

March 2, 2018

Texas Commission on Judicial Conduct  
P.O. Box 12265  
Austin, Texas 78711

Re: Hon. Michael McSpadden, 209th District Court Judge

Dear Commissioners:

The undersigned organizations write to file a complaint about the Hon. Michael McSpadden, District Judge for the 209th District Court in Harris County, Texas. On February 23, 2018, the Houston Chronicle quoted Judge McSpadden as follows:

Almost everybody we see here has been tainted in some way before we see them . . . . They're not good risks. . . . The young black men—and it's primarily young black men rather than young black women—charged with felony offenses, they're not getting good advice from their parents . . . . Who do they get advice from? Rag-tag organizations like Black Lives Matter, which tell you, 'Resist police,' which is the worst thing in the world you could tell a young black man . . . . They teach contempt for the police, for the whole justice system.

The article suggests that Judge McSpadden made these comments in response to a reporter's questions about administrative policies concerning personal bond in Harris County criminal courts. Specifically, the reporter asked about policies issued by Judge McSpadden, and other Harris County judges, requiring magistrates to deny personal bond in all cases.

Categorically denying personal bond means that every person, no matter their individual circumstances, is required to pay money bail in order to be released from jail. For people who cannot afford to pay their bail, the policy results in de facto orders of pretrial detention. This policy results in disproportionate detention of young black men.

A copy of the Houston Chronicle article is attached to this complaint.

### **Judge McSpadden's Bias Warrants Immediate Suspension and Removal**

If the quotation in the Houston Chronicle article is correct, Judge McSpadden's bias warrants his immediate suspension and removal. The quotation reveals that Judge McSpadden had an administrative policy of denying personal bond motivated by

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bias against young black men, which violates the following Canons of Judicial Conduct:

Canon 1: An . . . honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity . . . of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 3(B)(5): A judge shall perform judicial duties without bias or prejudice.

Canon 3(B)(6): 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, . . . age, . . . or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

Canon 3(C)(1): A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice . . . .

Canon 3(C)(2): A judge should require staff, court officials and others subject to the judge's direction and control to . . . refrain from manifesting bias or prejudice in the performance of their official duties.

Canon 3(C)(3): A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the . . . proper performance of their other judicial responsibilities.

Judge McSpadden's comments indicate that he considers race, sex, and age to be appropriate bases for denying pretrial release. His comments also indicate that he adopted an administrative policy, which was in place for more than ten years, motivated by his belief that young black men should be denied pretrial release. Finally, the Houston Chronicle article reports that Judge McSpadden's administrative policy explicitly directed magistrates to discriminate on the basis of socioeconomic status, denying pretrial release to people without access to wealth while permitting release for similarly situated people who could afford to pay for it.

Adopting a policy that explicitly discriminates on the basis of socioeconomic status, motivated by views that discriminate on the basis of race, gender, and age, was a willful violation of the Code of Judicial Conduct. By keeping this policy in place for more than ten years, Judge McSpadden engaged in willful and persistent conduct

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that was clearly inconsistent with the proper performance of his duties, and cast public discredit upon the judiciary and the administration of justice.

The Commission should recommend Judge McSpadden's immediate suspension to the Supreme Court of Texas. The Commission should also open formal proceedings against Judge McSpadden and recommend his removal from office.

### **Other Harris County Judges' Policies Warrant Immediate Investigation**

The focus of the February 23 Houston Chronicle article was not Judge McSpadden in particular. Instead, the article reported that at least 31 current and former Harris County judges instructed magistrates to deny personal bond in all cases. While these policies were all formally rescinded following a civil rights lawsuit challenging Harris County judges' bail policies, it is unclear what ameliorative action, if any, the criminal judges in Harris County have taken to ensure that magistrates consider personal bond.

An administrative policy of denying personal bond discriminates on the basis of socioeconomic status. Requiring magistrates to deny personal bond deprives magistrates of their discretion to consider ability to pay. Magistrates are thus required to deny pretrial release to people without access to wealth, while permitting release for similarly situated people who could afford to pay for it. All judges who adopted such policies, not just Judge McSpadden, willfully discriminated on the basis of socioeconomic status in violation of the Canons of Judicial Conduct.

Sincerely,

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