



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 08-0687-AP

PUBLIC ADMONITION

**HONORABLE TOM GRAY
CHIEF JUSTICE, 10TH COURT OF APPEALS
WACO, MCLENNAN COUNTY, TEXAS**

During its meeting on December 2-5, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Tom Gray, Chief Justice, 10th Court of Appeals, Waco, McLennan County, Texas. Justice Gray was advised by letter of the Commission's concerns and provided written responses. Justice Gray appeared with counsel before the Commission on August 13, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

BACKGROUND INFORMATION

In 2007, the Commission received and investigated numerous complaints relating to the vitriolic language contained in several dissenting opinions written by Justice Gray, which opinions contained unprofessional personal attacks against the judge's colleagues on the bench, Justices Bill Vance and Felipe Reyna, and against certain litigants, such as Larry Kelley, involved in cases before the Court. The increasingly acerbic opinions of Justice Gray became media fodder and were the subject of growing criticism and ridicule in editorials, on internet blogs, and at judicial conferences. Although the negative media coverage and denigration among certain segments of the legal community likely had the effect of diminishing public confidence in the integrity and impartiality of the judiciary and cast discredit on the administration of justice, Justice Gray acknowledged during the course of the investigation that he appreciated the problems caused by the tone of his dissenting opinions and had taken appropriate corrective measures to avoid engaging in that conduct in the future. Additionally, the Commission determined, in deference to the principle of judicial independence, that Justice Gray should not be disciplined for the content of his dissents.

In the course of the investigation, however, an additional complaint was received that made it evident that the internal strife within the 10th Court of Appeals, and in particular the discord between Justice Gray and his colleagues, needed to be examined and addressed due to the detrimental effect it was having on court staff.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Tom Gray was Chief Justice, 10th Court of Appeals, Waco, McLennan County, Texas.
2. In March 2007, Justice Felipe Reyna introduced Justice Gray as the keynote speaker at a fundraiser for the Republican Club of Somervel County in Glen Rose, Texas.
3. At the conclusion of his introduction to the approximately sixty (60) Republicans attending the fundraiser, Justice Reyna told the group, "Please join me in welcoming my good friend, Chief Justice Tom Gray," or words to that effect.
4. Justice Gray began his remarks to the audience by thanking Justice Reyna for the introduction, but went on to state, "Really, we are not friends. He's never been in my home. I've never been in his home. And furthermore, every time there's a close vote on the Court, he always votes with Bill Vance," or words to that effect.
5. Later that evening, several attendees spoke to Justice Reyna, expressing displeasure with and apologizing for Justice Gray's comments.
6. Somervel County is one of 18 counties within the jurisdiction of the 10th Court of Appeals.
7. Both Justice Reyna and Justice Gray are Republicans; Justice Bill Vance is a Democrat.
8. Thereafter, Justice Gray initiated a "whisper campaign" against Justice Reyna by criticizing him to Republican Party leaders in the counties located within the Court's jurisdiction.
9. Justice Gray attended Republican lunches and dinners and told party leaders "somebody needs to talk to Felipe. He's not being a good Republican," and that Justice Reyna "always votes with a liberal Democrat, [Justice] Bill Vance," or words to that effect.
10. In his response to the Commission's inquiry regarding this issue, Justice Gray said that after Justice Reyna was elected, people attending political events would ask Justice Gray about specific dissents Justice Gray had issued criticizing Justice Reyna, and Justice Gray was simply answering their questions.
11. According to a security tape obtained during the course of the investigation, on or about June 16, 2008, Justice Gray unlocked and entered the private offices of Justice Vance without permission.
12. In his appearance before the Commission, Justice Gray defended the unauthorized entry of Justice Vance's private offices by explaining that he was searching for a file. Justice Gray acknowledged, however, that after determining that the file was

- not in Justice Vance's office, he reviewed other papers located on Justice Vance's desk.
13. Justice Gray further testified that he has unlocked and entered the private offices of both Justice Vance and Justice Reyna in the past to look for files while the other justices were not present and had not given their permission.
 14. Following these incidents, Justice Gray never informed his fellow judges of his entry into their offices.
 15. Both Justice Vance and Justice Reyna testified that they would never enter Justice Gray's private offices without permission.
 16. Justice Vance and Justice Reyna further testified that they would not have given Justice Gray permission to enter their private offices when no one else was present.
 17. Justice Vance and Justice Reyna also testified about instances when Justice Gray has treated court staff in a sarcastic, intimidating and demeaning manner, which conduct also included angry outbursts and personal attacks. Statements implying that the chief clerk would be out of a job after January 1, 2009, and efforts at other times to convince the other justices to vote in favor of firing the chief clerk and the accountant were also common. Such mistreatment was sufficient to reduce some staff members to tears and has contributed to extremely low employee morale at the Court.
 18. Justice Gray advised the Commission that since no one has complained to him directly about his treatment of court staff, he was unable to respond to the allegations.
 19. Justice Gray further explained that he has told the chief clerk and others that things would be different after January 1, 2009, and that he was referring to the tension that he would no longer experience after Justice Vance retired from the bench and Justice Rex Davis assumed office.
 20. Justice Gray denied that he intimated or suggested that anyone's job was in jeopardy.

RELEVANT STANDARDS

1. Canon 2B of the Texas Code of Judicial Conduct states in pertinent part: "A judge shall not allow any relationship to influence judicial conduct or judgment."
2. Canon 3B(4) of the Texas Code of Judicial Conduct states in pertinent part: "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in his official capacity[.]"

CONCLUSION

The Commission concludes, based on the facts and evidence before it, that Justice Gray allowed his acrimonious relationship with Justices Vance and Reyna to improperly influence his conduct and judgment, and in the process, failed to treat those with whom he interacted in an official capacity, including court personnel, in a patient, dignified and

courteous manner. The Commission concludes that Justice Gray's conduct constituted willful and/or persistent violations of Canons 2B and 3B(4) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2B and 3B(4) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Tom Gray, Chief Justice, 10th Court of Appeals, Waco, McLennan 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 the 18th day of December, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct