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Texas judge faces public hearing for conduct over 2007 death-penalty appeal

11:52 AM CST on Friday, February 20, 2009

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The top judge of Texas' highest criminal court was told Thursday that she'll have to publicly defend her 2007 decision to close the court at 5 p.m. rather than allow a last-minute appeal in the case of a man executed later that night.



Judge Sharon Keller

Sharon Keller, the presiding judge of the Texas Court of Criminal Appeals, will have to justify her conduct – and possibly fight for her job – in a rare public hearing ordered by the State Commission on Judicial Conduct.

The commission ordered an inquiry into whether her behavior "constitutes incompetence in the performance of duties of office" and "casts public discredit on the judiciary."

The hearing could result in a recommendation that the Republican be removed from the court she was first elected to in 1994.

Keller has 15 days to formally respond to the charges. The process, including the hearing and the decision, could take more than a year and a half, The Associated Press reported.

Unusual move

The move "is rare as can be," said Larry Fox, former chairman of the American Bar Association Standing Committee on Ethics and Professional Responsibility. "A once-in-a-decade event."

Fox said the hearing offered a chance "to restore the reputation of the Texas judiciary" after Keller's decision sent shockwaves across the nation.

Keller declined to comment. Her attorney, Chip Babcock, told The Associated Press that she "absolutely and totally denies these accusations."

The "notice of formal proceedings" issued by the commission comes after more than a year of orchestrated public outrage over the handling of Michael Richard's case.

Richard, convicted in the 1986 rape and murder of a woman in Hockley, was slated for execution at 6 p.m. on Sept. 25, 2007, the same day the U.S. Supreme Court accepted a case on the constitutionality of lethal injection.

Richard's lawyers planned to file an appeal on those grounds but had computer problems. When they called the Court of Criminal Appeals to explain the delay, Keller told court officials that the court would close at 5 p.m.

Richard was executed that evening after attorneys were unable to file the appeal to the closed court. Legal experts say it is common practice for courts to accept filings after the close of business, particularly in death-penalty cases.

Scores of complaints

The allegations against Keller state that she was at home, meeting a repairman, when court officials called her with the late-filing request.

They also say she disregarded court procedures by not referring defense requests to file the appeal after hours to the Court of Criminal Appeals judge who was supposed to be handling the case that day.

After Richard was executed, a massive number of complaints were filed with the Commission on Judicial Conduct, said its executive director, Seana Willing.

Willing said a public hearing was more appropriate than the commission's typical confidential hearing.

"The result of what happened was very serious," Willing said. "We can't discount that."

Unlike a private proceeding, a public hearing is "a real adversarial process," she said. Keller now has "this opportunity for due process, to cross-examine and confront witnesses."

Willing said there are three possible outcomes. The charges could be dismissed; Keller could be censured; or a recommendation could be made to the Texas Supreme Court for her removal from office.

Damaged reputation

Brian Wice, a defense attorney and legal analyst for NBC in Houston, said removing Keller is "a very real possibility."

Wice, who clerked at the court before Keller took the bench, counts himself as Keller's friend. He called her actions "knuckleheaded" but said she is a hard worker who "cares deeply about doing her job."

"Her reputation's already been damaged," he said. "I'm glad for Sharon that she'll have the opportunity to be in a public forum where she finally gets to come out swinging."

Keller, a former assistant district attorney in Dallas, was the first woman to serve on the court. She has been controversial for several years, with a tough stance on crime earning her the nickname "Killer Keller."

Jim Harrington, director of the Texas Civil Rights Project, who organized a petition drive for complaints, said the hearing is "a great step towards rehabilitating the criminal justice system and the Court of Criminal Appeals."

The handling of the Richard case was a blot on Texas justice, he said.

After the initial uproar, the court quickly changed its rules to allow for electronic filings.

Keller's actions also are under scrutiny in the state Legislature. Rep. Lon Burnam, D-Fort Worth, has filed a bill seeking her impeachment.

Keller has served as presiding judge since 2000. Her term expires in 2012.