BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT

CJC NOS. 12-0096-DI, 12-0545-DI, 13-0729-DI, AND 14-0057-DI

PUBLIC REPRIMAND

HONORABLE STEPHEN R. TITTLE, JR.
196TH JUDICIAL DISTRICT COURT
GREENVILLE, HUNT COUNTY, TEXAS

During its meeting on April 9-10, 2014, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Stephen R. Tittle, Jr., Judge of the 196th Judicial District Court, Greenville, Hunt County, Texas. Judge Tittle was advised by letter of the Commission's concerns and provided written responses. Judge Tittle appeared before the Commission with counsel on April 10, 2014, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions.

BACKGROUND INFORMATION

Judge Stephen R. Tittle, Jr. was elected to the 196th Judicial Court bench in November 2010, and assumed office on January 1, 2011. For approximately ten years prior to his election to the bench, Judge Tittle had been a prosecutor for the Hunt County District Attorney's Office, where he worked with, and developed a friendship with, Christina Gaston, a probation officer with the Hunt County Community Supervision and Corrections Department (CSCD). Shortly after he became a judge, Judge Tittle issued a directive that no probation officers other than Gaston and the Director of the CSCD, James "Jim" McKenzie, would be permitted to serve the 196th District Court. Gaston served as the Court Officer for the 196th District Court until she was terminated by McKenzie on October 6, 2011.

During the months before her termination, Gaston met privately with Judge Tittle on several occasions to discuss whether CSCD Director McKenzie had engaged in illegal conduct by accepting cash payments and exercise equipment from probationers that he later donated to the

YMCA.[1] Despite his concerns that McKenzie may have committed a crime, Judge Tittle failed to raise this issue during an August 2011 meeting with McKenzie and the other Hunt County judges where Judge Tittle's stated concerns were resolved with an agreement that probationers would no longer be able to pay cash in lieu of performing community service hours ordered by the court.[2]

Shortly before Gaston's termination, McKenzie delivered a letter to the Hunt County judges, including Judge Tittle, notifying them that Gaston was under investigation for, among other things, creating an impression that she was in a special position to influence Judge Tittle's conduct and judgment. Within hours of the notice, Judge Tittle sent McKenzie an email accusing the Director of illegally collecting cash and exercise equipment from probationers that he later donated to a friend. McKenzie defended himself against these accusations in an email and followed up his response with a letter addressed to all of the Hunt County judges.[3] Judge Tittle did not disclose the source of the accusations in his email or in response to McKenzie's subsequent request that he identify the accuser. A few days later, Gaston was terminated. Gaston subsequently filed a wrongful termination action against the CSCD claiming whistleblower status, contending that she was fired for reporting to Judge Tittle the CSCD Director's illegal donation of cash and exercise equipment to the YMCA. Gaston's lawsuit remains pending.

In the two years following Gaston's termination, the Commission received numerous complaints against Judge Tittle, filed by CSCD Director McKenzie, CSCD Deputy Director John Washburn, Greenville attorney Joe Weis, and Hunt County Attorney Joel Littlefield, alleging that Judge Tittle misused the powers of his judicial office and engaged in a willful and persistent pattern of retaliatory conduct against McKenzie and the CSCD for terminating his friend, Gaston. Among other things, the Complainants alleged that Judge Tittle used his position and authority in an attempt to force McKenzie to personally prepare and present Presentence Investigation Reports and to prevent McKenzie from delegating the preparation of those report to supervising probation officers; to embarrass and malign McKenzie during court proceedings in which the judge forced McKenzie to testify; to threaten McKenzie with contempt of court and criminal prosecution for his failure to comply with court orders; and to cause financial harm to the CSCD through court-ordered waivers of mandatory probation fees designated by statute to fund a portion of CSCD operations.

In his testimony before the Commission, Judge Tittle denied that any of the rulings he made against McKenzie or that harmed the CSCD were the result of retaliation for Gaston's termination. However, Judge Tittle did acknowledge the existence of an adversarial relationship between McKenzie and him. According to Judge Tittle, however, it was McKenzie who disliked and was

[1] At the time, Hunt County Court at Law Judge Andrew Bench served on the local YMCA board of directors. Judge Tittle has publicly stated on several occasions that this relationship and the donation of money and equipment by McKenzie constituted an unlawful conflict of interest.

[2] According to McKenzie, for several years certain organizations in the community had begun accepting cash donations from probationers who were allowed to "buy off" their community service hours. The organizations had done this because they had a greater need for cash donations and did not need or want probationers working on their properties. While the practice was neither initiated nor promoted by the CSCD, the department was aware of it. The CSCD notified the organizations to stop the practice after concerns were raised by Judge Tittle.

