



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

**CJC Nos. 05-0679-DI, 05-0776-DI, 06-0299-DI, 06-0439-DI, 06-0893-DI,
AND 07-0056-DI**

PUBLIC REPRIMAND

**HONORABLE RICHARD W.B. "RICK" DAVIS
FORMER JUDGE, 272ND JUDICIAL DISTRICT COURT
BRYAN, BRAZOS COUNTY, TEXAS**

On or about April 20, 2006, the State Commission on Judicial Conduct ("Commission") voted to commence formal proceedings against Richard W.B. "Rick" Davis ("Respondent"), who, at the time, was judge of the 272nd Judicial District Court, in Bryan, Brazos County, Texas. The initial complaints dealt primarily with allegations that Respondent had continued to pursue a personal vendetta against local attorney Laura Cass ("Cass") and her former employer, Brazos County District Attorney Bill Turner ("Turner"), despite having been publicly reprimanded by the Commission in 2002 for engaging in similar acts of judicial misconduct. The formal proceeding was also intended to examine whether Respondent acted improperly in connection with an April 2005 grand jury that he impaneled, and its investigation of Turner, the judge's political foe.

The Office of the Texas Attorney General, acting as Special Counsel for Examiner for the Commission, filed the initial Notice of Formal Proceedings against Respondent on or about September 19, 2006. The proceedings were then abated by agreement of the parties to allow the Commission to investigate and address additional allegations of judicial misconduct involving Respondent's May 12, 2006 request for a Court of Inquiry to investigate criminal allegations against his 2005 political opponent, Brazos County First Assistant District Attorney, Shane Phelps ("Phelps"). On or about February 16, 2007, following Respondent's second appearance before the Commission in response to the new complaints, the Commission voted to add the new complaints to the already-pending formal proceedings. The Amended Notice of Formal Proceedings was served on

Respondent on or about June 21, 2007. Shortly thereafter, Respondent announced he would be stepping down from the bench at the end of his term to return to private practice. On August 27, 2007, a Special Master was appointed by the Texas Supreme Court to preside over the trial in the formal proceedings. In early January 2008, Respondent formally announced his candidacy for Brazos County District Attorney and resigned from judicial office. As a result of Respondent's resignation, the Commission voted to withdraw the formal proceedings pending against him. By agreement of the parties, the complaints against Respondent went back before the Commission for informal proceedings on or about June 9, 2008.

During its meeting on October 15-17, 2008, the Commission concluded its review of the evidence concerning the allegations against Respondent. By agreement of the parties, dated May 15, 2008, the transcript and records of the 2006 Court of Inquiry described below were submitted for the Commission's consideration and have been deemed admissible as evidence in this case. After considering the evidence before it, the Commission has entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Richard W.B. Davis ("Respondent") was the judge of the 272nd Judicial District Court, Bryan, Brazos County, Texas.
2. On March 1, 2002, the Commission issued a Public Reprimand to Respondent based upon his conduct toward Brazos County District Attorney Bill Turner ("Turner"), and former Assistant District Attorney Laura Cass ("Cass"). Respondent appealed the Commission's decision and on June 10 - 11, 2002, the case was heard *de novo* by a Special Court of Review duly appointed by the Supreme Court of Texas, consisting of the Honorable Justices John Boyd, Bea Ann Smith, and Sue Walker.
3. On July 2, 2002, the Special Court of Review issued an opinion in which it affirmed the Commission's Public Reprimand and, in addition, ordered Respondent to complete eight (8) hours of mentoring and anger management training. See *In Re Davis*, 82 S.W.3d 140 (Tex. Spec. Ct. Rev. 2002).
4. Shortly after the issuance of the Special Court of Review's Opinion, Respondent issued a public apology to Cass.
5. Based upon the Commission's March 1, 2002 Public Reprimand and the Special Court of Review's July 2, 2002 Opinion, Respondent had actual knowledge that "extreme retaliatory actions" and "disturbing tactics and inappropriate language to respond to those who might question his decisions" constituted a willful violation of Canon 3B(4). See *In Re Davis*, 82 S.W.3d 140, 147 (Tex. Spec. Ct. Rev. 2002).
6. Based upon the Commission's March 1, 2002 Public Reprimand and the Special Court of Review's July 2, 2002 Opinion, Respondent had actual knowledge that "a personal vendetta to destroy the reputation" and an "inability to handle appropriately the criticism that inevitably comes to every judge" constituted a

