order, that the Kenedy Foundation be sanctioned for their conduct in an amount sufficient to deter future bad behavior, and for such other and further relief, both in law and in equity, to which Movants may be justly entitled.

Respectfully submitted,



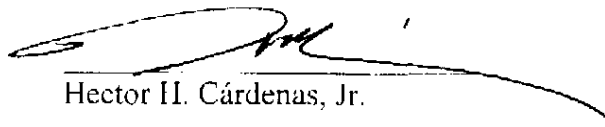
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ATTORNEYS FOR MOVANTS,
ROSA MARIA AGUILAR ET AL.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record via certified mail return receipt requested, first class mail and/or facsimile on this the 6 th day of December, 2001.



Hector H. Cárdenas, Jr.

Jorge C. Rangel
Law Offices of Jorge C. Rangel, P.C.
615 Upper N. Broadway, Suite 900
Corpus Christi, Texas 78403-2683

Russell H. McMains
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Austin, Texas 78746

hcardenasjr@msn.com

November 15, 2001

Mr. Steve Schiwetz
The Law Offices of Jorge C. Rangel, P.C.
615 Upper N. Broadway, Suite 900
Corpus Christi, Texas 78403-2683

Via Facsimile (361) 883-2611

Re: Cause No. 1261; *The John G. and Marie Stella Kenedy Memorial Foundation v. Sylvia Menchaca Ballí Aguilera, et al*; In the 105th District Court of Kenedy County, Texas.

Dear Mr. Schiwetz:

Please allow this correspondence to confirm my position with regard to your client's responses to the two sets of interrogatories in support of my pending motion to change venue.

In regard to the interrogatories served by Fred Balli, please note that you need to supplement your answers as follows:

Interrogatory No. 2 - in response to subpart a, you failed to identify the *address* and *county* of each home, apartment or other residential structure. I need this information to determine the total number of residences in Kenedy County under the control of the Foundation. From your answer, I cannot tell if you have homes in any of the other Rule 259 Counties.

In response to subpart b, you failed to provide the address and phone number of the mortgages and lessees. During the depositions of the affiants to my motion to change venue, you asked a considerable number of questions concerning control of the San Pedro Kenedy Ranch. I specifically want the address and telephone number of the San Pedro Kenedy Ranch Company as well as the same information for "Stuart Sasser et al."

Interrogatory No. 3 - please note that the exhibit "A" you refer to in your answer does not respond to subpart b, (i.e. it does not identify the number of acres involved). With regard to renewal of any such leases, your answer does not identify the total number of years the lease or contract has been in effect.

Interrogatory No. 4 - please note that the exhibit "C" you refer to in your answer does not identify the donations according to any of the four subparts.¹ Contrary to your claim

¹ The four subparts are as follows: (a) the name, address and county of each recipient; (b) the date and amount of each such gift, grant, donation or expenditure; (c) the total amount of money disbursed or paid by you to each such recipient; and (d) a cumulative total of the amount of money disbursed or paid by you in each "Rule 259 County", if any.

EXHIBIT A

that "such information is irrelevant", this information is critical to the venue motion, particularly with regard to the "total amount of money paid to each such recipient" and "a cumulative total of the amount of money disbursed or paid by you in each Rule 259 County" (see subparts c and d). Since this information is already in the Foundation's database, it should not be too difficult for you to answer this question properly.

In regard to the interrogatories served by Joe Balli, please note that you need to supplement your answers as follows:

Interrogatory No. 2 – please note that your answer references exhibit "A" but this exhibit is not responsive to the question. Did you intend to incorporate the information in exhibit "C"?

Your answer states that it "does not seem to relate to the question of Spohn Hospital". However, exhibit "C" includes grants to Spohn Hospital in 1987, 1989-1993, and 1995-2000. I am also curious to know the amount paid to Spohn Hospital or any affiliates through the matching grant program in 1999.

The response to this Interrogatory is also insufficient because it fails to answer any of the four subparts. This information as well as the information in Interrogatory 3 is relevant and critical for proving that my clients cannot get a fair trial in Kenedy, Kleberg, or Nueces County. It will also be helpful for determining whether my clients can get a fair trial in the adjacent counties of Hidalgo, Brooks, or Willacy County.

Interrogatory No. 3 – your answer states "as to total disbursements in each '259 County', such data is not collected." After spending more than three hours reviewing Exhibit "C", I discovered that in fact, several of the various reports your client produced identify the city of the recipient. Please refer to the reports for 1988, 1989, and 1992-2000. Moreover, Exhibit "C" also contains this information according to each distinct catholic diocese recipient for 1997-2000. Since the Foundation already has this information in their database, it is not unduly burdensome as you claim.

Without question, this is the most important interrogatory in both sets of discovery and I must have the information according to each subpart for the same reasons set forth in Interrogatory No. 2 above.

Interrogatory No. 5 – in response to subpart b, you failed to identify the company(s) or entity(s) with which the officer or director is affiliated for half of the Foundation's directors (Groner, Meaney, Bradley, Mueller, Wright, Meadows, and Forbes). You objected on the ground that this information "is irrelevant and might subject them to retaliation and harassment" yet, you provided this information for the other eight directors. I need to the name of their company or companies to determine if my client can get a fair trial. Upon information and belief, each of these persons is a powerful person of considerable influence in some, but perhaps not all of the Rule 259 Counties.

Mr. Steve Schiwetz
November 15, 2001
Page 3

Please note that none of the answers are verified as required by Rule 197.2(d). If you will verify your answers to both sets of Interrogatories and supplement as articulated above, as a compromise, I will forgo fighting over some of what I believe to be questionable objections to both sets of my clients' Requests for Production. If you refuse, then I will be forced to file a motion to compel and schedule it for the hearing tentatively scheduled on December 14, 2001.

In any event, once you have provided the information requested above, I believe you will realize that my clients cannot get a fair trial in Kenedy, Kleberg, or Nueces County, and that any argument to the contrary is not a defensible position. I would therefore ask that you please speak with your client and advise if the Kenedy Foundation will agree to change venue to a neutral city such as McAllen, Austin or Dallas.

Thank you in advance for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hector H. Cárdenas, Jr.", with a long, sweeping underline.

Hector H. Cárdenas, Jr.

HHC/sm

cc: Judge McDowell and all counsel of record

CAUSE NO. 1261

THE JOHN G. and MARIE STELLA
KENEDY MEMORIAL
FOUNDATION

PLAINTIFF

VS.

SYLVIA MENCHACA BALLI
AGUILERA, ET AL.

DEFENDANT

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IN THE DISTRICT COURT OF

KENEDY COUNTY, TEXAS

105TH DISTRICT COURT

**PLAINTIFF'S RESPONSES TO INTERROGATORIES AND REQUESTS FOR
PRODUCTION IN SUPPORT OF PENDING MOTION TO CHANGE VENUE
PROPOUNDED BY FRED BALLI**

TO: Intervenor, Fred Balli, one of the ROSA MARIA AGUILAR, et al intervenors, by and through his attorney of record Hector H. Cardenas, Jr., Law Offices of Hector H. Cardenas, Jr., 2700 Via Fortuna, Suite 150, Austin, Texas 78746; and, Ramon Garcia, Law Office of Ramon Garcia, P.C., 222 West University, Edinburg, Texas 78539

Pursuant to TEXAS RULE OF CIVIL PROCEDURE, Plaintiff, THE JOHN G. AND MARIE STELLA KENEDY MEMORIAL FOUNDATION, makes the following Responses to Interrogatories and Requests for Production in Support of Pending Motion to Change Venue filed herein by Fred Balli, one of the intervenors in the ROSA MARIA AGUILAR, et al Intervenor, as attached.

Respectfully submitted,

By:



Steve Schwetz
State Bar No. 17750900
Jorge C. Rangel
State Bar No. 16543500
Attorneys-In-Charge

CAUSE NO. 1261

THE JOHN G. and MARIE STELLA
KENEDY MEMORIAL
FOUNDATION

PLAINTIFF

VS.

SYLVIA MENCHACA BALLI
AGUILERA, ET AL

DEFENDANT

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IN THE DISTRICT COURT OF

KENEDY COUNTY, TEXAS

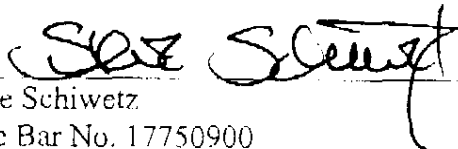
105TH DISTRICT COURT

**PLAINTIFF'S RESPONSES TO INTERROGATORIES AND REQUESTS FOR
PRODUCTION IN SUPPORT OF PENDING MOTION TO CHANGE VENUE
PROPOUNDED BY JOE BALLI**

TO: Intervenor, Joe Balli, one of the ROSA MARIA AGUILAR, et al intervenors, by and through his attorney of record Hector H. Cardenas, Jr., Law Offices of Hector H. Cardenas, Jr., 2700 Via Fortuna, Suite 150, Austin, Texas 78746; and, Ramon Garcia, Law Office of Ramon Garcia, P.C., 222 West University, Edinburg, Texas 78539

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Respectfully submitted,

By: 
Steve Schiwetz
State Bar No. 17750900
Jorge C. Rangel
State Bar No. 16543500
Attorneys-In-Charge

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August 29, 2001

Mr. Steve Schiwetz
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615 Upper N. Broadway, Suite 900
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Via Facsimile (361) 883-2611

Re: Cause No. 1261; *The John G. and Marie Stella Kenedy Memorial Foundation v. Sylvia Menchaca Ballí Aguilera, et al*; In the 105th District Court of Kenedy County, Texas.

Dear Steve:

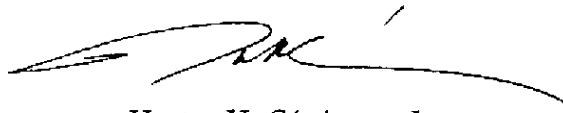
Per our conversation yesterday, I am concerned that conducting any discovery (either responding to discovery or serving any discovery) could waive my clients' rights to change the venue of this case to a county where we can get a fair and impartial trial. As we discussed, if we cannot reach an agreement on this matter, I will be forced to file a motion for protection.

Pursuant to Rule 11 of the Texas Rules of Civil Procedure, I would ask that you please sign in the space provided below for your signature to confirm our agreement that if I conduct any discovery on my clients' behalf (either responding to discovery or serving any discovery) it shall not be a waiver of my clients' pending motion to change venue.

I would also ask that you please sign this agreement to confirm that the deadline for my clients to respond to your requests for disclosure shall be September 17, 2001.

Thank you in advance for your professional courtesies with regard to this matter. If you have any questions or concerns, please do not hesitate to call.

Very truly yours,



Hector H. Cárdenas, Jr.

AGREED:

Steve Schiwetz, Attorney for Plaintiff, the
John G. and Marie Stella Kenedy Memorial Foundation

EXHIBIT

"D-1"

THE LAW OFFICES OF JORGE C. RANGEL, P.C.

JORGE C. RANGEL
BOARD CERTIFIED
CIVIL TRIAL LAW AND
PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

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E-mail address: steve.schiwetz@rangellaw.com

August 30, 2001

Via Facsimile: 512-477-2271

Mr. Hector H. Cardenas, Jr.
Law Offices of Hector H. Cardenas, Jr.
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Austin, TX 78716

Re: Cause No. 1261; *The John G. and Marie Stella Kenedy Memorial Foundation vs. Sylvia Menchaca Balli Aguilera, et al*; In the 105th District Court of Kenedy County, Texas

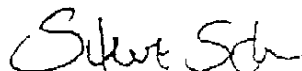
Dear Mr. Cardenas:

After having reviewed your proposed Rule 11 Agreement dated August 29, 2001, we would like to offer an alternative which we believe addresses your concerns about the possibility of waiving the Motion to Transfer Venue by answering the outstanding discovery.

We will agree that the deadline for answering our Requests for Disclosure is September 17, 2001 and that your answering this discovery and other outstanding discovery will not constitute a waiver of whatever venue transfer rights your clients may have. If this satisfies your concerns, please feel free to file this letter with the Court pursuant to Rule 11.

As was also discussed in our telephone conversation, we would like to take the depositions of the affiants to your venue motion as soon as it is convenient. Please visit with your clients and let us know when that might be accomplished.

Yours truly,



Steve Schiwetz

SS/r1

EXHIBIT

"D-2"