[3] According to McKenzie, the basis for the accusation arose from a campaign promoted by certain Hunt County probation officers to collect cash and exercise equipment from probationers that were to be donated to the local sheriff's department. When McKenzie learned of the program in February 2011, he immediately advised the officers to stop due to his concerns that the program would be improper. Any money and equipment already collected was donated to the local YMCA, a nonprofit organization to which the CSCD was permitted to donate the items.

angry with Judge Tittle because he reported to the District Attorney and other entities that the Director had engaged in illegal activity. According to McKenzie's testimony and other evidence in the record before the Commission, however, Judge Tittle never disclosed to McKenzie that he had reported these activities to the District Attorney or to other entities for a criminal investigation. Regardless of the source of the conflict, it is clear from the record before the Commission that the adversarial relationship between Judge Tittle and McKenzie influenced Judge Tittle's conduct and judgment in various proceedings before the court, as described in more detail in the Commission's Findings of Fact and Conclusions of Law recited below.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Stephen R. Tittle, Jr., was Judge of the 196th Judicial District Court in Greenville, Hunt County, Texas.

Orders for Pre-Sentence Investigation (PSI) Reports[4]

2. In December 2011, within two months of Gaston's termination, Judge Tittle began ordering McKenzie to personally prepare and present Presentence Investigation Reports (PSIs) in cases pending before the 196th District Court.[5]

3. Because McKenzie, as the Director of the CSCD, did not supervise probationers, he delegated the preparation and presentation of the court-ordered PSIs to an officer who supervised probationers.

4. In each instance, a PSI was prepared and timely filed by a qualified, certified probation officer (CSO) as required by law; however, none were prepared or presented by McKenzie as ordered.

5. In each instance, Judge Tittle refused to accept the PSI that had been prepared and timely filed by a CSO, and instead, attempted to enforce at least two of his orders through constructive contempt and criminal contempt proceedings against McKenzie.

6. Judge Tittle pursued the contempt proceedings against McKenzie despite having been advised by McKenzie's attorney, Joe Weis, that the judge's orders were not lawful or valid and despite being informed by prosecutors and defense counsel that no one needed or was relying on the PSI.

7. In May 2012, after Judge Tittle ordered McKenzie to personally prepare and present a PSI in the case of *State vs. Justin West*, the Hunt County District Attorney, Noble Walker, and the Hunt County Attorney, Joel Littlefield, sent a request to the Texas Attorney General's Office seeking an opinion as to whether a judge could lawfully interfere with the duties of

[4] A presentence investigation report, prepared by a probation or community supervision officer, is used to assist the judge in sentencing and contains information on the offense committed, an assessment of the offender's background, and sentencing recommendations. Specifically, Article 42.12 §9 of the Texas Code of Criminal Procedure provides that "the judge shall direct *a supervision officer* to report to the judge in writing on the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the judge." (Emphasis added)

[5] While it remains unclear whether Judge Tittle had ever issued an order for a PSI before this time, the record demonstrates that this was the first time that any judge had ordered McKenzie, as the CSCD Director, to personally prepare and present a PSI.

the Director of the CSCD, which allowed the Director to delegate the preparation and presentation of a PSI to another CSO.

8. Because Walker and Littlefield had relied on Judge Tittle's order for a PSI in the *West* case, which was still pending, the Attorney General's Office declined to address the issue due to separation of powers concerns.

9. On July 11, 2012, Judge Tittle presided over the sentencing hearing in the *West* case. The PSI that Judge Tittle had ordered had been prepared and filed by a CSO, who was present in the courtroom to testify if necessary; however, District Attorney Walker and West's defense attorney advised Judge Tittle that they did not need the PSI, obviating the need for testimony from anyone at the CSCD.

10. Nevertheless, on his own accord, and over the objections of McKenzie's attorney, Weis, Judge Tittle called McKenzie to the stand. Judge Tittle proceeded to question the Director regarding the probation services available in Hunt County for sex offenders like West.

11. Judge Tittle then questioned McKenzie about his alleged failure "to set a good example for probationers" by not complying with the court's orders.

12. McKenzie responded to all of the judge's questions, as well as to questions posed by West's attorney, providing factual information based on the PSI that had been prepared by West's supervising probation officer, and based on his years of experience as the Director of the CSCD.

13. Judge Tittle was displeased with Walker for not prosecuting McKenzie for contempt of court, and for pursuing an opinion from the Attorney General's Office instead. Judge Tittle persisted in his pursuit of a criminal prosecution of McKenzie by asking Walker:

> Mr. Walker, are you going to proceed with contempt proceedings against Mr. McKenzie or do we need a special prosecutor? … So what I'm asking is: Is the D.A.'s office declining to prosecute and would want a special prosecutor appointed, attorney pro tem instead?

