



STATE COMMISSION ON JUDICIAL CONDUCT

PUBLIC STATEMENT

No. PS-2013-1

Background

In January 2013, the State Bar of Texas Judicial Ethics Advisory Committee issued Ethics Advisory Opinion No. 296, in response to an inquiry from a Galveston County Court at Law Judge concerning a Galveston County policy that allowed a part-time family law judge to practice law in the other courts in the county. In the Opinion, the committee found that a part-time family law judge should not “represent clients before any court of the county in which he or she is appointed,” and in certain circumstances, should not represent clients “before courts in counties surrounding the county in which he or she is appointed” if those courts are “subject to the appellate jurisdiction of the court which he or she serves.”

On February 20, 2013, relying on the rationale set forth in Ethics Advisory Opinion No. 296, the Bexar County District Attorney sent a letter to the local presiding Bexar County Criminal District Judge, in which she advised the judges of the Bexar County Criminal District Courts that the continued practice of law by the part-time Bexar County Magistrate Judges was in violation of the Texas Code of Judicial Conduct. A similar letter was sent to the Presiding Magistrate Judge in Bexar County, requesting that action be taken to prevent the part-time magistrates from practicing law. In both letters, the District Attorney suggested that her office would be forced to take action if the concerns expressed in the letters were not immediately addressed.

The letters from the District Attorney raised concerns among the part-time Magistrate Judges that their continued representation of clients before the Bexar County courts would be a violation of the Texas Code of Judicial Conduct and could result in disciplinary action by the Commission. It likewise raised concerns among the District Judges that if they did not report a violation of the Code by a part-time Magistrate Judge who appears before them representing a client, they too would be in violation of the Code and could be disciplined by the Commission.

The district judges were also concerned that other counties, such as Hidalgo County, Nueces County, and Harris County, who modeled their magistrate systems after the Bexar County magistrate system,¹ would be facing similar problems based on the District Attorney’s interpretation of Advisory Opinion No. 296.

¹ The part-time magistrate judges in Bexar County do not “serve” the Criminal District Courts; instead, they are appointed by the district judges pursuant to section 54.901 of the Texas Government Code, and are subject to the

Statement

The Commission does not issue written advisory opinions analyzing or interpreting the Texas Code of Judicial Conduct. However, the Commission may instruct the judiciary and the public regarding the provisions of the Code through public or private sanctions or, under certain conditions, through a public statement. Written advisories issued by the State Bar Judicial Ethics Advisory Committee are not binding on the Commission.²

Without commenting on the merits of Advisory Opinion No. 296, it is the Commission's position that the part-time magistrates in Bexar County are permitted under the Code³ to represent criminal defendants, other than those they have magistrated, in the Bexar County courts. None of the matters before the Bexar County magistrate judges are referred to them by the district judges; the part-time magistrate judges are performing functions in matters before the jurisdiction of the district court attaches; the duties and authority of the magistrate judges, which are found in the Texas Code of Criminal Procedure, are wholly independent and distinct from those pertinent to the District Courts or the County Courts; the magistrate judges cannot rule on the merits of any matter before them other than to determine if probable cause exists to arrest and confine an individual; and without the necessity of a referral, magistrate judges can issue search warrants, arrest warrants, and protective orders, none of which constitute a final adjudication of any aspect of the case.

Canon 6D(1) of the Texas Code of Judicial Conduct requires part-time magistrate judges to comply with all Canons except Canons 4D(2), 4E, 4F, 4G or 4H. Canon 4G prohibits judges from practicing law "except as permitted by statute or this Code." Under Canon 6D(1), part-time magistrates are specifically allowed to practice law. Canon 6D(2), which advises part-time judges not to "practice in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a [part-time judge], or in any other proceeding related thereto," is aspirational.⁴

Neither the part-time Bexar County Magistrate Judges nor the Bexar County Criminal District Judges are in violation of the Texas Code of Judicial Conduct based solely on the fact that the part-time magistrates are representing criminal defendants, other than the ones they have magistrated, before the district court judges. The part-time magistrates do not "serve" the district

consent and approval of the Bexar County Commissioners Court. As a result, the magistrates serve Bexar County, not the district courts, and do not work for any of the district judges.

² The Office of Court Administration, which publishes and maintains the Committee's advisory opinions on its website, expressly notes that, "Neither the oral advice of the Commission's attorneys nor the written opinions of the Committee are binding on the Commission itself in disciplinary proceedings."

³ Canon 6D(1) of the Texas Code of Judicial Conduct provides that part-time magistrates are not required to comply with Canon 4G, the canon that prohibits judges from practicing law. Canon 6D(2) states that a part-time magistrate "should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a...magistrate...or in any other proceeding related thereto."

⁴ Pursuant to Canon 8B(2), certain canons (those containing "should" or "should not") are advisory in nature and cannot form the basis for a disciplinary action. Nevertheless, judges subject to the Code have a duty to comply with all canons, including those that contain aspiration goals, in order to maintain and promote public confidence in the integrity, impartiality, competence, and independence of the judiciary.

courts, do not practice law in the magistrate courts, and do not practice in a court subject to the appellate jurisdiction of the district courts.

The Commission issues this public statement pursuant to the authority granted to it by Article 5, Section 1-a(10) of the Texas Constitution, which provides that such action may be taken when sources other than the Commission cause notoriety concerning a judge or the Commission itself and the Commission determines that the best interests of a judge or of the public will be served by issuing the statement.

This public statement is intended to help preserve the integrity of all judges in the State of Texas, to promote public confidence in the judiciary, and to encourage judges to maintain high standards of professional conduct.

Signed this 29th day of April, 2013.

A handwritten signature in black ink, reading "Tom Alan Cunningham", enclosed in a thin black rectangular border.

Tom Cunningham, Chair
State Commission on Judicial Conduct