



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 11-0471-DI

PUBLIC WARNING

**HONORABLE MARISELA SALDANA
FORMER JUDGE, 148TH JUDICIAL DISTRICT COURT
CORPUS CHRISTI, NUECES COUNTY, TEXAS**

During its meeting on October 16-18, 2013, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Marisela Saldana, Former Judge of the 148th Judicial District Court in Corpus Christi, Nueces County, Texas. Judge Saldana was advised by letter of the Commission's concerns and provided a written response. Judge Saldana appeared with counsel before the Commission on October 17, 2013, and gave testimony. 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 Marisela Saldana was Judge of the 148th Judicial District in Corpus Christi, Nueces County, Texas.¹
2. On November 8, 2010, Complainant filed a petition to modify the parent-child relationship and obtained a Temporary Restraining Order (TRO) against his child's mother after his son made an outcry that the mother's boyfriend had spanked the child with a belt, leaving bruises on the child.
3. On November 18, 2010, the matter went before Judge Saldana to determine if the TRO would remain in effect. On that day, Judge Saldana dissolved the TRO and granted temporary orders that required the parties to avoid corporal punishment

¹ Judge Saldana lost the November 2010 general election and left office on December 31, 2010.

and to attend counseling. The judge also set a compliance hearing for December 2, 2010.

4. At the December 2nd compliance hearing, after some off-the-record discussions held in chambers, Judge Saldana went on the record to counsel the parties about the importance of complying with her orders and attending counseling. She also set the matter for final hearing on December 20, 2010.
5. At the December 2nd hearing, an Investigator for the Department of Family and Protective Services (DFPS), who had just been assigned to the case that day, expressed concerns about the date of the final hearing by advising the judge that DFPS investigations normally take 30-45 days to complete, implying that the December 20th date of the final hearing would pose a hardship for her. Judge Saldana declined to change the final hearing date.
6. On December 20, 2010, Complainant did not appear at the final hearing due to a medical condition. Complainant's attorney did appear and filed a motion for continuance on Complainant's behalf.
7. Before the continuance motion could be heard, however, Complainant's attorney suffered cardiac distress and was excused by the judge to seek medical attention.
8. In the absence of Complainant and Complainant's counsel, Judge Saldana allowed the mother's attorney to address the court regarding the merits of the still-pending continuance motion.
9. Although the attorney and his client had no additional information relating to Complainant's medical condition, the attorney did express his opinion that Complainant's absence was merely a "delaying tactic" to have the matter heard after December 31, 2010, which was Judge Saldana's last day in office.
10. Based on statements made during these proceedings, including "I know I am being played games with," and "we may run out of time," Judge Saldana appeared persuaded that Complainant was deliberately absenting himself from the proceedings as a delay tactic and in an effort to ensure that Judge Saldana's successor in office would handle the case.
11. Thereafter, at 2:45 p.m. that same day, on her own motion, Judge Saldana entered an "Order to TurnOver [sic] Minor Child," requiring Complainant to relinquish his child to the DFPS Investigator. The order was not supported or predicated on any verified pleadings and/or supporting affidavits on file with the court.²
12. At 5:00 p.m. that same day, without notice or an opportunity to be heard, Judge Saldana also issued a writ of attachment for the child based on a motion filed by the mother's attorney asserting, without elaboration, that the child was being "illegally restrained" by Complainant.

² Section 105.001(c) of the Texas Family Code provides that, "Except on a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure, an order may not be rendered: (1) Attaching the body of the child; (2) Taking the child into the possession of the court or of a person designated by the court; or (3) excluding a parent from possession of or access to a child."

