



**BEFORE THE  
STATE COMMISSION ON JUDICIAL CONDUCT**

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**CJC No. 12-0849-DI**

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**PUBLIC ADMONITION**

**HONORABLE JUERGEN (SKIPPER) KOETTER  
267<sup>TH</sup> JUDICIAL DISTRICT COURT  
VICTORIA, VICTORIA COUNTY, TEXAS**

During its meeting on August 14-16, 2013, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Juergen (Skipper) Koetter, Judge of the 267<sup>th</sup> Judicial District Court, Victoria, Victoria County, Texas. Judge Koetter was advised by letter of the Commission's concerns and provided a written response. 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 Juergen (Skipper) Koetter was Judge of the 267<sup>th</sup> Judicial District Court in Victoria, Victoria County, Texas.
2. On June 16, 2006, attorney O.F. Jones ("Jones") filed a lawsuit against his former client, Richard Whatley ("Whatley"), to recover attorney's fees owed in connection with Jones's representation of Whatley in a prior case filed in Medina County.
3. On February 2, 2009, a bench trial was held before Judge Koetter, who issued a take nothing judgment on April 13, 2009. Jones appealed the trial court's judgment.
4. On June 9, 2011, the Thirteenth Court of Appeals reversed and remanded the case, ordering the trial court to determine what, if any, attorney's fees were owed to Jones by Whatley.
5. On October 13, 2011, the parties appeared before Judge Koetter, who announced that he was awarding Jones more than \$40,000 in attorney's fees.

6. Although Jones put on no evidence, Whatley was allowed to briefly testify. As a result, Judge Koetter reduced the attorney fee award to \$26,694. Whatley filed a Motion for New Trial, but later withdrew that motion.
7. At a hearing held on November 22, 2011, Whatley urged his Motion to Withdraw the Motion for New Trial and offered to pay the \$26,694 ordered by the court.
8. Jones informed the court that he wanted a new trial because he believed he was entitled to more money from Whatley.
9. Judge Koetter indicated that he would grant a new trial and set the case for trial on its merits on January 18, 2012. Due to scheduling conflicts, the case was not heard on January 18, 2012.
10. On January 13, 2012, Judge Koetter signed an Agreed Order granting the Motion for New Trial, and vacating the October 13<sup>th</sup> Judgment.
11. On that same day, Jones sent a letter to Whatley's attorney, Jerry L. Clark ("Clark"), revealing a meeting with Judge Koetter at the courthouse during which the subject of mediating the dispute was discussed *ex parte*.
12. In his letter, Jones wrote,

"Judge Koetter told me to tell you that perhaps we need to consider mediation again. I told him that we had tried that once, and were not successful because Mr. Whatley was not amenable to reason, according to Bob Houston. He told me to tell you that he was inclined to sign a judgment that would provide me with a larger amount than he had previously, and that you should talk with Mr. Whatley to see if you thought that going back to Bob Houston for another couple of hours would be of any benefit or value."
13. In a letter to Jones dated February 2, 2012, Clark objected to the *ex parte* communication between Jones and Judge Koetter, and requested a meeting with Judge Koetter before the matter was set for trial.
14. In a letter to Clark dated February 2, 2012, Jones responded to Clark's objection about his *ex parte* meeting with Judge Koetter as follows:

"Next, as you know, I took the Order granting the New Trial over to the courthouse and found Judge Koetter and got him to sign the order. After he signed it, he said to me what I recited in my letter to you. In a sense it was an *ex parte* discussion, although it was in open court. Again, I merely passed on to you what was said, and in the instance what I was told. I am sure that you are familiar with Judge Koetter and his approach to matters before him as I am, and I am sure that you can explain his proclivities to the Whatley's [sic] as well as anyone."
15. On February 3, 2012, Jones notified Clark that Judge Koetter had signed a judgment awarding Jones \$45,000 in attorney's fees.
16. The \$45,000 judgment erroneously indicated that the parties appeared for a hearing on January 18, 2012, and that the judgment was signed on January 2, 2012.
17. On February 8, 2012, Judge Koetter signed a Judgment Nunc Pro Tunc correcting the errors in the judgment.
18. Whatley appealed the new judgment.

19. On May 23, 2013, the Thirteenth Court of Appeals reversed and remanded the case back to the trial court for a new trial. In its opinion, the Court found that Judge Koetter had no authority to enter the \$45,000 judgment without affording Whatley the right to be heard.
20. In his written responses to the Commission's inquiry, Judge Koetter acknowledged having the *ex parte* conversations with Jones.
21. Judge Koetter stated that he had suggested to Jones that the parties "needed to consider mediation again," but, according to the judge, this was merely a "passing remark" given the case history and the number of hearings in the case.
22. Judge Koetter further explained that the \$45,000 judgment was based on his opinion and the evidence that had been presented by the parties, who had been asked to submit briefs and any additional evidence they wanted the court to consider when addressing their respective positions on the attorney's fees question.
23. Judge Koetter advised the Commission that he had decided against conducting any further hearings in the case based on his impression and belief that neither party had new evidence to offer.

### **RELEVANT STANDARD**

Canon 3B(8) of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. 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, an attorney, a guardian ad litem, an alternative dispute resolution neutral or any other court appointee concerning the merits of a pending or impending judicial proceeding."

### **CONCLUSION**

The Commission concludes from the facts and evidence presented that Judge Koetter engaged in an improper *ex parte* communication with Jones concerning a contested issue in a pending case, which resulted in the entry of a judgment in favor of Jones without affording Whatley the right to be heard. In reaching its decision, the Commission took into account the fact that Judge Koetter had been sanctioned previously for engaging in similar conduct. In this case, the Commission concludes that Judge Koetter's conduct, as described herein, constituted a willful or persistent violation of Canon 3B(8) of the Texas Code of Judicial Conduct.

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In condemnation of the conduct described above that violated Canon 3B(8) 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 ADMONITION** to the Honorable Juergen (Skipper) Koetter, Judge of the 267<sup>th</sup> Judicial District Court, Victoria, Victoria County, Texas.

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** 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 17th day of September, 2013.

ORIGINAL SIGNED BY

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Tom Cunningham, Chair  
State Commission on Judicial Conduct