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Harris County District Attorney's Office
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HARRIS COUNTY DISTRICT ATTORNEY
KIM K. OGG

October 23, 2020

Mr. Wayne Dolcefino
Dolcefino Consulting
3701 Kirby, Suite 560
Houston, Texas 77098

Via CMRRR – 7015 1730 0000 9406 4355

Re: PIA Request of July 28, 2020

Dear Mr. Dolcefino:

Enclosed please find 26 pages of documents in response to your request for records of July 28, 2020. The names of prosecutors have been redacted with your permission.

There are 26 pages at 10 cents per page for a total of \$2.60 with a check payable to "Harris County, Texas."

If you have any questions or need any additional information, please contact me at 713-274-5949 or by email at stevens_elizabeth@dao.hctx.net to discuss.

Sincerely,

Elizabeth Stevens
Assistant District Attorney
General Litigation Division

10-26-2020

V:a pick-up

TOM BERG
FIRST ASSISTANT

VIVIAN KING
CHIEF OF STAFF



500 JEFFERSON, SUITE 600
HOUSTON, TEXAS 77002

KIM K. OGG
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

April 18, 2019

State Commission on Judicial Conduct
PO Box 12265
Austin TX 78711

Re: **Judge Darrell W. Jordan, Jr.,**
 Harris County Criminal Court at Law No. 16.

Greetings:

This is a complaint against Darrell W. Jordan, Jr. (State Bar of Texas No. 24053880), the elected judge of Harris County Criminal Court at Law No. 16. For the reasons detailed below, Judge Jordan has engaged in judicial misconduct.

A. Introduction

The role of a judge in courtroom proceedings was succinctly described by the special court of review addressing allegations of misconduct by Dallas County Criminal Court at Law Judge Etta Mullin in 2015:

Because words spoken from the bench can have a special force and influence, no one sets the tone for courtroom discourse more surely than the judge.

See In re Mullin, Docket No. 15-0002, at 17 (Tex. Spec. Ct. Rev., Oct. 21, 2015) (emphasis added).

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This observation remains true today, particularly in the county criminal courts where misdemeanor prosecutions take place. These county courts are often staffed by impressionable lawyers at the beginning of their careers, still learning how to present evidence and arguments to judges.

The best misdemeanor judges are easily identified by their patience, professionalism, and courtesy to all parties, as dictated by the Code of Judicial Conduct. *See Tex. Code Jud. Conduct, Canon 3(B)(4) (“A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity,...”)*

By contrast, a judge who indulges in incivility and impatience can have a disproportionate influence on lawyers and other courtroom observers, calling into question the judge’s impartiality and the overall quality of justice in that court.

While there is no question that a judge’s role in the criminal justice system is difficult when presiding over cases tried by inexperienced lawyers, those are *precisely* the cases that require the most patience and professionalism on the part of the court.

Judge Jordan has not exercised such patience and professionalism. Instead, he has repeatedly indulged in intemperate conduct with respect to the prosecutors appearing in his court. His conduct includes:

- Accusing a prosecutor in open court of misrepresenting facts with no basis.
- Threatening to jail prosecutors assigned to his court for showing him “disrespect.”
- Accusing prosecutors of racial bias and injecting race into court proceedings.
- Disqualifying a prosecutor in the middle of a jury trial without legal justification.

- Making a retaliatory finding of no probable cause in a criminal matter because the State would not change its punishment recommendation.

B. Standard of Review

The Texas Constitution provides that a judge may be disciplined “for 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 or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice[.]” TEX. CONST. art. V, § 1-a(6)A.

For purposes of article V, section 1-a, “willful or persistent conduct that is clearly inconsistent with the proper performance of” a judge’s duties includes a willful violation of a provision of the Code of Judicial Conduct.” TEX. GOV’T CODE § 33.001(b)(2). Willful conduct requires 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); *In re Bell*, 894 S.W.2d 119, 126 (Tex. Spec. Ct. Rev. 1995). A judge need not have specifically intended to violate the Code of Judicial Conduct; a willful violation occurs if the judge intended to engage in the conduct for which he or she is disciplined. *Davis*, 82 S.W.3d at 148; *In re Barr*, 13 S.W.3d 525, 539 (Tex. Rev. Trib. 1998).

For legal error to rise to the level of judicial misconduct, a legal ruling or action must be “made contrary to clear and determined law about which there is no confusion or question as to its interpretation,” and the complained-of legal error additionally must be (1) egregious, (2) made as part of a pattern or practice of legal error, or (3) made in bad faith. *In re Ginsberg*, No. 18-0001, 2018 WL 2994940, at *4 (Tex. Spec. Ct. Rev. June 11, 2018) (quoting *Barr*, 13 S.W.3d at 545). “Egregious” means “[e]xtremely or remarkably bad; flagrant,” or “shocking.” *Id.* at *5.

C. Acts of Judicial Misconduct

The following subsections detail acts of judicial misconduct by Judge Jordan that merit review by the State Commission on Judicial Conduct.

1. Violation of Canons 2(A) and 3(B)(4) – Acting discourteously, impatiently and in an intemperate manner that does not promote confidence in the integrity and impartiality of the judiciary

Canon 2(A) of the Code of Judicial Conduct provides: “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.” *See Tex. Code Jud. Conduct*, Canon 2(A).

Canon 3(B)(4) provides, in relevant part, that “[a] judge shall be patient, dignified and courteous to ... lawyers and others with whom the judge deals in an official capacity.” *See Tex. Code Jud. Conduct*, Canon 3(B)(4).

Judge Jordan has been discourteous and impatient with lawyers for the State of Texas, and has acted in an intemperate manner that does not promote public confidence in the integrity and impartiality of the judiciary.

a. Announcing in open court with no factual basis that “the State must have misrepresented some facts”

On October 22, 2018, Assistant District Attorney [REDACTED] presented probable cause to Judge Jordan in Cause Nos. 2226510 (*State of Texas v. Jason Duah*) and 2226511 (*State of Texas v. Francis Duah*).¹

¹ A judicial determination of probable cause to believe an offense was committed by the defendant is required under the Fourth Amendment of the United States Constitution “as a condition of any significant pretrial restraint of [the defendant’s] liberty.” *Gerstein v. Pugh*, 420 U.S. 103, 125 (1974); *Green v. State*, 872 S.W.2d 717, 721 (Tex. Crim. App. 1994). In *Gerstein*, the Supreme Court explained the limited and informal nature of the proceeding:

The sole issue is whether there is probable cause for detaining the arrested person pending further proceedings. This issue can be determined reliably without an

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The co-defendants were charged with weapons offenses and were arrested after interacting with two men who had felony warrants. [REDACTED] read the relevant portions of the offense report, and Judge Jordan made a finding that there was probable cause in the case.

Later that morning, a defense attorney approached Judge Jordan and told him that another judge had found no probable cause in a companion case from the same incident. [REDACTED] heard Judge Jordan publicly announce, "Well, the State must have misrepresented some facts."

At the request of Judge Jordan, [REDACTED] and the arresting officer clarified the information in the offense report, and confusion caused by a word choice of the officer, whose first language was not English. Judge Jordan ultimately did not change his initial finding of probable cause, but Judge Jordan's reckless public accusation that [REDACTED] misrepresented facts in an informal hearing before him was highly distressing to [REDACTED].²

adversary hearing. The standard is the same as that for arrest. That standard — probable cause to believe the suspect has committed a crime — traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony, and the Court has approved these informal modes of proof.

....

The use of an informal procedure is justified not only by the lesser consequences of a probable cause determination but also by the nature of the determination itself. It does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands, and credibility determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt.

Gerstein, 420 U.S. at 120, 122.

² In reporting this and other incidents to her supervisors, [REDACTED] expressed her concern that she no longer felt comfortable practicing law before Judge Jordan because he would unreasonably construe her good faith statements as being incorrect and malicious. According to [REDACTED] "[t]he experience gave me nightmares for weeks and made me very apprehensive about practicing law in his court."

This assault on [REDACTED] character also offended the dignity and decorum of the proceedings. *See, e.g., In re Mullin*, Docket No. 15-0002 (Tex. Spec. Ct. Rev., Oct. 21, 2015):

Whether a judge is assessing the credibility of a witness or an officer of the court, the process demands professionalism and civility. Because words spoken from the bench can have a special force and influence, no one sets the tone for courtroom discourse more surely than the judge. When a judge disagrees with what an attorney has said, the judge can state that the attorney is in error or mistaken in his facts without assaulting the attorney's character in rhetoric that offends the dignity and decorum of the proceedings.

Id. at 17.

b. Threatening to jail the prosecutors assigned to his court for "disrespecting" him

On October 30, 2018, Judge Jordan summoned three Assistant District Attorneys [REDACTED] and a defense attorney into his chambers. When they entered the chambers, Judge Jordan handed each of them copies of a contempt case from 1986, *Ex parte Krupps*, 712 S.W.2d 144 (Tex. Crim. App. 1986).

In summary, Judge Jordan informed them that he was being disrespected in his court and was upset about an incident involving the chief prosecutor, [REDACTED]. He stated that the previous day he had found no probable cause on a case that had been incorrectly charged, and that he later heard [REDACTED] communicate to someone that the case would be refiled by the State.

Judge Jordan apparently took personal affront at the idea that a case in which he found no probable cause might be refiled. This reaction by Judge Jordan had no basis in law. A judge's finding of no probable cause in an informal *Gerstein v. Pugh* hearing is not dispositive of a criminal case. Nothing forecloses the State from refileing the case or presenting the matter to a grand jury. *See Ex parte Preston*,

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533 S.W.2d 820, 821 (Tex. Crim. App. 1976) (“The return of an indictment establishes probable cause as a matter of law. Therefore, the question of probable cause to hold appellant has been rendered moot.”).

Despite the fact that Judge Jordan had no legal or actual basis for identifying such actions as “disrespectful,” Judge Jordan verbally threatened to jail all three prosecutors if he felt that they were disrespecting him or the court again.³

While describing his role in the court to the young attorneys, Judge Jordan described himself as “king” of the court, and was critical of the prosecutors for their advocacy, calling them “hang’em high prosecutors.” Not only did Judge Jordan threaten to hold the prosecutors in contempt if they “disrespected” him, but he told them he would only consider a PR bond *after* they were booked into jail.⁴

c. Making unjustified accusations of bias and repeated racial references

Judge Jordan has accused prosecutors in his court of racial bias, and improperly injected race into the proceedings in his court. For example, during the incident in his chambers described above, Judge Jordan speculated on whether his relative youth or his race was the cause of the disrespect he accused the prosecutors of showing him.

Following the incident in Judge Jordan’s chambers, a supervising misdemeanor prosecutor, Assistant District Attorney [REDACTED], approached the bench and attempted to facilitate a reconciliation with Judge Jordan on behalf of Assistant District Attorneys [REDACTED] in response to Judge Jordan’s statements that he “felt disrespected.” Judge Jordan responded, “You can come up here and tell me that, but you remind me of a slave driver. You whip the

³ This threat caused enough discomfort to [REDACTED] that her supervisor [REDACTED] felt it was necessary to remove her from the court. [REDACTED] was given an office day until the decision was made to replace her with a different prosecutor and assign her to a different court.

⁴ Judge Jordan acknowledged that this meeting took place in an email to the prosecutors’ supervisor. See Exhibit A.

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slaves, work them in the field, and mistreat them. Then you want to say that you're sorry for the mistreatment.”⁵

When [REDACTED], an African-American prosecutor, declined to grant pretrial diversion to an African-American defendant during a plea proceeding in late 2018, Judge Jordan ordered [REDACTED] to “turn around and look at the people sitting down. Everybody in here looks like you.”⁶ This commentary was outside the evidence in the case as well as the ethical boundaries of judicial conduct.

2. Violation of Canons 2(A), 3(B)(2), 3(B)(4) and 3(B)(8) – Failure to comply with the law

Canon 2(A) of the Code of Judicial Conduct provides, in relevant part, that “[a] judge shall comply with the law . . .” See TEX. CONST. art. V, § 1-a(6)(A); TEX. CODE JUD. CONDUCT, Canon 2(A).

Canon 3(B)(2) provides, in relevant part, that “[a] judge shall be faithful to the law and shall maintain professional competence in it.” See *id.*, Canon 3(B)(2).

Canon 3(B)(4) provides, in relevant 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.” See *id.*, Canon 3(B)(4).

Canon 3(B)(8) provides, in relevant 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.” See *id.*, Canon 3(B)(8).

⁵ Afterwards, [REDACTED] told supervisors that the comparison left him speechless, and he described it as “the single most shocking and offensive interaction” he had ever had with a member of the judiciary.

⁶ [REDACTED] believed that Judge Jordan’s reference to his race was intended to pressure [REDACTED] into changing the terms of the State’s plea offer to the defendant.

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On March 6, 2019, in *State of Texas v. Christopher M. Hernandez*, Cause No. 2132560, Judge Jordan violated Canons 2A, 3(B)(2), 3(B)(4) and 3(B)(8) by disqualifying a prosecutor mid-trial. See Exhibit B (trial transcript).

The reason expressed by Judge Jordan for disqualifying the prosecutor, [REDACTED] was that the prosecutor had attempted to suborn perjury by asking a police officer witness whether he believed that the defendant had committed a traffic violation by failing to maintain a single lane of traffic.⁷

⁷ From the court transcript:

PROSECUTOR So after you observed -- what did you observe that night? At that light, what did you do?

OFFICER At that point, like I said, first of all, he made an illegal u-turn. There's two clearly posted signs. One before the light and one right next to the light and the defendant made an illegal u-turn. After making an illegal u-turn, he was heading westbound on 1960. He made a lane change in going under the underpass. And as he was going around in the underpass on 1960, he failed to maintain his lane, veering into the left lane on multiple occasions.

PROSECUTOR And is an illegal u-turn a traffic violation?

OFFICER Yes.

PROSECUTOR Is that something you can stop a person for?

OFFICER Yes.

PROSECUTOR And failure to maintain a single lane, is that a traffic violation?

OFFICER Yes, it is.

PROSECUTOR And what does that indicate?

JUDGE JORDAN All right. Let's take the jury out for a second, please.

BAILIFF All rise.

(Jury exits courtroom. All parties present.)

JUDGE JORDAN Please have a seat. I just want – I just want to make sure I'm not going crazy because [REDACTED] you work with me every single day and you know the law as it relates to failure to maintain a single lane and what the elements of it are. Did you just ask him to lie on the record?

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Judge Jordan's justification for disqualifying the prosecutor was without basis in law, but more importantly, it was untrue. It is well-settled that a witness cannot commit perjury by expressing an opinion about his belief about the legal consequences of certain facts:

PROSECUTOR I didn't, Your Honor. I was gonna have him explain exactly what happened.

THE COURT I know but you know what the law -- we go over this every single day when we do PC on DWIs and I give you the law. I print it out to you, so I know you know. The defense attorney just told you what the law was on failure to maintain a single lane. So now I'm asking you, did you knowingly just have this officer lie on the stand as it relates to failure to maintain a single lane, if that's a traffic violation?

PROSECUTOR Your Honor, under the code, it is a traffic violation. I understand what you're getting at, Your Honor. You're saying it's not PC for a stop. And I'm just --

JUDGE JORDAN No. That's not what the law says. That's not a violation. That's not a violation. I gave you the case like a thousand times. We go over this every day in court. That's not a violation. Do you want me to go get the case law again and show you that that's not a violation? Pull the code and what does the code say?

MR. [REDACTED] We're pulling it up.

.....

DEFENSE COUNSEL Judge, I have -- I know you're thinking about this, I'd have another request. That this prosecutor be disqualified or recused from this matter for attempting to suborn perjury from this witness. Knowing what the law is, stating it in opening and then asking these questions. I think that's an ethical violation.

JUDGE JORDAN Okay. Let's go off the record for a second.

(Conversation off the record.)

JUDGE JORDAN Back on the record. So I'm gonna grant Tyler Flood's request to have [REDACTED] off the case.

Exhibit B at 32-33, 38.

Where a statement which is the basis of an accusation of perjury is a matter of construction, or deduction from given facts, the fact that it is erroneous, or is not a correct construction, or is not a logical deduction from all the facts, cannot constitute it perjury or false swearing. *A witness cannot be guilty of perjury in giving his opinion as to the legal effect of facts about which he is required to testify.*

Schoenfeld v. State, 119 S.W. 101, 103-104 (Tex. Crim. App. 1909) (emphasis added); see also *Brasher v. State*, 715 S.W.2d 827, 831 (Tex. App.—Houston [14th Dist.] 1986, no pet.) (“We recognize that a witness cannot be guilty of perjury in giving his opinion as to the legal effect of facts about which he is to testify.”)

It necessarily follows, then, that if the police officer’s opinion about the legal effect of what he observed was not perjury as a matter of law, the prosecutor’s conduct in eliciting that opinion could not have been subornation of perjury.