13. At the time Judge Saldana issued the writ of attachment, there was no evidence that the child was being illegally restrained. In fact, Complainant was entitled to possession of the child through the Christmas Holiday pursuant to the existing custody and visitation order on file in the case.
14. On December 21, 2010, the writ of attachment was processed and officers with the Nueces County Sheriff's Office were sent to pick up the child. At approximately 11:50 a.m., after the officers had failed to locate Complainant or the child, they confronted Complainant's mother at a local convenience store.
15. After Complainant's mother tried without success to contact Complainant by phone, the officers instructed her to appear in Judge Saldana's court.
16. That afternoon, Complainant's mother appeared before Judge Saldana.
17. In her testimony before the Commission, Judge Saldana claimed that she did not order Complainant's mother to come to court and was not involved in the process of having the woman appear in court.
18. However, despite this claim, when Complainant's mother arrived, Judge Saldana placed her under oath and proceeded to question her, on the record, about the whereabouts of Complainant and the child.
19. At 5:42 p.m. that day, Complainant appeared in Judge Saldana's court with the child. Over his objections that his attorney was in the hospital and could not be present to represent him in this proceeding, Judge Saldana ordered Complainant to explain his whereabouts the previous day.
20. Despite Complainant's assertions that he was capable of caring for his son in his current medical condition, Judge Saldana ordered Complainant to turn over the child to the mother.
21. Judge Saldana then informed Complainant that she had already modified custody and visitation as a result of the "tremendously difficult time" she had "getting in touch" with Complainant.
22. Court records show that the judge entered "Temporary Orders," at 4:30 p.m., more than an hour before Complainant appeared in court with the child.
23. According to the "Temporary Orders," Judge Saldana's decision was based on evidence presented to her on December 20, 2010, when neither Complainant nor his attorney were before the court.
24. In her written and oral testimony before the Commission concerning these matters, Judge Saldana failed to be candid and forthright when responding to questions intended to elicit facts and evidence, and provided inconsistent and misleading information that often contradicted information contained in court records, all of which hampered the Commission's efforts to investigate and resolve the matter.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part, “A judge shall comply with the law. . . .”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part, “A judge . . . shall maintain professional competence in [the law].”
3. Canon 3B(8) of the Texas Code of Judicial Conduct states, in pertinent part, “A judge shall 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. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party [or] an attorney . . . concerning the merits of a pending or impending judicial proceeding.”
4. Article V, §1-a(6)A of the Texas Constitution states, in pertinent part, 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.”
5. Section 33.001(b)(5) of the Texas Government Code provides that failure to cooperate with the Commission constitutes willful or persistent conduct that is clearly inconsistent with the proper performance of the judge’s duties, in violation of Article V, §1-a(6)A of the Texas Constitution.

CONCLUSIONS

The Commission concludes from the facts and evidence presented that Judge Saldana violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct when she issued orders for Complainant to turn over his child and issued a Writ of Attachment for the child: (1) without notice to Complainant or his attorney; (2) without conducting a hearing; and (3) in the absence of supporting pleadings and/or affidavits on file with the court. In reaching this decision, the Commission recognizes the general rule that the principle of judicial independence requires that judges ought not to be subject to discipline for their discretionary decisions.³ However, in this case, the facts and evidence demonstrated that Judge Saldana’s actions on December 20, 2010 and December 21, 2010 were done not in a good faith effort to protect the best interests of the child, but rather to punish Complainant for what the judge perceived to be his efforts to delay the matter until she left office on December 31, 2010. Because she believed that she was “being played with,” Judge Saldana forced Complainant to relinquish custody of his child over the Christmas holidays without notice or a hearing, and/or without credible evidence that the child was in any harm or danger.

³ *In re Barr*, 13 S.W.3d 525, 544-545 (Tex.Rev.Trib. 1998).

The Commission also concludes that Judge Saldana violated Canon 3B(8) of the Texas Code of Judicial Conduct when she went forward with the December 20th proceedings in the absence of Complainant and his attorney, entertained *ex parte* arguments from opposing counsel and the mother about the merits of the pending motion for continuance, and acted upon that *ex parte* information by issuing a Turnover Order, a Writ of Attachment, and modified Temporary Orders.

Finally, the Commission concludes that Judge Saldana initially provided misleading information to the Commission in her sworn written responses, and thereafter provided oral testimony that contradicted court records previously supplied to the Commission. In addition, Judge Saldana's conduct and demeanor during her appearance before the Commission appeared designed to obfuscate the facts and evidence and thwart the Commission's attempts to investigate and resolve the issues presented by the complaint. Judge Saldana's lack of candor and cooperation with the Commission in this regard violated Article V, §1-a(6)A of the Texas Constitution and Section 33.001(b)(5) of the Texas Government Code, and proved to be an aggravating factor in reaching a final decision in this case.

In condemnation of the conduct that violates Canons 2A, 2B, and 3B(8) of the Texas Code of Judicial Conduct, Section 33.001(b)(5) of the Texas Government Code, and Article V, §1-a(6)A of the Texas Constitution recited above, it is the Commission's decision to issue a **PUBLIC WARNING** to the Honorable Marisela Saldana, Former Judge of the 148th Judicial District Court in Corpus Christi, Nueces County, Texas.

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** by the Commission.

The Commission has taken this action in a continuing effort to protect 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 12th day of November, 2013.

ORIGINAL SIGNED BY

Tom Cunningham, Chair
State Commission on Judicial Conduct