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Complaint against County Judge James Oakley, Burnet County

I was one of the 18 individuals who filed complaints with the State Commission on Judicial Conduct (“SCJC” or “Commission”) late in 2016 relating to the conduct of Judge James Oakley, County Judge, Burnet County, Texas.

When the Commission issued its Findings of Fact and Public Reprimand on April 6, 2017, I was interested in learning exactly what Judge Oakley had testified to in his sworn testimony on April 5, 2017. Through Open Records requests I obtained an audio recording of his testimony and responses to questions from individual Commissioners as well as a copy of the written submission he made in February 2017.

After carefully reviewing the recording and document I have concluded that Judge Oakley provided to the Commission a narrative embellished by a pattern of deceptive, misleading and false statements. It is intolerable that an elected official, especially one entrusted with judicial duties, would seek to mislead the very entity charged with the responsibility of hearing and deciding complaints of official misconduct by judges. I am a licensed attorney in Texas and an officer of the court and such conduct offends me, as I expect it would most people, lawyers or not.

Accordingly I am filing this complaint against Judge Oakley for his conduct and sworn testimony at the official meeting of the Commission on April 5, 2017. Specific instances of the deceptive, misleading or false information and statements are set out below.

Judge Oakley made a Facebook Post (FB post) to his personal page on November 21, 2016, that showed a mug shot of a suspect in the shooting of a San Antonio police officer, a copy of the SAPD Facebook Post announcing the arrest of the suspect, and Judge Oakley’s comment: “Time for a tree and

a rope.” In response to the storm of criticism that followed, Judge Oakley pulled down his post and issued what he termed an apology. Then he crafted a narrative to answer the people who were calling for his ouster as a Director of Pedernales Electric Cooperative (“PEC”) and his removal as County Judge of Burnet County. On April 5, 2017 Judge Oakley related that narrative, under oath, in embellished form, to the Commission.

The overarching purposes of the narrative were twofold: First, to ask that others, including the Board of Directors of the PEC, which was considering whether his behavior merited his removal from the Board, and this Commission, to “understand where he was coming from” in a bid for sympathetic understanding. Second, he sought refute the charges that the post was racially tinged and a call for dispensing with due process and implementing so-called “vigilante justice.”

Since the Commission heard the narrative offered I will not review it in detail here. The main elements are set out in the Findings of Fact in the Commission’s order dated April 6, 2017.

The underlying message Judge Oakley sought to convey by his narrative had the following elements:

- His FB post was done in a flash of anger at the killing of a police officer.
- He posted to his private FB page and the message was not intended to be seen by a wider audience.
- His use of the phrase “Time for a tree and a rope,” was prompted by his recollection of the long-ago Pace Picante Sauce ad. He thinks in “ad slogans” because he worked in advertising and studied it in college.
- He had no racist intent or animus and would have felt the same about any killer of the officer.
- He did not intend to advocate for a form of summary, so-called “vigilante justice.”
- He may have been “too relaxed” in his post, whatever that means.
- He fairly quickly removed the FB post.
- He issued a so-called apology to “anyone who might have been offended.”
- People complaining about the post were, in effect, liberal outside agitators who did not like his conservative politics. The whole uproar about his FB post was politically motivated by his enemies. A form letter was used by those filing complaints with the Commission.

- None of the 18 people who filed complaints with the Commission were residents of Burnet County.
- People in Burnet County to whom he had talked about the post did not find it offensive, and that included some African–Americans.
- His judicial duties are minimal, consisting only of handling uncontested probate matters. He had even this minimal duty thrust, unsought, upon him when the County Court–at–Law Judge had a heart attack two months after he took office.
- He did not “think of himself as a Judge per se.”
- He did file an affidavit certifying that he spent at least 40% of his time on judicial duties and qualified for the extra compensation of \$25,000.00 in 2016. Asked about his probate case–load he replied: “About 250 last year (2016) I believe.”
- “Just asking for understanding of where I am coming from.”
- He asked that any sanction or reprimand be private rather than public.

This Complaint consists of two parts. First, the false, non–factual, deceptive and misleading statements given by Judge Oakley, under oath, to this Commission. Second, the affidavit filed by Judge Oakley claiming extra compensation based on his claim about amount of time spent on judicial duties.

I. False, non-factual, deceptive or misleading statements by Judge Oakley

Set out below are the false, non–factual, deceptive and misleading statements made by Judge Oakley to the Commission, that I have identified and fact–checked. Whether these statements were deliberate lies or the product of careless inattention to accuracy is for the Commission to decide. I will simply observe that all the untrue statements tend in one direction, namely, to bolster the preferred narrative that Judge Oakley crafted for his defense against the 18 complaints.

- **Testimony** – Judge Oakley stated flatly, regarding the **18 complaints** filed with the Commission, that “None were from Burnet County (residents).” He made this claim at least twice in his testimony.
- **Actual facts** – At least 5 of the 18 complaints were filed by residents of Burnet County, information one would have thought it easy for Judge Oakley to ascertain. (Names available on request)

Narrative purpose – To bolster his claim that the people complaining about his Facebook Post were outside agitators, mostly PEC members who disagreed with his political views, and are not representative of his constituents in Burnet County.

• **Testimony** – When asked by Commission Counsel **how many Probate Matters** he heard or handled he said, “About 250, I think last year (2016) I believe.”

Actual facts – According to the Probate Clerk of Burnet County the actual number of probate hearings heard by Judge Oakley in 2016 was 203. The figure he provided was inflated by more than 20%. Once again this is information he could have easily ascertained from his own office before appearing before the Commission to give testimony. His failure to do so demonstrates a curiously nonchalant disrespectful attitude towards his testimony and appearance, which he requested the opportunity to give.

Narrative purpose – The question was asked in relation to Judge Oakley’s filing of an affidavit stating that he spent at least 40% of his time on judicial duties. The inflated figure may have been intended to bolster that claim. (The affidavit and his claim for extra compensation based on it is the subject of the other major element of this Complaint as explained below.)

• **Testimony** – In talking about the **SAPD Facebook Post of Nov. 21 announcing the arrest of a suspect**, Judge Oakley made several misleading statements and provided incorrect or false information to the Commission. When questioned by Counsel at outset of hearing as to accuracy of Findings of Fact Judge Oakley implied that the SAPD FB post included the information that the man arrested had admitted killing the police officer. He stated elsewhere in his testimony that by reading some of the 12,000 comments already posted there he may have “allowed myself to get in that mindset.”

Actual facts – The original SAPD FB post did not contain information about any admission by the arrested individual. Whether Judge Oakley had knowledge of the late night (Nov. 21) admission by the arrested individual to television cameras at the time he made the post to his personal FB page on Nov. 21 is unknown. The SAPD FB page shows 4,500 comments, not 12,000 as asserted by Judge Oakley.

Narrative purpose – By implying he had knowledge of the so-called admission and inflating the number of comments, Judge Oakley appears

to be attempting to elicit sympathetic understanding from the Commission for his intemperate post.

Testimony – Judge Oakley was asked by a Commissioner (Questioner #6 on audio recording) **whether his post and comment would be appropriate for any elected official, judicial or not.** He responded by saying that with the intent with which it was made it was not inappropriate, but with the way it was twisted he can see how it could be seen that way. He then went on to blame political motivation on the part of PEC members who disagreed with his position on renewable energy and “can’t stand it that I was up on stage with Trump.” He stated PEC had close to 1 million customers, but there was a small group who sent out form letters saying all they had to do was click to send complaint to SCJC.

Actual facts – PEC has approximately 300,000 member/owners. I have no way of knowing if all 18 complaints were from PEC members but that would seem likely as both Burnet County and the surrounding counties, where the FB post got the most publicity, are in the PEC service area. When I filed my complaint with the Commission I was unaware that Judge Oakley had appeared on stage with Donald Trump, and I dispute the claim that political differences were the motivating factor behind the complaints.

Narrative purpose – Furthers the idea that outside agitators, rather than Burnet County residents and voters, were the ones complaining, and that these people were doing so out of political motivations. Why the numbers for the co-op were so inflated is a mystery to me.

Testimony – The last Commissioner who questioned Judge Oakley on April 5 told **him it was her understanding that he had been required to apologize as a condition for retaining his position as a Director of PEC.** She then asked him directly if that was the case. He replied emphatically, “No.”

Actual Facts – Judge Oakley testified before the Commission that he had issued an apology more or less contemporaneously with his pulling down his FB post. He subsequently apologized several more times, including at a PEC Board meeting. One of his main defenses in the investigation by a Special Committee of PEC Board was that he had apologized. In both public oral comments and written comments by PEC members to the Special Committee and the Board, member/owners of the co-op denounced the so-called “apologies” as insincere and self-serving. These

“apologies” took the modern day form of blaming the people who were offended by using the formulation of “I apologize to anyone who may have been offended by my words.” The PEC Board and Committee stressed Judge Oakley’s “apologies” in deciding to give him a mere slap on the wrist and mild rebuke. So, in fact his apologies, sincere or not, were an integral part of the decision making process at PEC. That he was not required to make a new apology at the time of the rebuke is due to the fact he had already done so.

Narrative purpose – To diminish the impact of the PEC rebuke. This is a classic example of telling what might be deemed a narrow, technical truth in the service of misleading the questioner as to what actually happened. Without the previously offered “apologies” the PEC Board would likely have dealt with Judge Oakley quite differently. This exchange also demonstrates that Judge Oakley was anything but forthcoming in his testimony to the Commission.

II. Claim for extra compensation based on judicial duties

In both 2015 and 2016 Judge Oakley filed an affidavit with the State of Texas stating that he spent more than 40% of his time on judicial duties. As a result he received extra compensation of \$25,000 per year in addition to his regular compensation as County Judge.

He was questioned about this by Counsel at the April 5 hearing and acknowledged that he had indeed filed the affidavits. He stated that he handled “250 probate cases last year (2016) I think.”

Throughout his testimony he stressed that his judicial duties were minimal. He even stated that he never considered himself a judge, but was more of an administrative officer involved in budgets and the like. Never wore a robe. Hears only uncontested probate cases and some guardianship matters. Had probate duties thrust on him unbidden when the County Court-at-Law Judge had a heart attack about two months after he took office. Then he just kept the function.

There is good reason to believe that the affidavits filed by Judge Oakley do not square with the facts. First, I personally checked with the Probate Clerk of Burnet County on July 14, 2017, and was told that the actual number of probate hearings held in calendar year 2016 was 203. That is substantially fewer than the 250 claimed by Judge Oakley in his

testimony. Second, according to the Bureau of Labor Statistics of the U.S. the standard work year is considered to be 2,080 hours. To spend at least 40% of one's time on judicial matters would work out to be just a bit more than 800 hours. Even if one hour was spent on each uncontested case, known to be highly unlikely by anyone familiar with that process, it would mean that in 2016 Judge Oakley spent at most 203 hours on the **only judicial duties** he repeatedly said he performed. Even if one adds in another few hours for the seven guardianship hearing or matters you don't get much above 200 hours. To put in 800 hours would mean spending, on average, 16 hours per week, or, put another way, two full days. The implausibility of that is evident on its face and from the repeated testimony of Judge Oakley himself who repeatedly sought to minimize his judicial duties.

It is hard to see how the affidavit Judge Oakley filed for 2016 can be viewed as anything other than factually incorrect and misleading.

Conclusion

Eighteen citizens filed complaints with the Commission in late 2016 and early 2017 charging that Judge James Oakley had engaged in judicial misconduct arising out of his Nov. 21, 2016 Facebook post about the accused in the shooting of a SAPD police officer, in which he used the racially tinged phrase, "Time for a tree and a rope." The Commission gave Judge Oakley an opportunity to respond in writing to the complaints. After being informed of the preliminary findings and proposed sanctions arrived at by the Commission in Feb. 2017, Judge Oakley asked for the opportunity to appear in person before the Commission to present his defense. At its April 5, 2017 meeting Judge Oakley did appear, was sworn in, answered questions from Commission Counsel and several Commissioners and made a closing statement.

During that appearance Judge Oakley provided purported facts and information that was in some instances false or non-factual and in others misleading and deceptive. This complaint has endeavored to set out specifically where that occurred and what the true facts are.

By virtue of giving false and misleading testimony to the Commission Judge Oakley has proved himself to be unfit to hold the office of County Judge of Burnet County and should be removed from that position by the

Commission. Accordingly I urge the Commission to find that Judge Oakley violated the Canons of Judicial Conduct by his conduct on April 5, 2017, in particular as stated in the Preamble: “The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards.” Giving false and misleading testimony under oath to SCJC does not comport with “general ethical standards” by any reasonable definition. This Commission should remove Judge James Oakley from the office of County Judge of Burnet County, Texas.

Respectfully submitted,

John Watson