14. Judge Tittle then made the following statement and findings on the record:

> But ultimately this court has to make a decision. And *instead of complying with the court's order, no one sought to enforce it.* That's not before us today. *That's for a future prosecution of Mr. McKenzie.* But *the court heard his testimony and finds that he was absolutely incredible; he has no credibility, is not truthful and [the court] does not rely on any of his statements in the decision today*. Mr. McKenzie through his own words, did admit that it was important for him to set a good example for his coworkers and his employees and for probationers, which he did not do. And I hope that Mr. West does not take any example from his lack of leadership. (Emphasis added)

15. Judge Tittle entered similar findings in each of the deferred adjudication judgments issued against *West* on August 1, 2012, to wit:

> The Court FINDS the Presentence Investigation, was ordered, was not done according to the applicable provisions of Tex. CODE CRIM. PROC. Art. 42.12 §9. The State and Defense agreed to proceed without it. The court finds that the appointed author and witness, *Jim McKenzie, Hunt County Community Supervision and Corrections Department Director is not credible or believed in this case.* The Court ORDERS that Defendant is given credit noted above for the time spent incarcerated. The court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above. (Emphasis added)

16. On October 1, 2012, following the entry of deferred adjudication judgments in the *West* case, Walker and Littlefield renewed their request for an opinion from the Attorney

General's Office, advising that office that "the cases in which these issues were raised have now been finally disposed of by final judgments entered on August 1, 2012."[6]

17. On October 29, 2012 and November 28, 2012, on his own motion, Judge Tittle held "review hearings" in the *West* case for the purpose of discussing the representations made by Walker and Littlefield in their most recent request for an Attorney General opinion.

18. Specifically, Judge Tittle challenged the representation that the *West* case had been finally decided, contending that because the adjudication of guilt had been deferred, there was no final disposition and issues remained pending before the 196th District Court.

19. Although Walker had been notified of the review hearings, he declined to attend. Another prosecutor from his office appeared in his stead. Littlefield received no notice of the hearings and did not attend.

20. At the conclusion of the November 28, 2012 hearing, without testimony in the record from Walker or Littlefield, Judge Tittle made the following findings, which were also placed on the docket sheet for the *West* case:

> The statements by Mr. Walker and Mr. Littlefield were false, untruthful and misleading, dishonest and deceitful.

21. Despite having made express findings in the *West* case that McKenzie was neither credible nor truthful, on December 4, 2012 and January 23, 2013, Judge Tittle ordered McKenzie to personally prepare and present PSIs in two more cases. Judge Tittle had also changed the language in his orders to include an additional prohibition that prevented McKenzie from delegating the work to any other CSO in the department.

22. On February 19, 2013, the Attorney General's Office issued Opinion No. GA-0991, stating that a district judge does not have the authority to order the director of a probation department who does not supervise defendants placed on community supervision to personally prepare a PSI or to personally appear in court to present the PSI.

23. Although Judge Tittle was dismissive of the Attorney General's Opinion,[7] he did amend his January 2013 PSI order to allow McKenzie to delegate the preparation and presentation of the report to another CSO.

Probation Fee Waivers

24. In February 2013, Judge Tittle caused notices to be sent to all defendants serving probation out of the 196th District Court, requiring them to appear for a "mandatory" review hearing pursuant to Article 42.12 §20 of the Texas Code of Criminal Procedure.[8] Approximately

[6] The October 1, 2012 Request for an Attorney General Opinion was assigned reference number RQ-1089-GA.

[7] At an April 10, 2013 hearing, Judge Tittle stated, "I've been submitted an AG opinion that the court has already made findings on that it was requested and received by less than honorable means…There's correspondence in here from Jim McKenzie, the director of adult probation…I don't know why he's citing case law to me, not case law but an opinion of his attorney…But I'll take that and put it in the trash appropriately."

[8] Article 42.12 §20 of the Texas Code of Criminal Procedure provides that on completion of one-half of the original community supervision period or two years of community supervision, *whichever is more*, the judge shall review the defendant's record and consider whether to reduce or terminate the period of community supervision, unless the defendant is delinquent in paying required restitution, fines, costs, or fees that the defendant has the ability to pay or the defendant has not completed court-ordered counseling or treatment. (Emphasis added)

40 probationers were sent notices to appear on March 8, 2013 for an Article 42.12 §20 review hearing.

25. McKenzie was also ordered to appear and did appear at the March 8th proceedings, along with the supervising probation officers for each of the probationers that appeared.

26. As a reward[9] for showing up, Judge Tittle waived the payment of the $60 per month probation fee that had been assessed against each probationer.[10]

27. None of the defendants who appeared on March 8th had an attorney present to represent his/her interests; nor did Judge Tittle offer to have an attorney appointed to protect their interests during these proceedings.[11]

28. While conducting the review hearings, Judge Tittle determined that none of the probationers who appeared on March 8th was eligible for early release under Article 42.12 §20.[12]

29. Nevertheless, without the benefit of legal counsel, notice, or an opportunity to be heard, at least three of the probationers who appeared on March 8th pursuant to the Article 42.12 §20 notice were jailed as a sanction. Judge Tittle also ordered that their probation sentences be extended and/or ordered that other conditions of probation be modified.

30. On March 20, 2013, Judge Tittle was scheduled to hear additional Article 42.12 §20 review hearings. Although the Court Officer and all supervising probation officers were present and available to testify regarding the probation status of the defendants who appeared, McKenzie did not appear.

31. Because McKenzie failed to appear, Judge Tittle refused to go forward with any of the review hearings.

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[9] Although Judge Tittle did not expressly use the term "reward" when waiving probation fees, he did inform probationers at a subsequent review hearing that "you all have a benefit that should be bestowed upon you for showing up, regardless of whether you are in compliance or not in compliance." In his written responses to the Commission's inquiry, Judge Tittle explained further that "during these review hearings, I have implemented a system of reward and punishment for the probationers. Those probationers who have performed well are rewarded by advantageously altering their probation terms by some type of reduction in length of probation; fee reduction; community service reduction; and lessening the reporting frequency."

[10] Under Article 42.12 §19 of the Texas Code of Criminal Procedure, a judge is required to assess a monthly probation fee to be paid by defendants placed on community supervision out of his court. The procedure for the waiver of probation fees is expressly set out in subparagraph (a) of §19, which provides that the court "may waive or reduce the fee or suspend a monthly payment of the fee if the judge determines that payment of the fee would cause the defendant a significant financial hardship."

[11] Article 1.051 of the Code of Criminal Procedure provides that an indigent defendant is entitled to have an attorney appointed to represent him or her when: (1) there is an adversarial judicial proceeding that may result in punishment by confinement and (2) in any other proceeding if the court concludes that the interests of justice require representation.

[12] Not every offense is eligible for an Article 42.12 §20 review hearing. Under subsection (b) of this section, a review hearing under §20 "does not apply to a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, a defendant convicted of an offense for which on conviction registration as a sex offender is required under Chapter 62, or a defendant convicted of a felony described by Section 3g." During these proceedings, Judge Tittle stated that he was aware that certain probationers who had appeared were not eligible for early release under §20, but that he was "still required to perform a review."

32. Instead, Judge Tittle appointed an attorney, Luis Merren, to represent all of the probationers who had shown up "so that [their] interests are protected;"[13] waived the monthly probation fees assessed against each probationer "as a benefit for showing up" when McKenzie had failed to appear; and directed Merren "to try to *secure [McKenzie's] attendance* whether that is *through a subpoena or other process* for 1:30 this afternoon." (Emphasis added)

33. On or shortly after March 22, 2013, McKenzie was served with the subpoenas that had been issued by Merren at Judge Tittle's behest. The subpoenas directed McKenzie to appear on April 12, 2013, for the Article 42.12 §20 review hearings that had been rescheduled from March 20, 2013.

34. On April 10, 2013, Eric Vinson, an attorney with the Texas Attorney General's Office, filed motions to quash the subpoenas issued for McKenzie's April 12th appearance.

35. At the commencement of the April 12th proceedings, Judge Tittle announced that he wanted McKenzie to present a plan to the court to make sure probationers were reviewed on a timely basis, to ensure that those probationers who were eligible for early release were identified so that probationers were not inconvenienced, and to inform the court of the fiscal impact any waiver of fees would have on the CSCD.

36. Judge Tittle then explained his purpose for conducting "mandatory review hearings," by noting that "the Court takes judicial notice that courts are required by law, they shall review those people eligible for early probation at least every two years.[14] That has never been done in this county."

37. Merren then informed Judge Tittle that he intended to call the supervising probation officers in each review case and did not need McKenzie to remain in the courtroom subject to the subpoenas.

38. Before releasing McKenzie from the subpoenas, and without ruling on the still pending motions to quash, Judge Tittle attempted to have the motions to quash removed from the court files or, alternatively, to have them sealed.

39. After Vinson argued that he could not lawfully do either, Judge Tittle challenged Vinson to prove the source and veracity of certain statements contained in the motions to quash.

40. Specifically, Judge Tittle took issue with the statement that "on or about March 20, 2013, Judge Tittle appointed Lu Merren to represent 27 probationers funded by the taxpayers of Hunt County."[15]

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[13] Based on the record of the proceedings, and the paperwork submitted in connection with the payment of Merren's fees, Judge Tittle made no inquiry as to whether any of the probationers who appeared on March 20th were already represented by retained counsel or wanted an attorney but could not afford one, nor did he make a determination that the interests of justice required representation.

[14] This is not an accurate reflection of the requirement set forth in Article 42.12 §20 of the Texas Code of Criminal Procedure. In fact, there is no provision under Article 42.12 that mandates a court, on its own initiative, to conduct regular "review hearings."

[15] As of April 12, 2013, Hunt County taxpayers had not yet "funded" Merren's representation of the probationers; however, following these proceedings, Merren did submit a fee affidavit to the court for each of the cases to which he had been appointed, and Judge Tittle did approve his fees in the total amount of $3,750.00, which was paid by Hunt County.

41. Vinson then attempted to remind the judge of his statement, on the record, at the March 20, 2013 proceedings, to wit:

> So that your interests are protected, the Court is going to appoint Mr. Lu Merren who is in court this morning to represent all of you on your review. *You are not required to pay the $100 per hour for his fee. However, he can bill that for each and every case*. (Emphasis added)

42. Judge Tittle then questioned Vinson regarding the accuracy of the assertion that Judge Tittle had ordered or directed Merren to issue subpoenas compelling McKenzie's appearance in court.

43. Judge Tittle eventually terminated his interrogation of Vinson with the following pronouncement: "the Court makes a finding that there are false and inaccurate statements and will not hear the matter."

44. From January 15, 2013 through April 30, 2013, Judge Tittle waived monthly probation fees in the amount of approximately $204,481.25, most of which resulted from the Article 42.12 §20 review hearings held in March and April 2013.[16]

45. Although he reinstated the probation fees for two probationers in May of 2013, without notice or a hearing, Judge Tittle refused to rule on requests and motions to reinstate fees or to vacate the orders waiving fees filed by Weis on behalf of the CSCD for the approximately 70 - 80 cases that remained.

46. The record before the Commission reflects that a public meeting was held on May 9, 2013, before the Hunt County Commissioners Court, at which time the CSCD budget was discussed. Among those who were present and participated in the meeting were McKenzie, Weis, County Judge John Horn, County Attorney Joel Littlefield, District Judge Richard Beacom and County Court at Law Judge Andrew Bench.

47. At the public meeting, the CSCD fiscal officer, Mike Taylor, testified that two-thirds of the revenue generated annually by the CSCD came from supervision fees, which are "the backbone of our department." The discussion turned to the anticipated loss in revenue for the CSCD as a result of the fee waivers granted by Judge Tittle in March and April 2013, and the impact, including layoffs, this would have on probation services if budget cuts were necessary.

48. Hunt County Commissioners who attended the public meeting were openly critical of Judge Tittle, condemning the fee waivers and the appointments of Merren and Abramson as being an added tax on the citizens.

49. Judge Tittle was invited to participate in the public meeting but declined to attend.

Also, on April 5, 2013, Judge Tittle appointed Cariann Abramson to represent probationers who appeared for review hearings on that date. Abramson charged Hunt County $250 for each of those cases, which fees were approved by Judge Tittle.

[16] These totals have been publicly reported and were calculated based on the projected loss of $60 per month for each probationer over the remainder of the probationer's total community supervision sentence. By way of comparison, records show that Judge Tittle had waived a total of $61.008.50 in probation fees between January 1, 2011 and January 14, 2013.

The Bernard Kelly Trial

50. In February 2011, Bernard Dale Kelly, Jr., was indicted under the law of parties[17] for the murder of his cousin, Treybbian Nelson. Kelly had driven the shooter, Tyrone McCurdy, to the scene of the crime, then agreed to drive McCurdy to another location after witnessing the shooting. McCurdy was also indicted for Nelson's murder, along with a third defendant who was tried as a juvenile.

51. In November 2012, Hunt County Assistant District Attorney Lauren Hudgeons prosecuted the case against McCurdy to a jury in Judge Tittle's court. McCurdy was convicted of murder and sentenced to 50 years in prison.

52. During the *McCurdy* trial, Kelly cooperated with the State, testified against McCurdy, and was instrumental in securing the conviction.

53. On November 28, 2012, Hudgeons and Kelly's attorney, Cariann Abramson, presented a plea agreement to Judge Tittle. The plea deal, which had been approved by the victim's mother and by law enforcement officers involved in Kelly's arrest, would have reduced the charge against Kelly to Aggravated Assault with a Deadly Weapon and a 5-year prison sentence.

54. Judge Tittle rejected the plea agreement.

55. On the Friday before the December 3, 2012 trial, Hudgeons and Abramson presented a motion to reduce the offense to Judge Tittle, who refused to rule on the motion.

56. On December 3, 2012, prior to *voir dire*, both Hudgeons and Abramson urged Judge Tittle to reconsider and accept the previously rejected plea bargain, which he refused to do.

57. Hudgeons then requested that Judge Tittle rule on the State's motion to reduce the offense to Aggravated Assault. Judge Tittle again failed to rule on the pending motion.

58. Hudgeons then presented a motion to dismiss the murder case,[18] and asked Judge Tittle to accept the transfer of an Aggravated Assault case that Hudgeons had just filed against Kelly in the 354th District Court. Judge Tittle likewise refused to rule on the motion to dismiss the murder case and refused to accept the transferred case.

59. On the afternoon of December 3, 2012, a venire panel was seated and *voir dire* commenced.

60. As Hudgeons began speaking to the venire panel, she renewed her efforts to obtain a ruling from Judge Tittle on the pending motions and pled with the judge to either go forward on the newly indicted Aggravated Assault case that she had attempted to transfer to his court or accept the plea agreement.

61. Judge Tittle immediately and repeatedly interrupted Hudgeons, who continued to speak in a loud manner in order to be heard over the judge.

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[17] Also known as the Felony Murder Rule. Texas Penal Code § 7.02 states that a person can be criminally responsible for the actions of another if he or she aids and abets, or conspires with the principal.

[18] Anticipating that Judge Tittle would deny the State's motion to reduce the charge, Hudgeons had already filed the Aggravated Assault case by information in the 354th District Court, where the current grand jury was in term. She immediately secured an order transferring the case to the 196th District Court.

62. Judge Tittle then ordered Hudgeons to stop talking and sit down under the threat of being detained by deputies. Hudgeons complied, at which time Judge Tittle prohibited her from going forward with the *voir dire*.

63. After the venire panel was escorted out of the courtroom, Judge Tittle admonished Hudgeons for her statements to the jury panel and for her conduct toward him, accused her of "filibustering," and demanded an apology.

64. After attempting to explain her conduct, Hudgeons apologized and assured the judge that it would not happened again.

65. The following day, before the jury entered the courtroom, Judge Tittle issued an order prohibiting Hudgeons and Abramson from asking for plea reductions or mentioning plea agreements in the jury's presence. Judge Tittle then made the following statement:

> We had an outburst yesterday in court. I believe the Court has appropriately addressed it. However, should there be any further outbursts, ***Ms. Hudgeons, the Court does have duct tape***, does have a notepad and does have a pen. If you need to write your questions to the jury if that's what it takes, I'm sure Ms. Bell who is sitting with you can read those questions, if there are any outbursts. I expect there will not be any.

66. Throughout the proceedings, Judge Tittle injected himself into the trial by questioning the State's witnesses in order to establish the elements of murder and by interrupting the examination of witnesses with objections of his own if the testimony appeared to be favorable to Kelly.

67. On several occasions, sometimes in the jury's presence, Judge Tittle made statements that were critical of Hudgeons, demeaned her skills as a prosecutor, questioned her ethics, and commented that she should lose her law license.

68. After the jury returned a verdict finding Kelly guilty of Aggravated Assault, Judge Tittle thanked them for their service and was in the process of releasing them when Abramson informed him that her client had elected to go to the jury for punishment.

69. Judge Tittle informed Abramson that it was too late to have the jury assess punishment as she had failed to file the election before trial. Although Hudgeons consented to Abramson's oral election, Judge Tittle denied that request as well.

70. Before releasing them, Judge Tittle spoke to the jurors privately for several minutes, thanking them for their service. According to some of the jurors, Judge Tittle had been critical of the way the case had been presented to the jury by Hudgeons and Abramson.

71. Judge Tittle scheduled the punishment hearing for December 17, 2012, at which time Abramson asked for a mistrial based on Judge Tittle's refusal to allow Kelly to change his election to have the jury assess punishment. Abramson also pointed out that she had timely filed a request to have the jury consider community supervision for Kelly.[19] However, Judge Tittle denied the motion and proceeded to sentence Kelly to 12 years in prison.

[19] Under Article 37.07(2)(b), a timely filed, verified motion for community supervision also allows a defendant to change his election and ask a jury to assess said punishment.

72. Based on Judge Tittle's treatment of Hudgeons during the *Kelly* trial, and during court proceedings in the weeks that followed the trial,[20] concerns were raised that Judge Tittle's personal feelings toward Hudgeons were having a negative impact on the rights of defendants in his court. As a result, Hudgeons was transferred to serve as the prosecutor for the 354th District Court.

73. Having been appointed to serve as Kelly's appellate attorney, Abramson filed an appellate brief with the 6th Court of Appeals in which she argued five points of error, including that Judge Tittle's conduct toward Hudgeons, both in front of the jury and outside its presence, was so prejudicial that it deprived Kelly of a fair and impartial judge in violation of his constitutional rights. In its responsive brief, the State conceded error with regard to this issue.

74. The Court of Appeals ultimately overturned Judge Tittle's 12-year prison sentence on the ground that Kelly had made a timely oral election to have the jury assess punishment. Although the Court acknowledged the "antagonism" between Judge Tittle and Hudgeons and the claim that Judge Tittle had lost his "neutrality," it declined to address these issues in reaching its decision.

75. After the *Kelly* case was remanded back to the 196th District Court for a new punishment hearing, the parties filed an Agreed Motion to Recuse seeking to remove Judge Tittle from the case.

76. On January 29, 2014, following a hearing, the Presiding Judge for the First Administrative Judicial Region recused Judge Tittle and appointed a visiting judge to take over the case. The visiting judge ultimately accepted the original plea agreement and sentenced Kelly to 5 years in prison.

77. In his written and oral testimony before the Commission, Judge Tittle denied that his treatment of Hudgeons violated the Code of Judicial Conduct; however, he later acknowledged in his testimony before the Commission that the comments regarding duct tape were not appropriate. Judge Tittle apologized to the Commission if Hudgeons "was personally offended by my statement."

78. Judge Tittle's conduct toward McKenzie, Hudgeons, and the fiscal impact of the probation fee waivers on the CSCD's operations and budget have received widespread media attention critical of Judge Tittle.

79. Judge Tittle lost the March 2014 primary election to his opponent, Hunt County Court at Law Judge Andrew Bench.

RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides, in relevant part, that, a judge may be disciplined for "willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of duties or casts public discredit upon the judiciary or the administration of justice."

[20] In unrelated proceedings in the weeks following the *Kelly* trial, as well as in his oral and written testimony before the Commission, Judge Tittle repeatedly accused Hudgeons of engaging in a pattern of forum shopping and discriminatory plea bargain practices. These claims were refuted by Hudgeons, District Attorney Walker, County Attorney Littlefield, and District Judge Beacom.

2. Section 33.001(b) of the Texas Government Code provides that, for purposes of Article V, Section 1-a(6)A of the Texas Constitution, "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" includes: "(1) willful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business."

3. Canon 2A of the Texas Code of Judicial Conduct provides that, "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."

4. Canon 2B of the Texas Code of Judicial Conduct provides, in pertinent part, that, "A judge shall not allow any relationship to influence judicial conduct or judgment."

5. Canon 3B(1) of the Texas Code of Judicial Conduct provides, in pertinent part, that, "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate."

6. Canon 3B(3) of the Texas Code of Judicial Conduct provides that, "A judge shall require order and decorum in proceedings before the judge."

7. Canon 3B(4) of the Texas Code of Judicial Conduct provides, in pertinent part, that, "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity."

8. Canon 3B(5) of the Texas Code of Judicial Conduct provides that, "A judge shall perform judicial duties without bias or prejudice."

9. Canon 3B(8) of the Texas Code of Judicial Conduct provides, in pertinent part, that: "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."

CONCLUSION

The Commission concludes from the evidence presented that Judge Tittle had an adversarial relationship with Jim McKenzie that started before or soon after Judge Tittle took the bench. That relationship improperly influenced Judge Tittle's conduct and judgment, which was manifest in the judge's (a) attempts to interfere in McKenzie's responsibilities for the day-to-day operations of the CSCD; (b) orders that McKenzie was to personally prepare and present PSIs even though he did not supervise probationers; (c) attempts to enforce those orders through contempt of court proceedings and criminal prosecution; (d) undignified and discourteous conduct at the July 12, 2012 sentencing hearing in the *West* case, at which the judge interrogated Walker regarding his refusal to prosecute McKenzie, and called McKenzie to the stand for the purpose of public embarrassment through baseless "findings" that McKenzie had "no credibility" and was "not truthful;" (e) undignified and discourteous conduct at the November 28, 2012 review hearing in the *West* case, at which the judge made unwarranted "findings" on the record that the Hunt County District Attorney and the Hunt County Attorney had made "false, untruthful and misleading, dishonest and deceitful" statements in a Request for an Attorney General Opinion; (f) use of Article 42.12 §20 review hearings as a pretext to gratuitously "reward" the probationers who showed up with the waiver of monthly probation fees; (g) failure to comply with Article 42.12 §19 when waiving probation fees; (h) failure to comply with Article 42.12 §20 and the due process rights of defendants by issuing jail sanctions, increasing the terms of community supervision, and/or

modifying other conditions of probation without providing notice, the right to counsel, or the opportunity to be heard; (i) failure to comply with Article 1.051 of the Code of Criminal Procedure when appointing Lou Merren to represent the probationers who appeared on March 20, 2013; (j) undignified and discourteous conduct toward Assistant Attorney General Eric Vinson at the April 12, 2013 proceedings, at which the judge repeatedly challenged statements in the motions to quash as being untruthful and inaccurate and attempted to publicly embarrass Vinson through unwarranted "findings" that the motions contained "false and inaccurate statements;" and (k) refusal to rule on motions to reconsider the decision to waive probation fees or to reinstate the probation fees in more than 70 cases that had been handled during the Article 42.12 §20 review hearings held in March and April 2013. The Commission concludes that Judge Tittle's conduct, as described above, constituted willful or persistent violations of Canons 2A, 2B, 3B(3), 3B(4), 3B(5), 3B(8) and Article V, §1-a(6)A of the Texas Constitution.

Texas jurisprudence in the context of judicial disciplinary actions has defined "willful conduct" to require a showing of intentional or grossly indifferent misuse of judicial office, involving more than an error of judgment or lack of diligence. *In re Davis*, 82 S.W.3d 140, 148 (Tex.Spec.Ct.Rev. 2002), citing *In re Bell*, 894 S.W.2d 119, 126 (Tex.Spec.Ct.Rev. 1995)(willful conduct requires "a showing of bad faith, including a specific intent to use the powers of office to accomplish an end which the judge knew or should have known was beyond the legitimate exercise of authority.") The term has also been defined as the improper or wrongful use of the power of his office by a judge acting intentionally, or with gross indifference to his conduct. *In re Barr*, 13 S.W.3d 525, 534 (Tex.Rev.Trib. 1998), citing *In re Thoma*, 873 S.W.2d 477, 489-90 (Tex.Rev.Trib. 1994)("willfulness…necessarily encompasses conduct involving moral turpitude, dishonesty, corruption, misuse of office, or bad faith generally, whatever the motive.") Based on the record in this matter, the Commission concludes that there is sufficient evidence of bad faith in Judge Tittle's conduct toward McKenzie and towards those individuals that the judge perceived were acting on McKenzie's behalf.

This was not a case of a judge committing an error of judgment or lacking diligence. On the contrary, Judge Tittle clearly knows the law, having been board certified in criminal law in 2006. Moreover, in his responses to the Commission's inquiries, Judge Tittle stated, "I am extremely knowledgeable regarding state criminal law and procedure, and I have studied and used the provisions of Texas Code of Criminal Procedure, and more specifically, Article 42.12, on a regular basis for about twelve years." Based on those representations, the Commission discounted the notion put forth by Judge Tittle that he made mistakes in how he noticed and handled the Article 42.12 §20 proceedings, and concluded that Judge Tittle intentionally misused the judicial office to cause harm to McKenzie and others connected with him.

In addition to his bullying treatment of McKenzie and others, Judge Tittle demonstrated bad faith in some of the rulings described above. In reaching this conclusion, the Commission recognizes the general rule that the principle of judicial independence requires that judges ought not to be subject to discipline for their discretionary decisions.[21] However, in this case, the evidence demonstrated that Judge Tittle's orders that McKenzie personally prepare and present PSIs and the orders waiving probation fees were done not in a good faith effort to protect the interests or rights of the State or the defendants, but rather were made for the purpose of embarrassing and punishing McKenzie.

[21] *In re Barr*, 13 S.W.3d 525, 544-545 (Tex.Rev.Trib. 1998).

The Commission also concludes that Judge Tittle abandoned the role of an independent, neutral and detached judge every time he became embroiled with McKenzie or someone who was, or appeared to be, working on McKenzie's behalf. When a judge fails to maintain an appropriate professional distance between himself and a litigant, that litigant's attorney, or the cause before the court, and "joins the fray," that judge has essentially abandoned his role as the impartial decision-maker. *See* David Rothman, *Embroilment*, Judicial Conduct Reporter, Spring 2008. In the proceedings described above, particularly those held on July 12, 2012, November 28, 2012, and April 12, 2013, Judge Tittle conducted himself in a manner reminiscent of the judge encountered by the United States Supreme Court in *Offutt v. United States*, 348 U.S. 11, 17 (1954). In that case, the Court criticized the trial court judge for failing to represent "the impersonal authority of law" and for allowing himself "to become personally embroiled with" counsel for one of the litigants. In *Offutt*, the Court denounced verbal exchanges similar to those initiated by Judge Tittle in the matter before the Commission, aptly describing them as a "continuous wrangle on an unedifying level." *Id.*

The Commission further concludes that Judge Tittle willfully and persistently violated Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct through his demeaning treatment of Lauren Hudgeons during and after the *Bernard Kelly* trial. Specifically, the Commission finds that the judge's threat to use duct tape on Hudgeons was excessive and unfair, especially given the fact that (a) Hudgeons had already apologized and promised not to engage in the conduct that offended the judge, and (b) the judge's own intransigence and unreasonable failure to rule on the State's motions contributed to the very situation that had so offended the judge. Further, Judge Tittle's animosity toward Hudgeons impacted the judge's conduct and judgment in the *Kelly* trial, in willful and persistent violation of Canons 2A, 2B and 3B(5) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution. Additionally, by preventing Hudgeons from conducting *voir dire*, Judge Tittle also interfered with the State's right to a fair trial, in willful violation of Canon 2A of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution. Finally, Judge Tittle failed in his duty to rule on the motions presented to him by Hudgeons and Abramson, in willful and persistent violation of Canon 3B(1) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.

Finally, the Commission concludes that Judge Tittle's conduct, as described above, was clearly inconsistent with the proper performance of his duties as a judge, and cast public discredit upon the judiciary and the administration of justice, in violation of Article V, §1-a(6)A of the Texas Constitution.

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In condemnation of the conduct described above that violated Canons 2A, 2B, 3B(1), 3B(3), 3B(4), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable Stephen R. Tittle, Jr., Judge of the 196th Judicial District Court, Greenville, Hunt 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 REPRIMAND** by the Commission.

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 21st day of May, 2014.

ORIGINAL SIGNED BY

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Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct