



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

**CJC Nos. 12-0737-DI; 12-1143-DI; 13-0027-DI; 13-0235-DI; 13-0373-DI; 15-0129-DI;
15-0374**

**PUBLIC REPRIMAND
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE MICHAEL THOMAS SEILER
435TH JUDICIAL DISTRICT COURT
CONROE, MONTGOMERY COUNTY, TEXAS**

During its meeting on April 8-9, 2015, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Michael Thomas Seiler, Judge of the 435th Judicial District Court, Conroe, Montgomery County, Texas. Judge Seiler was advised by letter of the Commission's concerns and provided written responses. Judge Seiler appeared before the Commission with counsel on April 8, 2015, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions.

FINDINGS OF FACT

1. At all relevant times, the Honorable Michael Thomas Seiler was Judge of the 435th Judicial District Court, Conroe, Montgomery County, Texas.
2. In 2007, the Texas Legislature created the 435th Judicial District Court to hear virtually all cases filed under Chapter 841 of the Texas Health and Safety Code for the purpose of determining whether repeat sexual offenders should be deemed sexually violent "predators" subject to involuntary civil commitment upon their release from prison.
3. After an offender is determined to be a predator, the 435th Judicial District Court has continuing jurisdiction over the predator. The court must conduct biennial reviews and adjudicate motions to modify the terms of the predator's civil commitment. However, the

duties imposed under Chapter 841 are suspended for the duration of any predator's confinement in the Texas Department of Criminal Justice (TDCJ).¹

4. During the 2007 Session, the Legislature also created the State Counsel for Offenders (SCFO) office, which is responsible for providing representation to indigent offenders and predators during these civil commitment proceedings.
5. In March of 2012, Barbara Corley was a section chief in the SCFO office.² Corley represented offenders and predators subject to civil commitment or supervised attorneys in the SCFO office who did.
6. During a March 5, 2012 trial, Judge Seiler repeatedly made comments to Corley, in the presence of the jury, in which he stated, among other things, that Corley was "wasting" everyone's time; that Corley had a "law degree" and needed to "use it;" that Corley was doing things "wrong;" and that he believed Corley was trying to "sneak stuff past [him]."
7. In addition, outside the presence of the jury, Judge Seiler repeated his comments that Corley was "wasting" everyone's time, and stated:

"That's just wonderful. Thank you for not wanting to follow [the Court of Appeals'] rulings and not wanting to follow mine either. You're just a joy to be with in here, Ms. Corley. Your ability to practice law is very frustrating to me. . ."
8. On July 26, 2012, Corley appeared in Judge Seiler's court to represent 46 predators³ brought over from prison for a hearing on motions to modify the terms of their civil commitments to track changes made to the language of the statute.
9. According to Judge Seiler, Corley was allowed to be present at the modification hearing despite not being required to do so by the statute.⁴
10. Due to security concerns and a potentially volatile situation in the courtroom created by the presence of 46 prisoners, Judge Seiler met separately with Corley and the prosecutor and told Corley to file any objections she may have in writing.
11. Despite this instruction, Corley attempted to make an objection in the courtroom. In response, Judge Seiler's bailiff told her to "sit down." Judge Seiler, out of frustration, then stated: "Sit down or I'll throw you out of the courtroom."⁵

¹ Section 841.150(a), Texas Health and Safety Code.

² Ms. Corley is no longer employed at the SCFO.

³ According to Judge Seiler, the 46 predators were all serving life sentences in prison and were unlikely to be released under the civil commitment statute.

⁴ Section 841.002 (3-A) of the Texas Health and Safety Code defines a civil commitment proceeding as a trial or hearing conducted under Subchapter D (trial), F (Commitment Review), or G (Petition for Release). Section 841.005(a) states that the Office of State Counsel for Offenders shall represent an indigent person subject to a civil commitment proceeding under this chapter. Under Subchapter E, Section 841.082(e) provides that the requirements imposed under Subsection (a) may be modified at any time after notice to each affected party to the proceedings and a hearing.

⁵ On appeal, the Ninth Court of Appeals ruled that there was no indication in the record that Corley had been disruptive or in contempt of court and that the judge should have allowed her to preserve error. The Court also dismissed the appeal for lack of jurisdiction. *In re Commitment of Carlos Cortez*, 405 S.W.3d 929, 934 (Tex.App. – Beaumont, 2013).

12. Similarly, during a trial on October 22, 2012, in which another SCFO attorney, Lindsey Lopez,⁶ was representing an indigent offender, Judge Seiler made the following statements to Lopez:
 - “If you do that again I’m not going to let you practice in my court.”
 - “If you want to ask that question, you tell me again, and then I’ll throw you out of the courtroom.”
 - “And you don’t have to like me, you don’t have to respect me, but you’ve got to follow my orders. And if you’re not going to do that, I’m going to have you thrown out of my courtroom.”
13. Judge Seiler testified that he used the threat of throwing Corley and Lopez out of the courtroom as a means of maintaining order and control in the courtroom, but would not have followed through on the threat.
14. In August 2008, SCFO attorney Randall Miller⁷ appeared in Judge Seiler’s court representing an offender who had allegedly engaged in homosexual activities.
15. During jury selection, Judge Seiler made several comments that were critical of Miller’s conduct.
16. Among other things, Judge Seiler told Miller that if he did not stop asking the jury panel questions regarding their views on homosexuality with the intent of getting the entire panel struck, Miller would soon not have a “job in this county.”⁸
17. Further, when advising Miller to stop asking such questions of the jury panel, Judge Seiler stated, based upon the prior answers of the jurors: “Nobody here is going to admit to liking homosexuals.”
18. At one point during jury selection, a potential juror indicated his belief that Miller was “getting slammed” by Judge Seiler; that Judge Seiler had an evident “bias” in the case; and that the juror did not believe that the offender could get a “fair trial” in Judge Seiler’s court.⁹
19. In a January 29, 2013 proceeding, Dr. John Tennison, an expert witness who regularly appeared on behalf of SCFO in civil commitment cases, argued with Judge Seiler about setting up a table around the witness stand to display books and research materials.

⁶ Ms. Lopez is no longer employed with SCFO, but continues to practice before Judge Seiler in private practice.

⁷ Mr. Miller is no longer employed with SCFO.

⁸ According to Judge Seiler, this comment was not intended as a threat that Miller should be fired from his position at SCFO, but rather it was intended to convey that there would be no ability to find juries to hear the civil commitment trials.

⁹ According to the record, the juror stated: “I stated a previous problem I have. In my trial, what appears to be happening here happened to me, where you are getting slammed whether you know it or not. I don’t know how anybody in this room could be on this jury and feel like this is going to be a fair trial. She asked questions about whether we had issues. You’re asking questions about whether we had issues, and you keep getting slammed by the Judge saying you can’t ask that. You can’t ask that. I think this whole thing is - if you stay here, you are crazy.”

20. According to the record, when Dr. Tennison began setting up his books and research materials around the witness stand, Judge Seiler responded to an objection by the State by stating:

“Yes, Dr. Tennison, put all that stuff down. Okay? No one needs to see it...You know, you’ve testified here multiple times and never look at all that junk; so just put it away, unless you’re going to be referring to it.”
21. When Dr. Tennison responded that he did in fact utilize his reference materials when testifying in court, Judge Seiler stated:

“He can keep the books up there. You know if he wants to argue with a State District Court Judge, then flipping argue with a State District Court Judge. Okay? That’s perfect.”
22. Out of frustration, Judge Seiler then recessed for the day.
23. According to Dr. Tennison, Judge Seiler made these statements in an angry tone; was red-faced; and was gesticulating “wildly” with his arms when speaking.
24. Dr. Tennison also stated that this was not the only time that Judge Seiler had treated him in a rude or demeaning manner, averring that Judge Seiler had “angrily yelled at [him] on several [other] occasions.”
25. Judge Seiler testified that he did not lose his temper and was not red-faced or gesticulating “wildly” when talking to Dr. Tennison; however, he conceded that he should have handled the situation better, including by recessing the proceedings earlier.¹⁰
26. On April 26, 2013, Judge Seiler spoke at a Texas Patriots PAC meeting during which he generally discussed the nature of civil commitment cases and the role of his court in hearing such cases.
27. During his presentation, Judge Seiler stated that if an individual scores above a 25 on the PCL-R test, that person is statistically considered to be a psychopath. Judge Seiler explained that he is the only judge in Texas that regularly deals with people who are psychopaths.
28. While making this presentation, Judge Seiler displayed a photo of the fictional serial killer “Hannibal Lecter.”
29. Judge Seiler described a trial involving a psychopath and told the audience that he kept a gun on his lap as he heard the testimony of this individual because the man “was way out there.”
30. Judge Seiler discussed the difficulty of finding placements in halfway houses for predators and whether to place all civilly committed predators in one location rather than spread out among six halfway houses. During this discussion, Judge Seiler said:

“[w]e’re kind of dealing with the nuclear radiation of defendant. Nobody wants them. We don’t want them in our community, right, and so we’re trying to figure out where they want to put them.”

¹⁰ According to Judge Seiler, Dr. Tennison had previously been excluded as an expert witness by Judge Seiler and has an online blog wherein he criticizes Judge Seiler and the SVP statute.

31. Judge Seiler also commented:

“sexual predators are kept separate from the parolees, probably for their own safety and the safety of the people in prison. I’m dealing with some really special individuals here. They are really special...”
32. During the presentation, Judge Seiler also discussed three specific cases involving predators who had appeared in his court.¹¹ In each instance, Judge Seiler identified the predator by name and projected the predator’s photograph from their original TDCJ incarceration pen packet on a screen for the audience to view as he discussed the cases.¹²
33. Judge Seiler referred to one of the predators as a “complete psychopath,” and projected a photograph of the predator with the caption, “cheerleader killer,” underneath it.
34. Judge Seiler then told the background story to explain that this former football player had sexually assaulted four cheerleaders from his high school. The slide used by Judge Seiler in this presentation referenced a television program where the case had been profiled and the same facts given. Judge Seiler explained that the reason Texas has the civil commitment statute was because of this case.
35. Judge Seiler referred to another predator as the “guy I tried last week.” Judge Seiler said “when you deal with psychopath individuals in controlled settings and law enforcement, they have a real hard time just maintaining control.” Judge Seiler said that “I wondered what was taking the jury so long, but a lot of times they want to just make it look official, so they’ll spend 30, 40 minutes back there. . .”
36. Judge Seiler talked about the first trial he heard as a judge, referring to a third predator as a “pedophile rapist.” According to Judge Seiler, the man “wasn’t a pedophile grooming an individual with a child. He actually raped them. Bad guy.” Stating that this was his very first civil commitment case, Judge Seiler commented that “he’s not any worse than anybody else I –I’ve handled, but you just always remember your first one as a jury trial.”
37. Judge Seiler informed the audience that the predator “told the jury that if the little boy had blue eyes, it’s not like they can help - he can help himself. I’m like, that’s why we have Judge Seiler...”
38. The third predator filed a motion to recuse Judge Seiler in his violation of civil commitment case, which was granted by a visiting judge.
39. Judge Seiler has been the subject of at least sixteen recusal motions filed since August 2014, eight of which have been granted. In each of the recusal motions, attorneys have alleged that Judge Seiler cannot be fair or impartial in their clients’ civil commitment cases due to, among other factors, his biased comments to the Texas Patriot PAC audience and his intemperate treatment of SCFO attorneys.

¹¹ Two of these predators were not under the 435th District Court’s continuing jurisdiction at the time of the presentation because they were serving a prison sentence in TDCJ for violation of civil commitment; however, upon release from TDCJ, each would be placed back on civil commitment and under the court’s jurisdiction.

¹² Judge Seiler testified that he spoke to the Texas Patriots PAC to explain the work of the court and show the audience that their tax money was being well spent; however, when asked what purpose was served by showing the audience photos of specific predators as well as the fictional “Hannibal Lecter” character, Judge Seiler could provide no explanation and conceded that he should not have done so.

RELEVANT STANDARDS

1. Canon 3B(4) of the Texas Code of Judicial Conduct provides, in part, “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.”
2. Canon 3B(5) of the Texas Code of Judicial Conduct provides that, “A judge shall judge shall perform judicial duties without bias or prejudice.”
3. Canon 3B(10) of the Texas Code of Judicial Conduct provides, in part, that: “A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge’s court in a manner which suggests to a reasonable person the judge’s probable decision on any particular case.”
4. Canon 4A of the Texas Code of Judicial Conduct provides that: “A judge shall conduct all of the judge’s extrajudicial activities so that they do not (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties.”
5. Article V, §1-a(6)A of the Texas Constitution provides that a judge may be disciplined for “willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, 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 facts and evidence that Judge Seiler engaged in numerous instances in which he treated attorneys from the State Counsel for Offenders office, as well as one of their expert witnesses, in a manner that was less than patient, dignified and courteous. While a judge has a duty to maintain order and decorum in the courtroom, which may require that he take appropriate measures to address situations in which an attorney or witness may be acting inappropriately, Canon 3B(4) of the Texas Code of Judicial Conduct prohibits that judge from belittling, degrading and/or demeaning the attorney, witness, or anyone else with whom the judge deals in an official capacity. Moreover, Judge Seiler’s comments to Corley, the other SCFO attorneys, and Dr. Tennison were sufficiently impatient, discourteous and undignified to cause a reasonable person to perceive that Judge Seiler harbored such a bias against the SCFO attorneys, their expert witness, and the offenders themselves, that a fair trial was not possible. Based on the incidents described above, the Commission concludes that Judge Seiler’s conduct constituted willful and persistent violations of Canons 3B(4) and 3B(5) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution.

The Commission further concludes that Judge Seiler’s presentation before the Texas Patriots PAC could cause a reasonable person to perceive that Judge Seiler would not be fair and impartial while presiding over civil commitment proceedings, in violation of Canon 4A(1) of the Texas Code of Judicial Conduct. Moreover, Judge Seiler’s public comments about specific offenders whose cases were subject to his court’s continuing jurisdiction, did suggest to a reasonable person how he would rule when those individuals come before the court in future proceedings, in violation of Canon 3B(10) of the Texas Code of Judicial Conduct. Because Judge

Seiler was recused from several civil commitment cases as a direct result of his presentation before the Texas Patriots PAC, the Commission concludes that his extrajudicial conduct interfered with the proper performance of his duties, in violation of Canon 4A(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 3B(4); 3B(5); 3B(10), 4A(1) and 4A(2) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the Commission's decision to issue a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Michael Thomas Seiler, Judge of the 435th Judicial District Court, Conroe, Montgomery County, Texas.

Pursuant to this Order, Judge Seiler 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 Seiler receive this additional instruction in the areas of: (1) the appropriate treatment of attorneys, witnesses, and others with whom the judge deals in an official capacity; (2) avoiding bias and the appearance of bias; and (3) avoiding extrajudicial conduct that casts doubt on a judge's capacity to act impartially and/or interferes with the proper performance of the judge's duties.

Judge Seiler 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 Seiler'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 Seiler 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 REPRIMAND AND ORDER OF ADDITIONAL EDUCATION**.

The Commission has taken this action with the intent of protecting the 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 24th day of April, 2015.

ORIGINAL SIGNED BY

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