



FILED
Clerk of the Commission.

Date 11/05/01 In Re Judge No 81
By Crystal Velasco
CRYSTAL VELASCO

**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

**IN RE: JUDGE H. N. McELROY
RETIRED JUSTICE OF THE PEACE, PRECINCT 4, PLACE 1,
SPRING, HARRIS COUNTY, TEXAS
(CJC Nos. 00-0454-JP & 00-0640-JP)**

**VOLUNTARY AGREEMENT TO RESIGN FROM
JUDICIAL OFFICE IN LIEU OF DISCIPLINARY ACTION**

This Agreement is being entered into by the undersigned parties pursuant to sections 33.001(b) and 33.032(h) of the Texas Government Code.

WHEREAS on February 4, 2000, the State Commission on Judicial Conduct (the "Commission") initiated a complaint (CJC No. 00-0454-JP) against Judge H.N. McElroy, and

WHEREAS on March 23, 2000, P.E. filed a complaint (CJC No. 00-0640-JP) with the Commission against Judge H.N. McElroy, and

WHEREAS on January 16, 2001, the Commission instituted formal proceedings against Judge McElroy pursuant to its authority under Article 5, §1-a(8) of the Texas Constitution, and

WHEREAS on January 17, 2001, Examiner's Notice of Formal Proceedings was served on Judge McElroy (a true and correct copy of the Notice is attached hereto as Exhibit A and incorporated herein for all relevant purposes), and

WHEREAS on March 1, 2001, Judge McElroy retired as Justice of the Peace, Precinct 4, Place 1, Spring, Harris County, Texas, and

WHEREAS the Examiner believes there is a preponderance of evidence to substantiate the pending charges against Judge McElroy, which would result in disciplinary action against Judge McElroy, and

WHEREAS no Findings of Fact or Conclusions of Law have been made in this matter, and

WHEREAS Judge McElroy disputes the charges and denies the allegations of misconduct in their entirety (a true and correct copy of Judge McElroy's Answer is attached hereto as Exhibit B and incorporated herein for all relevant purposes), and

WHEREAS the parties are desirous of resolving this matter without further time and expense.

IT IS THEREFORE AGREED that Judge McElroy, upon the effective date of this Agreement, shall voluntarily resign his judicial office in lieu of further disciplinary action by the Commission, and the Commission agrees that it shall take no further disciplinary action against Judge McElroy based on the Notice of Formal Proceedings in CJC Nos. 00-0454-JP and 00-0640-JP.

IT IS FURTHER AGREED that, upon the effective date of this Agreement, Judge McElroy shall be disqualified from: sitting or serving as a judge in the State of Texas; standing for election or appointment to judicial office in the State of Texas; or, performing or exercising any judicial duties or functions of a judicial office, including the performance of weddings pursuant to the authority of section 2.202(a)(4) of the Texas Family Code, in the State of Texas.

IT IS FURTHER AGREED that any violation of this Agreement by Judge McElroy would constitute: willful or persistent conduct that is clearly inconsistent with the proper performance of his duties in violation of Article 5, Section 1-a(6)A of the Texas Constitution and section 33.001(b) of the Texas Government Code; willful or persistent conduct in violation of the Texas Code of Judicial Conduct, including Canon 5(2) of the Code; or a violation of Rules 8.02(b) or 8.04(a)(7) of the Texas Disciplinary Rules of Professional Conduct.

IT IS FURTHER AGREED that any violation of this Agreement by Judge McElroy would be subject to review by the Commission, the State Bar of Texas, the Secretary of State, the Attorney General, or, if the circumstances warrant, the local District Attorney for appropriate action.

IT IS FURTHER AGREED that the Commission may enforce this Agreement through any legal process necessary, including injunctive relief; and that Travis County, Texas, shall be the proper venue for any dispute between the parties or proceeding relating to this Agreement.

IT IS FURTHER AGREED that this Agreement is not an admission by Judge McElroy of the charges against him in the Notice of Formal Proceedings in CJC Nos. 00-0454-JP and 00-0640-JP, or other currently pending litigation involving Judge McElroy, any such admission being denied in this compromise and settlement.

IT IS FURTHER AGREED that the effective date of this Agreement shall be November 4, 2001.

AGREED TO AND ACCEPTED upon its execution by the parties.

H.N. McElroy
JUDGE H.N. McELROY

Bob Warrick, Jr.
Examiner for the
State Commission on Judicial Conduct

Date: 10-24-01

Date: 10/19/01

AGREED TO AND ACCEPTED by the Commission as the final disposition of this matter.

[Signature]
Chair
State Commission on Judicial Conduct

Date: 10/30/01

VERIFICATION

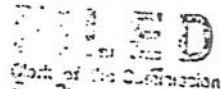
State of Texas §
 §
County of _____ §

BEFORE ME, the undersigned authority, on this day personally appeared H.N. McELROY, who by me being first duly sworn, on his oath deposed and said that the above "Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action" is a true and correct recitation of the facts and accurately reflects his understanding of the terms and conditions of, and voluntary consent to enter into, such Agreement.

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 24th day of October, 2001.



Teresa M. DuBose
NOTARY PUBLIC, IN AND FOR THE
STATE OF TEXAS



Date 01-16-01 In Re Judge No 81
 By Roxane Eley
 Roxane Eley

BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT

INQUIRY CONCERNING

JUDGE # 81

NOTICE OF FORMAL PROCEEDINGS

**TO THE HONORABLE H.N. MCELROY, JUSTICE OF THE PEACE,
 PRECINCT 4, PLACE 1, SPRING, HARRIS COUNTY, TEXAS**

Pursuant to Sec. 33.022 of the Texas Government Code (V.A.T.S. 1998), and Rule 10 of the Procedural Rules for the Removal or Retirement of Judges, as promulgated by the Texas Supreme Court, this NOTICE is hereby given to H.N. McElroy, Justice of the Peace, Precinct 4, Place 1, Spring, Harris County, Texas, that formal proceedings have been instituted against him, based upon the following:

FACTUAL ALLEGATIONS

1. At all times relevant hereto, H.N. McElroy was Justice of the Peace for Precinct 4, Place 1, Spring, Harris County, Texas.
2. Judge McElroy engaged in the inappropriate physical touching of P.E. and other African-American female employees of his court.
3. Judge McElroy made sexually suggestive comments to P.E. and other African-American female employees of his court.
4. Judge McElroy made racial slurs referring to African-American employees of his court and African-Americans in general.

RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides, in relevant part, that any Justice or Judge of the courts established by the Constitution or created by the Legislature may be removed from office, disciplined, or censured for "incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice."

2. Canon 3B(4) of the Texas Code of Judicial Conduct 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....”
3. Canon 3B(5) of the Texas Code of Judicial Conduct provides that “[a] judge shall perform judicial duties without bias or prejudice.”
4. Canon 3B(6) of the Texas Code of Judicial Conduct provides, in relevant part, that “[a] judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status....”

**CHARGE I
INAPPROPRIATE PHYSICAL TOUCHING**

Judge McElroy’s actions in engaging in the inappropriate physical touching of P.E. and other African-American female employees of his court constituted willful or persistent conduct in violation of:

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

**CHARGE II
SEXUALLY SUGGESTIVE COMMENTS**

Judge McElroy’s actions in making sexually suggestive comments to P.E. and other African-American female employees of his court constituted willful or persistent conduct contrary to the provisions of:

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

**CHARGE III
RACIAL SLURS**

Judge McElroy’s actions in making racial slurs referring to African-American employees of his court and African-Americans in general constituted willful or persistent conduct contrary to the provisions of:

1. Article V, Section 1-a(6)A of the Texas Constitution
2. Canon 3B(5) of the Texas Code of Judicial Conduct
3. Canon 3B(6) of the Texas Code of Judicial Conduct

Judge McElroy is hereby notified that he has the right to file a written answer to the foregoing charges within fifteen (15) days after service of this Notice of Formal Proceedings upon him. Judge McElroy's answer should be forwarded or delivered to Crystal Velazco, Clerk of the Commission, State Commission on Judicial Conduct, 300 West 15th Street, Suite 415, Post Office Box 12265, Austin, Texas, 78711-2265.

Signed this 6th day of January, 2001.

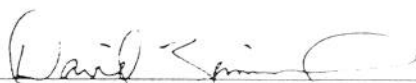
EXAMINERS

P.O. Box 12265
Austin Texas 78711
(512) 463-5533
FAX: (512) 463-0511

Margaret J. Reaves
Executive Director
Texas Bar # 16643800

W.W. Torrey
Texas Bar # 20144700

David Zimmerman
Texas Bar # 22265600

By: 
David Zimmerman
Texas Bar # 22265600

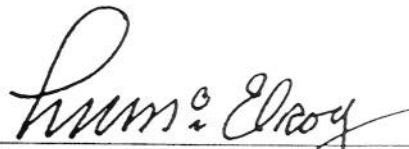


FILED
Clerk of the Commission.

Date 01-17-01 in Precinct No. 81
By Roxane Eley
Roxane Eley

MEMORANDUM

I hereby certify that I was personally served with a copy of the Notice of Formal Proceedings for Judge No. 81 on WED, the 17th day of January, 2001.



Honorable H.N. McElroy
Justice of the Peace, Precinct 4, Place 1
Spring, Harris County, Texas

MEMORANDUM



FILED
Clerk of the Commission

Date 01-17-01 In Re Judge No. 81
by Roxane Eley
Roxane Eley

RETURN OF SERVICE

I hereby certify that a true and correct copy of the Notice of Formal Proceedings for Judge No. 81 was personally served on H.N. McElroy, Justice of the Peace for Precinct 4, Place 1, Spring, Harris County, Texas, on Wednesday, the 17th day of January, 2001.

A handwritten signature in cursive script, appearing to read "David Zimmerman".

David Zimmerman, Examiner
State Commission on Judicial Conduct

BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT

INQUIRY CONCERNING

JUDGE # 81

ANSWER OF JUDGE H.N. McELROY

TO: STATE COMMISSION ON JUDICIAL CONDUCT, 300 West 15th Street,
Suite 415, P.O. Box 12265, Austin, Texas 78711-2265.

Pursuant to TEX. GOVT. CODE, § 33.022, and Rule 10 of the Procedural Rules for the Removal or Retirement of Judges, as promulgated by the Texas Supreme Court, Judge H.N. McElroy files his Answer to the Commission's Notice of Formal Proceedings.

GENERAL DENIAL

Judge McElroy enters a general denial and denies each and every, all and singular, the allegations contained in the Notice of Formal Proceedings.

CHARGE I
INAPPROPRIATE PHYSICAL TOUCHING

Answering specially as to Charge I, Judge McElroy denies engaging in inappropriate physical touching as alleged in the Notice of Formal Proceedings.

CHARGE II
SEXUALLY SUGGESTIVE COMMENTS

Answering specially as to Charge II, Judge McElroy denies making sexually suggestive comments as alleged in the Notice of Formal Proceedings.

CHARGE III
RACIAL SLURS

Answering specially as to Charge III, Judge McElroy denies making racial slurs as alleged in the Notice of Formal Proceedings.

ADDITIONAL DEFENSES

Without waiving any of the foregoing defenses, Judge McElroy raises the following defenses to the Notice of Formal Proceedings:

1. Judge McElroy asserts that the Notice of Formal Proceedings violates his Due Process rights under the 14th Amendment to the United States Constitution and also Art. I, § 19 of the Texas Constitution, because it wholly fails to notify or inform Judge McElroy of the sanctions being sought against him.

2. Judge McElroy relies on and invokes the protection of TEX. GOVT. CODE, § 665.081, and LOCAL GOVT. CODE, § 87.001, which provide that a county officer may not be removed from office for an act committed by that officer during a prior term of office. According to the Commission's own allegations, each of the purported acts made the basis of this proceeding occurred prior to the November 7, 2000 election. Judge McElroy was re-elected to his position as Justice of the Peace Precinct 4, Position 4 at that election.

2. Judge McElroy relies on and invokes the protection of the "forgiveness doctrine," which provides that an officer may not be removed predicated on acts which occurred prior to the officer's current term of office, and which were matters of public record or otherwise known to the electors, and were sanctioned and approved or forgiven by them at the election. According to the Commission's own allegations, each of the purported acts made the basis of this proceeding occurred prior to the November 7, 2000

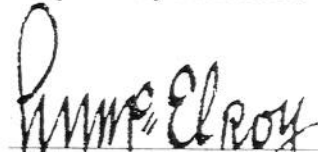
election. Newspaper articles reporting the alleged misconduct by Judge McElroy appeared in the *Houston Chronicle* on February 16, 2000, March 5, 2000, May 16, 2000, and October 29, 2000. News reports were also aired by local television and radio stations during that same time frame. Notwithstanding such public character assassination, Judge McElroy was re-elected by 86% of the vote at the November 7, 2000 election. Therefore, the Commission lacks any authority to remove Judge McElroy from office or enter any sanctions against him.

4. The Commission lacks any authority to remove, sanction or censure Judge McElroy following his anticipated retirement effective February 28, 2001.

5. Judge McElroy raises limitations and laches as defenses to this proceeding.

WHEREFORE PREMISES CONSIDERED, Judge H.N. McElroy requests the State Commission on Judicial Conduct to dismiss the Formal Proceedings against him and that it grant him such other and further relief to which he may be entitled.

Respectfully submitted.



H.N. McELROY
6831 Cypresswood Drive
Suite 4
Spring, Texas 77379
(281) 376-5512
Pro Se

CERTIFICATE OF SERVICE

I certify that on the 1st day of February, 2001, a true and correct copy of the above and foregoing document was served upon the following persons by certified mail, return receipt requested:

Crystal Velazco
Clerk of the Commission
State Commission on Judicial Conduct
P.O. Box 12265
Austin, Texas 78711-2265

David Zimmerman
State Commission on Judicial Conduct
P.O. Box 12265
Austin, Texas 78711-2265


H.N. McELROY

BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT

INQUIRY CONCERNING

JUDGE # 81

VERIFICATION

STATE OF TEXAS §

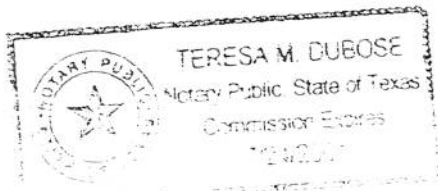
COUNTY OF HARRIS §

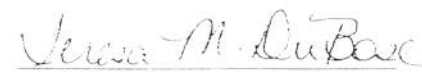
BEFORE ME, the undersigned authority, on this day personally appeared H.N. McELROY, who after being duly sworn did state the following:

My name is H.N. McElroy. I am over the age of 18 years and otherwise fully competent to make this affidavit. I am the person named in the Notice of Formal Proceedings filed in the above referenced proceeding. I have read the foregoing Answer of H.N. McElroy filed in that proceeding and I verify that the matters and defenses asserted in that Answer are true and correct.


H.N. McELROY

SUBSCRIBED AND SWORN TO BEFORE ME the 31st day of January, 2001.
2001.




Notary Public in and for
the State of Texas