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88th Judicial District Court
State of Texas

EARL B. STOVER, III
DISTRICT JUDGE

FILED FOR RECORD

2018 APR 26 P 3:49

CHYRL POUNDS
DISTRICT CLERK
TYLER COUNTY, TEXAS

P.O. BOX 607
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KOUNTZE, TEXAS 77625
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April 26, 2018

The Honorable Jacques Blanchette
Tyler County Judge
100 West Bluff St. Rm 102
Woodville, Texas 75979

Re: The State of Texas Ex Rel. Andrea Hope Sullivan vs Lou Ann Cloy, In Her
Official Capacity as District Attorney of Tyler County, Texas

Dear Judge Blanchette:

A Petition to Remove the District Attorney has been filed. The District Court has signed an Order for Citation to have the officer served. I am asking the District Clerk to provide you with copies of those documents.

As you may know the Tyler County Commissioner's Court has certain responsibilities in a removal suit under Chapter 87, Local Government Code. Please inform the Commissioner's Court of these actions. You may wish to retain outside counsel to advise and assist the Commissioner's Court.

Yours very truly,

Judge Earl Stover
88th Judicial District Court

cc: Tyler County District Clerk

REMOVAL; FILLING OF VACANCIES
Ch. 87

§ 87.018

(e) In a proceeding to remove a county attorney from office, the district attorney shall represent the state. If the county does not have a district attorney, the county attorney from an adjoining county, as selected by the commissioners court of the county in which the proceeding is pending, shall represent the state.

(f) In a proceeding to remove the county attorney or district attorney from office, the county attorney from an adjoining county, as selected by the commissioners court of the county in which the proceeding is pending, shall represent the state if the attorney who would otherwise represent the state under this section is also the subject of a pending removal proceeding.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 563, § 2, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 3 of Acts 1991, 72nd Leg., ch. 563 provides:

"This Act takes effect September 1, 1991, and applies only to proceedings for removal of a county officer that are instituted on or after the effective date of this Act. A proceeding for the removal of a county officer that was instituted before the effective date of this Act is governed by the law in effect on the date the proceeding

was instituted, and the former law is continued in effect for that purpose."

Prior Laws:

Const. Art. 5, § 24.
Rev.Civ.St.1879, arts. 3391, 3402, 3403, 3408.
Rev.Civ.St.1895, arts. 3532, 3543, 3544, 3549.
Rev.Civ.St.1911, arts. 6031, 6042, 6043, 6048.
Vernon's Ann.Civ.St. arts. 5971, 5977, 5978, 5981.

Cross References

Jurisdiction of district courts, misdemeanors involving official misconduct, see Vernon's Ann.C.C.P. art. 4.05.

Special issues, submission, see Vernon's Ann.Rules Civ.Proc., Rules 277, 279.

Library References

Counties ⇨ 45, 67.
Westlaw Topic No. 104.
C.J.S. Counties §§ 67, 104.

Research References

Encyclopedias

TX Jur. 3d District & Municipal Attorneys § 25, Proceeding for Removal--Conduct of Proceedings.

TX Jur. 3d District & Municipal Attorneys § 26, Representation in Cases of Removal.

TX Jur. 3d Police, Sheriffs, & Constables § 86.1, Jury Charge.

TX Jur. 3d Public Officers & Employees § 129, Parties.

TX Jur. 3d Public Officers & Employees § 135, Jury Trial.

TX Jur. 3d Public Officers & Employees § 136, Submission of Case.

TX Jur. 3d Public Officers & Employees § 137, Verdict and Findings; Questions for Court and Jury.

Forms

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 79:7, Removal of County Officers.

Treatises and Practice Aids

Brooks, 35 Tex. Prac. Series § 7.21, Removal from Office -- in General.

Westlaw Electronic Research

See Westlaw Electronic Research Guide following the Preface.

§ 87.017

Note 7

§ 87.017(a) to perform the duties of a district attorney may not describe himself in campaign literature as a holder of the office of district attorney. *Tex.Ethics Comm.Op. No. 196 (1994)*.

8. Recovery on bond

Exemplary damages were not recoverable under a temporary sheriff's bond given by direction of court to secure the sheriff for all damages and costs sustained because of an unlawful suspension from office. *McMulin v. Ellis (Civ.App. 1898) 48 S.W. 217*.

The judgment removing an officer is a bar to an action on the bond for fees during his suspension. *Eberstadt v. State (Civ.App. 1898) 20 Tex.Civ.App. 164, 49 S.W. 654, error refused*.

County judge and sureties on his bond, sued by removed judge who obtained reversal of judgment of removal against the county judge and the sureties on his bond, conditioned to pay all damages that plaintiff might sustain by reason of such temporary removal, were liable on the bond for the entire period of codefendant's occupancy of office of county judge. *Lowe v. Johnson (Civ.App. 1924) 259 S.W. 1004, dismissed w.o.j.*

In suit on bond given by constable who was temporarily appointed in suit for removal of incumbent constable conditioned on payment of damages allegedly sustained by incumbent "in case it should appear that the cause or causes of removal are insufficient or untrue," incumbent had burden of showing liability on the bond. *Ormes v. Quinn (Civ.App. 1938) 113 S.W.2d 242. Sheriffs And Constables ⇐ 13*

9. Wrongful suspension

Petition of ousted sheriff against appointee in his place and his sureties for wrongful suspen-

ORGANIZATION OF COUNTY GOVERNMENT Title 3

sion was not demurrable. *Kelley v. Reeves (Civ.App. 1927) 292 S.W. 654, error refused. Sheriffs And Constables ⇐ 168(1)*

District judge temporarily suspending county judge under statutory authority in removal suit was not civilly liable therefor, though suspension order was allegedly entered negligently, willfully, or maliciously. *Morris v. McCail (Civ. App. 1932) 53 S.W.2d 667. Judges ⇐ 36*

In action by county judge for damages resulting from institution and prosecution of removal suit by defendants, and from plaintiff's temporary suspension from office as result of conspiracy, defendants were not liable, at least where no loss of emoluments of office was alleged or proved. *Morris v. McCail (Civ.App. 1932) 53 S.W.2d 667. Malicious Prosecution ⇐ 14*

Where proceeding for removal of constable was dismissed on ground of insufficiency of verification of petition, without decision on whether cause for removal existed, existence and sufficiency of cause for removal became an issue in suit for damages against acting constable, who was appointed pending removal proceedings, and sureties on his bond, and hence petition not alleging that causes of removal were insufficient or untrue was demurrable. *Ormes v. Quinn (Civ.App. 1938) 113 S.W.2d 242. Sheriffs And Constables ⇐ 13*

Sheriff's appeal of his removal from office for official misconduct and incompetence was not moot, even though sheriff had pleaded guilty to two misdemeanor offenses of official misconduct; if Court of Appeals were to reverse removal, sheriff would have been entitled to his salary between date of his suspension and date of his resignation. *De Anda v. State (App. 4 Dist. 2004) 131 S.W.3d 198. Sheriffs And Constables ⇐ 6*

§ 87.018. Trial

(a) Officers may be removed only following a trial by jury.

(b) The trial for removal of an officer and the proceedings connected with the trial shall be conducted as much as possible in accordance with the rules and practice of the court in other civil cases, in the name of the State of Texas, and on the relation of the person filing the petition.

(c) In a removal case, the judge may not submit special issues to the jury. Under a proper charge applicable to the facts of the case, the judge shall instruct the jury to find from the evidence whether the grounds for removal alleged in the petition are true. If the petition alleges more than one ground for removal, the jury shall indicate in the verdict which grounds are sustained by the evidence and which are not sustained.

(d) The county attorney shall represent the state in a proceeding for the removal of an officer except as otherwise provided by Subsection (e) or (f).