



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC Nos. 17-1006-JP & 17-1123-JP

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE FRED BUCK
JUSTICE OF THE PEACE, PCT. 3
SAN ANGELO, TOM GREEN COUNTY, TEXAS**

During its meeting on June 6, 2018, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Fred Buck, Justice of the Peace Precinct 3, San Angelo, Tom Green County, Texas. Judge Buck was advised by letter of the Commission's concerns and provided written responses. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Fred Buck was the Justice of the Peace in Precinct 3, San Angelo, Tom Green County, Texas.

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2. On April 8, 2017, Jorge Ventura was arrested after a domestic dispute with his husband and charged with misdemeanor assault family violence. The following day, Judge Buck magistrated Mr. Ventura and entered an emergency protective order ("EPO") prohibiting him from, among other things, entering the marital residence.
3. On April 18, 2017, Judge Buck modified the EPO specifically permitting Mr. Ventura to return to the marital residence.
4. On April 19, 2017, Judge Buck modified the EPO to its original restrictions.

5. In his responses, Judge Buck stated that on April 18, 2017, Mr. Ventura's husband appeared in his office "and stated he was going to vacate the [marital] residence...." As a result, the judge modified the EPO permitting Complainant to return to their marital residence.
6. Judge Buck further stated that Mr. Ventura's husband returned to his office the following day to inform him "that he was not going to vacate the residence...." As a result, the judge modified the EPO to its original terms.
7. Judge Buck did not provide notice to all affected parties or conduct a hearing prior to modifying the EPO on either April 18, 2017 or April 19, 2017.

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8. On April 5, 2017, Judge Buck entered a peace bond against Donna Garcia and her roommate, Darryl McClure, upon the application of their neighbors, Robert and Linda Schneeman.
9. On May 4, 2017, the judge issued a summons ordering Ms. Garcia and Mr. McClure to appear in court on May 8, 2017 to "answer to the charge of Peace Bond" filed against them. The order to show cause stated as follows:

This court, seeking to hold and punish DONNA GARCIA for contempt of court in the above-numbered and styled cause, has considered the following acts and found them legally sufficient to support a finding of constructive contempt. FAILING TO OBEY A COURT ORDER (VIOLATING [sic] OF PEACE BOND, DISTURBING NEIGHBORS AND MAKING THREATS TOWARDS NEIGHBORS.

WHEREAS, the above acts by DONNA GARCIA have caused unwarranted expense and delay to this court and the State of Texas and have interrupted the business of the court and impaired the respect due to its authority, it is therefore

ORDERED that DONNA GARCIA appear before this court INSTANTLY, to show cause why he/she should not be held in contempt and punished by reason of the commission of the above mentioned acts, it is further

ORDERED that the court issue notice to be personally served on DONNA GARCIA, who may be served at [ADDRESS REDACTED] together with a copy of this order by any sheriff or constable of the State of Texas, directing and requiring DONNA GARCIA to appear in the courtroom of the Justice Court Precinct Three, Tom Green County at 3052 N. Bryant, San Angelo, Texas, INSTANTLY, then and there to show cause why he/she should not be adjudged in contempt of this court by reason of the facts set forth above.

10. A few hours after issuing the order to show cause, Judge Buck instructed law enforcement to pick up Ms. Garcia and Mr. McClure for a hearing on the show cause order later that afternoon.
11. During the hearing, Judge Buck did not inquire whether Ms. Garcia or Mr. McClure were indigent, and did not provide them with court-appointed counsel.
12. At the conclusion of the hearing, Judge Buck found Ms. Garcia and Mr. McClure in contempt, sentenced them to 72 hours in the county jail, and imposed a \$100 fine.
13. The judge acknowledged that his show cause order "did not comply" with the requirements under Texas law.

14. Judge Buck stated that “[p]rior to the show cause hearing Ms. Garcia and Mr. McClure were not given the opportunity to obtain an attorney....”

Relevant Standards

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part, that “A judge shall comply with the law....”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part, that “A judge should be faithful to the law and maintain professional competence in it.”
3. Article 17.292(j) of the Texas Code of Criminal Procedure provides, in pertinent part “...After notice to each affected party and a hearing, the issuing court may modify all or part of an order issued under this article if the court finds that: (1) the order as originally issued is unworkable; (2) the modification will not place the victim of the offense at greater risk than did the original order; and (3) the modification will not in any way endanger a person protected under the order.”
4. Notice of a contempt hearing must also be given a reasonable time before the hearing. *In re Blancas*, No. 08-13-00256-CR, 2014 Tex.App. LEXIS 5872, at * 18 (Tex.App.—El Paso May 30, 2014, orig. proceeding) citing *Hayes v. Hayes*, 920 S.W. 2d 344, 346-47 (Tex.App.—Texarkana 1996, writ denied).
5. Due process requires that a person charged with constructive contempt of court be given notice and a hearing before an order of contempt may be rendered. This is because in a constructive contempt case all of the elements of the offense are not personally observed by the court. *Ex parte Krupps*, 712 S.W.2d 144, 147 (Tex. Crim. App. 1986), cert. denied, 479 U.S. 1102 (1987). Thus, a person must be given full and complete notification of the charges so as to be afforded a reasonable opportunity to meet them by way of defense or explanation. *Ex parte Avila*, 659 S.W.2d 443, 445 (Tex. Crim. App. 1983); *Ex parte Carlile*, 783 S.W.2d 672, 673 (Tex. App.—Houston [14th Dist.] 1989, orig. proceeding). A person in jeopardy of contempt must be given adequate notice of the exact basis for the contempt of court. A contempt order will be set aside if the basis for the contempt recited in the order varies from the basis alleged in the notice provided to the contemnor. *See Ex parte Dugas*, 587 S.W.2d 735, 736 (Tex. Crim. App. 1979); *Gonzalez v. State*, 187 S.W.3d 166, 170 (Tex. App., Waco 2006, no pet.) (constructive contempt order invalid because defendant not provided notice). The notice must state when, how, and by what means the person has been guilty of contempt. *Ex parte Vetterick*, 744 S.W.2d 598, 599 (Tex. 1988).

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Buck failed to follow the law and exhibited incompetence in the law when he did not provide notice to all affected parties or conduct a hearing prior to modifying the EPO on either April 18, 2017 or April 19, 2017. The Commission further concludes that Judge Buck failed to follow the law and failed to exhibit competence in the law when he: (a) failed to provide Ms. Garcia and Mr. McClure with adequate notice of the show cause hearing, (b) failed to inquire whether they were indigent and needed court-appointed counsel, and (c) failed to provide them notice stating when, how, and by what means they had been guilty of contempt. The Commission concludes that Judge Buck’s conduct, as described above, constituted a willful violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct recited above, it is the Commission's decision to issue a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Fred Buck, Justice of the Peace in Precinct 3, San Angelo, Tom Green County, Texas.

Pursuant to this Order, Judge Buck must obtain **two hours** of instruction with a mentor, in addition to his required judicial education for Fiscal Year 2018 as to a court's administration of peace bonds.

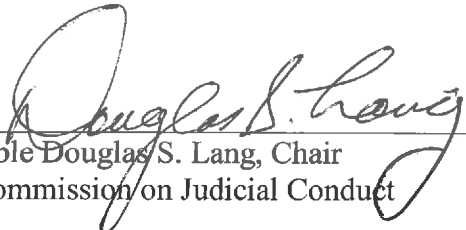
Judge Buck shall complete this additional **two hours** of instruction within **sixty days** from the date of written notification of the assignment of a mentor. It is Judge Buck's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **two hours** of education described herein, Judge Buck shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action in a continuing effort to protect the public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 9th day of August, 2018.



Honorable Douglas S. Lang, Chair
State Commission on Judicial Conduct