



**BEFORE THE STATE COMMISSION  
ON JUDICIAL CONDUCT**

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**CJC No. 18-0809**

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**PUBLIC ADMONITION**

**HONORABLE MARK ELLIS  
351ST DISTRICT COURT  
HOUSTON, HARRIS COUNTY, TEXAS**

During its meeting on December 5-7, 2018, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Mark Ellis, 351st District Court, in Houston, Harris County, Texas. Judge Ellis was advised by letter of the Commission's concerns and provided a written response. On August 8, 2019, Judge Ellis appeared through counsel. 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 Mark Ellis was Judge of the 351st District Court, in Houston, Harris County, Texas.<sup>1</sup>
2. In 1993, the Legislature adopted legislation creating the criminal law hearing officer position for Harris County. *See* Texas Government Code Section 54.851 *et seq.*
3. Among other things, the statutory scheme provides criminal law hearing officers with limited concurrent jurisdiction over cases filed in district and county criminal courts to determine probable cause, magistrate criminal defendants, issue search and arrest warrants, and enforce the judgments and orders of the county criminal courts at law. *See* Texas Government Code Section 54.856(a)(1-4).

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<sup>1</sup> Judge Ellis served as the elected judge in the 351st District Court between January 1, 1997, and December 31, 2016. He now serves by assignment as a visiting judge.

4. Consistent with this authority, Section 54.858(a) of the Texas Government Code provides that a criminal hearing officer “must allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law,” and Section 54.858(d) provides that the criminal law hearing officer “shall be available, within 24 hours of a defendant’s arrest, to...determine all matters pertaining to bail.”
5. Notwithstanding the criminal law hearing officers’ statutory authority, Judge Ellis issued instructions to the criminal law hearing officers to deny all Personal Recognizance (“PR”) bond requests from November 20, 2009, through December 16, 2016.
6. In his responses to the Commission, the judge stated he provided the instructions in September of 2009, and they were the only instructions he remembers giving the hearing officers in 20 years.

### **RELEVANT STANDARDS AND AUTHORITIES**

1. Canon 2A of the Texas Code of Judicial Conduct states in relevant part: “A judge shall comply with the law...”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states: “A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.”
3. Texas Code of Criminal Procedure Art. 17.15 provides that a court, judge or magistrate determining the amount of bail required in a particular case is “to be governed in the exercise of this discretion by the Constitution and by the following rules:
  1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
  2. The power to require bail is not to be so used as to make it an instrument of oppression.
  3. The nature of the offense and the circumstances under which it was committed are to be considered.
  4. The ability to make bail is to be regarded, and proof may be taken upon this point.
  5. The future safety of a victim of the alleged offense and the community shall be considered.”
4. Texas Government Code Section 54.851 *et seq.*, originally adopted in 1993, established the Criminal Law Hearing Officer position.
5. Specifically, Texas Government Code Section 54.856(a) provides that a criminal law hearing officer has “limited concurrent jurisdiction over criminal cases filed in the district courts” including “(2) committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require.”
6. Texas Government Code Section 54.856(b) provides that “This section does not limit or impair the jurisdiction of the court in which the complaint, information, or indictment is filed to review or alter the decision of the criminal law hearing officer.”

7. Texas Government Code Section 54.858(a) states that a criminal law hearing officer "...shall admit the person arrested to bail if allowed by law," and Section 54.858(b) provides that the officer may "determine the amount of bail and grant bail pursuant to Chapter 17, Code of Criminal procedure, and as otherwise provided by law."
8. Texas Government Code Section 54.858(d) provides: "The criminal law hearing officer shall be available, within 24 hours of a defendant's arrest, to determine probable cause for further detention, administer warnings, inform the accused of the pending charges, and determine all matters pertaining to bail."
9. Texas Code of Criminal Procedure Article 17.03(a) provides that "[a] magistrate may, in the magistrate's discretion, release the defendant on his personal bond without sureties or other security."
10. Texas Code of Criminal Procedure Article 17.03(b) states, in pertinent part, that "only the court before whom the case is pending may release on personal bond" a defendant who is charged with an offense under the following sections of the Penal Code: Capital Murder, Aggravated Kidnapping, Aggravated Sexual Assault, Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant), Injury to a Child, Elderly Individual, or Disabled Individual, Aggravated Robbery, Burglary, Engaging in Organized Criminal Activity, Continuous Sexual Abuse of Young Child or Children, Continuous Trafficking of Persons; or is charged with a first degree felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code.
11. Texas Code of Criminal Procedure Article 17.21 provides, "In cases of felony, when the accused is in custody of the sheriff or other officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, and determine if the accused is eligible for a personal bond."

### CONCLUSION

After considering the facts and evidence before it, the Commission concludes that Judge Ellis failed to comply with the law, and failed to maintain competence in the law, by instructing criminal law hearing officers not to issue personal release bonds in any cases and to strictly follow a bail schedule in direct contravention of the express authority provided to the criminal law hearing officers by the legislature in Texas Government Code Sections 54.856(a)(2), 54.858(a), 54.858(b), and 54.858(d). In addition, these instructions constitute willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and cast public discredit upon the judiciary or administration of justice.

Based on this conduct, the Commission concludes that Judge Ellis' actions constituted willful violations of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Article V, Sec. 1-a(6)(A) of the Texas Constitution.

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In condemnation of the conduct violative of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Article V, Sec. 1-a(6)(A) of the Texas Constitution, recited above, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Mark Ellis, 351st District Court Judge, Houston, Harris 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 with the intent of assisting Judge Ellis in his continued judicial service, as well as 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 26 day of August, 2019.



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Judge Catherine N. Wylie, Chair  
State Commission on Judicial Conduct