



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 08-0073-MU

PUBLIC WARNING

**HONORABLE HECTOR DE PENA, JR.
ASSOCIATE MUNICIPAL JUDGE
CORPUS CHRISTI, NUECES COUNTY, TEXAS**

During its meeting on August 13-15, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Hector De Pena, Jr., Associate Municipal Court Judge, Corpus Christi, Nueces County, Texas. Judge De Pena was advised by letter of the Commission's concerns and provided a written response. By letter dated July 8, 2008, Judge De Pena was offered an opportunity to appear before the Commission, but declined to respond to the Commission's invitation. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Hector De Pena, Jr., was Associate Municipal Court Judge for the City of Corpus Christi, Nueces County, Texas.
2. According to a complaint filed by the city attorney, several female detention officers claimed that at various times in 2007, Judge De Pena had made sexually inappropriate comments to them, or made unwanted physical contact with them.
3. According to the women, the alleged conduct took place at various locations, and was directed to the women individually.
4. The city's human resources officer interviewed the women and other witnesses, and compiled a report dated September 10, 2007.
5. According to the affidavit of the primary complainant, a detention officer, on February 14, 2007, Judge De Pena asked her about her marital status, and then suggested that the two of them "run away."

6. The detention officer also stated that Judge De Pena occasionally hugged her and rubbed her shoulders, without her consent, and would refer to her as “sweetheart, darling or gorgeous.”
7. The complainant further stated that Judge De Pena once forcibly kissed her in the hallway of the detention center, without her consent.
8. She stated that on another occasion Judge De Pena approached her at work and commented that he was there “to sexually harass” her, and then began to massage her shoulders, without her consent.
9. Finally, the woman stated that on or about August 17th or 18th, 2007, Judge De Pena made unwanted contact with her by touching her back and waist while telling her: “Just remember, I love you.”
10. A second officer stated in her affidavit that Judge De Pena would sometimes refer to her as “sweetheart, darling or gorgeous.”
11. This officer said that the judge would occasionally touch or hug her, without her consent, and that in July 2007, he touched her right breast while attempting to hug her without her consent.
12. A third officer stated in her affidavit that Judge De Pena once kissed her on the forehead, without her consent, and that he would refer to her as “darling” and “sweetie.”
13. The fourth officer stated in her affidavit that in June 2007, Judge De Pena greeted her by saying “Hey Sexy.” This officer also stated that Judge De Pena would occasionally rub her shoulders, and that he once kissed her on the cheek; however the officer said that she did not find the judge’s behavior to be offensive or threatening.
14. In his written responses to the Commission’s inquiry, Judge De Pena admitted that he “probably did” call one of the officers by “pet names” and that he “probably did ...rub her shoulder” occasionally. He also acknowledged that he referred to another female officer as “sexy” on one occasion “when she came to work well dressed and manicured.”
15. The Commission was advised by city officials that in February 2005, a similar complaint had been made against Judge De Pena by a court administrative assistant, for which the judge had received a warning.
16. The City of Corpus Christi’s written policy issued to all city employees “prohibits sexual harassment at all levels of City employment.” According to that policy, “Sexual Harassment” is defined, in part, as “unwelcome sexual advances ... and other verbal or physical conduct of a sexual nature” The policy defines “unwelcome sexual advances,” in part, as “verbal or physical conduct of a sexually offensive nature” including “unwelcome sexual flirtations, advances ... uninvited and unwelcome physical contact or touching, including ... hugging”

RELEVANT STANDARDS

1. 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 an official capacity . . .”
2. Article V, §1-a(6)A of the Texas Constitution states that a judge may be disciplined or removed from office for a willful violation of the Texas Code of Judicial Conduct, or for 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

Based on the facts and evidence before it, the Commission concludes that as a public official charged with upholding the honor and integrity of the judiciary, Judge De Pena’s conduct toward certain female detention officers with whom he worked in his official capacity lacked the dignity and courtesy required of a judicial official and was clearly inconsistent with the proper performance of his duties. Judge De Pena’s inappropriate behavior towards these women constituted willful and/or persistent violations of Canon 3B(4) of the Texas Code of Judicial Conduct, and Article V, Section 1-a(6)A of the Texas Constitution.

In condemnation of the conduct which violates Canon 3B(4) and Article V, §1-a(6)A of the Texas Constitution recited above, it is the Commission’s decision to issue a **PUBLIC WARNING** to Judge Hector De Pena, Jr., Associate Municipal Judge, City of Corpus Christi, Nueces County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above is made the subject of a **PUBLIC WARNING** by the State Commission on Judicial Conduct.

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 29th day of August, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct