

**Judgment and Public Admonition issued August 10, 2018**



**DOCKET NO. SCR 18-0005**

**SPECIAL COURT OF REVIEW**

**IN RE INQUIRY CONCERNING HONORABLE STACEY BOND**

**OPINION**

This Special Court of Review<sup>1</sup> is assigned to conduct a trial de novo<sup>2</sup> of the State Commission on Judicial Conduct’s Public Admonition issued against Respondent, the Honorable Stacey Bond, the former Judge of the 176th Judicial District Court in Houston, Harris County, Texas. We note at the outset that the function of the Commission “‘is not to punish; instead, its purpose is to maintain the honor and dignity of the judiciary and to uphold the administration of justice for the benefit of the citizens of Texas.’” *In re Slaughter*, 480 S.W.3d 842, 844-45 (Tex. Spec. Ct. Rev. 2015) (per curiam) (quoting *In re Lowery*, 999 S.W.2d 639, 648 (Tex. Rev. Trib. 1998, pet. denied)). Similarly, a special court of review is not charged with punishing but with providing guidance to judges and protection to the public. *In re Davis*, 82 S.W.3d 140, 150 (Tex. Spec. Ct. Rev. 2002).

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<sup>1</sup> See TEX. GOV’T CODE ANN. § 33.034 (West Supp. 2017). This special court of review consists of Justice Rebeca C. Martinez of the Fourth Court of Appeals, presiding by appointment; Justice Leanne Johnson of the Ninth Court of Appeals, participating by appointment; and Justice Wade Birdwell of the Second Court of Appeals, participating by appointment.

<sup>2</sup> Review of a sanction issued in an informal proceeding is by trial de novo. TEX. GOV’T CODE ANN. § 33.034(e)(2) (West Supp. 2017).

## BACKGROUND

On December 8, 2015, Judge Bond presided over the aggravated sexual assault trial of Keith Hendricks. The complainant was a woman named Jane Doe,<sup>3</sup> who was homeless at the time she was sexually assaulted. At the time of trial, Ms. Doe was living in Longview, Texas. The day before trial, Harris County District Attorney Investigator Brandon Plagens transported Ms. Doe from Longview to Houston without a subpoena. Although the case had been set for trial previously, Ms. Doe was never served with a subpoena.

On direct examination of the State, Ms. Doe's testimony was incoherent. Judge Bond took a break, excused the jury, and asked counsel to approach the bench while Doe remained on the witness stand "making unintelligible noises." The following exchange occurred between Judge Bond and Assistant District Attorney Nick Socias:

Court: You have a plan for how you'd like to proceed?

Socias: Nope.

Court: Do you think her current state is permanent or –

Socias: It's – I couldn't tell what caused it. I know what you're thinking. I have never noticed it not be this.

Court: Okay, so a delay doesn't help you.

\* \* \*

Mr. Plagens: I think it's the stress.

According to the transcript from the trial, Judge Bond believed Ms. Doe's responses were nonsensical and that she appeared to be responding to "internal stimuli." Plagens offered his opinion that it was stress related since the witness "does not want to be here." Judge Bond gave counsel five minutes to decide how to "handle it." Prosecutor John Wakefield then announced, "Another option, just throwing it out there, maybe what we can do, is there any way we can do some sort of a witness bond for her, give her, like, maybe a couple hours to try and dry out and then maybe later on the trial?" Judge Bond recessed for five minutes, returned and brought the

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<sup>3</sup> To respect her privacy, we refer to the complainant by the pseudonym Jane Doe.

jury back into the courtroom and recessed for lunch, advising Ms. Doe to return to resume her testimony at 12:45 p.m. Ms. Doe acknowledged the court by nodding in affirmance.

At 1:00 p.m., outside the jury's presence, Assistant District Attorney Nick Socias informed Judge Bond that Ms. Doe had been taken into custody "for mental health reasons."<sup>4</sup> Socias stated he had observed her to be a danger to herself, and he heard her say she was not going to return and he observed her asking random people for a ride so she could leave the courthouse. Socias asked, "At this point, since also she was absent, we were asking for a witness bond just to ensure her presence and that her release is back into our custody and not released out into the street." Defense counsel Easterling objected to any delay and suggested to Judge Bond that she bring Ms. Doe into court to determine "what kind of shape she really is in after lunch. Let's see what kind of answers and questions we can get from her now. I'm not challenging what he says, I'm not questioning what he says, but if she's safely in custody then she can be brought into the courtroom and we can see where we go from this." Socias then interjected, telling Judge Bond that Ms. Doe had attempted suicide years earlier, and that she had asked how many sleeping pills would be enough to kill herself. Socias then asked for a continuance to allow Ms. Doe to be properly evaluated for competency. Judge Bond granted the continuance, and, having previously determined off the record a mutually convenient date from counsel, recessed the case until January 11, 2016, with no further discussion regarding Ms. Doe.

Judge Bond then signed a form titled "Writ of Attachment or Bench Warrant" (hereinafter, "Writ"). It named Jane Doe as a "Witness taken on mental health warrant now located in NPC."<sup>5</sup>

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<sup>4</sup> Prosecutor Socias testified Ms. Doe had been taken by the Houston Fire Department. Only later did her learn that she was taken to St. Joseph's Hospital under a mental health warrant.

<sup>5</sup> Judge Bond testified that NPC stands for NeuroPsychiatric Center.

The writ form listed various custodians including the state hospital, the jail facility, any peace officer of the Sheriff, none of which were circled. It then states,

The above named individual is a witness or defendant in the above styled and numbered case. The case is set on the court's docket for January 11, 2016 at 8:00 a.m. in the Harris County District or County court listed above. Witness bond is fixed at \$10,000. So that he may appear before this Court, we ORDER you to deliver the above named individual to the custody of the Harris County Sheriff or any of his deputies.

The date and amount of the bond were written in by hand, and the remainder was typed.

Investigator Plagens testified that on December 18, 2015, it was his understanding that Ms. Doe was being released from St. Joseph's Hospital. According to Plagens, before she was released, Plagens was informed that there was a witness bond for Ms. Doe and she was going to be released from St. Joseph's, and he coordinated with the Constable's Office in Precinct 1 to transport her from St. Joseph to the Harris County Inmate Processing Center. Plagens testified that Precinct 1 was the division that handled mental health transports. According to Plagens, he knew that the Harris County Sheriff's Department had a mental health division, and he assumed that Doe was being transferred from St. Joseph's to the mental health division. Plagens testified that he assisted in her transport "to make sure that Jane Doe—all of her medical stuff and everything else was also transported along with her." According to him, the "IPC"<sup>6</sup> at the Sheriff's Office took Ms. Doe into custody on December 18, 2015, and it held her in custody until she was released on January 14, 2016. Plagens testified that he had received an email dated either December 24 or 25, around Christmastime, that informed him Ms. Doe was in general population at the Harris County Jail and not in the mental health division of the facility, because of the bench warrant issued by Judge Bond. Plagens testified he made unsuccessful efforts to have Ms. Doe moved to the mental health

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<sup>6</sup> Plagens testified that IPC stands for Inmate Processing Center.

division and out of general population. During her custody at the jail, Ms. Doe was assaulted by another inmate. On January 8, 2016, Ms. Doe also allegedly had an altercation with a guard and Ms. Doe was then charged with the offense of assault of a public servant. Her assault case was then assigned to Judge Bond's court.

On January 11, 2016, the date Hendricks's trial was scheduled to reconvene, the Sheriff's Office transported Ms. Doe to Judge Bond's court to make an appearance on the assault charge. After an off-the-record conference, Judge Bond indicated on the record that she had been informed that Ms. Doe was charged over the weekend for assaulting a guard "while she was housed in the county jail," and that Socias had made no "deals" with Ms. Doe in exchange for her testimony in Hendricks's trial that day. Responding to questions from defense counsel Easterling, Socias explained why Ms. Doe's case landed in Judge Bond's court, stating, "she's attached in this court." Easterling asks, "And she doesn't have an attorney as we speak right now, to your knowledge, right?" Socias responds, "I don't know." Judge Bond then stated, "I'm not aware of it. But like I said, I haven't had an opportunity to even hear PC because the females have not been delivered this morning." After Hendricks arrived, his trial resumed, with the jury being brought in and Ms. Doe resuming her testimony. Later that day, Judge Bond signed an Order of Transfer recusing herself from Ms. Doe's assault case, noting, "This defendant testified as a complaining witness in a jury trial before me. I have a great deal of sympathy for this individual. It would be improper for me to oversee her case. I would feel terrible about punishing her." The Harris County District Attorney's Office subsequently dismissed the felony assault charge against Ms. Doe. Three days later, on January 14, 2016, Judge Bond released Ms. Doe from her material witness bond, and Ms. Doe was released from the Harris County Jail.

A grievance was filed with the Commission against Judge Bond. After informal proceedings, the Commission concluded that Judge Bond violated Canons 2A and 3B(2) of the Code of Judicial Conduct and publicly admonished her. TEX. CONST. art. V, § 1-a(8); TEX. CODE OF JUD. CONDUCT, Canons 2A, 3B(2), reprinted in TEX. GOVT. CODE ANN. tit. 2, Subtit. G, app. B (West 2013).

Judge Bond appealed the ruling of the Commission to this Special Court of Review. By statute, the review by the special court of review is de novo. *See* TEX. GOV'T CODE ANN. §§ 33.001(a)(11), 33.034(f)(2) (West Supp. 2017). In the charging instrument now before us, the Commission added additional charges. *See id.* at § 33.034(d). In four charges, the Commission asserts violations of Canon 2A, 3B(2) and Canon 3B(8), as well as violations of article V, section 1-a(6) of the Texas Constitution.

This Special Court of Review timely convened a trial at which the Examiner and the Respondent appeared. The parties presented witnesses and documentary evidence. *See* TEX. GOV'T CODE ANN. § 33.034(e), (h). Having considered the evidence, the arguments of counsel, and the pre- and post-trial briefing of the parties, we issue our decision disposing of the appeal.

#### **RELEVANT STANDARDS AND BURDEN OF PROOF**

The Texas Constitution provides that a judge may be disciplined “for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice[.]” TEX. CONST. art. V, § 1-a(6)A. For purposes of article V, section 1-a, “willful or persistent conduct that is clearly inconsistent with the proper performance of” a judge’s duties includes a willful violation of a provision of the Code

of Judicial Conduct.” TEX. GOV’T CODE ANN. § 33.001(b)(2). Willful conduct requires a showing of intentional or grossly indifferent misuse of judicial office, involving more than an error of judgment or lack of diligence. *In re Davis*, 82 S.W.3d 140, 148 (Tex. Spec. Ct. Rev. 2002); *In re Bell*, 894 S.W.2d 119, 126 (Tex. Spec. Ct. Rev. 1995). A judge need not have specifically intended to violate the Code of Judicial Conduct; a willful violation occurs if the judge intended to engage in the conduct for which he or she is disciplined. *Davis*, 82 S.W.3d at 148; *In re Barr*, 13 S.W.3d 525, 539 (Tex. Rev. Trib. 1998).

For legal error to rise to the level of judicial misconduct, a legal ruling or action must be “made contrary to clear and determined law about which there is no confusion or question as to its interpretation,” and the complained-of legal error additionally must be (1) egregious, (2) made as part of a pattern or practice of legal error, or (3) made in bad faith. *In re Ginsberg*, No. 18-0001, 2018 WL 2994940, at \*4 (Tex. Spec. Ct. Rev. June 11, 2018) (quoting *Barr*, 13 S.W.3d at 545). “Egregious” means “[e]xtremely or remarkably bad; flagrant,” or “shocking.” *Id.* at \*5 (citations omitted).

As this review is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of a civil action, the Commission had the burden to prove the charges against Judge Bond by a preponderance of the evidence. *See* TEX. GOV’T CODE ANN. §33.034(f); *In re Sharp*, 480 S.W.3d 829, 833 (Tex. Spec. Ct. Rev. 2013).

### **CHARGES**

Canon 2A of the Code of Judicial Conduct provides, in relevant part, that “[a] judge shall comply with the law . . .” *See* Tex. Const. art. V, § 1-a(6)(A); Tex. Code Jud. Conduct, Canon 2(A). Canon 3B(2) provides, in relevant part, that “[a] judge shall be faithful to the law and shall maintain professional competence in it.” *See id.*, Canon 3B(2). Canon 3B(8) provides, in relevant

part, that “[a] judge should accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.” *See id.*, Canon 3B(8)).

The Commission alleged Judge Bond’s behavior represented willful conduct that violated multiple Canons of the Texas Code of Judicial Conduct, as well as the Texas Constitution, as follows:

**A. Charge I: Canon 2A/3B(2)**

Judge Bond violated the joint mandates of Canons 2A and 3B(2) that she comply with and maintain competence in the law when she issued an instrument described as a “Writ of Attachment or Bench Warrant” with a corresponding \$10,000 bond for Ms. Doe on December 8, 2015, which resulted in Ms. Doe’s involuntary confinement in jail for approximately twenty-eight days, when Ms. Doe did not meet any of the legal prerequisites for a writ of attachment, and was given no due process regarding either the validity of the writ of attachment or her subsequent confinement.

**B. Charge II: Canon 3B(8)**

Judge Bond violated Canon 3B(8)’s mandate to afford every defendant a right to be heard by failing to appoint counsel (or other representative such as a guardian ad litem) for Ms. Doe, and failing to hold a hearing at which Ms. Doe (or her counsel) could be heard regarding the terms of Ms. Doe’s bond, at minimum, and her confinement.

**C. Charge III: Texas Constitution, Art. V, sect. 1-a(6)**

By signing the Writ of Attachment or Bench Warrant, which caused a crime victim to be incarcerated without due process of law, Judge Bond cast public discredit on the judiciary and the administration of justice in violation of Article V, Section 1-a(6) of the Texas Constitution.

**D. Charge IV: Texas Constitution, Art. V, sect. 1-a(6)**

By signing the Writ of Attachment or Bench Warrant, which caused a crime victim to be incarcerated without due process of law, Judge Bond engaged in willful conduct that is “clearly inconsistent with the proper performance of [her] duties” in violation of Article V, Section 1-a(6) of the Texas Constitution.

**DISCUSSION**

**I. Canons 2A and 3B(2)**

The Commission alleges that by issuing the order that incarcerated Ms. Doe for nearly a month in violation of her due process rights, Judge Bond violated Canons 2A and 3B(2). The

Commission focuses on the premise that Judge Bond lacked the legal authority to issue a writ of attachment.

An “attachment” is:

a writ issued by a clerk of a court under seal, or by any magistrate, or by the foreman of a grand jury, in any criminal action or proceeding authorized by law, commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury on a day named, or forthwith, to testify in behalf of the State or of the defendant, as the case may be. It shall be dated and signed officially by the officer issuing it.

TEX. CODE CRIM. PROC. ANN. art. 24.11 (West 2009).

Article 24.12 of the Code of Criminal Procedure governs when a writ of attachment may issue. The State is entitled to have a writ of attachment issued for a witness who resides “in the county of the prosecution” and has “been duly served with a subpoena to appear and testify in any criminal action” and “fails to so appear[.]” *Id.* art. 24.12.<sup>7</sup>

The Examiners assert Judge Bond’s Writ of Attachment was legally and factually incompetent for several reasons. First, in December 2015, Ms. Doe did not reside in Harris County, and thus the trial court lacked statutory authority to issue a writ of attachment under article 24.12 as she did not reside in the county of prosecution.<sup>8</sup> Second, the State never served Doe with a subpoena for her appearance. It is undisputed that Ms. Doe voluntarily agreed to come to Houston to testify. Third, at the time Judge Bond signed the writ of attachment, Ms. Doe had not failed to appear at a criminal proceeding. *See Boyle v. State*, 820 S.W.2d 122, 128 (Tex. Crim. App. 1989), *overruled on other grounds by Gordon v. State*, 801 S.W.2d 899 (Tex. Crim. App. 1990) (“[I]t is elementary that an attachment for a witness is not authorized until the witness fails

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<sup>7</sup> Article 24.12 was amended in 2017; we cite to the version in place in 2015.

<sup>8</sup> Even if Judge Bond had considered Ms. Doe to be an out-of-county witness, refusal to obey a subpoena would have still been required. *See TEX. CODE CRIM. PROC. ANN. art. 24.22* (West 2009).

to obey a properly served subpoena.”). To the contrary, Ms. Doe did appear and then suffered a mental health crisis which led to her involuntary hospitalization pursuant to a mental health warrant. Therefore, the Examiners contend that Judge Bond had no statutory authority for the issuance of the Writ of Attachment and that it was an unlawful order.

Judge Bond initially testified that she believed that Ms. Doe had appeared pursuant to a subpoena, but later testified that she would have issued the warrant anyway even if she had known that Ms. Doe had appeared without a subpoena. Judge Bond contends that once Ms. Doe appeared to testify, Doe subjected herself to the jurisdiction of the court and therefore a subpoena was not required. *See Almanza v. State*, 535 S.W.3d 585, 589 (Tex. App.—Waco 2017, no pet.) (“In any case, criminal or civil, if a person appears at trial to be a witness, the trial court has jurisdiction of the witness for purposes of administering the witness oath, regulating the process of obtaining the witness’s testimony, placing the witness under ‘the Rule’ pursuant to Rule 614 of the Rules of Evidence, and even compelling the continued presence of the witness for the duration of the trial.”). If Judge Bond had simply issued a contempt order for Ms. Doe after she failed to appear after the lunch break, then we agree that the reasoning in *Almanza* would apply. Under the facts before us, we find *Almanza* inapposite to whether Judge Bond engaged in sanctionable conduct.

In the case at bar, the Writ of Attachment or Bench Warrant was issued at a time when the witness was already subject to and in custody under a mental health warrant issued by a different judge and different court.<sup>9</sup> Judge Bond admitted that she never reviewed the mental health warrant

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<sup>9</sup> None of the documents from the mental health proceeding were submitted or provided to this Special Court of Review. Both parties admit that at the time Judge Bond issued her Writ of Attachment, the witness was already in the custody of the mental health facility pursuant to “a mental health warrant” issued by a separate court. The Texas Health and Safety Code provides for the involuntary detention of a person for a mental health assessment under certain circumstances. *See e.g.*, Chapters 573 and 574 of the TEX. HEALTH & SAFETY CODE ANN., tit. 7, chapters 573 (“Emergency Detention”), 574 (“Court-Ordered Mental Health Services”) (West 2017 and Supp. 2017). If an emergency detention warrant is issued and the person is transported to and detained involuntarily at a mental health facility, a physician must examine the patient within forty-eight hours of detention and if the physician does not certify the need for further detention pending a probable cause hearing, the patient must be released. *Id.* §§573.021(b),

at any time. Judge Bond testified she signed the Writ of Attachment, which clearly identified Jane Doe by name<sup>10</sup> and that Jane Doe was a “witness taken in on mental health warrant now located in NPC.” Judge Bond identified the writ as a form presented to her for signature, and she testified that she was required to set a witness bond, which the judge set in the warrant at \$10,000.

Even assuming that Ms. Doe subjected herself to the jurisdiction of the court upon testifying, we nonetheless find that Judge Bond committed an egregious legal error when she signed the Writ of Attachment against an individual then detained under a mental health warrant.<sup>11</sup> Judge Bond testified that she assumed, based on her “experience,” that Ms. Doe would be medically “committed” for at least thirty days.<sup>12</sup> Even so, the continuation of the Hendricks trial was not scheduled to reconvene until January 11, 2016, which was greater than thirty days from the date Ms. Doe was first transported for medical care under the mental health warrant. Judge Bond admitted to having contemplated the possibility that Ms. Doe would be discharged earlier than January 11th. If Ms. Doe were to be medically released from the mental health warrant before January 11, Judge Bond testified that she expected the sheriff to then transport Ms. Doe immediately back to Judge Bond’s court and, at that time, Judge Bond testified that she would have likely given Ms. Doe a personal recognizance bond.

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573.023(a). There are statutory provisions in the Health and Safety Code that expressly provide for a hearing and the appointment of counsel to extend a person’s detention beyond 48 hours. *Id.* §574.003. In addition, the Code provides for restrictions upon the location where such person may be held in custody at the jail, including the express prohibition for the person’s detention in the general population, absent extreme circumstances. *See*, §§573.001(f), 574.027(c).

<sup>10</sup> Written below Jane Doe’s name on the writ is an identifying number. It is unknown whether the number assigned to Jane Doe is from the jail or NPC.

<sup>11</sup> We have found no authority in the Code of Criminal Procedure that authorizes the issuance of a bench warrant for a person who is in custody and confined under a mental health warrant or detention order, as Ms. Doe was at the time Judge Bond signed the Writ of Attachment.

<sup>12</sup> Judge Bond testified she believed Ms. Doe would spend thirty days in the mental health unit, stating, “My experience with folks who get committed to restore competency, that is generally a 30-day process.”

Based upon the testimony and evidence presented to the Special Court of Review, it appears that Judge Bond granted the State's request to detain Ms. Doe to guarantee her presence at the continuation of the Hendricks trial. According to the trial transcript from December 8, 2015, Judge Bond disregarded the suggestions, first from prosecutor Wakefield and later from defense counsel Easterling, to attach the witness in custody and bring the witness to her court for a determination of Doe's "mental capacity." While that decision could be explained by Judge Bond's reliance upon the court that issued the mental health warrant having already made a determination of Doe's mental capacity, Judge Bond made no effort to include language in the Writ of Attachment or Bench Warrant Judge Bond issued to require the custodian to bring Doe to her court "instanter" upon Doe's immediate release from the mental health warrant, nor did she delay signing the writ of attachment so she could then make an effort to determine whether the requisite facts were present under the applicable law governing when a writ of attachment may issue. At no time did Judge Bond determine the scope or extent of the jurisdiction exercised by the court issuing the mental health warrant. Judge Bond admits that after she signed the Writ of Attachment on December 8th, she made no further inquiry regarding Ms. Doe until January 11th, and that she did not obtain a copy of or review the mental health warrant. Judge Bond was aware the witness was subject to a mental health warrant, yet disregarded the pending jurisdiction of the probate court and the provisions set forth under Chapters 573 and 574 of the Health and Safety Code. We conclude based on a preponderance of the credible evidence before us that Judge Bond executed the writ of attachment for the sole purpose of detaining Ms. Doe to guarantee the presence of the State's witness at trial, and that she issued the warrant at a time when the witness was subject to the jurisdiction of the court that issued the mental health warrant. Additionally, when asked whether she could have waited until January 11, 2016 to determine if the witness would appear –

voluntarily or under new subpoena -- and, if she did not, only then issue a writ of attachment for the witness, Judge Bond answered, “I could have, yes.”

Judge Bond agreed on cross-examination that Ms. Doe was denied due process of law. When asked who denied her that due process, Judge Bond answered, “I think the - - it was a perfect storm that denied her the due process.” Judge Bond agreed that she was part of that perfect storm by signing the Writ of Attachment.

It is clear that Judge Bond appears to be remorseful for the treatment of Ms. Doe while in the custody of the Sheriff. Nevertheless, Judge Bond contends that she followed the applicable law and that she should not be sanctioned because at most she merely made a mistake in signing a poorly worded form for a Writ of Attachment or Bench Warrant for a material witness. While mere mistakes of law generally are not sanctionable, on the record before us, we conclude that Judge Bond made an egregious legal error and failed to act in a manner that promotes confidence in the integrity and impartiality of the judiciary. *See* TEX. CONST. art. V, §1-a(6)(a).

A judge has a duty to inform herself of the law. *See* Tex. Code Jud. Conduct, Canon 2A (“A judge shall comply with the law[.]”); *In re Barr*, 13 S.W.3d at 556-57. It is incumbent on a trial judge to determine the scope of her lawful authority before exercising it. *See* Tex. CODE JUD. CONDUCT, Canon 2A. While a trial judge may reasonably rely on court personnel and officers of the court to provide her information affecting the due course of proceedings in her court, it is the independent obligation of the trial judge to act knowledgeably and within the confines of the law. A judge must remain a neutral arbiter to protect the public’s confidence in the integrity and impartiality of the court. *Id.* We find that Judge Bond failed to inform herself of the law and failed to comply with the law when she granted the State’s request to issue an order, in the form of a writ, to detain Ms. Doe upon her medical release and until trial without consideration of whether the

witness was subject to a subpoena, and without consideration of minimum due process and constitutional guarantees. Judge Bond knowingly issued the subject writ without first determining her lawful authority to do so in compliance with the law.

## **II. Canon 3B(8)**

In its second charge, the Commission alleges that Judge Bond violated Canon 3B(8) when she failed to hold a hearing for Ms. Doe after she signed the Writ of Attachment and failed to appoint Ms. Doe an attorney or other advocate before incarcerating her. Judge Bond testified that she would routinely hold a probable cause hearing for every defendant in her court that was in custody.

Ms. Doe was not returned to court until January 11, 2016—the date provided in Judge Bond’s Writ of Attachment. Although Judge Bond stated it was not her intention to confine Ms. Doe to jail, she agreed that her writ played a role in Ms. Doe’s confinement. Judge Bond knew on January 11, 2016, that Ms. Doe remained confined in jail, yet did not provide her a hearing, reduce her bond, or appoint counsel. Judge Bond did not release Ms. Doe from the writ issued by her court until January 14, 2016, three days after Ms. Doe completed her testimony in the Hendricks case.

Judge Bond acknowledged that she failed to include language in the Writ such as “instanter” or “forthwith” and to require the custodian to immediately bring Ms. Doe before Judge Bond’s court, at which point Judge Bond claims she would have held a hearing and informed Ms. Doe of her rights and the consequences of failing to appear. Judge Bond testified she fixed a \$10,000 bond so that there would be an “avenue for a PR bond.” While acknowledging that the right to have an attorney attaches when “a person is in jeopardy of being in custody,” Judge Bond argued that she had no duty to appoint counsel or hold a hearing for Ms. Doe because, at the time,

Ms. Doe was not a defendant and had no right to notice of the Writ of Attachment or the date of trial, a hearing, or the appointment of counsel.

We find Judge Bond’s position regarding Ms. Doe’s lack of any due process rights troubling. A judge must accord to every person with a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. *See* TEX. CONST. art. V, § 1-a(6)(A); Tex. Code Jud. Conduct, Canon 3B(8)). Judge Bond argues that once Ms. Doe began testifying, she subjected herself to the court’s jurisdiction and until she was released by the court, the trial court had the inherent power to require the witness to reappear. Judge Bond also argues that as a witness, rather than a defendant, witnesses are not granted due process rights. The question under 3B (8) is not only whether Judge Bond had jurisdiction to require a testifying witness to return and complete her testimony, but rather whether Ms. Doe, as the complaining witness and victim, became “a person with a legal interest” in the proceeding with a right to be heard according to law. The subsequent enactment of article 24.111 of the Code of Criminal Procedure, purportedly in response to the events in this case, did not negate the inherent procedural requirements for a writ of attachment as outlined in the governing statute, nor Judge Bond’s obligation to accord every person with a legal interest and subject to a writ of attachment under the circumstances of this case a right to be heard. *See* TEX. CODE CRIM. PROC. ANN. art. 24.111 (West 2017) (now expressly requiring a trial court to appoint an attorney for a witness and hold a hearing before issuing a writ of attachment).<sup>13</sup> We cannot agree with Judge Bond’s contention that at the time she signed the Writ, she was so authorized under the statute in the manner as she did. Here, Judge Bond sought to attach a witness subject to the jurisdiction of another court under a mental health warrant, with the

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<sup>13</sup> The Supreme Court has explained that a material witnesses under federal law should be accorded the same constitutional right to pretrial release as other federal detainees. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 733 (2011) (citing 18 U.S.C. §3144).

intent to restrict Ms. Doe’s liberty and to hold her in custody until her testimony was complete, without regard to the applicable law or the exercise of jurisdiction from a separate court over the same person.

**III. Article V, Section 1-a(6) of the Texas Constitution—Casting Public Discredit on the Judiciary and the Administration of Justice**

By its third charge, the Commission alleges Judge Bond cast public discredit on the judiciary and the administration of justice.<sup>14</sup> The Commission argues that rather than protect Ms. Doe’s due process rights, Judge Bond sentenced her to jail where she was further assaulted. Judge Bond’s only reply to this charge is that she did not act willfully. On the record now before us, as outlined above, we find that Judge Bond’s actions publicly discredited the judiciary and the administration of justice. *See* TEX. CONST. art. V §1-a(6).

**IV. Article V, Section 1-a(6) of the Texas Constitution—Act Clearly Inconsistent with the Proper Performance of [Judge Bond’s] Duties**

In its fourth charge, the Commission alleges that Judge Bond’s incompetent and unlawful writ led to the incarceration of a mentally ill rape victim, which is clearly inconsistent with the proper performance of her duties. Judge Bond spent more than twenty years as a prosecutor and a defense attorney, and at the time of the events in question, was board certified in criminal law and had served four years on the bench. She testified, “as a prosecutor, the cases are set for trial. If your witness who has been personally served doesn’t show, then you ask the judge to issue a writ of attachment.” Despite her extensive knowledge of the law and the judicial system, Judge Bond issued a writ of attachment for a witness who was not under subpoena and who had voluntarily appeared in court. Ms. Doe was initially held on a mental health warrant, and then after being released from the mental health facility, Ms. Doe was transported to jail, where she

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<sup>14</sup> The Examiner referenced THE WASHINGTON POST article published on July 21, 2016 which recounted the facts surrounding Ms. Doe’s detention without counsel pending her testimony in the Hendricks trial.

remained, until her release. The Examiner contends that in signing the writ, Judge Bond exhibited conduct clearly inconsistent with the proper performance of her duties. Judge Bond's response is that, again, she did not act willfully. While Judge Bond's actions were done in her judicial capacity, we find under the circumstances of this case that the writ of attachment was "made contrary to clear and determined law about which there is no confusion or question as to its interpretation," and the complained-of legal error was egregious and inconsistent with the proper performance of her duties. *See In re Ginsburg*, 298 WL 2999490, at \*4.

## **V. Appropriate Sanction**

Upon a finding of judicial misconduct, the imposition of sanctions must necessarily be decided on a case-by-case basis. *In re Canales*, 113 S.W.3d 56, 73 (Tex. Rev. Trib. 2003). After an informal proceeding, the Commission may address judicial misconduct by (1) ordering additional education; (2) issuing a private sanction; or (3) issuing a public sanction. TEX. GOV'T CODE ANN. § 33.001(a)(10) ("Sanction" means an order issued by the commission under Section 1-a(8)..., providing for a private or public admonition, warning, or reprimand or requiring the person to obtain additional training or education."). Ranked in order of increasing severity, private and public sanctions can include admonitions, warnings, and reprimands. *Id.*; *see also* Frequently Asked Questions, Office of State Commission on Judicial Conduct, <http://www.scjc.texas.gov/faqs/>. Admonition is the lowest level sanction. *In re Roach*, No. SCR 18-0006, slip op. at \*32 (Tex. Spec. Ct. Rev. July 24, 2018), available at <http://www.scjc.texas.gov/opinions/>.

The purpose of sanctions in cases of judicial discipline is to preserve the integrity and independence of the judiciary and to restore and reaffirm public confidence in the administration of justice. The discipline we impose must be designed to announce publicly our recognition that there has been misconduct; it must be sufficient to deter respondent from engaging in such conduct; and it must discourage others from engaging in similar conduct in the future. Thus, we

discipline a judge not for purposes of vengeance or retribution, but to instruct the public and all judges, ourselves included, of the importance of the function performed by judges in a free society. We discipline a judge to reassure the public that judicial misconduct is neither permitted nor condoned.

*Barr*, 13 S.W.3d at 560 (op. on orig. submission) (quoting *In re Kneifl*, 351 N.W.2d 693, 700 (Neb. 1984)). “A reprimand is the most severe sanction available to the commission unless formal proceedings are voted.” State Commission on Judicial Conduct 2000 Annual Report, 64 Tex. B.J. 298, 302 (March 2001). “A warning puts the judge on notice that the actions identified in the sanction are improper.” *Id.*<sup>15</sup>

When determining an appropriate sanction, courts have considered the following factors:

(a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge’s official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his position to satisfy his personal desires.

*In re Deming*, 736 P.2d 639, 659 (Wash. 1987); *see also In re Sharp*, 4;80 S.W.3d at 839 (referring to *Deming* factors); *In re Rose*, 144 S.W.3d 661, 733 (Tex. Rev. Trib. 2004, no appeal)(same).

Here, at the time Judge Bond issued the writ in question, she had been on the bench for four years, and before that she spent more than twenty years as a prosecutor and a

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<sup>15</sup> We found prior instances of judges being privately admonished for related conduct. *See e.g.*, the private admonishment of a judge who “failed to comply with the law and demonstrated a lack of professional competence in the law when [a trial court judge] summoned two witnesses to court using writs of attachment and punished the witnesses with incarceration for violating her orders despite the fact that the witnesses were no longer the subjects of an active subpoena.” [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a District Court Judge*. 08/05/16.

defense attorney, and she was board certified in criminal law. Judge Bond signed the Writ of Attachment in the courtroom and in her official capacity, she knew or should have known what the Code of Criminal Procedure required before issuing such writs, and she knew or should have known that the issuance of a writ of attachment, at the time she issued it, could lead to the attachment of Ms. Doe. Although we have no evidence of any other complaints about Judge Bond, her issuance of the Writ of Attachment led to public outrage and cast discredit on the integrity of and respect for the judiciary.

We note that Judge Bond has appeared to take some responsibility for her conduct. During her appearance before the Commission, she admitted “the order isn’t written the way it should have been, and that is 100 percent on me.” She also testified that in hindsight she would have “re-checked that the prosecutor had properly issued his subpoena, and I would not have issued a writ on the day that we broke for the postponement.” She admitted she did not read the writ form as carefully as she should have and she testified that she felt “ridiculously, horribly sorry” that she did not read it carefully.

At the trial before this Special Court of Review, Judge Bond also agreed that her decision to issue the writ in the format she used would not have changed had she known Ms. Doe appeared voluntarily without subpoena. “I would have used — I’m certain I would have used this same form.” Judge Bond also appeared to place some significance on the fact that the prosecutor never provided the court with an update on Ms. Doe’s status. And, she testified that some of the delay that occurred in releasing Ms. Doe from jail after January 11<sup>th</sup> could have been “that the clerk didn’t put it before me. I think that happens at the conclusion of the trial.” When asked why she did not follow through on the bench warrant and determine the location of Ms. Doe, Judge Bond replied, “I have many, many,

many cases before me each day that I deal with.” She explained that she had between 700 and 1,000 defendants in her court, and can “only deal with what’s in front of me.”

The Special Court of Review recognizes that criminal district court judges have a heavy work load, and we agree that prosecutors and attorneys as officers of the court, have certain responsibilities to bring matters to the attention of the trial judge. But, a trial court judge has a responsibility to do more than sign the orders or forms placed before them by a prosecutor or attorney, and the judge must be particularly cognizant of the law and potential impact upon witnesses whose liberty interests are implicated by the issuance of a Writ of Attachment. Considering the evidence and circumstances in this case, we conclude that the Examiner met its burden and that some type of sanction is appropriate. Although a private admonition may also be appropriate in some cases, we find that given the facts of this matter as presented to us that a public admonition is appropriate, rather than a private admonition. Accordingly, after considering the pleadings, the evidence, the arguments of counsel, and the parties’ pre- and post-trial briefing, the appropriate sanction is a public admonition against Judge Bond for her violations of the Code of Judicial Conduct and the Texas Constitution.

#### **CONCLUSION**

We find that Judge Bond violated Canons 2A/3B(2) and 3B(8) of the Code of Judicial Conduct and article V, section 1–a(6) A of the Texas constitution. We issue the following sanction against Judge Bond for those violations: Public Admonition.

**Judgment and Public Admonition issued August 10, 2018**

**DOCKET NO. SCR 18-0005**

**SPECIAL COURT OF REVIEW**

**IN RE INQUIRY CONCERNING HONORABLE STACEY BOND**

**JUDGMENT AND PUBLIC ADMONITION**

The Special Court of Review has considered the pleadings, all of the evidence, the arguments of counsel, and the parties' pre- and post-trial briefing and finds that the Honorable Stacey Bond willfully violated Canons 2A/3B(2) and 3B(8) of the Texas Code of Judicial Conduct and article V, section 1–a(6) of the Constitution of the State of Texas. Accordingly, the Special Court of Review concludes that the appropriate sanction is a Public Admonition of the Honorable Stacey Bond for said violations.

**SPECIAL COURT OF REVIEW<sup>1</sup>**

<sup>1</sup> See TEX. GOV'T CODE ANN. § 33.034 (West Supp. 2017). This special court of review consists of Justice Rebeca C. Martinez of the Fourth Court of Appeals, presiding by appointment; Justice Leanne Johnson of the Ninth Court of Appeals, participating by appointment; and Justice Wade Birdwell of the Second Court of Appeals, participating by appointment.