



HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

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December 16, 2019

Hon. Lina Hidalgo, Harris County Judge

Hon. Rodney Ellis, Harris County Commissioner Precinct 1

Hon. Adrian Garcia, Harris County Commissioner Precinct 2

Hon. Steve Radack, Harris County Commissioner Precinct 3

Hon. Jack Cagle, Harris County Commissioner Precinct 4

RE: Supplemental Notice dated December 13, 2019

Judge Hidalgo and Harris County Commissioners:

The Harris County Criminal Lawyers Association ("HCCLA") is aware Harris County Commissioners Court has added an agenda item regarding the continued employment of the Hon. Colin Amann as magistrate judge. HCCLA is alarmed by the addition of this agenda item and wholly opposes Commissioners Court taking any action.

HCCLA is the largest local criminal defense bar in the United States, with more than 700 active members engaged in defense of citizens accused of criminal acts. HCCLA has, for almost 50 years, stood for criminal justice, criminal justice reform, and against government/judicial overreach. HCCLA has been, and is, unafraid to seek legal redress for our members and their clients in the face of wrong doing by judges, prosecutors, law enforcement, and members of society.

On December 10, 2019, Nassau Bay Police Sgt. Kaila Sullivan was killed in the line of duty. This is the third line of duty death for a local law enforcement officer in the last several weeks. HCCLA joins the rest of Harris County in mourning the loss of yet another first responder.

The Harris County District Attorneys Office ("HCDAO") filed a complaint charging felony murder, alleging Tavoires Henderson caused the death of Sgt. Sullivan. Felony murder is a death caused during the commission of another felony. Texas Penal Code Sec. 19.02(b)(3). Further, HCDAO has publicly stated HCDAO's need for the opportunity to vet the allegations and investigate the facts of Sgt. Sullivan's death before deciding what, if any, additional charges should be filed.

HCDAO filed the felony murder complaint in order to get a warrant issued for Mr. Henderson's arrest as quickly as possible. HCDAO presented the complaint and evidence to a neutral magistrate judge in order to get the warrant issued, as required by statute, the Texas Constitution, and the Constitution of the United States of America. All Texas judges with judicial duties can sit as a magistrate - justices of the peace, municipal judges, magistrate judges, district court judges, etc. The neutral magistrate judge reviewed the complaint and evidence, and found it sufficient to issue the warrant for Mr. Henderson's arrest. HCCLA finds HCDAO's actions legally required, necessary, and prudent under the circumstances.

Mr. Henderson was arrested and taken before a neutral magistrate judge on or about December 12, 2109, as required by law. Previously, Harris County engaged in the unconstitutional practice of setting bonds in magistrate's court without legal representation for the accused. Harris County recently ended this illegal practice, without litigation. HCCLA applauds Harris County Commissioners Court for its foresight in this regard.

Additionally, three previous Harris County magistrate judges were sanctioned by the Texas Commission on Judicial Conduct. HCCLA was among those who filed the complaints with the Texas Commission on Judicial Conduct against these magistrates. The sanctions resulted from these magistrates failing to exercise their discretion in setting personal or low bonds for persons accused of felonies. Instead, these magistrates took direction from elected Criminal District Court judges. A magistrate is only to consider the law, apply the law to the complaints and evidence before the magistrate, and render an independent decision, which these magistrates failed to do.

The Texas Constitution provides for reasonable bail to be set by a neutral magistrate in all cases, except capital murder. See Tex. Const. Art. 1, Sec. 11a; *Ex parte Moore*, 594 Sw2d 449, (CCA 1980)("There can be no doubt that the language of said [Texas Constitution] Article I, § 11a, grants to a *district court and to the district court alone the jurisdiction to deny bail* under the conditions prescribed therein. This constitutionally granted jurisdiction cannot be altered by the fact that a felony less than capital complaint has been filed in the justice of the peace court.")(emphasis supplied).

Mr. Henderson appeared before Magistrate Judge Amann. Judge Amann is well versed in the law, having practiced criminal law or been a magistrate for over 32 years. Mr. Henderson was charged by complaint with felony murder when Mr. Henderson appeared before Judge Amann. The Texas Constitution required Judge Amann to set a bond, as noted above. Had Judge Amann failed to follow the law and denied bond, HCCLA would have filed a complaint against Judge Amann for willfully ignoring the law and his sworn duty under the law.

Further, as a practical matter, Mr. Henderson was not going to be released on bond. Mr. Henderson had been previously released on bond for another felony charge pending in Harris County. By committing another felony while on bond for a felony, Mr. Henderson could be held at no bond on the previous charge, and Mr. Henderson was, in fact, held at no bond on the previous felony charge. Moreover, Mr. Henderson has charges pending in Montgomery County and Galveston County. In the event Mr. Henderson had been able to post bonds on the two Harris County felonies - which Mr. Henderson could not - Mr. Henderson would have been transported to those counties to appear before magistrate judges there.

HCCLA finds this agenda item antithetical to the progress made. Harris County has recently ended its illegal practice of failing to provide counsel to the accused at a magistrate hearing without litigation, as noted above. Harris County recently spent over \$6 million before agreeing to end the illegal and unconstitutional practice of denying personal bonds to low level offenders. As noted above, three (now former) magistrate judges in Harris County have been disciplined for failing to follow the law and act neutrally, as all judges swear an oath to do. This agenda item seeks to punish a magistrate judge for following his oath.

HCCLA is also profoundly disturbed by this intrusion on the rights of the judiciary. Texas and the United States of America operate on the premise there is a separation of powers between the legislative, executive, and judicial branches of government. This bedrock principle of governance is embodied in both Constitutions. Interference by one branch of government with the powers of another branch undermines the very fabric of society. Commissioners Court threatening a magistrate judge's employment not only chills the actions of individual judges, it is an assault on judicial independence and the individual's right to due process of law. Elected judges are entrusted to determine who acts as magistrates and associate judges, not County Commissioners. HCCLA will support any action to address and prevent this intervention in the judicial process.

With all respect, HCCLA requests Harris County Commissioners Court withdraw this item from the agenda. Afford Mr. Henderson all the rights he is due under the law, and the judiciary the powers inuring to this independent branch of government.

Respectfully,

A handwritten signature in black ink, appearing to read 'Neal Davis', with a large, stylized flourish at the end.

Neal Davis, President

Harris County Criminal Lawyers Association

cc: Harris County Magistrate Judges
Harris County Criminal District Court Judges
Harris County Criminal Court at Law Judges