

Opinion Issued on June 17, 2021



DOCKET NO. SCR 21-0002

SPECIAL COURT OF REVIEW¹

IN RE INQUIRY CONCERNING HONORABLE THOMAS G. JONES, SCR 21-0002

CJC No. 19-1083

On June 16, 2021, this Special Court of Review issued its opinion in this cause. After issuing the opinion, it came to light that there was an error in the opinion. Therefore, this Court withdraws the opinion dated June 16, 2021, and issues the following substitute opinion.

Justice of the Peace Thomas G. Jones (“Judge Jones”) was sanctioned by the Commission on Judicial Conduct (“the Commission”) for (1) issuing a show cause order based on a plaintiff’s oral motion for contempt, and (2) failing to ensure that

¹ This Special Court of Review consists of The Honorable Patricia O. Alvarez, Justice of the Fourth Court of Appeals, presiding by appointment; The Honorable Judy C. Parker, Justice of the Seventh Court of Appeals, participating by appointment; and The Honorable Bruce Williams, Justice of the Eleventh Court of Appeals, participating by appointment.

parties against whom a contempt motion was filed had notice and opportunity to respond. Judge Jones appealed the Commission's ruling and a trial de novo ensued before this Special Court of Review.

Based on the evidence presented at the trial, this Court finds that the Commission met its evidentiary burden to prove that Judge Jones violated Canons 2A, 3B(2), 3B(8) of the Texas Code of Judicial Conduct, and Article V, section 1-a(6)A of the Texas Constitution. We affirm the sanctions imposed by the Commission.

BACKGROUND

Charlotte Smith Carroll filed a lawsuit in Judge Jones' court in a case against her previous landlord, Norman Olsen ("Norman"), and his brother, John Olsen ("John"), who was the property manager. In her lawsuit, Carroll sought the return of her security deposit. The case was transferred to another court and a bench trial followed. On June 22, 2016, Carrol obtained a judgment against the Olsens in the amount of \$1500. The Olsens never paid the judgment.

About two years later, in an effort to collect on the judgment, Carroll filed post-judgment interrogatories. Judge Jones granted permission for Carroll to serve the interrogatories on the Olsens, but her attempts to serve the interrogatories through certified mail resulted in unclaimed and refused mail. On June 15, 2018, Judge Jones ordered the Olsens to answer Carroll's post-judgment interrogatories.

A Constable immediately began attempts to serve Norman and John with the interrogatories. None of the Constable's attempts were successful. The interrogatories remained unanswered.

Sometime in February of 2019, Carroll made a court appearance and complained to Judge Jones that her interrogatories were being ignored by Norman and John. Carroll then made an oral motion for contempt, which she followed with a written motion attached in an email to Judge Jones' clerk. Carroll's motion for contempt was never filed with the court's records nor was it ever served on the Olsens. Without confirming whether the post-judgment interrogatories or the motion for contempt were served on the Olsens, Judge Jones issued a Show Cause Order, setting a hearing for April 2, 2019. At about this time, Carroll decided not to pursue service on Norman. A constable was directed to serve John with the Show Cause Order but was unsuccessful. Although John was not personally served with the Show Cause Order, he attended the April 2 hearing because he received the order in the mail.

Minutes before the April 2 hearing began, an altercation between Carroll and John ensued. Judge Jones announced he was resetting the hearing for May 14, 2019, and John and Carroll were escorted from the courthouse. Judge Jones' clerk mailed a Notice of Hearing to the parties resetting the contempt hearing on May 14, 2019. The Notice of Hearing did not include either the Show Cause Order or Carroll's

motion for contempt. In fact, the Notice of Hearing was not even clear on who was required to appear. John testified that when he received the Notice of Hearing, he thought only Carroll was required to appear because of the altercation.

When neither John nor Norman appeared at the May 14 hearing, Judge Jones signed a writ of attachment ordering John arrested and kept in custody until discharged by the court. The order was subsequently withdrawn but not before Norman filed a complaint against Judge Jones with the Commission.

After Norman's complaint was investigated, the Commission began an informal proceeding and ultimately sanctioned Judge Jones with a public reprimand and an Order of Additional Education. Judge Jones appealed the Commission's sanction and order.

THE COMMISSION'S CHARGE

For the de novo trial, the Commission charged Judge Jones with three violations of the Canons of the Texas Code of Judicial Conduct and a violation of the Texas Constitution. "A judge is subject to discipline for 'willful' violation of any canon of judicial conduct as long as she or he intends to engage in conduct for which she or he is disciplined, whether or not she or he has specific intent to violate the canon." *In re Barr*, 13 S.W.3d 525, 534–35 (Tex. Rev. Trib. 1998) (citing *In re Flanagan*, 690 A.2d 865 (Conn. 1997)); accord *In re Ginsberg*, No. 18-0001, 2018 WL 2994940, at *4 (Tex. Spec. Ct. Rev. June 11, 2018) .

The Commission's charge centered on (1) Judge Jones' issuance of a Show Cause Order for John based on Carroll's oral motion for contempt, which was not properly before the court and was not served on John, and (2) Judge Jones' failure to ensure John had notice of the motion for contempt, thus preventing John from an opportunity to respond. The violations were charged under the following authorities:

- **Charge I: Canon 2A**, which states that a “judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” TEX. CODE JUD. CONDUCT, Canon 2A, *reprinted in* TEX. GOV'T. CODE ANN., tit. 2, subtit. G, app. B (West 2013); *see also In re Davis*, 82 S.W.3d 140, 148 (Tex. Spec. Ct. Rev. 2002); *Barr*, 13 S.W.3d at 557.
- **Charge II: Canon 3B(2)**, which specifically admonishes a judge to “be faithful to the law and [] maintain professional competence in it.” TEX. CODE JUD. CONDUCT, Canon 3B(2); *see also In re Bell*, 894 S.W.2d 119, 123 (Tex. Spec. Ct. Rev. 1995), *disagreed with by Ginsberg*, 2018 WL 2994940, at *2.
- **Charge III: Canon 3B(8)**, which requires a judge to “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.” TEX. CODE JUD. CONDUCT, Canon 3B(8); *see also Barr*, 13 S.W.3d at 548.
- **Charge IV: Article V, §1-a(6)A of the Texas Constitution**, which authorizes judicial discipline to protect the public's confidence in judicial

competence. *See* TEX. CONST. art. V, § 1-a(6); *see also Joachim v. Chambers*, 815 S.W.2d 234, 243 (Tex. 1991); *In re Sharp*, 480 S.W.3d 829, 838 (Tex. Spec. Ct. Rev. 2013) .

THE LAW OF CONTEMPT

Section 21.002(a) of the Texas Government Code provides courts with the authority to enforce its judgments and orders through orders of contempt. *See* TEX. GOV'T. CODE ANN. § 21.002(a); *Ex parte Dolenz*, 893 S.W.2d 677, 680 (Tex. App.—Dallas 1995, no writ) (citing *Ex parte Pryor*, 800 S.W.2d 511, 512 (Tex.1990) (orig. proceeding)). Contempt is a “broad and inherent power of a court.” *In re Reece*, 341 S.W. 3d 360, 362 (Tex. 2011) (citing *Ex parte Browne*, 543 S.W.2d 82, 86 (Tex.1976) (orig. proceeding)). Contempt of court is broadly defined as “disobedience to or disrespect of a court by acting in opposition to its authority.” *Id.* at 364 (citing *Ex parte Chambers*, 898 S.W.2d 257, 259 (Tex.1995) (orig. proceeding)).

Motions for contempt made by a party must be in writing, signed, and filed with the court unless the motion is made during trial or when all parties are present. *See* TEX. R. CIV. P. 502.1; *Isaac v. CitiMortgage, Inc.*, 563 S.W.3d 305, 313 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). A party filing a motion for contempt is required to serve a true copy of the motion on all parties. *See* TEX. R. CIV. P. 21(a); *Templeton Mortgage Corp. v. Poenisch*, No. 04-15-00041-CV, 2015 WL

7271216, at *4 (Tex. App.—San Antonio Nov. 18, 2015, no pet.); *Hummel v. Hummel*, No. 04-10-00554-CV, 2011 WL 3849477, at *3 (Tex. App.—San Antonio Aug. 31, 2011, no pet.). The motion may be served through an attorney of record, a sheriff or constable, or by any other person competent to testify. See TEX. R. CIV. P. 21a; *Mathis v. Lockwood*, 166 S.W.3d 743, 745 (Tex. 2005); *State v. Bristol Hotel Asset Co.*, 65 S.W.3d 638, 642 (Tex. 2001).

Before a court can hold a party in contempt, that court must notify that party of the contempt allegations. See *Ex parte Vetterick*, 744 S.W.2d 598, 599 (Tex. 1988); accord *Ex parte Adell*, 769 S.W.2d 521, 522 (Tex. 1989) (citing *Ex parte Blanchard*, 736 S.W.2d 642, 643 (Tex. 1987); *Ex parte Gordon*, 584 S.W.2d 686, 690 (Tex. 1979); *Ex parte Edgerly*, 441 S.W.2d 514, 516 (Tex. 1969)). Such notice is a matter of due process afforded to all persons facing contempt charges. *In re Duncan*, No. 05-19-01572-CV, 2020 WL 2487195, at *2 (Tex. App.—Dallas May 14, 2020, no pet.) (citing *Ex parte Alloju*, 907 S.W.2d 486, 487 (Tex. 1995) (per curiam) (orig. proceeding)). “[The] notice should be by *show cause order* or equivalent legal process *personally served on the alleged contemnor*, and it should *state when, how and by what means* the defendant has been guilty of contempt.” *Vetterick*, 744 S.W.2d at 599 (emphasis added) (citing *Ex parte Gordon*, 584 S.W.2d 686, 686 (Tex. 1979); *Ex parte Edgerly*, 441 S.W.2d 514, 516 (Tex. 1969)). “The issue is not whether relator was served in compliance with the rules, but rather

whether he was afforded due process.” *Ex parte Moore*, 567 S.W.2d 523, 526 (Tex. Civ. App.—Texarkana 1978, no writ) (citing *Ex Parte Herring*, 438 S.W2d 801 (Tex. 1969))..

ANALYSIS

In our analysis, we are mindful that at the trial *de novo*, the Commission bore the burden to prove its charges against Judge Jones by a preponderance of the evidence. *Ginsberg*, 2018 WL 2994940, at *2 (citing *In re Slaughter*, 480 S.W.3d 842, 845 (Tex. Spec. Ct. Rev. 2015) (per curiam)). The issue before us is whether the Commission met its burden to prove that Judge Jones violated the charged Canons of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.

As noted above, the crux of the Commission’s charge is Judge Jones’ issuance of the Show Cause Order based on an oral motion for contempt, which was not properly before the court, and Judge Jones’ failure to ensure that John had notice of the motion for contempt that was the basis of Judge Jones’ Show Cause Order. We will address each contention separately.

A. Judge Jones Issued a Show Cause Order Based on An Oral Motion for Contempt Not Served on John.

The evidence presented at the trial *de novo* established that Judge Jones issued the Show Cause Order for the Olsens based on Carroll’s oral motion for contempt. *Contra* TEX. R. CIV. P. 21(a). The evidence also established that before issuing the

Show Cause Order, Judge Jones did not confirm that the Olsens had notice of the interrogatories and Carroll's motion for contempt. *Contra Moore*, 567 S.W.2d at 526. Due Process required Judge Jones to afford the Olsens proper notice and the opportunity to respond. *See Moore*, 567 S.W.2d at 526; *Barr*, 13 S.W.3d at 548.

Taking into consideration all the evidence presented and the credibility of the witnesses, this Court finds that the Commission met its burden of proof and established by a preponderance of the evidence that Judge Jones violated Canons 2A, 3B(2), and 3B(8) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.

B. Failure To Ensure That John Was Served And Had Proper Notice of Carroll's Motion for Contempt

The evidence presented at trial established that the Olsens did not receive notice of Carroll's motion for contempt. Although John appeared at the April 2 contempt hearing, the evidence showed that John was not served with the motion for contempt and that he was not personally served with the Show Cause Order. When Judge Jones' clerk reset the contempt hearing for May 14, the Show Cause Order was not attached to the notice of hearing, and neither Olsen was ordered to appear. On May 14, 2019, when John Olsen did not appear, Judge Jones issued a writ of attachment.

Due Process required Judge Jones to notify the Olsens of his Show Cause Order by personally serving them with that order before issuing the writ of

attachment. *Contra Vetterick*, 744 S.W.2d at 599; *Moore*, 567 S.W.2d at 526. Judge Jones' failure to do so, and his failure to confirm that Carroll's motion for contempt was filed and served, deprived John of the opportunity to know the *when, how and by what means* he was charged with contempt, and it deprived him an opportunity to respond before the writ of attachment issued. *See Vetterick*, 744 S.W.2d at 599; *Moore*, 567 S.W.2d at 526. Indeed, the same failure on Judge Jones' part deprived Carroll from timely executing on her judgment.

Taking into consideration all the evidence presented and the credibility of the witnesses, this Court finds that the Commission met its burden of proof and established by a preponderance of the evidence that Judge Jones violated Canons 2A, 3B(2), and 3B(8), as well as Article V, section 1-a(6)A of the Texas Constitution.

THE SANCTION

The following factors help to guide our decision regarding the appropriate sanction regarding Judge Jones' violations:

- (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.

Matter of Deming, 108 Wash. 2d 82, 119–20 (1987); accord *In re Sharp*, 480 S.W.3d 829, 839 (Tex. Spec. Ct. Rev. 2013); *In re Rose*, 144 S.W.3d 661, 733 (Tex. Rev. Trib. 2004).

We note that this case does not represent Judge Jones' first judicial discipline and that the issues leading up to the Commission's investigation occurred in the judge's official capacity. Judge Jones denied wrongdoing and asked the Commission to reconsider their findings. We also note that the effect of the violations in this case on the public's respect for and perception of the judiciary was apparently negative, based on parties' email communications with Judge Jones' clerks. Furthermore, we note that the sanction is warranted if the judge's conduct was willful, meaning that he intended to engage in the conduct that comprised the violations. The evidence in this case establishes that Judge Jones' conduct was willful. Based on these considerations, we adopt the sanctions originally imposed by the Commission to include a public reprimand and four hours of mentor education. *See Sharp*, 480 S.W.3d at 842.

CONCLUSION

The evidence showed by a preponderance of the evidence that Judge Jones issued a Show Cause Order for John Olson based on Carroll's oral motion for contempt, that Carroll's written motion for contempt was not filed in court, and that

it was not served on John Olsen. The evidence also established that Judge Jones failed to personally serve John Olsen with the Show Cause Order, which was originally set for hearing on April 2, 2019, and reset for May 14, 2019, and that substitute service did not satisfy John Olsen's due process rights. John Olsen was deprived from knowing the *when, how and by what means* he was charged with contempt, and Carroll was deprived of the right to collect her judgment. Accordingly, we find Judge Jones in violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct, as well as Article V, section 1-a(6)A of the Texas Constitution. We agree that the public reprimand and four hours of mentor education are an appropriate sanction and so order.



Patricia O. Alvarez, Justice

Panel consists of:

Patricia O. Alvarez, Justice
Judy C. Parker, Justice
Bruce Williams, Justice