

**FILED**

Clerk of the Commission

BEFORE THE STATE COMMISSION**ON JUDICIAL CONDUCT**Date 7/6/2022 In Re Judge No. 105
By Cherie Jones
acting clerk**INQUIRY CONCERNING****JUDGE NO. 105****NOTICE OF FORMAL PROCEEDINGS****TO THE HONORABLE FRANKLIN BYNUM, HARRIS COUNTY CRIMINAL COURT AT LAW NO. 8, HOUSTON, HARRIS COUNTY, TEXAS:**

Pursuant to TEXAS GOVERNMENT CODE Section 33.022 and RULE 10 OF THE TEXAS PROCEDURAL RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES, this Notice is hereby given to the Honorable Franklin Bynum, judge for the Harris County Criminal Court at Law No. 8, Houston, Harris County, Texas, that formal proceedings have been instituted against him by the State Commission on Judicial Conduct, based upon the following:

PROCEDURAL HISTORY

1. At all times relevant hereto, the Honorable Franklin Bynum was the Judge for the Harris County Criminal Court at Law No. 8, Houston, Harris County, Texas.
2. Judge Bynum was elected in 2018 and took the bench in January of 2019. His term ends on December 31, 2022.
3. On July 1, 2020, David Mitcham, the First Assistant to Harris County District Attorney Kim Ogg, filed a complaint against Judge Bynum in CJC No. 20-1415 and thereafter supplemented his complaint on September 30, 2020, November 24, 2020, January 8, 2021, and October 4, 2021 (the "Mitcham Complaint").
4. On January 27, 2021, an Anonymous Complainant filed a complaint against Judge Bynum in CJC No. 21-0679 (the "Anonymous Complaint").
5. On December 14, 2021 and March 30, 2022, Judge Bynum provided sworn written responses to the Commission's Letters of Inquiry about these matters (collectively, the "Judge's Responses").
6. After reviewing these matters during its regularly scheduled meeting on February 4 and 9-10, 2022, the Commission invited Judge Bynum to appear before it for a pre-suspension hearing pursuant to Rules 6 and 15(b) of the Procedural Rules for the Removal or Retirement of Judges to consider whether to recommend to the Supreme Court that Judge Bynum be suspended from office pursuant to same and Art. V, Section 1-a(6)(A) of the Texas Constitution.
7. On April 19, 2022, Judge Bynum, represented by counsel, appeared before the Commission to provide testimony regarding the allegations against him in these matters.

FACTUAL ALLEGATIONS

8. On July 2, 2019, in an interview with *The Nation* magazine, Judge Bynum openly expressed his continuing desire even after assuming the bench to contribute to the “demolition” of the criminal justice system as it currently exists.
9. On July 25, 2019, Judge Bynum engaged in a panel discussion on a local television show sponsored by the Harris County Criminal Lawyers Association titled “Reasonable Doubt” during which he disparaged the Texas judiciary as a whole, the Texas Center for the Judiciary and its training program for new judges, and the Honorable Mark Atkinson, director of the Texas Center for the Judiciary, for his contribution to what Judge Bynum described as a failed system.
10. In his public statements after assuming the bench, Judge Bynum made clear he would continue his advocacy for criminal justice reform in his role as a judge, only now from “within” the system, and exhibited contempt for the pillars of said system, including the Harris County District Attorney’s Office (“HCDAO”).
11. Turning to Judge Bynum’s tenure on the bench, on March 20, 2020, Judge Bynum presided over *State of Texas v. Christopher Bales* (the “Bales Case”) and engaged in a series of bad faith decisions that ultimately led to his recusal. Judge Bynum exhibited an improper and abusive demeanor towards Assistant District Attorney Michael Eber during this case because of the HCDAO’s prosecutorial decisions.
12. Judge Bynum implemented a series of targeted court policies amounting to “retaliatory conduct” against the HCDAO which included: (1) denying HCDAO staff the opportunity to communicate with the judge or his staff by email, while not prohibiting similar communications between the judge/his staff and defense attorneys; (2) not allowing HCDAO staff to communicate with other court participants during Zoom proceedings; (3) adopting a blanket policy of not accepting agreed pleas from the State; and (4) refusing to allow HCDAO staff to view court proceedings remotely.
13. On June 1, 2020, Judge Bynum sent an e-mail to prosecutors assigned to his court directing them to appear personally for jail dockets going forward, in violation of orders designed to protect court participants from the COVID-19 pandemic, including: (1) the Texas Supreme Court’s 1st, 12th, and 17th Emergency Orders; (2) the 11th Administrative Judicial Region’s proposed schedule dated May 29, 2020; and (3) Harris County Judge Lina Hidalgo’s 4th Amended Stay Home, Work Safe Order.
14. Judge Bynum issued improper *sua sponte* orders of protection directing the Harris County Sheriff’s Office not to collect DNA specimens from defendants convicted of certain enumerated misdemeanor offenses, despite the requirements of Tex. Gov’t Code §411.1471(b)(1).
15. Judge Bynum made *sua sponte* findings of “No Probable Cause” in at least four (4) cases without a motion or notice to/participation of the State or defendant, in situations where the defendant had been previously magistrate and already appeared in court, and in at least one case, already entered into a plea agreement with the HCDAO.
16. Judge Bynum set aside the State’s charging document in 20 cases because the complaints did not include a sworn probable cause affidavit on their face, which is not required under the law.

17. Judge Bynum’s findings of no probable cause in cases of alleged family violence and the violation of protective orders demonstrated bias or prejudice against victims of domestic assaults.
18. While presiding over *State of Texas v. Jaime Martinez-Contreras* (the “Contreras Case”), in which the defendant was charged with DWI-2nd offender, Judge Bynum accepted a plea agreement that included a statutory 30-day jail sentence, but then improperly awarded the defendant credit for 30 days in jail when he was in custody for, at most, two days.
19. While presiding over *State of Texas v. Johnny Ernesto Ortiz* (the “Ortiz Case”), another DWI-2nd offender case, Judge Bynum accepted a plea agreement that included a probated one-year jail sentence, but improperly refused to apply the 72-hour mandatory jail sentence mandated in such situations by Tex. Code Crim. Proc. Art. 42A.401(a)(1).
20. During the COVID-19 pandemic, citing the “emergency powers” conveyed to him by the Texas Supreme Court’s Emergency Orders regarding same, Judge Bynum engaged in the practice of setting certain cases for a bench trial despite the State’s refusal to consent to a jury waiver. For example, in *State of Texas v. Celso Sapon-Rosales* (the “Sapon-Rosales Case”), Judge Bynum set the case for a bench trial despite the State’s refusal to consent to a jury waiver. The State requested appellate relief in the Sapon-Rosales Case and obtained a stay of the trial court proceeding.
21. Judge Bynum frequently denied requests by the State to provide an existing record or require a court reporter to record the proceedings before him.
22. Judge Bynum improperly refused to issue warrants or summonses when necessary, instead requiring the State to do so, in contravention of the requirements of Tex. Code Crim Proc. Arts, 15.03 & 15.09.
23. During a Zoom docket for *State of Texas v. Mark Burns* (the “Burns Case”), Judge Bynum engaged in an initial, off-the-record exchange with Assistant District Attorney Charles Hagerman (“Hagerman”) during which the judge suggested the HCDAO used domestic violence victims as “pawns”. Hagerman later asked Judge Bynum to make a record of their earlier discussion, a request Judge Bynum declined and ultimately resulted in Judge Bynum instructing Hagerman to leave the courtroom.
24. After receiving a request from Judge Bynum’s court coordinator via text asking him to return to court, Hagerman rejoined the Zoom proceeding. With a court reporter now on the Zoom call, Judge Bynum called the Burns Case for the stated purpose of giving Hagerman a “formal contempt warning on the record” for his conduct.
25. While presiding over *State of Texas v. Austin Kane Reyes-Cisneros* (the “Reyes-Cisneros Case”), Judge Bynum conducted a bench trial over the State’s objection to the judge proceeding without the State’s consent to the defendant’s jury waiver. Judge Bynum refused to stay the proceedings pending the State’s petition for writ of mandamus. Judge Bynum acquitted the defendant.
26. On May 27, 2021, the Houston 14th Court of Appeals conditionally granted the State’s petition for writ of mandamus, ordering Judge Bynum to vacate the judgment of acquittal in the Reyes-Cisneros Case.¹ Despite the Court of Appeals’ ruling and the State’s notice to the court of

¹ See *In re State ex rel. Ogg*, Case No. 14-20-00793-CR.

same, Judge Bynum did not act to vacate the judgment until the Court of Appeals issued the writ and he was personally served with a copy of same.

27. Judge Bynum improperly used the threat of contempt against Assistant District Attorney Sean Powers (“Powers”) with respect to *State of Texas v. Gregory Massenburg*. Judge Bynum issued a Show Cause Order against Powers, requiring him to appear on July 16, 2021, at 11:00 a.m., but when Powers and other ADAs appeared as ordered, Judge Bynum kept them waiting for approximately 45 minutes. When he finally took the bench, Judge Bynum announced the hearing would be reset for September 2, 2021.
28. While presiding over *State of Texas v. Bradley Rose* (the “Rose Case”), following a series of failures to appear by Defendant Bradley Rose, Judge Bynum failed to forfeit the defendant’s bond on the State’s motion despite the requirements of Tex. Code. Crim Proc. Arts. 22.01 & 22.02.
29. Judge Bynum took a selfie while wearing a “Defund Police” t-shirt given to him by the Chicago Public Defender’s Office, which was posted on his Twitter feed and reposted on the Houston Police Officers Union’s Facebook page.

RELEVANT STANDARDS

1. Article V, §1-a(6)A of the Texas Constitution provides, in relevant part, that any Justice or Judge of the courts established by the Constitution or created by the Legislature may be removed from office, disciplined, or censured for “incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice.”
2. Article V, §1-a(7) of the Texas Constitution provides, “The Commission shall keep itself informed as fully as may be of circumstances relating to the misconduct or disability of particular persons holding an office named in Paragraph A of Subsection (6) of this Section, receive complaints or reports, formal or informal, from any source in this behalf and make such preliminary investigations as it may determine. Its orders for the attendance or testimony of witness or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court or by a Master.”
3. §33.001(b)(5) of the Texas Government Code provides, in relevant part, that for purposes of Section 1-a, Article V of the Texas Constitution, “willful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties” includes, *inter alia*, “willful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct” and “failure to cooperate with the commission.”
4. Canon 2A of the Texas Code of Judicial Conduct provides in relevant part, “A judge shall comply with the law...”
5. Canon 2B of the Texas Code of Judicial Conduct provides, in relevant part, “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.”
6. Canon 3B(2) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge...shall maintain professional competence in [the law].”

7. Canon 3B(4) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and other with whom the judge deals in an official capacity...”
8. Canon 3B(5) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge shall perform judicial duties without bias or prejudice.”
9. Canon 3B(6) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.”
10. Canon 3B(8) of the Texas Code of Judicial Conduct provides, in relevant part, “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.”
11. Canon 3B(8) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney ... or any other court appointee concerning the merits of a pending or impending judicial proceeding.”
12. Canon 3B(10) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge shall abstain from public comment about a pending or impending proceeding which may come before a judge’s court in a manner which suggests to a reasonable person the judge’s probable decision on any particular case.”
13. Canon 4A(1) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge shall conduct all of the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge.”
14. Canon 4A(2) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge shall conduct all of the judge’s extra-judicial activities so that they do not interfere with the proper performance of judicial duties.”

CHARGE I

Bias Against the State

Judge Bynum’s conduct demonstrating bias against the Harris County District Attorney’s Office constituted willful violations of the Code of Judicial Conduct and willful or persistent conduct that is clearly inconsistent with the proper performance of his duties and/or cast public discredit on the judiciary or administration of justice, in violation of the standards set forth in:

1. Article V, §1-a(6)A of the Texas Constitution;
2. Canon 2A of the Texas Code of Judicial Conduct;
3. Canon 3B(2) of the Texas Code of Judicial Conduct;
4. Canon 3B(4) of the Texas Code of Judicial Conduct;
5. Canon 3B(5) of the Texas Code of Judicial Conduct;
6. Canon 3B(6) of the Texas Code of Judicial Conduct;
7. Canon 3B(8) of the Texas Code of Judicial Conduct;
8. Canon 3B(10) of the Texas Code of Judicial Conduct;
9. Canon 4A(1) of the Texas Code of Judicial Conduct; and

10. Canon 4A(2) of the Texas Code of Judicial Conduct.

CHARGE II

Failure to Comply with the Law

Judge Bynum's failures to comply with laws and failures to maintain professional competence with respect to those laws in a manner consistently favoring defendants and defense attorneys constituted willful violations of the Code of Judicial Conduct and willful or persistent conduct that is clearly inconsistent with the proper performance of his duties and/or cast public discredit on the judiciary or the administration of justice, in violation of the standards set forth in:

1. Article V, §1-a(6)A of the Texas Constitution;
2. Canon 2A of the Texas Code of Judicial Conduct;
3. Canon 3B(2) of the Texas Code of Judicial Conduct; and
4. Canon 3B(8) of the Texas Code of Judicial Conduct;

CHARGE III

Reasonable Doubt Regarding Judicial Impartiality

Judge Bynum's public statements and treatment of the Harris County District Attorney's Office cast reasonable doubt on his capacity to act impartially and were willful violations of the Code of Judicial Conduct and willful or persistent conduct that is clearly inconsistent with the proper performance of his duties and/or cast public discredit on the judiciary or the administration of justice, in violation of the standards set forth in:

1. Article V, §1-a(6)A of the Texas Constitution;
2. Canon 2A of the Texas Code of Judicial Conduct;
3. Canon 3B(2) of the Texas Code of Judicial Conduct;
4. Canon 3B(4) of the Texas Code of Judicial Conduct;
5. Canon 3B(5) of the Texas Code of Judicial Conduct;
6. Canon 3B(6) of the Texas Code of Judicial Conduct;
7. Canon 3B(10) of the Texas Code of Judicial Conduct; and
8. Canon 4A(1) of the Texas Code of Judicial Conduct.

Judge Bynum is hereby notified that he has the right to file a written answer to the foregoing charges within fifteen (15) days after service of this Notice of Formal Proceedings upon him. Judge Bynum's verified answer should be forwarded or delivered to the State Commission on Judicial Conduct, P.O. Box 12265, Austin, Texas, 78711.

Signed this 6th day of July, 2022.

EXAMINERS

Jacqueline Habersham
Executive Director
Texas Bar No. 00785931
jackie.habersham@scjc.texas.gov

Zindia Thomas
General Counsel
Texas Bar No. 24004947
Zindia.Thomas@scjc.texas.gov

Lorin Hayes
Senior Commission Counsel
Texas Bar No. 00790322
Lorin.Hayes@scjc.texas.gov

Phil Robertson
Commission Counsel
Texas Bar No. 17058500
Phil.Robertson@scjc.texas.gov

Katherine Cheng
Commission Counsel
Texas Bar No. 24040679
Katherine.Cheng@scjc.texas.gov

State Commission on Judicial Conduct
P.O. Box 12265
Austin, Texas 78711
Telephone: (512) 463-5533
Facsimile: (512) 463-0511

By: /s/ Zindia Thomas
Zindia Thomas

OFFICER'S RETURN

Came to hand the ____ day of _____, 2022, at _____ o'clock, __.m., and executed the ____ day of _____, 2022, at _____ o'clock, __.m., by delivering to the within named Respondent, the **Honorable Franklin Bynum**, at _____, _____, Texas _____, in person, a true copy of the attached Notice of Formal Proceedings.

SHERIFF/CONSTABLE/AUTHORIZED PERSON

BY: _____

(Printed Name)

_____ County, Texas