

Misc. Docket No. 02- 9078

**ORDER
OF
THE SUPREME COURT OF TEXAS**

The State Commission on Judicial Conduct has recommended that the Honorable Mary W. Hart, Municipal Court Judge, White Deer, Carson County, Texas, be suspended without pay pursuant to Texas Constitution Article 5, §1-a(6)A, and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, pending final disposition by the Commission of the charge pending against Respondent.

Having considered the Commission's Request for Order of Suspension of Judge and its exhibits, it is the Order of the Supreme Court of Texas that the Honorable Mary W. Hart, Municipal Court Judge, White Deer, Carson County, Texas, be immediately suspended from office without pay pursuant to Texas Constitution Article 5, §1-a(6), pending final disposition by the Commission of the charge pending against Respondent.

As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the
City of Austin

This 9th day of May, 2002.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

State Commission on Judicial Conduct

Officers

Michael L. O'Neal, Chair
Kathleen H. Olivares, Vice-Chair
Dee Coats, Secretary



April 24, 2002

Executive Director
Margaret J. Reaves

Members

L. Scott Mann
Keith Baker
Martin Chiuminatto, Jr.
Gilbert M. Martinez
James A. Hall
Ronald D. Krist

John T. Adams, Clerk
Supreme Court of Texas
Supreme Court Building
P.O. Box 12248
Austin, Texas 78711

RECEIVED
IN SUPREME COURT
OF TEXAS

APR 25 2002

JOHN T. ADAMS, Clerk
By _____ Deputy

Re: Inquiry Concerning CJC No. 02-0344-MU

Dear Mr. Adams:

Enclosed for filing are the original and 11 copies of *Commission's Request for Order of Suspension of Judge* in the above-referenced matter for the Court's consideration. Also enclosed is an Order for the Court's convenience. I ask that you please file stamp two of the copies provided and return them for our records.

By copy of this letter, I am providing the subject judge a true and correct copy of the *Commission's Request for Order of Suspension of a Judge*.

If you have any questions or need further information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Mogil".

Lisa Mogil
Commission Counsel

LM/et
Encl.

xc: Honorable Mary Hart
Municipal Court Judge
City of White Deer
P.O. Box 98
White Deer TX 79097

Via Certified Mail, Return Receipt Requested
No. 7000 0600 0027 2944 9781

IN THE SUPREME COURT OF TEXAS

02- 9078
Misc. Docket No.

ORIGINAL

INQUIRY CONCERNING
CJC No. 02-0344-MU

COMMISSION'S REQUEST FOR ORDER OF SUSPENSION OF JUDGE

TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW the undersigned counsel for the State Commission on Judicial Conduct (hereinafter the "Commission") and files this request that the Supreme Court suspend, without pay, the Honorable Mary W. Hart, Municipal Court Judge, White Deer, Carson County, Texas, and would show the Court as follows:

I. Authority

Article 5, §1-a(6)A of the Texas Constitution provides, in pertinent part, as follows:

On the filing of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and 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, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.

Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges sets forth the procedure for the suspension of a judge by using substantially the same language as that used in the Texas Constitution, as recited above.

II. Factual and Procedural Background

At all times relevant hereto, Mary W. Hart (hereafter "Respondent") has been a Municipal Court Judge, White Deer, Carson County, Texas.

On March 11, 2002, a Sworn Complaint was filed with the Commission by Hope Lochridge, Executive Director of the Texas Municipal Courts Education Center of Austin, Travis County, Texas, alleging that Respondent failed to comply with her judicial education requirements under the Rules of Judicial Education for fiscal year 2001. (A true and correct copy of the Sworn Complaint is attached hereto as **Exhibit A** and incorporated herein for all relevant purposes).

The Rules of Judicial Education, promulgated by the Court of Criminal Appeals pursuant to Section 56.006 of the Texas Government Code, require municipal judges to complete 12 hours of continuing judicial education each year as an official duty of office. The Commission views this education requirement as a basic qualification necessary to serve as a judge. Other jurisdictions that take this approach have removed judges from the bench for failing to comply with education requirements. *See, e.g., Matter of Lobdell v. State Comm'n on Judicial Conduct*, 59 NY2d 338 (1983); *In re Yusko*, Determination (N.Y. Comm'n on Judicial Conduct, March 7, 1995); *In re Judge No. 1791*, 418 S.E.2d 83 (Ga. Sup. Ct. 1992) (per curiam). In addition, Georgia laws require the Judicial Qualifications Commission to recommend removal of certain judges who fail to obtain training, and Utah law mandates that the Supreme Court order the reprimand, censure, suspension, removal, or involuntary retirement of certain judges who do not complete training. O.C.G.A. §15-9-1.1 (2001); Utah Code Ann. §78-8-103 (2001). Finally, some state statutes declare a judge ineligible to serve or to receive a salary unless the judge has completed the requisite training. *See, e.g., Miss. Code Ann. §9-11-3* (2001); *Mont. Code Ann. §3-1-1502* (2001); *N.M. Stat. Ann. §35-14-10* (2001).

III. Suspension

On March 12, 2002, pursuant to Article 5, §1-a(6)A of the Texas Constitution and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, a copy of the Sworn Complaint was served on Respondent. In addition, Respondent was notified that the

Commission had set the matter of Respondent's suspension for an informal hearing to be held at the Commission's offices located in the William P. Clements, Jr. Building, 300 West 15th Street, Suite 415, Austin, Texas on April 10, 2002, at 2:50 p.m. (A true and correct copy of the notice to Respondent is attached hereto as **Exhibit B** and incorporated herein for all relevant purposes).

On April 10, 2002, Respondent did not appear at the suspension hearing held before the Commission. After considering the Sworn Complaint, Respondent's written response to the Commission, and the argument of counsel, the Commission made the following findings:

1. On August 17, 2001, the Texas Municipal Courts Education Center notified Respondent that she had failed to obtain her required 12 hours of judicial education during fiscal year 2001, which commenced on September 1, 2000 and ended on August 31, 2001;
2. According to the records of the Texas Municipal Courts Education Center, Respondent applied for, but was denied, a waiver of her judicial education for fiscal year 2001 by the Municipal Courts Education Committee; and
3. In her written response to the Commission dated March 18, 2002, Respondent represented that she was unable to attend the judicial education classes for fiscal year 2001 because she is on oxygen and had an arthritis flare up.

Based on the evidence before it, the Commission concluded that Respondent has engaged in willful and persistent conduct that is clearly inconsistent with the proper performance of her duties or casts public discredit upon the judiciary or on the administration of justice in the State of Texas.

Based on the above, the Commission recommends that the Texas Supreme Court order the immediate suspension of Respondent from her office as Municipal Court Judge, White Deer, Carson County, Texas, without pay. (A true and correct copy of the Commission's Recommendation of Suspension is attached hereto as **Exhibit C** and incorporated herein for all relevant purposes).

Prayer

WHEREFORE, premises considered, the undersigned counsel for the Commission respectfully requests that, pursuant to Article 5, §1-a(6)A of the Texas Constitution and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, this Honorable Court issue an order suspending Judge Mary W. Hart, without pay, from her office as Municipal Court Judge, White Deer, Carson County, Texas, pending final disposition by the Commission of the charge pending against Respondent.

Respectfully submitted,

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

Margaret J. Reaves
Executive Director
Texas State Bar No. 16643800

Seana Willing
General Counsel
Texas State Bar No. 00787056

Lisa Mogil
Commission Counsel
Texas State Bar No. 24002622

By: *Lisa Mogil*
Lisa Mogil
Texas State Bar No. 24002622

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the "Commission's Request for Order of Suspension of a Judge" has been sent to Honorable Mary W. Hart, Municipal Court Judge, City of White Deer, PO Box 98, White Deer Texas 79097, on this the 25th day of April 2002, via certified mail, return receipt requested.



Lisa Mogil

AFFIDAVIT OF HOPE LOCHRIDGE

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary public, personally appeared Hope Lochridge and upon her oath duly sworn testified as follows:

“I am over the age of 18, have never been convicted of a felony and have personal knowledge of all facts stated herein.

I am the Executive Director for the Texas Municipal Courts Education Center. As part of my duties, I ensure judges’ compliance with judicial education requirements under the Rules of Judicial Education promulgated by the Court of Criminal Appeals of Texas, a copy of which is incorporated by reference and made a part of this affidavit.

Judge Mary W. Hart, Municipal Court Judge of White Deer, Carson County, Texas, is not in compliance with Rule 4a(2) of the Rules of Judicial Education for fiscal year 2001.

Judge Hart completed 0 hours out of the 12 required hours of education for fiscal year 2001.

Judge Hart was not granted a waiver or other permission to relieve her of her educational requirements for fiscal year 2001.”

FURTHER AFFLIANT SAYETH NOT.

Hope Lochridge

Hope Lochridge
Executive Director, Texas Municipal Courts Education Center

SWORN AND SUBSCRIBED TO BEFORE ME, on this the 11th day of March , 2002.

Patricia Russo
Notary Public, State of Texas

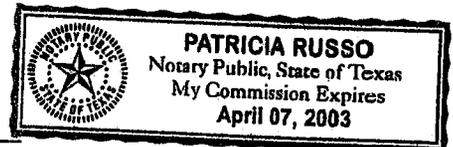


EXHIBIT A

State Commission on Judicial Conduct

COPY

Officers

Michael L. O'Neal, Chair
Kathleen H. Olivares, Vice-Chair
Dee Coats, Secretary



Executive Director
Margaret J. Reaves

Members

L. Scott Mann
Keith Baker
Martin Chi uminatto, Jr.
Gilbert M. Martinez
James A. Hall
Ronald D. Krist

March 12, 2002

CONFIDENTIAL

**CERTIFIED MAIL # 7000 0600 0027 2944 9613
RETURN RECEIPT REQUESTED**

Honorable Mary W. Hart
Municipal Court Judge
City of White Deer
PO Box 98
White Deer TX 79097

Re: CJC No. 02-0344-MU

Dear Judge Hart:

As you are aware, the State Commission on Judicial Conduct exercises jurisdiction over allegations of judicial misconduct. Article 5, §1-a(7) of the Texas Constitution provides that, "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."

In addition, the Texas Court of Criminal Appeals has adopted Rules of Judicial Education, which establish requirements for mandatory instruction of judges. Such rules provide that the names of judges failing to obtain the required instruction shall be forwarded to the Commission for disciplinary review. Your name has been reported by the Court of Criminal Appeals as not having completed the required 12 hours of instruction during fiscal year 2001, the year beginning on September 1, 2000 through August 31, 2001. Enclosed as *Attachment A*, please find a sworn complaint provided to us by Hope Lochridge, Executive Director of the Texas Municipal Courts Education Center.

In the course of its preliminary investigation into this issue, the Commission has decided to consider whether to recommend to the Supreme Court that it suspend you from further judicial service pursuant to its authority under Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges promulgated by the Supreme Court of Texas by order dated May 21, 1992. Rule 15 provides that:

Rule 15. SUSPENSION OF A JUDGE

(a) ...

(b) Upon the filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and 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, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under Rule 6), may recommend to the Supreme Court the suspension of such person from office.

(c) When the Commission or the Supreme Court orders the suspension of a judge or justice, with or without pay, the appropriate city, county, and/or state officials shall be notified of such suspension by certified copy of such order.

The Commission hereby puts you, Municipal Court Judge Mary W. Hart of Carson County, Texas, on notice that pursuant to the above cited Procedural Rule 15(b), the Commission may seek to recommend to the Texas Supreme Court that you be immediately suspended from office, pending further action by the Commission on Judicial Conduct. This action is based on the contents of the sworn complaint filed with the Commission on March 11, 2002 by Hope Lochridge, Executive Director of the Texas Municipal Courts Education Center.

In compliance with Article 5, §1-a(6)A of the Texas Constitution and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, the Commission requests that you appear before it on **Wednesday, April 10, 2002 at 2:50 p.m.**, in the Commission's offices located in the William P. Clements, Jr. Building, 300 West 15th Street, Suite 415, Austin, Texas.

An appearance before the Commission is governed by Section 33.022 of the Texas Government Code. While you may not invite witnesses to testify, you may invite guests to observe the hearing. You may be asked to discuss any matter relating to the above-referenced case. Please review your written responses and notify us of any changes. You are free to submit any written documents or court records that you deem material, including any affidavits or sworn statements from witnesses. Any documents you wish the Commission to consider must be received by this office no later than **3:00 p.m. on April 9, 2002.**

If you are unable to attend this hearing, you must notify the Commission in writing no later than **April 3, 2002.** Your failure to attend or provide a good cause reason for your failure to attend could result in the Commission initiating a complaint against you for failure to cooperate. The date and time of the hearing are reserved to allow you the opportunity to clarify your actions to the Commission and to allow the Commission the opportunity to more fully understand the facts and circumstances of the case. Such discussion may result in an early resolution of the issues. However, please be advised that your testimony will be under oath and may be used in subsequent proceedings. For security reasons, if you desire to invite guests to the hearing, your appearance confirmation letter should identify those persons. Of course, you have the right to be represented by an attorney.

The hearing will take place during a regularly scheduled Commission meeting; therefore, it is the Commission's policy that no requests for a continuance of the hearing will be entertained.

EXHIBIT B

In order for us to complete the investigation into this matter, we ask that you respond to the questions contained in item QJ-1 attached hereto. Please write or type your answers in the space provided below each question. If you need more space, please feel free to attach additional pages. After responding to the questions, please feel free to submit any comment, explanation, or justification you believe appropriate. Additionally, please personally sign, date and verify your answer before a notary public.

We do appreciate your helping us to carry out our responsibilities and request your written response by **Friday, March 29, 2002**. If you have any questions or if we may be of assistance to you, please do not hesitate to contact Lisa Mogil, the staff attorney assigned to this matter, at (877) 228-5750 (toll free).

At the conclusion of the hearing, the Commission may vote to dismiss the matter, issue a private or public sanction against you, order that you obtain additional education, or initiate formal proceedings in order to recommend your removal and/or suspension from office. In some situations, the Commission may postpone its decision in order to obtain additional testimony or other evidence.

Thank you for your time and consideration.

Sincerely,

Seana Willing
General Counsel

SW/LM/et
Encl.

EXHIBIT B

AFFIDAVIT OF HOPE LOCHRIDGE

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary public, personally appeared Hope Lochridge and upon her oath duly sworn testified as follows:

"I am over the age of 18, have never been convicted of a felony and have personal knowledge of all facts stated herein.

I am the Executive Director for the Texas Municipal Courts Education Center. As part of my duties, I ensure judges' compliance with judicial education requirements under the Rules of Judicial Education promulgated by the Court of Criminal Appeals of Texas, a copy of which is incorporated by reference and made a part of this affidavit.

Judge Mary W. Hart, Municipal Court Judge of White Deer, Carson County, Texas, is not in compliance with Rule 4a(2) of the Rules of Judicial Education for fiscal year 2001.

Judge Hart completed 0 hours out of the 12 required hours of education for fiscal year 2001.

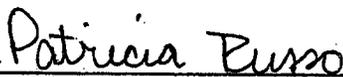
Judge Hart was not granted a waiver or other permission to relieve her of her educational requirements for fiscal year 2001."

FURTHER AFFLIANT SAYETH NOT.



Hope Lochridge
Executive Director, Texas Municipal Courts Education Center.

SWORN AND SUBSCRIBED TO BEFORE ME, on this the 11th day of March, 2002.



Notary Public, State of Texas

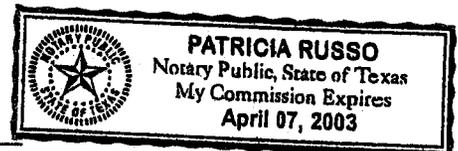


EXHIBIT B

ATTACHMENT
A

4. Please provide any other relevant information regarding your attendance at judicial education seminars during fiscal year 2001.

(Judge's signature)

(Date)

(Printed Name)

**VERIFICATION
CJC No. 02-0344-MU**

State of Texas

§
§
§

County of _____

BEFORE ME, the undersigned authority, on this day personally appeared _____, who by me being first duly sworn, on his oath deposed and said that the above responses to the Commission's inquiries are based on personal knowledge, and are true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME, on this the _____ day of _____, 2002.

NOTARY PUBLIC, IN AND FOR THE STATE
OF TEXAS

EXHIBIT B



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

**Inquiry Concerning
CJC No. 02-0344-MU**

COMMISSION'S RECOMMENDATION OF SUSPENSION

On the 10th day of April, 2002, came on to be heard the Sworn Complaint of Hope Lochridge requesting that the State Commission on Judicial Conduct ("Commission") recommend the immediate suspension of Judge Mary W. Hart, Municipal Court Judge, White Deer, Carson County, Texas ("Respondent").

After considering the Sworn Complaint, Respondent's written response to the Commission, and the argument of counsel, the Commission concluded that Respondent has engaged in willful and persistent conduct that is clearly inconsistent with the proper performance of her duties and which casts public discredit on the judiciary and on the administration of justice in violation of Article 5, §1-a(6)A of the Texas Constitution.

WHEREFORE, pursuant to Article 5, §1-a(6)A of the Texas Constitution and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, the Commission recommends that the Texas Supreme Court order the immediate suspension, without pay, of Judge Mary W. Hart from her office as Municipal Court Judge, White Deer, Carson County, Texas, pending final disposition by the Commission of the charge pending against Respondent.

SIGNED: April 19, 2002.

A handwritten signature in black ink, appearing to read "Michael L. O'Neal", written over a horizontal line.

Honorable Michael L. O'Neal, Chair
State Commission on Judicial Conduct

EXHIBIT C