



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC Nos. 19-1453 & 19-1693

**PUBLIC ADMONITION
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE WAYNE A. CHRISTIAN
COUNTY COURT AT LAW NO. 6
SAN ANTONIO, BEXAR COUNTY, TEXAS**

During its meeting on February 5-7, 2020, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Wayne A. Christian, County Court at Law No. 6, San Antonio, Bexar County, Texas. Judge Christian was advised by letter of the Commission's concerns and provided a written response. After considering the evidence before it, the Commission enters the following findings and conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Wayne A. Christian was Judge of County Court at Law No. 6 in San Antonio, Bexar County, Texas.
2. Allison Michelle Jacobs was convicted of Driving While Intoxicated, and Judge Christian placed her on community supervision/probation in Cause Number 544462.
3. On October 1, 2018, Judge Christian held a hearing on the State's third Motion to Revoke Probation.
4. Although prosecutors were present at the revocation hearing, they remained silent and did not participate in the hearing, as was customary for revocation hearings in Judge Christian's court.
5. Judge Christian called the case, and Jacobs pled not true. The probation officer, who was not duly sworn, advised the court that Jacobs had three positive drug tests for methamphetamine.

6. In response, Defense counsel asserted that Jacobs denied taking methamphetamine, but that she had been taking diet pills and offered to put on testimony from Jacobs's mother, who was present, that Jacobs did not exhibit any signs of taking methamphetamine.
7. Judge Christian granted the State's motion to revoke probation and sentenced Jacobs to one year in jail. Defense counsel asked for contested hearing, but Judge Christian denied the request.
8. Jacobs appealed the judgment revoking her probation and filed a motion for reasonable bond pending appeal.
9. On June 12, 2018, the 4th Court of Appeals reversed the judgment of the trial court and remanded for further proceedings. The appellate court held that Judge Christian deprived Jacobs of due process, including her right to disclosure of the evidence against her, an opportunity to be heard, present evidence and cross-examine witnesses, and a neutral and detached hearing body, and that Judge Christian abused his discretion in acting arbitrarily as a surrogate for the State and by failing to conduct a contested hearing on the State's motion to revoke.
10. In his written responses to the Commission, Judge Christian believed that the hearing was uncontested or informal, and explained the revocation hearing procedure he used in Jacobs was the same he used for 15 years which was fundamentally the same as used by several other county court at law judges.
11. Judge Christian stated that, in retrospect, when counsel objected, he should have stopped the proceedings, considered the matter a miscommunication or misunderstanding with defense counsel, and conducted a formal contested revocation hearing.
12. Believing defense counsel would seek review of his bail order by writ of habeas corpus, Judge Christian instructed defense counsel to ask the criminal district judge to set an appeal bond for Jacobs, however, the record does not include a referral of the appeal bond matter to a district judge. Instead, the record includes an order from Judge Christian denying the motion for an appeal bond, which was reviewable by a district judge through an application for a writ of habeas corpus. Defense counsel filed an application for a writ of habeas corpus, and a district judge set the amount of bail pending appeal.
13. As a result of the case and the opinion of the 4th Court of Appeals, Judge Christian changed his procedure for revocations hearings, and clarified the policy and procedures for contested and uncontested motions to revoke probation hearings in his court. In future revocation hearings in his court, the probation officer will be sworn, and the State and defense will be allowed to present evidence, cross-examine witnesses, and recommend an outcome.

RELEVANT STANDARD

1. Canon 2A of the Texas Code of Judicial Conduct provides that a judge shall comply with law.
2. Canon 3B(8) of the Texas Code of Judicial Conduct provides that 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.
3. In a probation revocation hearing, due process requires, among other things, disclosure to the probationer of the evidence against her, an opportunity to be heard and to present witnesses and evidence, and a neutral and detached hearing body. *Tapia v. State*, 462 S.W.3d 29, 41-42 (Tex. Crim. App. 2015) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)). "The proceeding to

revoke probation, although not the same as a criminal trial, requires substantially all the same procedure. ... An adversary proceeding is afforded the probationer in which almost all of the rules of evidence and criminal procedure are applicable.” *Whisenant v. State*, 557 S.W.2d 102, 104-05 (Tex. Crim. App. 1977). A probation revocation hearing is a judicial proceeding, to be governed by the rules established to govern judicial proceedings, and the Texas Rules of Evidence apply to a Texas probation revocation hearing. *Ex parte Doan*, 369 S.W.3d 205, 210, 211 (Tex. Crim. App. 2012). “Before testifying, a witness must give an oath or affirmation to testify truthfully.” Tex. R. Evid. 603.

4. “Pending ... the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail.” Tex. Code Crim. Proc. Art 44.04(a).

CONCLUSION

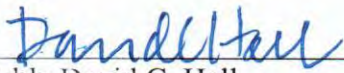
Based upon the record before it and the factual findings recited above, the Texas State Commission on Judicial Conduct has determined that the Honorable Wayne A. Christian, County Court at Law No. 6, San Antonio, Bexar County, Texas, should be publicly admonished for failing to have a witness sworn, denying the State the opportunity to be heard on the motion to revoke, denying the defendant the right to present evidence, and denying bail pending appeal, in violation of Canon 2A and Canon 3B(8) of the Texas Code of Judicial Conduct.

Pursuant to this Order, Judge Christian must obtain **two hours** of instruction, in addition to his required judicial education for Fiscal Year 2020. In particular, the Commission desires that Judge Christian receive this additional education in the area of criminal procedure, specifically regarding probation revocations and appeal bonds.

Judge Christian shall complete the additional **two hours** of instruction recited above within **sixty days** from the date of the Commission’s final order. It is Judge Christian’s responsibility to schedule the additional education.

The Commission has taken this action pursuant to the authority contained in Article V, §1-a of the Texas Constitution in a continuing effort to promote confidence in and high standards for the judiciary.

Issued this the 12th day of August, 2020.



Honorable David C. Hall
Chairman, State Commission on Judicial Conduct