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January 17, 2018

The Honorable Lee H. Rosenthal United States Courthouse
515 Rusk Street, Room 11535
Houston, Texas 77002

Re: *ODonnell et al. v. Harris County et al.*, No. 16-CV-01414

Dear Chief Judge Rosenthal:

Plaintiffs respectfully submit this letter requesting a pre-motion conference to address deeply troubling revelations from the Texas State Commission on Judicial Conduct (the “Commission”) concerning directives from County Court at Criminal Law Judges (“Judges”) to Hearing Officers’ Hagstette, Licata III, and Wallace that purportedly limited their discretion to grant personal bonds.

On January 10, 2018, the Commission publicly admonished the Hearing Officers for “strictly following *directives not to issue personal bonds* to defendants *per the instructions of the judges* in whose court the underlying cases were assigned.” Ex. 1 (emphasis added). The Commission concluded that the Hearing Officers’ “failed to comply with the law” and that their “conduct was motivated by *direct instructions from individual judges* who played a role” in their employment. *Id.* (emphasis added).

The Commission’s public admonition of the Hearing Officers is troubling, and it gives Plaintiffs’ cause for concern regarding Defendants’ compliance with their discovery obligations and Defendants’ possible misrepresentations to this Court and to Plaintiffs.

Throughout the course of discovery, Plaintiffs have sought to confirm whether Hearing Officers had ever received instructions limiting their discretion to grant personal bonds by seeking discovery on any instructions provided by Judges to Hearing Officers. For example, Plaintiffs requested Defendants produce:

Any bail schedules or other instructions, guidelines, or advisories that were in effect at the time the case was filed, whether written or oral, given by any of the County Courts at Law Judges to any of the Hearing Officers, regarding how to set

bail and whether and when to grant, or recommend individuals for personal bonds

...

Ex. 2 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers' Objections and Responses to Plaintiffs' First Request for Production of Documents No. 3).¹

Defendants responded that they would produce non-privileged, responsive documents. *Id.* One year later, Plaintiffs filed a pre-motion conference letter in an attempt to resolve what appeared to be Defendants' inadequate production and Defendants' refusal to certify its document production pursuant to Fed. R. Civ. P. 26(g). Ex. 4. In response, Defendants' counsel stated they had produced all responsive documents in Fall 2016 and that no additional responsive e-mails had been located. Ex. 5 (Oct. 20, 2017 letter from Phil Morgan). Alarming, the Commission's findings of fact describe specific e-mails with instructions "from multiple District and County judges aiming to restrict the Hearing Officers' authority to set certain bonds" that, to Plaintiffs' knowledge, have *never* been produced.

In addition, Plaintiffs requested Defendants admit:

The Hearing Officers' discretion to recommend arrestees for personal bonds is circumscribed by instructions from the County Court at Law Judges.

Ex. 6 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers' Objections and Responses to Plaintiffs' Requests for Admission No. 10).²

Defendants responded that this request was "vague" and thus they could neither admit nor deny. Ex. 6. Yet, there is nothing vague about the Commission's findings of fact that describe testimony from the Hearing Officers that "until August 2016" several Judges did not permit Hearing Officers to grant personal bonds and that the Hearing Officers provided instructions

¹ See also Ex. 2 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers' Objections and Responses to Plaintiffs' First Request for Production of Documents No. 4) (seeking any bail schedules or other instructions "that are currently in effect"); Ex. 3 (County Criminal Court at Law Judges' Amended Objections and Responses to Plaintiff's First Set of Requests for Production Nos. 3 - 5) (seeking "[a]ny bail schedules or other instructions, guidelines or advisories that have been in effect during the past two years, whether written or oral, given by any of the County Court at Law judges to any of the Hearing Officers, regarding how to set bail in misdemeanor or felony cases," "a chart that summarized the Judges' instructions to the Hearing Officers about how to set bail"; and "any bail schedules or other instructions . . . given by any of the County Courts at Law Judges to any of the Hearing Officers, regarding how to set bail and whether and when to grant, or recommend individuals, for personal bonds," respectively).

² See also Ex. 6 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers' Objections and Responses to Plaintiffs' Requests for Admission Nos. 6, 7, 8, 11) (seeking admission that "the County Court at Law Judges provide instructions, either oral or written, to the Hearing Officers about how to set bail"; "[t]he County Court at Law Judges tell the Hearing Officers which categories of arrestees . . . are eligible for release without secured financial conditions"; "[t]he Hearing Officers follow instructions from the County Court at Law Judges to deny personal bonds to certain groups of people . . ."; "[t]he Hearing Officers' discretion to impose a higher or lower bail amount than what the bail schedule prescribes is circumscribed by instructions from the County Court at Law Judges"); Ex. 7 (County Criminal Court at Law Judges' Objections and Responses to Plaintiff's First Set of Requests for Admission No. 7) (seeking admission that "Defendant Judges provide instructions to the Hearing Officers setting out criteria and/or guidelines for granting or denying a personal bond").

from *multiple* Judges “aiming to restrict the Hearing Officers’ authority to set certain bonds.” Ex. 1.

Plaintiffs also served the following Interrogatory on November 11, 2016:

In the last two years, what guidance or instructions have the Defendant Judges given to Hearing Officers about arrestees’ eligibility for personal bonds?

Ex. 8 (County Criminal Court at Law Judges’ Amended Objections and Responses to Plaintiffs’ First Set of Interrogatories No. 3).³

As relevant, Defendants’ response stated the following only:

Subject to their objections, the County Criminal Court at Law Judges responded as follows: Three sources of law provide guidance to the Hearing Offices: (1) the Texas Code of Criminal Procedure art. 17.15; (2) the *Roberson* Order; and (3) the Local Rules of Court. The County Criminal Court at Law Judges sent a letter to the magistrate Hearing Officers on August 8, 2016 forwarding recent amendments to the Local Rules of Court and reminding the Hearing Officers that they have full discretion to set appropriate bail amounts according to the five *Roberson* factors, including ability to pay, and to issue personal bonds in appropriate circumstances. *See* Dkt. 80-4. On November 18, 2016, the County Criminal at Law Judges sent a letter to all attorneys practicing in the County Courts at Law, informing of them of additional changes to the pretrial procedures, including requiring the attorneys to raise bail at an arrestee’s initial appearance before a County Criminal Court at Law Judge. **The County Criminal Court at Law Judges have not withheld any responsive information and are not withholding any information on the basis of privilege.**

See Ex. 8 (County Criminal Court at Law Judges’ Amended Objections and Responses to Plaintiff’s First Set of Interrogatories).

Defendants’ response appears inadequate and misleading in light of the Commissions’ findings of fact that individual Judges provided Hearing Officers with instructions “aiming to restrict the Hearing Officers’ authority to set certain bonds.” Ex. 1. And the Commission’s findings appear to be based on documents provided to the Commission by Defendants themselves, as well as oral statements made by Defendants in their own defense as purported mitigation of their ethics violations. Pursuant to the Federal Rules, Defendants have an ongoing duty to supplement discovery in a “timely manner” if the party learns that its disclosure or response is “incomplete or incorrect.” *See* Fed. R. Civ. P. 26(e). Yet, Defendants have never supplemented their

³ *See also* Ex. 8 (County Criminal Court at Law Judges’ Amended Objections and Responses to Plaintiffs’ First Set of Interrogatories No. 2) (“In the last two years, what guidance or instructions have been given to Hearing Officers from the Defendant Judges about setting financial conditions of release?”); Ex. 9 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers’ Objections and Responses to Plaintiffs’ Interrogatories Nos. 5, 6) (requesting “guidance or instructions” regarding the bail-setting process and arrestees’ eligibility for personal bonds, respectively).

discovery to inform the Plaintiffs that Judges, in whose court the underlying cases were assigned, had instructed Hearing Officers not to issue personal bonds.

Equally troubling, the Commissions' revelations raise the question of whether any of the Defendants made misrepresentations to the Court. For example, the Commission quotes an e-mail from Judge Diane Bull that states: "Please instruct the probable cause hearing officers to withhold their rulings on all pre-trial release applications for defendants." Ex. 1. This quote, if accurate, appears to be inconsistent with Judge Diane Bull's testimony in her sworn declaration: "The Criminal Law Hearing Officers are independent magistrates for the purpose of setting bail amounts and deciding whether to grant personal bonds in misdemeanor cases. I do not supervise them." Ex. 10, at JUDGES000928.⁴ Likewise, on appeal, the Judges and Hearing Officers submitted declarations with similar testimony calling the Hearing Officers "independent" to the United States Court of Appeals for the Fifth Circuit and to the United States Supreme Court. Ex. 11 Each of the Hearing Officers submitted sworn declarations stating that they exercise "judicial discretion" to "set bail in an amount that I believe will ensure the accused's return to court." Ex. 12, at HARRISCO-ODONNELL007244 (Declaration of Joe Licata).⁵

In addition, the Commission's revelations cast uncertainty over Defendants' testimony during the preliminary injunction hearing. For example:

Q: Are there, as I understand it, some district courts who may have given instructions in the past to hearing officers?

A: Yes.

Q: Are there any similar written instructions to hearing officers today other than the email that Judge Jordan recently sent?

A: No.

Q: Are there any unwritten practices that you have been told to follow but they didn't put it in writing? When I say "they," for the record, the county court at law judges.

A: Will you give me a timeframe for that?

Q: We are talking about now, the last 16 months, the last 18 months.

A: No.

Dkt. 275 at 115-116 (Testimony of Blanca Villagomez).

In addition, Judge Goodhart testified as follows, testifying explicitly on behalf of all of the Defendant Judges 1-15:

⁴ See also Ex. X, at JUDGES000913 (Declaration of Judge Paula Goodhart); JUDGES000916 (Declaration of Judge Bill Harmon); JUDGES000917 (Declaration of Judge Natalie Fleming); JUDGES000919 (Declaration of Judge John Clinton); JUDGES000920 (Declaration of Judge Margaret Stewart Harris); JUDGES000922 (Declaration of Judge Larry Standley); JUDGES000923 (Declaration of Judge Pam Derbyshire); JUDGES000924 (Declaration of Judge Jay Karahan); JUDGES000926 (Declaration of Judge Analia Wilkerson); JUDGES000927 (Declaration of Judge Dan Spjut); JUDGES000931 (Declaration of Judge Michael Fields); JUDGES000935 (Declaration of Judge Jean Spralding Hughes).

⁵ See also Ex. X, at HARRISCO-ODONNELL007239 (Declaration of Blanca Villagomez); HARRISCO-ODONNELL007242 (Declaration of Jill Wallace); HARRISCO-ODONNELL007246 (Declaration of Ron Nichols); HARRISCO-ODONNELL007240 (Declaration of Eric Hagstette).

Q: Have you ever sent any email instructions or verbal instructions to the hearing officers about how to conduct their business?

A: I have never sent them emails or verbally instructed them on how to conduct their business.

Dkt. 276 at 67 (Testimony of Paula Goodhart).

These are just a small number of the many more examples of similar potentially inconsistent, possibly misleading, and apparently false statements offered by Defendants and their attorneys throughout this case in numerous documents and oral statements. As this Court knows, Plaintiffs repeatedly pursued such information through documents and testimony (and Defendants themselves affirmatively offered argument and testimony on the issue) because of the significant relevance of the issue to numerous issues in dispute in this case, including to the merits and to questions of municipal liability.

On January 17, 2018, Plaintiffs requested that Defendants produce all documents, statements, or testimony of any type produced to the Commission, described by the Commission, or referenced by the Commission, whether orally or in writing. Ex. 13. In response, counsel for the Judges stated that they are “not aware” of any relevant information provided to the Commission, Ex. 14, and counsel for the Hearing Officers and Harris County stated that the only referenced letter was from 1995 and “was no longer in effect at the time of the lawsuit.” Ex. 13. This lawsuit, however, was filed in May 2016, and the Commission’s findings specifically stated that the Hearing Officers testified that “until August 2016, ‘the County Criminal Court at Law Judges historically’ had rules that limited the Hearing Officers’ discretion to grant personal bonds. Moreover, if the 1995 letter was no longer in effect, it begs the question of how it was offered as mitigation by the Hearing Officers’ in proceedings concerning judicial conduct violations that occurred based on the videos and other evidence in the record in this case.

Plaintiffs do not raise these issues before the Court lightly. Nevertheless, Plaintiffs are gravely concerned by the Commission’s revelations and believe that this Court’s intervention is necessary and appropriate. Consequently, Plaintiffs invoke this Court’s procedure for filing a pre-motion conference letter, so that they may formally move the Court as follows:

- Compel production of all materials responsive to Plaintiffs’ Requests for Production, including all materials and testimony submitted to the Commission so that Plaintiffs can make an assessment of the seriousness of the apparent misrepresentations and discovery violations;
- Strike all incomplete or insufficient discovery responses and compel timely, corrected, and sworn discovery responses;
- Sanctions as deemed appropriate by the Court, including, but not limited to, reasonable costs, including attorneys’ fees, pursuant to the Court’s discretion.

Respectfully submitted,

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