



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 19-0833

PUBLIC ADMONITION

**HONORABLE MARK LUITJEN
SENIOR DISTRICT JUDGE, SITTING BY ASSIGNMENT
SAN ANTONIO, BEXAR COUNTY, TEXAS**

During its meeting on August 5-6, 2020, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Mark Luitjen, Senior District Judge, Sitting by Assignment, San Antonio, Bexar County, Texas. Judge Luitjen was advised by letter of the Commission's concerns and provided a written response.

BACKGROUND

On August 31, 2018, Judge Luitjen held a hearing on the defendant's motion to withdraw the plea and for new trial in Cause Nos. 2017-CR-7980 & 2017-CR-12813, each styled *State of Texas v. Gary Davis Garretson*, (the "Garretson Case") in the 399th Judicial District Court of Bexar County, Texas (the "August 31st Hearing"). During the hearing, Judge Luitjen expressed concern about whether he had jurisdiction to rule on the motion for new trial, given the passage of time. The judge indicated he would need to look at the legal authority provided by defense counsel and do some research on his own, then recessed the hearing for about 45 minutes.

Defense counsel was not in the courtroom during the recess. The transcript from the August 31st Hearing indicates Judge Luitjen stated that during the recess, he asked someone to call a person from the District Attorney's Office to come to the courtroom to discuss the jurisdictional issue.¹ The transcript further demonstrates that during the recess Judge Luitjen consulted with the Chief of the Criminal Trial Division of the District Attorney's Office, Jay Norton, who relayed a message to the judge that the Chief

¹ While the transcript indicates the judge asked a person named "Pam" to make this call, in his written responses to the Commission Judge Luitjen explained he did not know of any person assigned to the court by that name, he believed this to be a mistake in the transcript, and he had actually asked the prosecutor handling the case, Evan Patterson, to make the call.

of the appeals section of the District Attorney's Office, Enrique "Rico" Valdez, agreed with the judge's belief that he did not have jurisdiction in the matter.

When the hearing reconvened, Judge Luitjen announced that he had consulted with Mr. Norton, who had consulted with Mr. Valdez, and that the State had indicated to him it believed he was correct regarding the court's lack of jurisdiction in the matter. At that point defendant's counsel expressed concern regarding what he perceived to be improper *ex parte* communications between Judge Luitjen and the State. Judge Luitjen then expressed his belief that he could consult with anyone he wanted to in talking about a case or researching the law, including the District Attorney's Office.

In his written responses to the Commission, Judge Luitjen explained he did not believe he had initiated an improper *ex parte* communication, because he had only requested that someone from the District Attorney's Office's appellate section come to court to participate in the hearing. The judge also stated he did not believe he had permitted an improper *ex parte* communication on the part of Mr. Norton, as he did not know Mr. Norton was even aware of the issues. Further, while the judge stated he did not intend to confer with anyone until all parties were present once the hearing was reconvened, he acknowledged that defendant's counsel was not present in the courtroom when Mr. Norton relayed the message from Mr. Valdez, though he noted he believes the defendant was present in the jury box. Finally, Judge Luitjen stated he did not consider the communication in making his decision, as he had already concluded he lacked jurisdiction. There is no indication Judge Luitjen admonished the State for communicating with him about the merits of a pending motion outside the presence of defense counsel.

After considering the evidence before it, the Commission enters the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Mark Luitjen was a Senior District Judge, Sitting by Assignment, in San Antonio, Bexar County, Texas.
2. Judge Luitjen initiated an *ex parte* communication with the State concerning the merits of defendant's motion at the August 31st Hearing when, at a recess and out of the presence of defendant's counsel, he asked Mr. Patterson to get someone from the District Attorney's Office's appellate section to come to court to discuss the merits of the motion.
3. Judge Luitjen permitted an *ex parte* communication with the State concerning the merits of defendant's motion at the August 31st Hearing when, during the recess and out of the presence of defendant's counsel, he permitted Mr. Norton to relay Mr. Valdez's belief that the court did not have jurisdiction to rule on the motion.
4. When Judge Luitjen reconvened the August 31st Hearing, while he immediately disclosed the *ex parte* communications, he did not admonish the State regarding those communications, nor did he announce he would not consider such communications.
5. Judge Luitjen believed he could contact anyone regarding defendant's motion or researching the law with respect to defendant's motion.

RELEVANT STANDARD

Canon 3B(8) of the Texas Code of Judicial Conduct states, in relevant part: "A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside

the presence of the parties between the judge and a party, [or] an attorney...concerning the merits of a pending or impending judicial proceeding.”

CONCLUSION

Based upon the record before it and the factual findings recited above, the Texas State Commission on Judicial Conduct has determined that the Honorable Mark Luitjen, Senior District Judge, Sitting by Assignment, San Antonio, Bexar County, Texas, should be publicly admonished for initiating and permitting improper *ex parte* communications with the State concerning the merits of defendant’s motion to withdraw the plea and for new trial in the Garretson Case, in violation of Canon 3B(8) of the Texas Code of Judicial Conduct.

The Commission has taken this action pursuant to the authority contained in Article V, §1-a of the Texas Constitution in a continuing effort to promote confidence in and high standards for the judiciary.

Issued this the 4th day of December, 2020.



David Hall
Chairman, State Commission on Judicial Conduct