



**BEFORE THE  
STATE COMMISSION ON JUDICIAL CONDUCT**

---

**CJC Nos. 08-0792-JP, 08-0820-JP, 08-0821-JP AND 08-0822-JP**

---

**PUBLIC WARNING**

**HONORABLE GUSTAVO GARZA  
JUSTICE OF THE PEACE, PRECINCT 6, PLACE 1  
LOS FRESNOS, CAMERON COUNTY, TEXAS**

During its meeting on February 11-13, 2009, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Gustavo Garza, Justice of the Peace, Precinct 6, Place 1, in Los Fresnos, Cameron County, Texas. Judge Garza was advised by letter of the Commission's concerns and provided a written response. Judge Garza appeared with counsel before the Commission on February 12, 2009, 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 Gustavo Garza was Justice of the Peace for Precinct 6, Place 1, in Los Fresnos, Cameron County, Texas.
2. Judge Garza is also a licensed attorney who has practiced law for more than twenty-six (26) years.
3. On or about January 22, 2008, J.V., a 14-year-old student, was charged by the Los Fresnos Consolidated Independent School District (the "School District") with Failure to Attend School.
4. According to court records provided to the Commission by Judge Garza, the School District also filed a separate charge against J.V.'s mother and stepfather for the offense of Contributing to J.V.'s Non-attendance; however, the records provided by the judge reflect that court action was taken only in J.V.'s case.

5. According to compulsory attendance notices provided by the School District before charges were filed, J.V. and her parents were warned that they “will be summoned before a justice of the peace for violation of Compulsory Attendance Law where sanctions may involve court costs, fines and/or community service.”
6. The attendance notices further provided that “[t]he penalties for violating [the Texas Compulsory Attendance Law] are:
  - a. Court Costs, plus
  - b. Up to \$500 fine
  - c. Parent may be required to attend school all day with child
  - d. Student may be required to work on community service hours
  - e. Student & parent may be court ordered to attend counseling/parent classes.”
7. On or about February 15, 2008, J.V. appeared before Judge Garza with her mother. J.V.’s stepfather, who did not approach the bench, remained seated in the courtroom.
8. According to a Court Proceeding Report dated February 15, 2008 (the “February 15 Report”), which was completed by a member of court staff, both J.V. and her mother entered a plea of “no contest” at this time.
9. The court’s docket sheet, which was completed by Judge Garza, also reflected that J.V. entered a plea of “no contest” at this appearance.
10. According to both the February 15 Report and Judge Garza’s docket sheet, J.V.’s case was reset to March 19, 2008.
11. The February 15 Report, which also contained information regarding “Sanctions as per T.E.C. 25.094,” further instructed J.V. to comply with the requirement to “attend school without unexcused absences or tardies for the school year as appropriate.”
12. Judge Garza testified before the Commission that he granted deferred disposition to J.V.; however, no evidence was provided that the judge entered any written order of deferred disposition, probation, or other judgment in this matter.
13. Although J.V. and her mother signed the February 15 Report, Judge Garza did not.
14. At least one record provided by Judge Garza indicated that J.V.’s mother failed to appear on March 19, 2008, and that a warrant was prepared for her arrest. No evidence was provided as to whether the arrest warrant was ever executed.
15. On or about April 9, 2008, J.V. appeared before Judge Garza with her stepfather.
16. According to the Court Proceeding Report dated April 9, 2008 (the “April 9 Report”), both J.V. and her stepfather entered a plea of “guilty” at this time; however, no such plea was reflected on Judge Garza’s docket sheet.
17. According to the stepfather, because J.V. was “not in compliance,” Judge Garza told him “I need \$500 or you paddle her.”
18. The stepfather went on to explain that none of the sanctions described in the attendance notices or the Court Proceeding Reports was discussed with him, and no inquiry was made as to whether he could afford to pay the \$500.00.

19. Because he could not afford to pay \$500.00, the stepfather stated that he believed he had no choice but to paddle J.V., which he reluctantly did.
20. According to Judge Garza's docket sheet, the stepfather "opted discipline."
21. At the bench, a large wooden paddle was made available to the stepfather.
22. When the stepfather asked how many times he needed to strike J.V., Judge Garza responded, "5 times."
23. According to the stepfather, after he completed the paddling, Judge Garza admonished him for not striking J.V. hard enough.
24. The stepfather described the paddling, which took place in open court, as a degrading and humiliating experience.
25. The April 9 Report, which was signed by J.V. and her stepfather, but not the court, contained the following hand-written remarks: "B.O.E. 5X" and "Step Dad (X Soft)."
26. According to Judge Garza, the remarks "B.O.E. 5X" and "Step Dad (X Soft)" were written by a member of court staff to indicate that J.V.'s stepfather used the paddle ("B.O.E." or "Board of Education") five times, but did so very softly.
27. Although J.V.'s fine had been discharged through the paddling by her stepfather, J.V.'s case remained pending with conditions for compliance.
28. Both the April 9 Report and the judge's docket sheet entry for April 9, 2008, reflected that the case was reset to June 4, 2008.
29. A final Court Proceeding Report dated June 4, 2008 (the "June 4 Report"), which was signed by J.V. and her mother, contained the hand-written comments, "100% Compliance" and "Pick Up Grades."
30. Both the June 4 Report and the judge's docket entry for June 4, 2008, indicated that the case was reset to September 25, 2008, more than 180 days past J.V.'s plea of "no contest" on February 15, 2008 and several weeks into the new school year.
31. No assessment of any fine or court costs was reflected in any of the Court Proceeding Reports, on Judge Garza's docket sheet, or in any other record provided to the Commission relating to J.V.'s case. No evidence was provided as to whether J.V.'s case was ever dismissed or closed.
32. Sometime in 2007, E.G. was charged with Failure to Attend School. E.G. testified that she was sixteen (16) years old at the time the charges were filed.
33. According to E.G., during one of her many court appearances, Judge Garza told her mother to pay \$500.00 or paddle E.G. The mother chose to paddle E.G. because she did not have \$500.00.
34. According to E.G., being paddled in the courtroom was "degrading" and did not help her.
35. Although E.G.'s fine had been discharged through the paddling by her mother, E.G.'s case remained pending. The case was reset and E.G. was required to meet various conditions for compliance.

36. According to E.G. and Judge Garza, her case would only be dismissed after she reached “100% compliance.”
37. On or about March 7, 2008, following the appearance wherein her mother had paddled her, E.G., who was now seventeen (17) years-old, was held in contempt of court and required to serve three (3) days in the Cameron County Jail.
38. According to E.G., she was held in contempt without a hearing, was not afforded the right to counsel, and no prosecutor was present.
39. Although E.G. was sent to jail for failure to comply with Judge Garza’s orders, no written judgment, order or other court record reflecting the assessment of a fine, court costs, or the imposition of conditions of probation was provided to the Commission.
40. According to court records provided to the Commission by Judge Garza, the outstanding fine of \$500.00 assessed on February 22, 2007 against L.G., a twelve (12) year-old boy charged with disorderly conduct, was resolved on or about April 30, 2008, when L.G.’s father paddled the boy in court. The court records indicated L.G.’s father was unemployed and, therefore, could not afford to pay the fine.
41. Court records also reflected that the mother of A.V., a fourteen (14) year-old student charged on February 9, 2007 with failure to attend school, paddled A.V. at an April 21, 2008 court appearance.
42. A.V.’s parents had been charged separately for the offense of contributing to A.V.’s nonattendance, but court records indicate no action was taken against the parents in this second case.
43. Although no plea was taken at the initial appearance of A.V. and her parents on February 16, 2007, the Court Proceeding Report reflected that conditions for compliance were imposed on A.V. and the case was reset to December 6, 2007.
44. After the April 21, 2008 court appearance, at which time a plea of guilty was taken and the option of discipline was taken, A.V.’s case was reset to June 4, 2008.
45. Court records reflect that A.V.’s mother failed to appear on June 4, 2008, and that a warrant was prepared for her arrest. No evidence was provided as to whether the arrest warrant was ever executed.
46. In his testimony before the Commission, Judge Garza did not dispute the fact that parents of students who were charged with failure to attend school were provided the option of paying a fine or disciplining their child. However, the judge insisted that the option of discipline, which was understood by everyone to mean paddling, was a choice made by the parent, not an order of the court.
47. Judge Garza went on to state that in cases involving failure to attend school he routinely defers the matters without a finding of guilt in order to give the students the opportunity to turn their life around, stay in school, and eventually graduate from high school.
48. Judge Garza explained that his orders, including the imposition of any fines and/or conditions of probation, were made orally to the parents and students appearing before the court and were believed to be clearly understood by everyone.

49. Judge Garza acknowledged that he should have issued written orders or judgments in the cases filed by the School District.
50. When asked to explain his legal authority for allowing the option of paddling to parents, Judge Garza stated that Article 45.051(b)(1) of the Texas Code of Criminal Procedure authorizes the court to impose “any reasonable condition” in cases where deferred disposition is granted.
51. Although Judge Garza insisted that he never ordered a parent to paddle his/her child, he did acknowledge that any condition of deferred disposition under Article 45.051 of the Texas Code of Criminal Procedure would have to be imposed by an order of the court.
52. Although Article 45.051 also imposes a duty on the court to collect court costs up front when granting deferred disposition, Judge Garza acknowledged that he did not comply with that requirement.
53. When asked to explain the legal authority for imposing a condition on a parent to satisfy a fine or condition of probation imposed on the student for failure to attend school, Judge Garza initially directed the Commission’s attention to Section 151.001(a)(2) of the Texas Family Code, which “obligates the parents to discipline their children,” and to Section 9.61 of the Texas Penal Code, which provides a parent with a defense to prosecution if the force used against his or her child is justified as that term is defined under that Chapter.\*
54. Ultimately, Judge Garza was unable to identify any legal authority that imposed a legal responsibility on the parent to satisfy the payment of a fine imposed against the student for the offense of failure to attend school or that permitted a parent to paddle a child as a condition of probation imposed against the student for the offense of failure to attend school.
55. Judge Garza did testify that a parent charged with the offense of contributing to a student’s non-attendance could be fined or required to comply with conditions of probation under Article 45.051, but acknowledged that this did not occur in any of the cases presented to the Commission.
56. Judge Garza agreed that the paddling conducted in open court was embarrassing for the students and their parents; however, it was his opinion that any lack of order or decorum in the courtroom caused by this practice was outweighed by the positive results, including reduced filings of truancy cases by the School District, to the community as a whole.
57. Judge Garza advised the Commission that the option of paddling is confined to those cases filed by the School District. He does not afford the option to parents of juveniles charged with traffic or other criminal offenses.

---

\* Section 9.62 of the Texas Penal Code provides a similar defense to School District employees, who are permitted to use reasonable force, including corporate punishment, as a form of discipline against a student under Section 22.0512 of the Texas Education Code. *See Texas Attorney General Opinion No. GA-0374*. However, according to Judge Garza’s testimony, the School District’s current policy does not permit the use of corporal punishment against a child.

## **RELEVANT STANDARDS**

1. Canon 2A of the Texas Code of Judicial Conduct provides that “[a] judge shall comply with the law... .”
2. Canon 3B(3) of the Texas Code of Judicial Conduct provides that “[a] judge shall require order and decorum in proceedings before the judge.”
3. Section 25.093 of the Texas Education Code provides that a parent may be charged with the offense of contributing to a student’s nonattendance, a Class C misdemeanor, punishable by fine only.
4. Section 25.094 of the Texas Education Code provides that a student may be charged with the offense of failure to attend school, a Class C misdemeanor.
5. Article 45.054(a) of the Texas Code of Criminal Procedure provides that in cases involving the offense of failure to attend school (Sec. 25.094, Tx. Ed. Code), the court has jurisdiction to enter an order including one or more provisions listed therein requiring compliance by the student and, in some instances, by the student and the parent.
6. Article 45.054(g) of the Texas Code of Criminal Procedure further provides that a disposition order under this article “may not exceed beyond the 180<sup>th</sup> day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.”
7. Article 45.051(a) of the Texas Code of Criminal Procedure provides that “on a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge may,...., defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days.”
8. Article 45.050 of the Texas Code of Criminal Procedure prohibits a justice of the peace from ordering the confinement of a child for contempt of court. A “child” for purposes of this article is defined as a person who is at least 10 years of age and younger than 17 years of age and charged with or convicted of an offense over which the justice of the peace has jurisdiction.

## **CONCLUSION**

The Commission concludes from the facts and evidence presented in this case that Judge Garza willfully and/or persistently failed to follow the law, in violation of Canon 2A of the Texas Code of Judicial Conduct, by (a) proceeding against students and their parents under the same case number even when the parents were charged separately for a different offense; (b) requiring the parents to discharge the fine assessed against the students in the failure to attend cases; (c) failing to inquire into the students’ or their parents’ ability to pay a fine or to provide them with the options of a payment plan, performing community service in satisfaction of a fine or court costs, or waiving the fine or costs after a determination of indigency; (d) failing to properly document or issue a written judgment or order of probation or deferred disposition, including conditions for compliance, in the students’ cases; (e) failing to properly document or issue a written judgment or order assessing a fine, court costs, or special fee in the students’ cases; (f) failing to document or issue a written order of probation or deferred disposition,

including conditions for compliance, in any case filed against the parents; (g) failing to properly document or issue a written judgment or order assessing a fine, court costs, or special fee in any case filed against the parents; (h) requiring the students and their parents to return to court after the parents had discharged the fine through paddling; (i) requiring the students and their parents to return to court more than 180 days beyond the date of their first appearance in court and/or beyond the end of the school year in which the court order was entered; (j) holding E.G. in contempt of court without providing evidence of the violation of a written order or judgment of the court; (k) holding E.G. in contempt of court without affording her adequate due process, including the right to be represented by counsel; and (l) ordering the confinement of E.G., who was sixteen (16) years old when charged with the offense of failure to attend school, for contempt of an unwritten court order. In reaching this conclusion, the Commission notes that Judge Garza's position that he never ordered the corporal punishment of students charged with failure to attend school could not be reconciled with his assertion that he had the legal authority to permit corporal punishment as a "reasonable condition" of probation under Article 45.051 of the Texas Code of Criminal Procedure.

Further, the Commission concludes that Judge Garza exceeded his authority by providing parents and the School District with a "safe haven" for the administration of corporal punishment. While acknowledging that the Legislature had not provided the courts with any legal authority to impose corporal punishment as a sanction under the Texas Education Code or the Texas Code of Criminal Procedure, Judge Garza routinely facilitated and permitted the paddling of juveniles in his courtroom thereby clothing the practice with an improper judicial blessing. This court-sanctioned paddling, which subjected the students and their parents to public embarrassment, humiliation, fear and pain, failed to maintain proper order and decorum in the courtroom as required by Canon 3B(3) of the Texas Code of Judicial Conduct.

\*\*\*\*\*

In condemnation of the above-recited conduct that violated Canons 2A and 3B(3) of the Texas Code of Judicial Conduct recited above, it is the Commission's decision to issue a **PUBLIC WARNING** to the Honorable Gustavo Garza, Justice of the Peace, Precinct 6, Place 1 in Los Fresnos, Cameron County, Texas.

Pursuant to the authority contained in Article V, Section 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 **9<sup>TH</sup>** day of **March**, 2009.

**ORIGINAL SIGNED BY**

---

Honorable Sid Harle, Chair  
State Commission on Judicial Conduct