



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 04-0487-JP

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE OSCAR TULLOS
JUSTICE OF THE PEACE, PRECINCT 2, PLACE 2
BROWNSVILLE, CAMERON COUNTY, TEXAS**

During its meeting in Austin, Texas, on December 8-10, 2004, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Oscar Tullos, Justice of the Peace, Precinct 2, Place 2, Brownsville, Cameron County, Texas. Judge Tullos was advised by letter of the Commission's concerns and provided a written response. Although invited to testify before the Commission on December 9, 2004, Judge Tullos declined to do so. After considering the evidence, the State Commission on Judicial Conduct entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Oscar Tullos was Justice of the Peace, for Precinct 2, Place 2, in Brownsville, Cameron County, Texas.
2. On or about April 12, 2002, Judge Tullos accepted a criminal complaint for issuance of a bad check filed by Filiberto Bermea against Manuel Giron. The criminal complaint arose from an action to collect on a check that had been written to Bermea by Giron, which was returned for insufficient funds.

3. On that same day, Judge Tullos sent a letter to Giron notifying him that a criminal charge of Issuance of a Bad Check had been filed against him, and that Giron had ten (10) days to appear in court to settle the matter.
4. Judge Tullos then mailed notice of the trial setting to both Bermea and Giron. The *Order Setting Trial* contained the style of a civil lawsuit.
5. Prior to the original trial date, Judge Tullos granted a motion for continuance filed by Bermea, the complaining witness in the case.
6. On or about September 16, 2002, Judge Tullos heard testimony in the case.
7. Notations entered by Judge Tullos in the court's file at the time of the trial indicated that a judgment had been entered for Bermea in the amount of \$614.82.
8. The actual written judgment issued on September 16, 2002, reflected that Giron was found guilty of the Class "C" misdemeanor offense and was ordered to pay restitution in the amount of \$614.82. The restitution amount included a fine and court costs of \$255.00.
9. Although the case was criminal in nature, no prosecutor appeared to present the State's case against Giron.
10. According to Judge Tullos, the confusion resulting from various notices being sent from the court that misled Giron into believing the case against him was civil, rather than criminal, in nature was due to a former clerk's error.
11. The judge also stated that it was his belief that the term "restitution" meant all monies owed to the court.
12. Although Judge Tullos indicated that he was familiar with the law that requires all criminal cases to be prosecuted by an assistant District or County Attorney, because no prosecutor appeared on the day of trial to present the case against Giron, "in the interest of justice" and "with the consent of both parties," the judge went forward with the case and received testimony from Giron regarding the criminal charge.
13. Judge Tullos was sanctioned in 2003 for, among other things, improperly converting a criminal complaint into a civil lawsuit.

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, in pertinent part, "A judge shall maintain professional competence in [the law]."
3. Article 45.101(a) of the Texas Code of Criminal Procedure requires that all prosecutions in the justice court be conducted by the county or district attorney or a deputy county or district attorney.

4. Article 45.031 of the Texas Code of Criminal Procedure states that if a prosecutor is not present when the case is called for trial, the judge may postpone the trial; appoint an attorney *pro tem* to represent the state; or proceed to trial.
5. Article 45.032 of the Texas Code of Criminal Procedure requires the judge to enter a directed verdict of “not guilty” for the defendant if the prosecutor fails to prove a *prima facie* case of the offense alleged in the complaint.

CONCLUSIONS

The Commission concludes based on the facts and evidence before it that Judge Tullos failed to comply with the law and demonstrated a lack of professional competence in the law by proceeding to trial in a criminal case in the absence of a prosecutor and by finding the defendant guilty when no *prima facie* proof was presented to the court by a prosecutor. The Commission further concludes that the judge lacked sufficient understanding of the basic differences between civil and criminal proceedings. Because Judge Tullos had previously been sanctioned for similar conduct, his conduct in this case constituted persistent violations of Canons 2A and 3B((2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A and 3B(2) 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 Oscar Tullos, Justice of the Peace, Precinct 2, Place 2, Brownsville, Cameron County, Texas.

Pursuant to this Order, Judge Tullos must obtain **eight (8) hours** of instruction with a mentor in addition to his required judicial education. In particular, the Commission desires that Judge Tullos receive this additional education in the areas of civil and criminal procedure, with particular attention given to recognizing the basic differences between a criminal and a civil complaint, criminal and civil process, and criminal and civil trial procedures.

Judge Tullos shall complete the additional **eight (8) hours** of instruction recited above within **sixty (60) days** from the date of written notification of the assignment of a mentor. It is Judge Tullos’ responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **eight (8) hours** of instruction described herein, Judge Tullos 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, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a

PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION by the State Commission on Judicial Conduct.

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 21 day of December, 2004.

ORIGINAL SIGNED BY

Honorable James A. Hall, Chair
State Commission on Judicial Conduct