



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 17-0352-AJ

**PUBLIC ADMONITION AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE JOSEPH LICATA III
CRIMINAL LAW HEARING OFFICER
HOUSTON, HARRIS COUNTY, TEXAS**

During its meeting on December 6-8, 2017, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Joseph Licata, Criminal Law Hearing Officer, in Houston, Harris County. Judge Licata was advised by letter of the Commission's concerns and provided a written response. Judge Licata appeared with counsel before the Commission on December 7, 2017, and gave testimony. 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 Joseph Licata was a Criminal Law Hearing Officer, in Houston, Harris County. As part of his job duties, he conducts probable cause hearings and sets bond amounts.

Agreeing to Forego Personal Bonds and Adherence to Bond Schedule

2. Chief U.S. District Judge Lee Rosenthal issued an opinion in April of 2017 in a lawsuit against Harris County¹ for violating the rights of misdemeanor defendants. *ODonnell v. Harris County*, 2017 U.S. Dist. LEXIS 65445, *281 (S.D. Tex. April 28, 2017). *Inter alia*, the Court found Harris County's bail policy unconstitutional because the "policy is to detain indigent misdemeanor defendants before trial, violating equal protection rights

¹ Judge Licata was one of the defendants named in the lawsuit.

against wealth-based discrimination and violating due process protections against pretrial detention without proper procedures or an opportunity to be heard.”²

3. The Court also issued an injunction requiring Harris County to promptly release indigent defendants within 24 hours of their arrest.³
4. The district court found “little to no credibility in the Hearing Officers’ claims of careful case-by-case consideration under the *Roberson* order and the Article 17.15 factors” based on the high percentage of misdemeanor defendants subject to secured money bail who were detained rather than released, the infrequent deviations from the scheduled bail amount, and the video recordings of probable cause hearings “which consistently show an indifference as to whether pretrial detention will result from setting bail.” *Id.* at *103.⁴
5. Judge Licata informed the Commission that he considers “the factors set out in article 17.15 of the Code of Criminal Procedure, all available facts and information, and the accused’s demeanor,” when determining bond amounts for individuals accused of a crime.
6. Judge Licata stated he also considers “any rules, preferences, and policies of the assigned trial court judge to whom the case is assigned.” He noted that until March of 2017, several of the District Court Judges “did not permit Hearing Officers to grant personal bonds” and, until August 2016, “the County Criminal Court at Law Judges historically had similar rules.”
7. Judge Licata stated that “a job description by the board of judges made clear the Hearing Officers are ‘at will employees,’ [and] that the Hearing Officers are the ‘delegates’ of the judges trying criminal cases.”
8. Judge Licata provided instructions from multiple District and County judges aiming to restrict the Hearing Officers’ authority to set certain bonds. The following instructions were included in e-mails:
 - a. A retired hearing officer: “You may never, never ever give a PR bond to a defendant in any of the District courts. This would probably get you fired.”
 - b. District Court Judge Joan Huffman: “No pre-trial bonds; no lowering of bonds.”
 - c. County Court Judge Diane Bull: “Please instruct the probable cause hearing officers to withhold their rulings on all pre-trial release applications for defendants.”
9. Section 54.851 *et seq.* of the Texas Government Code establishes the Criminal Law Hearing Officer position.

² Harris County was sued on a related issue over thirty years ago. In *Roberson v. Richardson*, Civil No. 84-2974 (S.D. Texas Nov. 25, 1987), the parties reached a final agreed judgment which included language that hearing officers “shall have the authority to order the accused released on personal bond or released on other alternatives to prescheduled bail amounts.”

³ Before the effective date of the trial court’s injunction, Harris County filed motions to stay in the Fifth Circuit and the Supreme Court, both of which were denied.

⁴ Judge Rosenthal gathered evidence over an eight day hearing that included 300 written exhibits, 2,300 video recordings of bail-setting hearings, and the testimony of thirteen witnesses. Judge Licata did not testify.

10. Section 54.856(a)(2) of the Texas Government Code outlines the magistration authority of Criminal Law Hearing Officers, and provides that the “jurisdiction of the criminal law hearing officer” includes: “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.”
11. Judge Licata provided the Commission with a copy of the Harris County local rules. Consistent with Section 54.856(a)(2) of the Texas Government Code, Local Rule 12.1 states “whether to approve or deny a personal bond is up to the reviewing magistrate’s sound discretion.”
12. During his appearance before the Commission, Judge Licata testified that the restriction of PR bonds refers to felony cases, and stated “there weren’t that many restrictions on the misdemeanor cases. There were a few guidelines.”

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states: “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.”
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. The Texas Code of Criminal Procedure Art. 17.15 states:

The amount of bail...is to be regulated by the court, judge or magistrate; they are 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. The Texas Code of Criminal Procedure Art. 17.03(a) states “A magistrate may, in the magistrate’s discretion, release the defendant on his personal bond without sureties or other security.”

CONCLUSION

After considering the facts and evidence before it, the Commission concludes that Judge Licata failed to comply with the law, and failed to maintain competence in the law, by strictly following directives not to issue personal bonds to defendants per the instructions of the judges in whose court the underlying cases were assigned. In so doing, Judge Licata violated his

constitutional and statutory obligation to consider all legally available bonds, including personal recognizance bonds, for those individuals whose cases were assigned to courts who instructed him not to issue personal recognizance bonds.

In weighing the facts and circumstances of this case, the Commission gave weight to the fact that, at least in part, Judge Licata's conduct was motivated by direct instructions from individual judges who played a role in his continued employment. The Commission considered this a mitigating factor in reaching its determination in this case.

Based on this conduct, the Commission concludes that Judge Licata's actions constituted willful violations of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct violative of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct recited above, it is the Commission's decision to issue a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION** to Joseph Licata, Hearing Officer, 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 WITH ORDER OF ADDITIONAL EDUCATION** by the Commission.

Pursuant to this Order, Judge Licata must obtain **four hours** of instruction with a mentor, in addition to his required judicial education for Fiscal Year 2018. In particular, the Commission desires that Judge Licata receive this additional education in the area of magistration and bond setting.

Pursuant to the authority contained in § 33.036 of the Texas Government Code, the Commission authorizes the disclosure of certain information relating to this matter to the Texas Justice Court Training Center to the extent necessary to enable that entity to assign the appropriate mentor for Judge Licata.

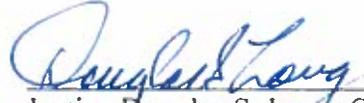
Judge Licata shall complete the additional **four hours** of instruction recited above within **60 days** from the date of written notification from the Commission of the assignment of a mentor. Upon receiving such notice, it is Judge Licata's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **four hours** of instruction described herein, Judge Licata shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

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 WITH ORDER OF ADDITIONAL EDUCATION**.

The Commission has taken this action with the intent of assisting Judge Licata 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 10th day of January, 2018.



Justice Douglas S. Lang, Chair
State Commission on Judicial Conduct