



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 07-0668-CC

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE BRENT KEIS
COUNTY COURT AT LAW No. 1
FORT WORTH, TARRANT COUNTY, TEXAS**

During its meeting on April 16-18, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Brent Keis, County Court at Law No. 1, in Fort Worth, Tarrant County, Texas. Judge Keis was advised by letter of the Commission's concerns and provided a written response. Judge Keis appeared before the Commission, with counsel, on April 16, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Brent Keis was Judge of the County Court at Law No. 1, in Fort Worth, Tarrant County, Texas.
2. On or about April 16, 2007, Nuru Witherspoon ("Witherspoon"), an African-American attorney from Dallas, appeared in Judge Keis's court with his clients, David and Toni Goodman, who were the plaintiffs in a personal injury action being defended by State Farm Insurance Company.
3. After Witherspoon approached the bench and introduced himself, Judge Keis inquired as to the correct pronunciation and origin of Witherspoon's first name.

4. Witherspoon advised the Judge that his first name, Nuru, was of African origin, but that he was from Georgia.
5. This information caused Judge Keis to attempt to engage Witherspoon in a conversation about the transportation of enslaved Africans to the Americas in what is referred to as the “Middle Passage.”
6. Judge Keis also explained the theory held by some that the Middle Passage experience had the effect of causing the death of Africans unable to cope with the hardships of the voyage and leaving only the stronger, more capable Africans surviving, the resulting effect being the athletic superiority of many of today’s African-Americans.
7. Witherspoon did not engage in the Judge’s discussion of the Middle Passage or any other subject.
8. Following his failed attempt to engage Witherspoon in a conversation about slavery, Judge Keis proceeded to review photographs of the automobile involved in the case, observing that there appeared to be very little physical damage to the Goodmans’ vehicle.
9. Judge Keis inquired about the injuries suffered by Toni Goodman and learned that there appeared to be no objective medical evidence of injury, meaning that the injury was what is commonly referred to as a “soft tissue” injury.
10. This type of “soft tissue” injury case is known in Tarrant County as a “MIST” case (Motor vehicle Incident Soft Tissue injury).
11. Learning of the amount of money being offered to the plaintiff by State Farm, Judge Keis told Witherspoon that he considered the offer to be very good in light of the lack of damage to the automobile and the soft tissue type of injury suffered by Mrs. Goodman.
12. Thereafter, the parties entered into settlement negotiations.
13. When the negotiations appeared to be at an impasse, Judge Keis delivered what he refers to as his standard “MIST” talk.
14. According to Judge Keis, the “MIST” talk is an explanation to litigants of the risks associated with submitting “MIST” cases to a jury in Tarrant County. Its purpose is to encourage a careful and thoughtful settlement discussion between the parties in light of the facts of the case and the history of jury trial verdicts observed by Judge Keis during his tenure on the bench in Tarrant County.
15. As part of the “MIST” talk, Judge Keis explained to Witherspoon and his clients the relative effectiveness of verbal, visual and documentary evidence in jury trials and the history of awards by Tarrant County juries in cases similar to theirs.
16. Judge Keis went on to explain that he was a Republican, and that juries in Tarrant County are predominantly made up of Republicans.
17. Using a gambling analogy relating to the spin of a roulette wheel, Judge Keis concluded his “MIST” talk by telling Mrs. Goodman that if she wanted to “bet on black,” she could proceed to trial.
18. Neither the attorney for State Farm nor Witherspoon requested that Judge Keis give the “MIST” talk.

19. Although Witherspoon had requested the trial setting and had announced ready for trial that morning, there were certain evidentiary and procedural challenges that first needed to be resolved, including Witherspoon's late filing of medical records affidavits and the apparent absence of a witness list identifying medical professionals who would be called to testify on his clients' behalf.
20. There is no evidence before the Commission as to whether or not the Goodmans were aware of any procedural or evidentiary issues potentially jeopardizing their case.
21. After Judge Keis's failed attempt to engage Witherspoon in a discussion about slavery and the Middle Passage, and the Judge's "MIST" talk, the Goodmans opted to settle with State Farm rather than go to trial.
22. At the time, Witherspoon expressed no objection to or concern about the Judge's discussions of slavery, the Middle Passage, or the "MIST" talk.
23. However, in a videotaped statement obtained by the Commission on March 11, 2008, in lieu of his appearance before the Commission, Witherspoon testified that although he did not express it at the time, he nevertheless found it shocking when Judge Keis, whom he had never met before, attempted to discuss the Middle Passage and theories about the slave trade with him prior to the commencement of trial.
24. Witherspoon went on to explain that even though his instinct was to "get out of here," the reason he took no action against Judge Keis at the time was because he was more focused on his clients interests than his own feelings about the Judge's comments. However, after describing the incident to his colleagues in the legal community, Witherspoon eventually filed a complaint against Judge Keis with the Commission.
25. Judge Keis soon became the subject of widespread negative media attention and public criticism over this event after a fellow lawyer and friend of Witherspoon sent a copy of Witherspoon's complaint to the local media.
26. In a statement to the media, Witherspoon remarked that it would be a "stretch" to describe Judge Keis's discussion about slavery, the Middle Passage and theories about the effect of that event on African-American athletes, as being "racist."
27. Witherspoon went on to state that while he had developed a thick skin over the years and did not consider himself to be overly sensitive, his clients were the ones offended by the judge's comments and who felt they were not going to get a fair trial in front of this judge.
28. David Goodman also spoke to the media, describing that he and his wife felt they had been forced to settle by "a hostile court situation." In an affidavit submitted to the Commission on March 12, 2008, Mr. Goodman reiterated his belief that the judge, through his comments to Witherspoon and the "MIST" talk, had improperly forced them into settling for far less than what they were entitled to receive.
29. Following the media reports, Judge Keis recused himself from the Goodmans' case, as well as from all cases involving Witherspoon's firm.

30. In his written and live testimony before the Commission, Judge Keis acknowledged that he did discuss the Middle Passage with Witherspoon, but explained that he did so in an effort to make Witherspoon, an out-of-town lawyer, feel comfortable and relaxed in the Judge's courtroom.
31. Having learned that the origin of Witherspoon's first name was of African origin, Judge Keis explained that he believed a conversation about the historical events of the slave trade and the Middle Passage might be of interest to Witherspoon and would encourage the out-of-town attorney to talk about himself, his interests and his case.
32. Describing his comments to Witherspoon as a "welcoming, friendly conversation with counsel," Judge Keis elaborated by stating that when attorneys are appearing in his court for the first time, he devotes a great deal of time and effort to make them feel comfortable and to allay any fears of being "hometowned."
33. According to Judge Keis, in his opinion, the statements he made were not "racist, biased, insensitive, inappropriate, undignified, discourteous, [or] absurd," nor did they "creat[e] an environment that was hostile to the plaintiffs or their counsel."
34. In support of his testimony before the Commission, Judge Keis provided copies of affidavits, letters and emails from several attorneys who regularly practiced in his court, all of whom extolled the Judge's moral character, judicial demeanor, reputation for fairness, the manner in which the "MIST" talk is given, and the benefits of the "MIST" talk.
35. The Commission also received an unsolicited letter of support for the Judge from a local attorney who explained that in his experiences practicing before Judge Keis, he has never seen the Judge exhibit racist behavior.
36. Several local attorneys also appeared before the Commission on behalf of Judge Keis to praise the Judge's judicial demeanor and his reputation for fairness.
37. At the conclusion of the videotaped statement presented to the Commission in lieu of his appearance, Witherspoon described how such comments from a judge in the courtroom might have a "chilling effect" on the litigants, creating "this sense that you can't get a fair shot when you walk into the courtroom," and leaving one with the perception that the judge has already made up his mind before the case has been presented.

RELEVANT STANDARDS

1. Article V, §1-a(6)A of the Texas Constitution states that a judge may be disciplined or removed from office for 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(5) of the Texas Code of Judicial Conduct states: "A judge shall perform judicial duties without bias or prejudice."
3. Canon 3B(6) of the Texas Code of Judicial Conduct states: "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...”

4. Canon 3B(8) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.”

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Keis made an inartful and insensitive attempt to engage Witherspoon in a discussion about slavery, the Middle Passage, and the possible effect of that event on today’s African-Americans. Because the incident did receive widespread media attention, some members of the public reached the conclusion, perhaps mistaken, that the judge harbored a bias or prejudice against Witherspoon on the basis of the attorney’s race. Although Judge Keis insists that he did not intend his comments to be racially insensitive or offensive, it is clear that his remarks were inappropriate in the setting in which they occurred, and that they could easily be misinterpreted by anyone unfamiliar with the Judge.

The Commission notes that many members of the Tarrant County legal community have come out in support of Judge Keis and his use of the “MIST” talk as an admirable way to encourage both parties to engage in meaningful settlement discussions. While the “MIST” talk may be an effective case management tool, the Commission finds that the judge’s unsolicited discussion of the facts, evidence, and apparent value of the Goodmans’ case in an effort to “encourage settlement” created, in the minds of the Goodmans, an atmosphere that was coercive and intimidating. Moreover, by injecting both race and politics into the case, Judge Keis created a legitimate concern in the minds of the Goodmans and their attorney about the impartiality of the court regarding the merits of their case. When taken together, the “MIST” talk and the judge’s earlier remarks to Witherspoon about slavery and the Middle Passage had a chilling effect on the efforts of Witherspoon and his clients to have their case determined on its own merits. In the end, regardless of the perceived strengths or weaknesses of the Goodmans’ case, Witherspoon and his clients were entitled to an impartial judge and Judge Keis had a duty to afford them “the right to be heard according to law.” The Commission finds that Judge Keis’s actions in this matter violated Canons 3B(5), 3B(6), and 3B(8) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution.

The Commission notes that the character references provided by Judge Keis in support of his defense to the allegations have been taken into account in determining the appropriate discipline to impose in this case.

In condemnation of the conduct described above that violated Canons 3B(5), 3B(6), and 3B(8) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the Commission’s decision to issue a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Brent Keis, County Court at Law No. 1, Fort Worth, Tarrant County, Texas.

Pursuant to this Order, Judge Keis must complete an **eight (8) hour** course covering the topics of racial sensitivity and diversity, including the perceptions of

litigants and their counsel regarding comments made by and with the apparent authority of a Trial Judge. Such course shall be approved in advance by the Commission and shall be in addition to the judge's required judicial education for the fiscal year.

Judge Keis is hereby directed to complete the additional education recited above within **one hundred and twenty (120) days** from the date of this Order. It is Judge Keis's responsibility to schedule and complete the additional education, at his own expense, and to provide proof of completion, along with the Respondent Judge Survey, to the Commission within **ten (10) days** following the conclusion of the training.

Failure to complete the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** by the State Commission on Judicial Conduct.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this **14th** day of **May, 2008**.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct