

COPY

CAUSE NO. 1261

THE JOHN G. and MARIE  
STELLA KENEDY MEMORIAL  
FOUNDATION

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IN THE DISTRICT COURT OF

V.

KENEDY COUNTY, TEXAS

SYLVIA MENCHACA BALLÍ  
AGUILERA, ET AL.

105<sup>TH</sup> JUDICIAL DISTRICT

MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, ROSA MARIA AGUILAR, ET AL., hereafter referred to as Movants, and files this their Motion For Protective Order in the above-referenced cause, and in support thereof would show unto the court as follows:

**INTRODUCTION**

1. On August 16, 2001 Movants filed a Motion to Change Venue because of local prejudice, which is scheduled for oral hearing on October 31, 2001. This Motion For Protective Order is filed out of an abundance of caution to protect Movants from the need to answer any and all discovery served by the Kenedy Foundation or any other party to this action until this honorable court has ruled on the Motion to Change Venue.

2. The granting of this Motion For Protective Order will protect the record and prevent any potential arguments by opposing counsel that Movants have waived their right to change the venue of this case from Kenedy County to a county where Movants can get a fair and impartial trial.

**REQUESTS FOR DISCLOSURE**

3. The Plaintiffs in this cause served Requests for Disclosure on Movants, which are due today, September 17, 2001. Attached hereto as Exhibit "A" and Exhibit "B" respectively,

AT 9:07 AM SEP 19 2001  
CLERK OF DISTRICT COURT  
105th JUDICIAL DISTRICT  
Vela

are proposed letter agreements confirming the date for responding to said Requests for Disclosure. However, no agreement was reached with regard to the ability of Movants to serve and conduct discovery without the risk of waiving their rights to change the venue of this case to a county where Movants can get a fair and impartial trial. Although counsel for Movants and counsel for the Foundation are attempting to work out their differences, to date, the Foundation is only willing to allow Movants to respond to discovery. Movants are thus prejudiced and therefore seek a Protective Order as to all discovery in this case until the Court rules on Movants' pending Motion to Change Venue.

#### **OTHER OUTSTANDING DISCOVERY**

4. Many, but not all of the clients now represented by the undersigned counsel were served with discovery by service on their former counsel. At the last status conference, the use of uniform discovery was discussed both on the record and off the record, but the parties have not yet agreed whether the old discovery is still in effect or whether uniform discovery will be used in this case. Although an agreement on this issue is anticipated, Movants further seek a protective order concerning all outstanding discovery or discovery served in the future until the court has ruled on Movants' pending Motion to Change Venue.

5. This Motion is filed pursuant to the Court's equitable powers under the common law as well as pursuant to Rule 192.4 and 192.6 of the Texas Rules of Civil Procedure. Specifically, Movants would show that under Rule 192.4(b) this Motion should be granted because under the facts presented: (1) "*the burden or expense of the proposed discovery outweighs its likely benefit*"; and (2) "the needs of the case *and the importance of the issues at stake in the litigation*" require that this Motion be granted. This Motion should also be granted under the Court's equitable powers so that justice may be done.

WHEREFORE, ROSA MARIA AGUILAR, ET AL., Movants herein, pray that after notice and hearing, the Court find and issue a Protective Order as follows:

1. under the facts presented, the burden or expense to Movants outweighs the likely benefit of responding to or conducting discovery until Movants' pending Motion to Change Venue has been ruled upon;
2. the needs of this case and the importance of the issues at stake in the litigation require that Movants' Motion for Protective Order be granted and Movants are protected from answering or conducting any discovery until the Motion to Change Venue has been ruled upon; and
3. for all such other and further relief at law or in equity to which Movants may be justly entitled.

Respectfully submitted,



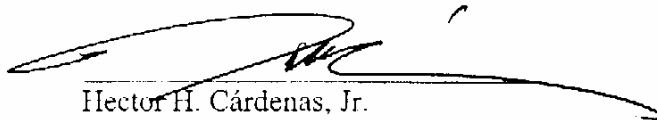
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ROSA MARIA AGUILAR ET AL

**CERTIFICATE OF CONFERENCE**

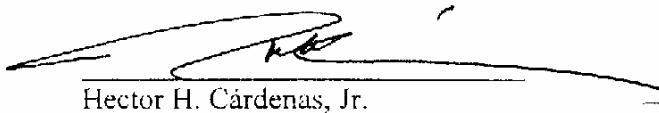
Several conferences with Steve Schiwetz were held on the merits of the foregoing Motion For Protective Order and no agreement on the Motion was reached.



Hector H. Cárdenas, Jr.

**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 17th day of September, 2001.



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Honorable Pat McDowell  
Senior District Judge  
3824 Greenbrier  
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hcardenasjr@msn.com

August 29, 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 Balli Aguilera, et al*; In the 105<sup>th</sup> 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. Cardenas, Jr.

AGREED:

---

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

EXHIBIT

A

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

JORGE C. RANGEL  
BOARD CERTIFIED  
CIVIL TRIAL LAW AND  
PERSONAL INJURY TRIAL LAW  
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(361) 882-2411 (FACSIMILE)

E-mail address: [steve.schiwetz@rangellaw.com](mailto:steve.schiwetz@rangellaw.com)

August 30, 2001

Via Facsimile: 512.477.2271

Mr. Hector H. Cardenas, Jr.  
Law Offices of Hector H. Cardenas, Jr.  
P. O. Box 163506  
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 105<sup>th</sup> District Court of Kenedy County, Texas

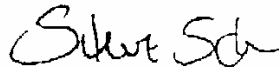
Dear Mr. Cardenas:

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/ra

EXHIBIT

B

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THE JOHN G. and MARIE  
STELLA KENEDY MEMORIAL  
FOUNDATION

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IN THE DISTRICT COURT OF

V.

KENEDY COUNTY, T E X A S

SYLVIA MENCHACA BALLÍ  
AGUILERA, ET AL.

105<sup>TH</sup> JUDICIAL DISTRICT

NOTICE OF ORAL HEARING

NOTICE IS HEREBY GIVEN that the Motion For Protective Order filed by ROSA MARIA AGUILAR, ET AL., is hereby set for oral hearing on Wednesday, October 31, 2001 at 1:00 p.m. in the first floor courtroom of the Nueces County Courthouse in Corpus Christi, Nueces County, Texas. FURTHER NOTICE IS GIVEN that Movants may present evidence and testimony in support of their Motion For Protective Order at said hearing.

Respectfully submitted,



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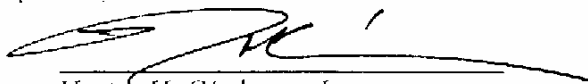
ATTORNEYS FOR INTERVENORS  
ROSA MARIA AGUILAR ET AL.

AT	9:08	SEP 19 2001	A.
105 <sup>TH</sup>			
CLERK OF COURT			
BY <i>Jeronica Vela</i>			



## 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 17th day of September, 2001.

  
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