

STATEMENT OF THE ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS CONCERNING CHARLES DEAN HOOD

Charles Dean Hood was convicted in 1990 of a double murder and sentenced to death. Hood sought relief from his conviction and sentence on the ground that the judge who presided over his trial was then engaged in a romantic relationship with the elected prosecutor who tried the case. Whether those allegations are true has yet to be established, though Hood now seeks a judicial inquiry into those facts. The judge in charge of the case has indicated that he will not take any further action on the case and will refer all motions to the Texas Court of Criminal Appeals.

On June 17, 2008, a stay of execution was granted and later vacated. However, Mr. Hood was not executed due to the fact that the death warrant expired at midnight and there was insufficient time for the Texas Department of Criminal Justice to implement the protocol. A new execution date of September 10, 2008 has now been set for Mr. Hood.

It is now imperative for the Texas courts to immediately order expedited discovery, so that all persons with knowledge about the events ten years ago can be questioned under oath. If the inquiry shows that there was indeed a romantic relationship, Hood's conviction should be vacated, subject to whatever further proceedings are called for by Texas law.

DUE PROCESS

Since success or failure of the prosecution could foreseeably have affected the prosecutor's political future, a romantic relationship between the judge and the prosecutor would have given the latter an interest in the outcome of the case. Whenever any adjudicatory decision must be made, the due process guarantees of the United States Constitution (and, we assume, of the Texas Constitution) demand that the decision maker be impartial.¹ That demand is at its most stringent where the proceeding is a criminal case with a possible sentence of death. The United States Supreme Court has long held that "[e]very procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law."² A romantic relationship between judge and prosecutor would certainly constitute "a possible temptation ... not to hold the balance nice, clear, and true between the state and the accused."³ And, the Constitution requires that a judge "not only must be unbiased but also must avoid even the appearance of bias."⁴

¹ *Morrissey v. Brewer*, 408 U.S. 471, 485-86 (1972) (revocation of parole); *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (termination of welfare benefits).

² *Tumey v. Ohio*, 273 U.S. 510, 532 (1927) (judge may not have a personal interest in costs assessed against convicted defendants); *Ward v. Monroeville*, 409 U.S. 57, 58-60 (1972) (judge may not have interests in fines assessed in his capacity as official of municipality that will receive such fines).

³ As the Massachusetts Supreme Judicial Court has explained, in ordering an evidentiary hearing into an alleged intimate relationship between defense counsel and a prosecutor, "[a] lawyer's personal interests surely include maintaining amicable relations with his relatives, his spouse and

DUTIES OF JUDGE

In light of these constitutional requirements and the basic demands of adjudicatory fairness, Rule 2.11 of the American Bar Association Model Code of Judicial Conduct requires that “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” The same requirement is imposed by Texas Rule of Civil Procedure 18b(2)(a), which applies to recusal of a judge in both civil and criminal cases.⁵ This requirement may be more stringent than the constitutional requirement. In any event, it would have been breached if the alleged romantic relationship actually existed.

Canon 2(A) of the Texas Code of Judicial Conduct provides that: “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.” The Constitution and the recusal rule are law that the judge was required to comply with, so failure to do so would have been a violation of the Code of Judicial Conduct, if the alleged romantic relationship existed.

DUTIES OF PROSECUTOR

Rule 8.04(a)(4) and (6) of the Texas Rules of Disciplinary Conduct forbid a lawyer to “engage in conduct constituting an obstruction of justice” and to “assist a judge ... in conduct that is a violation of applicable rules of judicial conduct or of other law.” Moreover, Rule 8.03(b) requires a lawyer to report a judge to the appropriate disciplinary authority if the lawyer has knowledge that the judge “has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office.”

Whether or not the facts will ultimately establish that violations of the applicable ethics rules and codes of conduct have occurred justifying professional discipline, what is crucial now is that, prior to carrying out the death sentence in this case, the matter be thoroughly investigated and that Mr. Hood’s constitutional rights be fully protected.

anyone with whom he is comparably intimate.” *Commonwealth v. Croken*, 733 N.E.2d 1005, 1011 (Mass. 2000). Thus, defense counsel’s intimate relationship with a prosecutor, if shown to exist, would establish that defense counsel had had a conflict of interest. *Id.* The potential violation of Due Process is even more acute when the intimate relationship involves the prosecutor and the presiding judge in the criminal trial.

⁴ *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 150, 89 S.Ct. 337, 340 (1968).

⁵ See *Westbrook v. State*, 29 S.W.3d 103, 121 (Tex. Ct. Crim. App. 2000).