Moreover, Judge Jordan rushed to judgment without acceding the State an opportunity to develop a record that would have addressed the judge’s purported concerns. The foundation of Judge Jordan’s premise was that a driver could not have committed a traffic violation simply by failing to maintain a single lane of traffic – he believed that the driver had to also have done so in an unsafe manner.⁸

The State had already established the first prong of weaving in traffic. See Exhibit B at 32 (“And as he was going around in the underpass on 1960, he failed to maintain his lane, veering into the left lane on multiple occasions.”) Judge Jordan

⁸ See *State v. Bernard*, 503 S.W.3d 685, 691 (Tex. App.—Houston [14th Dist.] 2016), pet. granted, judgment vacated on other grounds, 512 S.W.3d 351 (Tex. Crim. App. 2017) (per curiam) (to prove violation of TEX. TRANS. CODE § 545.060, State must establish that driver was “(1) failing to drive as nearly as practical entirely within a single lane and (2) moving from the lane when not safe to do so”). But see *Leming v. State*, 493 S.W.3d 552, 559 (Tex. Crim. App. 2016) (plurality opinion holding that weaving, safe or unsafe, sufficient to establish violation of Section 545.060); *Wilde v. State*, No. 07-15-00432-CR, 2016 WL 3180290, at *3 (Tex. App.—Amarillo June 3, 2016 no pet.); *Manifold v. State*, No. 06-17-00103-CR, 2017 WL 5180289, at *3 (Tex. App.—Texarkana Nov. 9, 2017 pet. ref’d); *State v. Virginia South*, No. 12-17-00176-CR, 2018 WL 636085, at *4 (Tex. App.—Tyler Jan. 31, 2018 pet. ref’d) (all adopting *Leming* analysis).

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intervened *sua sponte*, however, before the prosecutor could develop evidence showing the second prong of weaving in an unsafe manner. Although Judge Jordan acknowledged the need for further record development,⁹ he thereafter peremptorily disqualified the prosecutor, struck the entirety of the officer's previous testimony, and disqualified the officer as a witness. See Exhibit B at 38 & 89.

These precipitous rulings in this case were unjustified and egregious abuses of judicial authority. Judge Jordan had no factual basis or legal authority to disqualify the prosecutor. The District Attorney has a constitutional duty to represent the State of Texas in criminal law matters. TEX. CONST. Art. V, § 21. Texas law allows a judge to disqualify or remove a district attorney only in two circumstances:

- First, when the district attorney "has been, before his election, employed adversely" in the case that the district attorney is now prosecuting. TEX. CODE CRIM. PROC. art. 2.01. In other words, the district attorney cannot prosecute someone who the district attorney previously represented in the same case.

⁹ See Exhibit B at 35:

JUDGE JORDAN And so is he now gonna testify to that it was done in an unsafe manner?

PROSECUTOR Your Honor, I was just gonna try to develop it further. I didn't get a chance to do that at this moment. That's all I was gonna try to do, Your Honor.

DEFENSE COUNSEL Judge, I –

MR. [REDACTED] Your Honor, that's all I was trying to do, try and develop the testimony further. And I just needed to ask more questions to do so, Your Honor.

THE COURT All right.

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- Second, upon a showing of incompetency, official misconduct, or intoxication on or off duty caused by drinking an alcoholic beverage. TEX. LOCAL GOV'T CODE § 87.013(a).

Absent this showing, a trial court may not disqualify a district attorney or her staff for reasons that do not rise to the level of a due process violation. *See State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 927 (Tex. Crim. App. 1994); *State ex rel. Eidson v. Edwards*, 793 S.W.2d 1, 6 (Tex. Crim. App. 1990).

As noted above, the prosecutor, in asking the testifying police officer whether certain conduct was a traffic violation, was not suborning perjury, and he did not violate the due process rights of the defendant.

Notably, it is of no moment that counsel for the defense first made the motion to disqualify the prosecutor. Judge Jordan granted the motion without determining his lawful authority to do so. *See* TEX. CODE JUD. CONDUCT, Canon 2A. While a trial judge may reasonably rely on court personnel and officers of the court to provide him information affecting the due course of proceedings in his court, it is the independent obligation of the trial judge to act knowledgeably and within the confines of the law. A judge must remain a neutral arbiter to protect the public's confidence in the integrity and impartiality of the court. *Id.*

Judge Jordan's decision to disqualify the prosecutor was not only wrong, but it was also egregious because it occurred mid-trial, arbitrarily depriving the State of the lawyer who had prepared the case for trial. Similarly, his decision to disqualify the police officer in a one-witness driving while intoxicated case instead of instructing the jury to disregard the question and answer at issue was effectively a death penalty sanction to the prosecution of the case.

Judge Jordan further compounded the negative effects of his legally infirm rulings by refusing to grant the State's motion to dismiss the case after Judge Jordan struck the State's only witness. Instead, Judge Jordan forced the State to proceed and entered a directed verdict. This incident is similar to judicial conduct disapproved by a Special Court of Review in *In re Mullin*, Docket No. 15-0002 (Tex. Spec. Ct. Rev., Oct. 21, 2015). *In re Mullin* involved a situation in which the

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prosecutor sought to dismiss a case after a motion for continuance had been denied and the prosecutor could not proceed in the absence of a key witness for the State. *Id.* at 13-14. Judge Mullin denied the motion to dismiss and ordered the State to remain in the courtroom until the case was tried. Although Judge Mullin eventually granted the motion to dismiss, the Special Court of Review observed that the judge's "persistence that [an assistant district attorney] prosecute a case that the State already had sought to dismiss did not promote public confidence in the integrity and impartiality of the judiciary, and violated the judge's duty under Canon 2A." *Id.* at 15.¹⁰

The record also suggests that Judge Jordan's ruling was made not to protect the defendant's rights in Cause No. 2132560, but instead as a bad faith punishment of the prosecutor because the prosecutor was making a legal argument that the judge had rejected in previous *unrelated* matters. In an impatient and intemperate manner, Judge Jordan discussed at length his belief that the prosecutor should have known not to ask this question because of Judge Jordan's rulings in other cases:

[REDACTED] what drives me crazy is that I have to dismiss two to three DWIs a week because cops write failure to maintain a single lane and that's not enough. And we have this same conversation every single day. That was part of defense counsel's opening. He went through the exact same thing that we talk about every day in court.

And then you – I mean, what it appears is that, what is it, you got false testimony – knowingly got false testimony from a witness. I don't see how – how can it be – how can it be interpreted any other way? You knew that wasn't a traffic violation. Every day we go through the police reports. I say, [REDACTED] is there anything else? Does it say failure to maintain single lane? Does it say anything more? And your response is okay, yeah, I know, Judge. You know how I feel about it. This point, it

¹⁰ In another case, Judge Jordan also refused to grant a dismissal where the Judge had denied the State's motion for continuance based on witness unavailability. The State sought to dismiss the case because it could not proceed without the witness, but Judge Jordan forced the State to proceed and then entered a directed verdict.

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doesn't matter how I feel about it, you know that's the law because I've shown you repeatedly. So how do you come here today and ask him was that a traffic vio – to list a traffic violations, then he says it is and you know that's not a traffic violation.

Exhibit B at 37-38. Shortly after making this statement, Judge Jordan granted the motion to disqualify the prosecutor. *Id.* at 38.

The same reason was expressed for striking the State's witness. See Exhibit B at 90 ("Your witness was not taken away from you. The behavior, the actions by the State, the repeated course of conduct through multiple trials by the State is why the State's witness testimony was stricken.") Judge Jordan's decision to suppress a witness's *entire* testimony should not have been based, in part or in whole, on the *past* conduct by the prosecutor with which Judge Jordan disagreed.

This is chaotic, retaliatory, and arbitrary judging. Judge Jordan's conduct merits disciplinary review.

3. Violation of Canon 3B(9) – Retaliatory Finding of No Probable Cause for Reasons Unrelated to the Merits of the Case

Canon 3B(9) of the Code of Judicial Conduct provides, in relevant part, that "[a] judge shall dispose of all judicial matters promptly, efficiently and fairly." See TEX. CODE JUD. CONDUCT, Canon 3B(9).

On October 22, 2018, in *State of Texas v. Cameron Burkhalter*, a criminal trespass prosecution docketed as Cause No. 2229629, the State of Texas and Burkhalter's attorneys reached an agreement for Burkhalter to enter a plea of guilty in exchange for an agreed recommendation of 20 days confinement in the Harris County Jail.

Judge Jordan disagreed with the recommended punishment and instructed the temporary bar licensed law student intern who was representing the State in the plea hearing to reduce the recommended punishment to a sentence of time served. After consulting with his supervising attorney, the law student intern

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declined to do so. Judge Jordan then retaliated against the State by finding that there was no probable cause for the criminal trespass and ordered Burkhalter's release.

The bad faith nature of this finding of no probable cause was evidenced by the fact that Judge Jordan apparently had no problem with the probable cause in Burkhalter's case as long as the State would agree to recommend a sentence in accordance with Judge Jordan's preferences. It was only when the State declined to reduce its recommendation on punishment that Judge Jordan found no probable cause and ordered the defendant's release.

In short, either (a) Judge Jordan was willing to accept a plea of time served for a defendant in a case that he knew lacked probable cause, or (b) Judge Jordan believed there was probable cause justifying the guilty plea, but made a false adverse ruling to punish the State, over the shoulders of a law student intern, for not bending to his will on the recommended punishment.

Judge Jordan's conduct merits disciplinary review.

C. Conclusion

The State does not ask for perfect judges, but judges who will fairly and impartially administer justice in a patient and courteous manner. Judge Darrell Jordan, by the conduct detailed above, has acted otherwise.

The State Commission on Judicial Conduct should closely examine the allegations in this complaint and take appropriate disciplinary measures to address Judge Jordan's acts of judicial misconduct.

The District Attorney's Office will provide available documentation and contact information for witnesses upon request.

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Sincerely,

A handwritten signature consisting of two wavy lines forming a stylized 'T' shape, followed by a straight line extending to the right.

TOM BERG
First Assistant District Attorney
713-274-5899

EXHIBIT A

Mitcham, David

From: Jordan, Judge Darrell (CCL) <Darrell_Jordan@ccl.hctx.net>
Sent: Tuesday, October 30, 2018 9:24 AM
To: Beedle, Nathan; King, Vivian; Berg, Tom; Mitcham, David
Cc: [REDACTED]
Subject: RE: Disrespect

I just meet with all the ADA's in my court and we went over the case law on contempt of court. There is no justifiable reason why a chief would instruct the coordinator to do the opposite of what I told her. Thankfully she pointed out that I was the Judge. I've sent enough emails and had meetings and nothing has changed. This is the only tool I have left.

Darrell

-----Original Message-----

From: Beedle, Nathan [mailto:BEEDLE_NATHAN@dao.hctx.net]
Sent: Tuesday, October 30, 2018 8:32 AM
To: Jordan, Judge Darrell (CCL); King, Vivian; Berg, Tom; Mitcham, David
Cc: [REDACTED]
Subject: RE: Disrespect

Judge,

I will address the issue. I would like to keep any issue such as the one presented within my chain of command if possible. My direct chain of command is David Mitcham and Tom Berg, not Vivian King. I have no problem that Vivian knows about the issue but Mr. Mitcham and Mr. Berg are the appropriate chain of command.

I will address the issue.

Nathan N. Beedle
Assistant District Attorney
Misdemeanor Division Chief
Office of the Harris County District Attorney
500 Jefferson, 10th Floor
Houston, TX 77002
Office #: 713-274-0589
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-----Original Message-----

From: Jordan, Judge Darrell (CCL) [mailto:Darrell_Jordan@ccl.hctx.net]
Sent: Monday, October 29, 2018 7:38 PM
To: Beedle, Nathan; King, Vivian
Subject: Disrespect

Good Evening,

Today I was covering for court 6. My Chief was also covering for court 6. The 3 and defense counsel approached for PC. The case clearly had the wrong charge. So I found no PC. The first thing that was troubling was the 3 states "yea the 2 said this was the wrong charge too". The Chief walks up and is told I found No PC then his response is we are going to refile it anyway so let's just work it out. I just sat there and watched. When I saw the defense attorney go to reset I asked why Is he resting a case I found no PC on. I went on with court business. At the end of the the coordinator comes to me and says the chief told me to reset the case anyway. She then told him I was a sitting judge and had found no PC and she wouldn't reset it. I dealt with the same attitude last week from Josh and now I'm dealing with it from my chief. Somehow there is some serious confusion on who the judge is in court 16. I have no problem putting them in there place then kicking them out of the courtroom but I don't think I should have to do that. I'm asking you all to handle this situation.

Kind Regards,

Darrell Jordan



**KIM OGG
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS**

MEMORANDUM

TO: Nathan Beedle, Division Chief
CC: Ryan Kent, Deputy Div. Chief
FROM: [REDACTED]
SUBJECT: Judge Jordan
DATE: 3/11/2019

I was in Ct.16 as an ADA #2 from approximately Oct. 2018 to January 2019. During my time in his court Judge Jordan's relationship with the prosecutors lurched from one conflict to another. The most vivid clashes involved the Judge accusing a fellow prosecutor (ADA [REDACTED]) of outright dishonesty and another where the Judge summoned myself and my colleagues into his chambers and threatened to throw us all in jail. Because I was in the room during the latter episode, I feel most comfortable outlining what happened on that particular day:

It was a bond docket day and Judge Jordan summoned all three of the Ct.16 prosecutors and one defense attorney to speak with him in his chambers. The defense attorney who came in with us was Ms. Juanita. When we entered the room Judge handed each of us pre-printed copies of a contempt case from 1986, *Ex parte Krupps*.

Judge went on to tell us that he felt he was being disrespected in his court and that an incident involving the chief prosecutor, [REDACTED] really made him upset. He explained that he found no probable cause ("no PC") on a case that had been incorrectly charged yesterday and that he heard [REDACTED] communicate to someone that the case would be re-filed. Judge heard the defense attorney on the case getting a reset after he found no-PC. Judge said that this incident caused him to feel disrespected and that this disrespect was a problem he feels [REDACTED] had been causing for a long time. [REDACTED] was also mentioned as a person he felt disrespected by. [REDACTED] is a long-time prosecutor who volunteered to cover a few days while [REDACTED] was out on leave. Judge then used the phrase "hang'em high prosecutors" to describe the three of us. He said that [REDACTED] was having a bad influence on me and [REDACTED] and that as young prosecutors he should be training us. When describing his role in the court, Judge Jordan described himself as "king" of the court.

He warned all three of us that if he felt that we were disrespecting him or the court again he would (I paraphrase) "hold you in contempt, throw you in jail, give you a PR bond, and then let Kim Ogg settle the rest of it out." Judge then speculated whether the disrespect he feels is due to his relative youth or his race. He mentioned the names of about two or three judges I am not familiar with and stated that they didn't get the same treatment as he's been receiving. Judge also mentioned Misdemeanor Chief Nathan Beedle's name but I cannot remember what it was in reference to.

Judge told [REDACTED] that the only reason he didn't hold him in contempt yesterday was because he was a friend of Kim Ogg and he was sensitive to [REDACTED]'s situation at home [REDACTED]. Interspersed throughout Judge's discussion with us was a mention about Kim Ogg's platform of restorative justice. There was a theft case that [REDACTED] gave a pre-trial intervention on the day before that Judge was unhappy about. He was upset that [REDACTED] didn't give the defendant a class and dismiss since the defendant had already lost a basketball scholarship as a result of picking up the charge. Judge told us "if the girl played for UT you would've offered a class and dismiss." Judge Jordan then ended the discussion and asked that we get back to docket and see if we can get a trial started today. As me and [REDACTED] left to walk out of the room [REDACTED] attempted to communicate to Judge by saying "I didn't mean any disrespect" but Judge cut him off and said "I know you didn't."

After this incident there were a number of incidents involving the Deputy Chief of the misdemeanor division, [REDACTED], where I witnessed the Judge display very hostile and accusatory conduct over seemingly mundane court business. During at least one of these incidents the Judge asked that his exchange with [REDACTED] be placed on the record, in the middle of bond docket, as if to imply that he believed [REDACTED] was lying. This sort of relationship between the judge and prosecutors continued throughout my time in Ct.16 until I was moved in January of 2019.

It is important to emphasize, at no point during my tenure did I ever observe any of my colleagues exhibit anything less than the highest standard of honesty and professionalism. Judge Jordan's hostility and suspicion was unwarranted and at times seriously interfered with the fair disposition of our cases. The latest confrontation involving my successor [REDACTED] is yet another unfortunate episode in a long line of unnecessary conflicts with the Judge.

Tom Berg
First Assistant



500 Jefferson Street, Floor 10
Houston, Texas 77002-1901

HARRIS COUNTY DISTRICT ATTORNEY
KIM OGG

INTEROFFICE MEMORANDUM

TO: File
FROM: [REDACTED]
SUBJECT: Experiences in CCL 16, with Presiding Judge D. Jordan
DATE: 3/12/2019
CC: David Mitcham

Experiences

When Judge Jordan returned from his military leave and duty, I began to notice erratic behavior that included accusing the State of misrepresentations that had no sound basis. Many times his drastic shifts in demeanor would go from friendly and trusting to hostile and skeptical.

Waggoner Trial

On October 4, 2018, during a close to the closing argument of a trial held in his court, he abruptly began to close my case out. I was forced to assert my right to a close to the closing argument and he stated that I told him I would not give a close to my closing argument. He had the court reporter read back my actual words from the beginning of my open to the closing argument. I informed Judge Jordan that my statement during my argument '...I will be brief here...' was not an outright waiver of my close to closing argument.

Unlawful Carry Duah 2226510/ Duah 2226511:

During the bond docket on October 22, 2018, I presented PC to Judge Jordan in a case, with co-defendants (brothers) who were charged with gun crimes. They were arrested after interacting with two men who had a felony warrants. At the time, a peace officer executing the warrants found the two defendants with the law violations. These co-defendants were in a vehicle outside a townhome where the suspects with the warrants were found. I read the relevant portions that lead to the judge finding PC in the case. Later that morning, we shifted to the jail docket. While at the jail docket, a defense attorney approached the judge and told him that Judge Fields found no PC in a companion case (see note on 10/22/18 reset for 2226510) from the same incident. I heard Judge Jordan announce, 'well the state must have misrepresented some facts...' Judge Jordan called me to the bench and he told me he wanted to revisit PC. The defense attorney added that it sounded like all the parties were inside the townhouse and the officer went into the home without a warrant to arrest the two brothers who were there visiting. Her statement was specifically that the officer wrote in his DIMs statement that he had the men lay on the floor. I re-read the facts of the case to the judge and explained that often times a Spanish to English translation is not always properly translated. I told him this happens when a person whose first language is Spanish says things like, "got off the car" instead of, "got out of the car" and "placed it on the

"floor" instead of, "placed it on the ground". I called Officer Lopez and he verified that English was his second language, the facts in the DIMS, including "ground" verses "floor" language and apologized for typing "floor" when he meant "ground." Judge Jordan did not change his finding. This experience was concerning because Judge Jordan accused me of misrepresenting facts in an informal hearing before him.

Eventually, he began to openly state that he did not trust the state or the agencies that represent the state. One of the first representations was during a PC hearing previous to the one held on October 22, 2018, I referred judge to CCP Article 18.16 Preventing Consequences of Theft. [REDACTED] eventually stepped in and, in open court, Judge Jordan asked Mr. [REDACTED] how he is to trust statements made by peace officers. I began to be very concerned that at any time I would be accused of misrepresenting facts.

On October 31, 2018, I over saw a Driving While Intoxicated 2nd trial that was scheduled in Judge Jordan's court. He represented to our office and to the defense attorneys that the following week was reserved for trials he would roll from that week if necessary. He preferentially set an assault case that was being overseen by a pro se defendant on November 1, 2018. Judge Jordan brought in his court reporter and went on the record to assert that I made misrepresentations to him regarding witness availability. Below is an overview of that case and what occurred on that day.

Prior DWI: An officer pulled the Defendant over for expired registration sticker. Officer observed the smell of alcoholic beverage. HGN 6/6, WAT 3/8, OLS 1/4. The Defendant refused breath or blood. Defendant was convicted on 5/8/2006 and completed a 1 year probation.

Current DWI: On February 10, 2018, the Defendant crashed into the back of the victim's vehicle while the victim was stopped at a red light. The victim suffered minor injuries and his vehicle damage was minor as well. The victim attempted to communicate with the Defendant, to make sure she was okay and observed that she appeared to be intoxicated. The victim called law enforcement. Law enforcement observed the defendant to have an odor of alcoholic beverage, blood shot eyes. Defendant admitted to drinking three beers. HGN 6/6 plus vertical, WAT 7/8, OLS 3/4. Defendant refused to provide a sample of her breath or blood and no warrant was obtained.

Negotiation with Defense attorney: The resets and file indicate there was an offer of 45 days jail or 18 months' probation with TRAS, DAET, RUA, no refusal to any breath tests, \$300 fine and 24 hours of community service. Another reset indicated that he would allow her to go to the Judge without an agreed recommendation (the Judge's standard sentence is 21 AA classes, time served, a high fine, 24 hours of community service, RUA). Prosecutors who negotiate with defense counsel ([REDACTED]) found communication to be quite difficult – she was quite unreasonable.

Settings:

February 16, 2018, defense counsel left before it was reset

March 23, 2018, defense counsel indicated this was her first appearance

April 27, 2018, defense reset

June 12, 2018, defense reset

July 12, 2018, reset for the state to evaluate the case

July 24, 2018, state offered to allow Defendant to plea open to the Judge and the state would abandon the enhancement, it was set for a disposition but a note on the file said JRTL AND 21 AA meetings 400/500 fine August 2, 2018, note says the offer was open until motions were filed, defense counsel set the case for trial for October 1, 2018.

September 17, 2018, Defense reset the jury trial date off-docket to October 31, 2018.

October 31, 2018, trial setting oral motion to continue granted, the case was reset for November 1, 2018.

November 1, 2018, case forced to trial

Trial Settings: The case was first set for trial on October 1, 2018. Defense requested a rest of the case until October 31, 2018. State filed a Motion to Continue and Judge Jordan continued the case for only 1 day. The State had a case ready for trial on November 1, 2018, with the victim and witnesses physically present in the courthouse, as well as the *pro se* defendant. Judge Jordan refused to go to trial on that case.

Incident October 31, 2018 – November 1, 2018: Earlier in the week I spoke with the defense attorney and told her I was expecting to ask the court for a continuance because my civilian witness had not previously been available. During the docket, we approached the bench and I told the court I wanted to request a reset to be in touch with the witnesses. I also told the Judge that my civilian witness indicated that he would be available on November 1, 2018. I reminded the Judge that he had a *pro se* case specially set for trial on November 1st. Judge indicated that we also have next week for trials and I asked if we could set this case for Monday. The Judge denied the request and stated he would give me until tomorrow – November 1, 2018. I attempted to call the officer during the court's docket. The only number I had (during court) led to dispatch for the constable's office and due to the busy docket I was not able to get in touch with the officer until late afternoon. This is when I first learned that the arresting officer was not available until November 5th. I promptly notified the defense counsel that I would be requesting a reset again.

On November 1, 2018, the Judge called the docket in the morning and I noticed that the Defendant's name did not appear on the docket; however the Judge called her name and she did not answer at the docket call. I also did not see the defense attorney in the court. (The Coordinator erroneously reset the case for January 1, 2018). We presumed that this case would be reset by default since the *pro se* case was also set today and the Judge sounded very interested in trying the assault case. A short time after the docket call, the Judge called this case without the defense attorney nor the defendant present. I stood up and told the Judge I would be asking for a reset. The Judge yelled at me about not filing a written motion on the previous date and demanded that I file two motions today. I changed the name of the motion I was to present to say "state's first motion to continue" and saved it. I also saved the same document as, "state's second motion to continue" and changed the title as such. I filed those motions immediately. The Judge stated he was denying my motion and told his staff to bring the jury up. We attempted to negotiate a plea with the Defense counsel and found her to be extremely difficult to communicate with again. We told her the Judge would deny our motion to continue and force the case to be dismissed. We also told her we would refile the case after the case was dismissed. She asked to approach the Judge regarding the case and when we did, he again told us we were going to trial. After we told the Judge we would file a motion to dismiss he said he would refuse to sign the motion and told us we were going to trial. The court chief, [REDACTED] filed a Motion to Dismiss before and the Judge refused to sign it.

I went into the trial court to sit waiting on the Judge. The entire panel was there waiting too. I went to the back to check on the status and found the Judge speaking in a heated manner towards my co-workers. The Judge cut his statements short and said, 'let's go to trial'. He went into the court and began talking and I asked Mr. [REDACTED] and Mr. [REDACTED] what they suggested I do if the Judge asked me to respond. I was instructed to say, "The state has nothing for this panel" so after the Judge's voir dire, I stood up and said what I was directed to say. The defense counsel gave a 30 min voir dire and the panel kept asking her why they were here and telling her they did not understand what was going on. The Judge attempted to assist the defense counsel with voir dire; however different people on the panel kept stating they did not understand why they were there if the state had nothing for the panel. I sat monitoring my email and attempting add notes to the file as it progressed.

During voir dire, but before the panel was sworn in, [REDACTED] filed another Motion to Continue citing Article 29.035, Texas Code of Criminal Procedure, informing the Court that it must provide the parties at least 3 days of trial.

After the voir dire, the Judge asked for counsel to approach for causes. I approached with the defense attorney and I said 'the state has no input'. The defense counsel gave her strikes and the Judge had the list prepared.

While defense counsel reviewed the list, Mr. [REDACTED] came in and asked the defense counsel to approach with him. Mr. [REDACTED] politely asked to approach the bench and offered the new motion to continue. The Judge told Mr. [REDACTED] he did not want to hear the motion at that time. The Judge asked Mr. [REDACTED] when the proper time to present motions is, and even though Mr. [REDACTED] attempted to respond and discuss the motion or respond the Judge in general said we are not going to hear that motion right now. He asked Mr. [REDACTED] if he needed assistance with leaving and Mr. [REDACTED] said, 'Judge I do not,' and he left. The jury was present for this discussion and there was no attempt to make the discussion as private as possible. After we turned the strike list back in with no signatures, the Judge sat the jury and the State objected to the panel due to lack of notice and urged its Motion to Continue. The Judge then swore in the jury. While the jury was out of the room, Mr. [REDACTED] asked if he could now hear the State's motion. Mr. [REDACTED] came back into the court and argued the motion. The Judge accused Mr. [REDACTED] of approaching the Judge ex parte three times before Mr. [REDACTED] turned to the defense attorney for a statement on the record. Mr. [REDACTED] asked her if he asked her to approach with him and she answered in the affirmative. After the eight to ten minute conversation – which was recorded via Mr. [REDACTED]'s cell phone, and Mr. [REDACTED] attempted to inform the Judge he granted the motion on 10/31/18 but failed to give the state adequate, three-day mandatory notice – the jury was called back in. After we offered nothing into evidence and the defense rested and closed as well. The defense counsel moved for a direct verdict. It took the Judge about 15 minutes to figure out what to do next and what charge to use. Eventually the jury was given a directed verdict and they found the defendant not guilty.

After the jury was gone, Mr. [REDACTED] was still in the court speaking with the defense attorney when the Judge began to engage Mr. [REDACTED] in conversation. The Judge was stating to Mr. [REDACTED] that the clerk thought he was extremely rude to the Judge. Mr. [REDACTED] attempted to apologize for any misunderstanding and the Judge compared him and his apology to being a slave master that apologized after punishing his slaves.

As a result of his escalating accusations, (on October 4, 2018, being accused, of making a statement I did not make during trial, and on October 22, 2018, in open court being accused of misrepresenting facts related to a probable cause hearing, and finally being accused in another trial setting in which a court reporter memorialized statements in writing;) I no longer felt comfortable practicing law in County Court at Law No. 16 when Judge Jordan presided. My fear is that everything I say could be scrutinized to a point that any innocent inconsistent statement would be turned into a malicious and incorrect statement that I made. The experience gave me nightmares for weeks and made me very apprehensive about practicing law in his court.