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**JAN 23 2018**

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361-888-0410 FELONY DIVISION  
361-888-0286 MISDEMEANOR DIVISION  
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OFFICE OF THE



DISTRICT ATTORNEY

**Mark A. Gonzalez**  
DISTRICT ATTORNEY  
105<sup>TH</sup> JUDICIAL DISTRICT  
NUECES COUNTY

FILE # ML-48295-18  
I.D. # 48295

FACSIMILE  
361-888-0399 FELONY DIVISION  
361-888-0700 MISDEMEANOR DIVISION  
361-888-0381 VICTIM ADVOCATE

**RQ-0207-KP**

January 23, 2018

Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Pursuant to Texas Government Code Section 402.042, I hereby request a Texas Attorney General's Opinion concerning the following question:

Are prosecutors and other employees of the District Attorney's Office (including those hired specifically as process servers for the District Attorney's Office) who are over 18 years old, but who are not peace officers, eligible to execute and serve a subpoena under Tex. Code Crim. Proc. art. 24.01(b)(2) for a witness in a case that the District Attorney's Office is prosecuting but which that particular prosecutor or employee is not, at the time of issuance, actively involved in prosecuting or assisting in the prosecution thereof, in any capacity aside from service of process?

Respectfully submitted,

/s/ *Mark A. Gonzalez*

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Mark A. Gonzalez

## BRIEF IN SUPPORT OF REQUEST

The relevant portion of the Texas Code of Criminal Procedure provides:

(b) The person named in the subpoena to summon the person whose appearance is sought must be:

...  
(2) a least 18 years old and, at the time the subpoena is issued, *not a participant in the proceeding for which the appearance is sought.*

Tex. Code Crim. Proc. art. 24.01(b)(2) (emphasis added).

The word “participant” is not defined in the Code, nor does it appear to be a legal term of art. Accordingly, it should be given its common meaning. *See Clinton v. State*, 354 S.W.3d 795, 800 (Tex. Crim. App. 2011). Although every member of the District Attorney’s Office may have the authority to participate in any given case being tried by that office, not every employee of the office would be considered a participant under the common understanding of that term unless he or she took some active part in the prosecution of the case.

Accordingly, prosecutors and employees who are not actually participating in the prosecution of a case should not be disqualified from serving a subpoena on a witness in that case.