- willful violation of Canons 2A and 4A(1). See *In Re Davis*, 82 S.W.3d 140, 147-148 (Tex. Spec. Ct. Rev. 2002).
7. Based upon the Commission's March 1, 2002 Public Reprimand and the Special Court of Review's July 2, 2002 Opinion, Respondent had actual knowledge that "us[ing] the power of his office to retaliate against someone with whom he had a personal grudge" constituted a willful violation of Article V, § 1-a of the Texas Constitution. See *In Re Davis*, 82 S.W.3d 140, 148 (Tex. Spec. Ct. Rev. 2002).
 8. Based upon the Commission's March 1, 2002 Public Reprimand and the Special Court of Review's July 2, 2002 Opinion, Respondent had actual knowledge that "pursuing retaliatory actions" was not protected First Amendment speech. See *In Re Davis*, 82 S.W.3d 140, 149-150 (Tex. Spec. Ct. Rev. 2002).
 9. In the 2004 primary election, Brazos County First Assistant District Attorney Shane Phelps ("Phelps") ran against Respondent. Respondent prevailed in an April 2004 runoff election.
 10. During the 2004 general election, Respondent's friend and political supporter, Patrick Meece ("Meece") ran against Turner. Turner was re-elected.
 11. Respondent was aware that Meece had been digging through trash dumpsters trying to find information that could be used against his political opponent, Turner. Meece had shown Respondent documents he had found and reconstructed that Meece contended could prove violations of the Texas Election Code by Turner and Respondent's political opponent, Phelps.
 12. Respondent declined Meece's request for a court of inquiry, and instead advised Meece to refer the materials elsewhere.

The April 2005 Grand Jury

13. Respondent knew that the Texas Ethics Commission had dismissed Meece's complaint and that the Public Integrity Unit of the Travis County District Attorney's Office had likewise declined to take any action.
14. In April 2005, deviating from his normal practice, Respondent impaneled a grand jury using jury commissioners rather than the panel method. Respondent appointed Amanda Short ("Short"), a client of Meece's law firm, to act as the grand jury's foreperson.
15. In early August 2005, Respondent learned from Meece that he was going to present information directly to Short alleging that Turner and Phelps had violated the Texas Election Code during the 2004 election.
16. After receiving the information directly from Meece, Short asked Respondent for an extension of the grand jury's term, which was scheduled to expire at the end of September.
17. The District Attorney's Office was not informed by Short or Respondent of the request to extend the grand jury.

18. In a letter dated August 18, 2005, Respondent told Short that her request was premature, and that she could renew it at a later time. Respondent did not share this communication with the District Attorney's Office and it was not made public until November 2005.
19. On September 15, 2005, Short again contacted Respondent requesting an extension of the grand jury's term.
20. On September 15, 2005, Respondent signed a written order extending the grand jury's term for 90 days – from September 30, 2005 to December 29, 2005. Although not requested, the order also authorized the grand jury to conduct its business away from the courthouse at a location of its own choosing.
21. The District Attorney's Office was not notified that the grand jury had been extended, or that it might be meeting in a location other than the courthouse.
22. Despite authorizing the grand jury to meet away from the courthouse in any location of its choosing, Respondent did not take any steps to appoint a bailiff, make arrangements for a location, or take any other reasonable steps to protect the integrity or secrecy of the grand jury process or the security and privacy of the jurors themselves.
23. None of the communications between Respondent and Short were filed with the Brazos County District Clerk's office until November 14, 2005, at which time only the September 15 request and order were turned over and recorded in the minutes of the court.
24. The District Attorney's Office was not included in, nor made aware of, the communications until November 2005. Although the grand jury term had been extended for 90 days, the District Attorney's Office was not notified or otherwise made aware of the grand jury's extended availability until approximately two (2) months after Respondent signed the September 15 order.
25. On or about November 30, 2005, at a meeting in Meece's office, Meece informed Respondent that Meece had made arrangements for the grand jury to meet the following day, December 1, 2005, in a conference room in the building where his law office is located.
26. Despite having been told that Meece had made arrangements for the grand jury meeting, Respondent did not question Meece's involvement in the grand jury process. Respondent did not ask any questions or take any other steps to protect the integrity or secrecy of the grand jury process or the security and privacy of the jurors themselves.
27. Having reason to believe that the grand jury was investigating him or someone in his office, Turner sought to recuse both Respondent and the Brazos County District Attorney's Office from exercising any authority over or having any further involvement with the grand jury.
28. In a letter to Judge Olen Underwood, Presiding Judge of the 2nd Administrative Judicial District, responding to Turner's Motion to Recuse, Respondent turned over the remaining records in his possession relating to the April 2005 grand jury,

- to wit: Short's August 14, 2005 request for an extension and Respondent's written response placing the request in abeyance.
29. The grand jury met on December 1, 2005, despite complaints from several of the grand jurors. At that time, Short presented the full packet of information provided by Meece. The grand jurors decided to take no action against Turner.
 30. Respondent's alleged involvement with a grand jury possibly investigating criminal charges against Turner and Phelps, as well as Respondent's ongoing feud against Turner and Phelps, resulted in widespread media attention and public criticism of Respondent's actions.

The Courts of Inquiry

31. Article 52.01 of the Texas Code of Criminal Procedure provides that only a district judge, acting in his capacity as a magistrate, may request the commencement of a Court of Inquiry.
32. In June 2003, Respondent requested that a Court of Inquiry be convened to investigate Turner. Judge Underwood appointed the Honorable Judge David Peeples of San Antonio to preside. The Court of Inquiry was convened in July 2003, but dismissed during the first day of hearings. Judge Peeples wrote a formal opinion cautioning Respondent that the extraordinary procedure of the Court of Inquiry "should be used with prudence and restraint."
33. Based upon the formal opinion issued by Judge Peeples, Respondent had actual knowledge that there was not sufficient evidence to investigate Turner, and that he had not exercised "prudence and restraint" in requesting the Court of Inquiry.
34. In early 2006, in response to inquiries from the Commission regarding allegations that he improperly interfered with the April 2005 grand jury, Respondent began collecting affidavits from some members of the grand jury, and others, to defend himself against the complaints. Respondent prepared several of the affidavits himself and used his court staff to obtain signatures from the witnesses, including affidavits later described by these same witnesses as "exaggerated" and inaccurate.
35. At some point, Respondent decided to use these affidavits for another purpose: to attempt to discredit his former political opponent, Phelps.
36. On May 12, 2006, Respondent submitted a written request to Judge Underwood asking that a Court of Inquiry be convened to investigate Phelps. Respondent accused Phelps of obstructing the April 2005 Grand Jury's investigation of Phelps and Turner.
37. Respondent attached twenty supporting affidavits to his May 12 request for the second Court of Inquiry. Four of those affidavits predated the alleged December 2005 grand jury obstruction. Three were included with the request solely to accuse Laura Cass of improper *ex parte* communication, and Judge Peeples of "corruption and subterfuge" and "moral cowardice." The fourth merely repeated

- accusations that had been dismissed by Judge Peeples in the first Court of Inquiry in 2003.
38. Judge Underwood appointed the Honorable Judge Cynthia Kent of Tyler to preside over Respondent's second Court of Inquiry, which was convened on July 5, 2006. Tyler attorney F. R. "Buck" Files, Jr. was appointed by Judge Kent to prosecute the matter.
 39. After two full days of testimony and evidence, Judge Kent dismissed Respondent's second Court of Inquiry.
 40. What became clear during the second Court of Inquiry is that Respondent never asked the grand jurors whether Phelps took any action to intimidate or harass them, or to otherwise hinder their investigations. Nor did he make any attempt to ascertain that the grand jurors' contact with Phelps on December 1, 2005, occurred after the grand jury had decided not to pursue any action against Turner.
 41. In her written Order dated October 6, 2006, Judge Kent found that there was "no credible evidence of any misconduct or violation of law by Mr. Shane Phelps."
 42. In her oral findings, which were incorporated by reference in her written Order, Judge Kent found that "any reasonable person, judge or jury, listening to [Meece's] testimony would believe and find that he has a political vendetta against the District Attorney's office."
 43. Judge Kent also found that Respondent's complaint against Phelps was based on "mistake, false information or other similar basis, indicating" a lack of probable cause to believe that Phelps had committed any offense.
 44. As a direct result of Respondent's second Court of Inquiry, the cost to Brazos County was nearly \$55,000.

RELEVANT STANDARDS

1. Article 5, §1-a(6)A of the Texas Constitution provides that any Texas justice or judge may be disciplined for willful or persistent violation of the rules promulgated by the Supreme Court of Texas, . . .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.
2. Section 33.001(b) of the Texas Government Code defines "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" as including, among other things: "[a] willful violation of the Code of Judicial Conduct; or persistent or willful violation of the rules promulgated by the supreme court."
3. Canon 2A of the Texas Code of Judicial Conduct provides that "[a] judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

4. Canon 2B of the Texas Code of Judicial Conduct provides, in relevant part, that “[a] judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge”
5. Canon 3B(5) of the Texas Code of Judicial Conduct provides that “[a] judge shall perform judicial duties without bias or prejudice.”
6. Canon 4A(1) of the Texas Code of Judicial Conduct provides, in relevant part, that “[a] judge shall conduct all of the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge.”
7. Canon 4A(2) of the Texas Code of Judicial Conduct provides, in relevant part, that “... [a] judge shall conduct all of the judge's extra-judicial activities so that they do not ... interfere with the proper performance of judicial duties.”

CONCLUSIONS

The Commission concludes from the facts and evidence presented that by allowing a grand jury he had appointed to be influenced by Meece, a friend and political supporter, to seek indictments against political opponents based upon information that had already been reviewed and rejected by more than one independent investigative agency, Respondent engaged in willful conduct that cast public discredit on the judiciary and administration of justice, damaged public confidence in the integrity and impartiality of the judiciary, and was inconsistent with the proper performance of his duties. Respondent’s conduct cast reasonable doubt on his capacity to act impartially as a judge. To the extent Respondent’s conduct was in furtherance of the grudges and retaliation that were the subject of his prior public reprimand, it constitutes both willful and persistent misconduct.

Rather than protecting the grand jury from the external interference of someone he knew had a political score to settle, Respondent took actions that isolated the grand jury. By meeting privately with the foreperson, and then eventually extending the term of the grand jury without notifying the District Attorney’s Office or any other official, Respondent deprived the grand jury of the legal advice and assistance provided by statute. Knowing that Meece had provided his materials to the foreperson making accusations against Turner and Phelps, Respondent did not provide any guidance or advice to the grand jurors, nor did he arrange for any legal advice to be provided to the grand jury in the absence of the District Attorney’s Office. By authorizing the grand jury to meet outside the courthouse without appointing a bailiff, making arrangements for a location, or taking any other reasonable steps, Respondent failed to protect the integrity or secrecy of the grand jury process or the security and privacy of the jurors themselves. Respondent’s willful conduct in failing to protect the grand jury process and the grand jurors was inconsistent with the proper performance of his duties, cast public discredit on the judiciary and administration of justice, and damaged public confidence in the integrity and impartiality of the judiciary. Respondent’s conduct cast reasonable doubt on

his capacity to act impartially as a judge. With respect to Respondent's failure to protect the April 2005 Grand Jury from outside influence, the Commission concludes that Respondent has willfully and/or persistently violated Article 5, Section 1-a(6) of the Texas Constitution; Section 33.001(b)(2) of the Texas Government Code; and Canons 2A, 2B, 3B(5), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct.

Respondent engaged in willful and persistent conduct when he requested a Court of Inquiry to investigate Phelps on May 12, 2006. Having actual knowledge that his previous request for a Court of Inquiry against Turner lacked "prudence and restraint," Respondent nonetheless filed his 120-page request based upon affidavits that were not credible and did not constitute probable cause. Respondent prepared several of the affidavits himself and used his court staff to obtain signatures, including affidavits later described by the witnesses as "exaggerated" and inaccurate. By using procedures only available to a district judge, Respondent used the prestige of judicial office to further his own personal grudges and political agenda. Respondent's conduct also brought public discredit to the judiciary and the administration of justice not only by publicly engaging in conduct that had already been found to be improper and unethical, but also by publishing serious and unfounded accusations against those involved in the administration of justice in the Brazos County District Attorney's Office. Respondent's conduct cast reasonable doubt on his capacity to act impartially as a judge.

Despite the 2002 Public Reprimand and the published Opinion of the Special Court of Review affirming it, Respondent compounded his prior misconduct by adding additional unfounded accusations against Cass, as well as baseless attacks against Judge David Peeples, in his May 12, 2006 request for the Special Court of Inquiry. By using procedures only available to a district judge, Respondent used the prestige of judicial office to further his own personal grudges and to retaliate against those involved in his 2002 Public Reprimand and the dismissal of his June 2003 Request for a Special Court of Inquiry. Respondent's conduct also brought public discredit to the judiciary and the administration of justice not only by publicly engaging in conduct that had already been found to be improper and unethical, but also by publishing serious and unfounded accusations against other judges and those involved in the administration of justice in the Brazos County District Attorney's Office. Respondent's conduct cast reasonable doubt on his capacity to act impartially as a judge.

With respect to his May 12, 2006 request for a Court of Inquiry and his gratuitous and baseless accusations against Cass and Judge Peeples, the Commission concludes that Respondent has willfully and/or persistently violated Article 5, Section 1-a(6) of the Texas Constitution; Section 33.001(b)(2) of the Texas Government Code; and Canons 2A, 2B, 3B(5), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct.

In condemnation of the above-recited conduct that violated Article 5, §1-a(6)A of the Texas Constitution, Section 33.001(b)(2) of the Texas Government Code, and Canons 2A, 2B, 3B(5), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable Richard W.B.

“Rick” Davis, former judge of the 272nd Judicial District Court, Bryan, Brazos County, Texas.

Pursuant to the authority contained in Article 5, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** 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 the 31st day of October, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct