



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 12-1079-DI

**PUBLIC ADMONITION
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE NOE GONZALEZ
370TH JUDICIAL DISTRICT COURT
EDINBURG, HIDALGO COUNTY, TEXAS**

During its meeting on August 13-15, 2014, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Noe Gonzalez, Judge of the 370th District Court, Edinburg, Hidalgo County, Texas. Judge Gonzalez was advised by letter of the Commission's concerns and provided written responses. The judge appeared with counsel before the Commission on August 14, 2014, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Noe Gonzalez was Judge of the 370th Judicial District Court in Edinburg, Hidalgo County, Texas.

THE DOMIT DIVORCE CASE

2. Antun Domit is a McAllen businessman and developer. In 2006, one of his companies was involved in the development and construction of Ocean Tower, a 31-story luxury apartment building on South Padre Island.
3. On or about May 9, 2006, Domit filed for divorce from his wife, Maria, and the case was assigned to Judge Gonzalez's court (the "Domit Divorce Case").

4. As a result of structural and/or construction defects, construction on Ocean Tower stopped in 2008 and the building was demolished in 2009. In June 2008, Domit filed a lawsuit in the 357th District Court in Cameron County to recover more than \$125 million in damages (“the Ocean Tower Lawsuit”).
5. On November 10, 2008, Maria asked Judge Gonzalez to appoint a receiver over the couple’s community property, which included approximately 36 business entities (including Ocean Tower).
6. On November 18, 2008, Judge Gonzalez entered an order appointing attorney David Calvillo as the receiver in the Domit Divorce Case. The order authorized Calvillo to take “charge and possession” of the couple’s business entities, including Ocean Tower, and to “manage, control, and dispose of the property *as he sees fit*” (emphasis added).
7. In his testimony before the Commission, Judge Gonzalez explained that he entered the receivership order to protect the community estate prior to making any determination on the division of the parties’ community property and/or debts.
8. In August 2009, while the divorce remained pending, the Ocean Tower Lawsuit settled. The Domits’ company received approximately \$3.5 million from the settlement.
9. Calvillo immediately took control of the Ocean Tower settlement proceeds and placed them in a “Receivership Account” at Inter National Bank.
10. Thereafter, Calvillo hired Maria’s divorce attorneys to represent him in initiating and defending lawsuits related to the Domits’ business interests.
11. In his testimony before the Commission, Judge Gonzalez expressed that it was his belief that the parties had agreed to this arrangement and, therefore, he had no concerns about potential conflicts regarding Calvillo’s fiduciary relationships with Maria’s attorneys.
12. On August 26, 2009, Judge Gonzalez signed an “Agreed Order on Compensation of Receiver” in the Domit Divorce Case, which allowed Calvillo to pay himself, without court oversight or approval, his “standard hourly rate” plus “reasonable and necessary” expenses out of the Ocean Tower settlement proceeds. The order set forth that a party objecting to Calvillo authorizing payment of his own fees was required to file a written motion within 10 days of Calvillo’s submission of his fee statements to the parties’ attorneys.
13. Soon thereafter, Calvillo paid approximately \$108,000 to Maria’s divorce attorneys and approximately \$23,000 to Domit’s divorce attorneys out of the Ocean Tower settlement proceeds.
14. Judge Gonzalez acknowledged that the language in the receivership order, which allowed Calvillo to “manage, control, and dispose of the property as he sees fit,” was broad enough to give Calvillo the authority to file lawsuits on behalf of the Domits’ business entities and to pay himself and the Domits’ attorneys without any court oversight, approval, or intervention.
15. Judge Gonzalez further testified that he did not know how Calvillo determined the amounts to be paid or whether the amounts paid were reasonable and necessary. The

judge stated that neither party contested Calvillo's payment of his own fees and/or the payments made to the parties' attorneys.

16. On November 29, 2011, a petition was filed in the United States Bankruptcy Court for the Southern District of Texas by six of the Ocean Tower creditors sending Ocean Tower into involuntary bankruptcy. The Chapter 7 bankruptcy stayed the Domit Divorce Case.
17. On February 8, 2012, the bankruptcy court appointed attorney Michael Schmidt to serve as Trustee of the Ocean Tower bankruptcy proceedings. Schmidt obtained records showing that Calvillo had paid himself approximately \$1.2 million dollars in legal fees and expenses between 2009 and 2011 from the Receivership Account containing the Ocean Tower settlement proceeds. Calvillo also paid attorneys in the Domit Divorce Case legal fees and expenses in the amount of approximately \$1 million dollars from the Ocean Tower settlement proceeds. These payments were made without a determination of the rights of Ocean Tower creditors to those funds.
18. Thereafter, Schmidt filed adversary claims against Calvillo and the Domits' divorce attorneys asking the bankruptcy court to disgorge the fees Calvillo had paid to himself and to the attorneys from the Ocean Tower settlement proceeds.
19. Subsequently, Calvillo hired Maria's divorce attorneys to represent the receivership in the bankruptcy court.
20. The bankruptcy stay was lifted in order to finalize the Domits' divorce.
21. Schmidt's adversary claims against Calvillo and the Domits' attorneys are still pending in the bankruptcy court.
22. In his testimony before the Commission, Judge Gonzalez explained that the Domit Divorce Case was the first case in which he was required to appoint a receiver and that it was his only experience in this area of the law.

COMPLIANCE WITH THE COUNTY INDIGENT DEFENSE PLAN

23. The Hidalgo County Indigent Defense Plan provides that all courts in the county are to appoint attorneys to represent indigent defendants from a rotational public appointment list pursuant to the Texas Fair Defense Act as incorporated into the Texas Code of Criminal Procedure.
24. Under the administrative rules of the Texas Indigent Defense Commission,¹ if the top ten percent of appointed attorneys receive more than three times their representative share of appointments, there is a presumption that the appointment system being used is neither fair, neutral, nor nondiscriminatory.
25. Based on records obtained from Hidalgo County, during the period from January 1, 2008 through December 31, 2013, Judge Gonzalez appointed attorney Jeanne Holmes to represent indigent defendants in a disproportionately high percentage of criminal cases compared to other attorneys on the Hidalgo County rotating appointment list.

¹ The Texas Indigent Defense Commission was created to administer statewide appropriations and policies and to monitor compliance under the Texas Indigent Defense Act.

26. Specifically, Hidalgo County records indicated that Judge Gonzalez appointed Holmes to represent indigent defendants in approximately 778 cases during this period. This represented nearly 22% of the 3,568 appointments made to a total of 192 attorneys.²
27. The attorney with the next highest percentage of court appointments out of the 370th District Court received just over 400 appointments, while the attorney with the third highest percentage of court appointments received 180 appointments. In total, Holmes and two other attorneys received 38% of all appointments out of the 370th District Court between January 1, 2008 and December 31, 2013.³
28. Based on the records provided by Hidalgo County, the appointment system employed by Judge Gonzalez in the 370th District Court for the period between January 1, 2008 through December 31, 2013 exceeded the Texas Indigent Defense Commission's threshold for presuming that the court's system for appointments is fair, neutral, and nondiscriminatory.
29. In his testimony before the Commission, Judge Gonzalez acknowledged that Holmes had received a very large number of appointments from him. The judge explained that this occurred because Holmes was one of a few attorneys that personally appeared in his court and was available to accept appointments when Judge Gonzalez needed an attorney immediately to represent indigent defendants in cases involving a Motion to Revoke Probation or a Motion to Adjudicate.
30. According to Judge Gonzalez, because Holmes was physically present in the courtroom, she was available to accept an appointment when Judge Gonzalez needed to replace an attorney who failed to appear with his or her client for a court appearance.
31. Judge Gonzalez also explained that Holmes may have received more appointments because she had a good professional relationship with the lead prosecutor assigned to his courtroom, which enabled her to quickly resolve cases and thereby help alleviate jail overcrowding.
32. The Hidalgo County Indigent Defense Plan requires judges to maintain a list of attorneys eligible to represent indigent defendants in hearings on Motions to Revoke and Motions to Adjudicate, and to appoint those attorneys on a rotating basis from that list.
33. In his testimony before the Commission, Judge Gonzalez acknowledged that he was aware of the requirement in the Hidalgo County Plan to use a rotating list to appoint attorneys for indigent defendants in hearings on Motions to Revoke and Motions to Adjudicate, but the judge stated that no such list exists.

² During this same period, Judge Gonzalez also approved fee vouchers for Holmes' work in the amount of approximately \$475,000.00, which was nearly double the amount of fees paid to the attorney with the second highest number of indigent court appointments out of the 370th District Court. That attorney received approximately \$254,500 in fees through indigent court appointments from Judge Gonzalez.

³ In fact, of the 192 attorneys on Judge Gonzalez's court appointment list, the top ten received nearly 54% of all court appointments for this period, with Holmes receiving 40% of those appointments.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part that “A judge shall comply with the law...”
2. Canon 3B(2) the Texas Code of Judicial Conduct states, in pertinent part, that “A judge... shall maintain professional competence in [the law].”
3. Article V, Section 1-a(6)A of the Texas Constitution provides that any Texas judge may be disciplined for willful violation of the Code of Judicial Conduct, incompetence in performing the duties of office, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.

CONCLUSION

The Commission concludes from the evidence presented that Judge Gonzalez failed to comply with the law, failed to demonstrate professional competence in the law, and demonstrated incompetence in performing the duties of office, when he entered a receivership order in the Domit Divorce Case that granted the receiver, Calvillo, non-delegable judicial powers, including the unfettered authority to make payments to himself and his attorneys from the Ocean Tower settlement proceeds without any court oversight, approval, or intervention. Such broad receivership powers over the Domits’ property, which had yet to be subject to a court determination as to the rights of the respective parties in interest, was beyond the authority contemplated by the provisions in the Texas Family Code and/or the Texas Civil Practice and Remedies Code relating to the appointment of receivers. The Commission concludes that by issuing such an order, Judge Gonzalez violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Article V, section 1-a(6)A of the Texas Constitution.

In addition, the Commission concludes that Judge Gonzalez failed to comply with the Texas Fair Defense Act and the Hidalgo County Indigent Defense Plan in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, as evidenced by the disproportionately high percentage of indigent court appointments that attorney Holmes received from Judge Gonzalez from January 1, 2008 through December 31, 2013.

In condemnation of the conduct described above that violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Article V, section 1-a(6)a of the Texas Constitution, it is the Commission’s decision to issue a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Noe Gonzalez, Judge of the 370th District Court, Edinburg, Hidalgo County, Texas.

Pursuant to this Order, Judge Gonzalez must obtain **four (4) hours** of instruction with a mentor judge, in addition to his required judicial education in Fiscal Year 2015. In particular, the Commission desires that Judge Gonzalez receive this additional instruction in the area of receiverships.

Judge Gonzalez shall complete the additional **four (4) hours** of instruction described above within **sixty (60) days** from the date of written notification from the Commission of the

assignment of a mentor. Upon receipt of such notice, it is Judge Gonzalez's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **four (4) hours** of instruction described above, Judge Gonzalez shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 26th day of August 2014.

ORIGINAL SIGNED BY

Hon. Steven L. Seider, Chair
State Commission on Judicial Conduct