



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 17-1018-JP

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE MICHAEL G. SMITH
JUSTICE OF THE PEACE, PCT. 3
TERRELL, KAUFMAN COUNTY, TEXAS**

During its regularly scheduled meeting on February 7-8, 2018, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Michael G. Smith, Justice of the Peace Precinct 3, Terrell, Kaufman County, Texas. Judge Smith was advised by letter of the Commission's concerns and provided written responses. Judge Smith appeared with counsel before the Commission on February 8, 2018, 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 Michael G. Smith was Justice of the Peace in Precinct 3, Terrell, Kaufman County, Texas.
2. On or about April 19, 2017, Larry McKinney travelled to Judge Smith's court and requested to inspect and copy judicial case files on a particular defendant.
3. Upon his arrival at the courthouse, Judge Smith's clerk asked Mr. McKinney "who [he] was working for and why [he] wanted the records."
4. According to Mr. McKinney, the clerk stated that it was "the policy of her court [to] not give those type of records out to the public and that [he] would need to speak with the judge."
5. At that point in the conversation, Judge Smith came out of his office and asked Mr. McKinney who he was and why he wanted the records.

6. At some point during their encounter, Judge Smith contacted the Precinct 3 Constable's Office and requested law enforcement to appear in his office.
7. Upon law enforcement's arrival, Judge Smith ordered Mr. McKinney to place his cell phone on the counter so that he could not record their conversation.
8. Judge Smith and Mr. McKinney proceeded to have a heated conversation regarding Mr. McKinney's record request.
9. On the audio recording of their conversation, Judge Smith can be overheard asking Mr. McKinney why he wanted the records and telling him that a request for his records must be made under Rule 12 of the Rules of Judicial Administration.
10. Precinct 3 Deputy Constable Kyle Gross submitted a sworn affidavit stating that he "heard Judge Smith tell Mr. McKinney under rule 12 he didn't have to release the information."
11. Precinct 3 Deputy Constable Patrick S. Poston submitted a sworn affidavit stating that he could hear "loud voices coming from the inner office areas" where Judge Smith and Mr. McKinney were discussing Mr. McKinney's records request.
12. In his response, Judge Smith stated that Mr. McKinney appeared in his office to request records and began using profanity around his court clerks.
13. Judge Smith notified Precinct 3 Constable Keith Stephens about Mr. McKinney's behavior and requested law enforcement to come to his office to control the situation.
14. According to Judge Smith, he instructed Mr. McKinney that he must make his request for records in writing. Upon hearing the judge's instruction, Mr. McKinney allegedly began using profanity and stated that he would file the instant complaint.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent 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. Canon 3B(4) of the Texas Code of Judicial Conduct states: "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control."
4. Section 552.003(1)(B) of the Government Code excludes the judiciary from the Public Information Act. Section 552.0035 of the Government Code specifically provides that access to judicial records is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.
5. In *Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex.App.—Houston [1st Dist.] 1989, no writ), the court held that the public has right to inspect and copy judicial records subject to court's inherent power to control public access to its records.
6. A "judicial record" is defined by Rule 12.2(d) of the Rules of Judicial Administration as a "record made or maintained by or for a court or judicial agency in its regular course of business *but not*

pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record.” (Emphasis added.) Records created, produced, and filed in connection with a specific court case are not “judicial records” and are not subject to Rule 12. See Appeal No. 16-022, Before the Presiding Judges of the Administrative Judicial Regions (Jan. 26, 2017).¹

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Smith’s refusal to permit Mr. McKinney to inspect and copy judicial case files demonstrated a failure to comply with the law and to maintain professional competence in the law. Furthermore, Judge Smith failed to exhibit the patience, dignity, and courtesy expected of a judicial officer while engaged in his official duties when he engaged in a heated conversation with Mr. McKinney for requesting access to court files. The Commission concludes that Judge Smith’s conduct, as described above, constituted a willful violation of Canons 2A, 3B(2) and 3B(4) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 3B(2) and 3B(4) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Michael G. Smith, Justice of the Peace Precinct 3, Terrell, Kaufman County, Texas.

Pursuant to this Order, Judge Smith 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 Smith receive this additional education in the following areas: (1) judicial demeanor and (2) public access to judicial case files.

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 Smith in this case.

Judge Smith shall complete the additional **four hours** of instruction recited within **sixty days** from the date of written notification of the assignment of a mentor. It is Judge Smith’s responsibility to contact the assigned mentor and schedule the additional education.

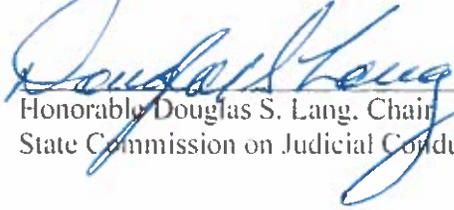
Upon the completion of the **four hours** of education described herein, Judge Smith shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission 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 WARNING AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

¹ Available at: <http://www.txcourts.gov/media/1437063/16-022.pdf>

The Commission has taken this action in a continuing effort to protect the 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 21st day of February, 2018.


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