

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

**STANDING ORDER REGARDING RESEARCH AS TO POTENTIAL JURORS
IN ALL CASES ASSIGNED TO U.S. DISTRICT JUDGE RODNEY GILSTRAP**

In preparation for voir dire, the Court will direct the Clerk's office to provide a list of potential jurors to counsel that will form the venire in each case. Guided by the rules of this Court, guidance from the American Bar Association Standing Committee on Ethics and Professional Responsibility, and applicable rules governing counsel's ethical obligations, it is **ORDERED** that the following shall apply regarding the parties' investigation of potential jurors in any case assigned to U.S. District Judge Rodney Gilstrap:

1. All attorneys, parties, and their respective employees and agents, including jury consultants, are prohibited from communicating with or causing another to communicate with in any way, directly or indirectly (including through any non-lawyers or lawyers, connected to the case or not), any juror or potential juror or family members of such individuals, except in the course of official proceedings in this case. *See* Tex. Disciplinary Rules Prof'l Conduct R. 3.06(b), *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A (West 2013) (Tex. State Bar R. art. 10, § 9).
2. All attorneys, parties, and their respective employees and agents, including jury consultants, are prohibited from conducting or causing another to conduct a "vexatious or harassing" investigation of any juror or potential juror. *See* Tex. Disciplinary Rules Prof'l Conduct R. 3.06(a)(1).
3. All attorneys, parties, and their respective employees and agents, including jury consultants, are prohibited from personally or through another sending an access request to the electronic social media ("ESM") platform of any juror or potential juror, including for example a

Facebook friend request or an Instagram request to “Follow” that juror. Other forms of ESM include, but are not limited to LinkedIn and Twitter. *See* ABA Standing Comm. on Ethics and Prof’l Responsibility, Formal Op. 466 (2014). However, for purposes of clarity, the Court informs all attorneys, parties, and their respective employees and agents, including jury consultants, that they are *not* prohibited from conducting or causing another to conduct any type of online investigation merely because a juror or potential juror may become aware that his or her ESM is being reviewed. For example, lawyers are not prohibited from reviewing the LinkedIn accounts of jurors or potential jurors even if network settings would alert that juror or potential juror to the fact that a lawyer from the case has reviewed his or her LinkedIn account. As the ABA Standing Comm. on Ethics and Prof’l Responsibility, Formal Op. 466 (2014) has made clear in this situation:

This Committee concludes that a lawyer who uses a shared ESM platform to passively view juror ESM under these circumstances does not communicate with the juror. The lawyer is not communicating with the juror; the ESM service is communicating with the juror based on a technical feature of the ESM. This is akin to a neighbor’s recognizing a lawyer’s car driving down the juror’s street and telling the juror that the lawyer had been seen driving down the street.


Formal Op. 466 at Page 5.

4. The Court recognizes the critical role that informed jury selection plays in any jury trial. The Court recognizes the duty imposed on diligent parties to secure as much useful information as possible about venire members, acting within the ethical and legal parameters of our profession. In today’s evolving digital world additional guidance from the Court is given to better inform counsel as to such parameters in an effort to more accurately delineate the line between prospective jurors’ private and public information. Accordingly, it is **ORDERED** that counsel in every case shall ensure that the following are made aware of this Order and its prohibitions not later than 30 days prior to jury selection:

- A. Other attorneys in their respective firms or who may be assisting them or consulting with them on a case;
- B. Their employees and agents, including jury consultants;
- C. Their clients in the case, and for corporate or other business institutions, the general counsel and the corporate representatives or entity representatives involved in the case.

A violation of this Order may result in sanctions by the Court and/or such other action as the Court deems just and proper.

So ORDERED and SIGNED this 25th day of January, 2017.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE