



**BEFORE THE STATE COMMISSION  
ON JUDICIAL CONDUCT**

---

**CJC No. 18-0092**

---

**PUBLIC ADMONITION**

**HONORABLE JONATHAN BAILEY  
431<sup>ST</sup> JUDICIAL DISTRICT COURT  
DENTON COUNTY, TEXAS**

During its regularly scheduled meeting on June 5-6, 2019, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Jonathan Bailey, Judge of the 431<sup>st</sup> Judicial District Court in Denton County, Texas. Judge Bailey was advised by letter of the Commission's concerns and provided written responses. Judge Bailey appeared before the Commission on June 6, 2019, 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 Jonathan Bailey was Judge of the 431<sup>st</sup> Judicial District Court in Denton County, Texas.

*Background*

2. In early 2015, Respondent Father<sup>1</sup> began a relationship with Respondent Mother, who had a child from a previous relationship ("Chris") and was pregnant with another ("Pam") at the time they first met. In March 2015, Mother gave birth to Pam. Father consented to be being listed as the father on Pam's birth certificate because he did not want Mother to give Pam up for adoption.
3. Approximately two months after Pam's birth, the Texas Department of Family and Protective Services ("DFPS") received a referral alleging that Father had overdosed on Xanax, Nyquil and alcohol.

---

<sup>1</sup> The Commission references the same fictitious names that were used by the Fort Worth Court of Appeals in their memorandum opinion in this matter.

4. In June 2015, Father began to participate in a substance-abuse evaluation. However, he soon stopped participating because “there was no reason...to do them because...[he] wasn’t gonna get any type of custody over [Chris or Pam].”
5. In the Fall of 2015, Mother and Father conceived their first child together (“Luke”).
6. On October 23, 2015, DFPS received a referral concerning Chris and Pam’s living conditions (specifically the children being exposed to marijuana use). Chris and Pam were ultimately placed in a foster home.
7. In December 2015, DFPS placed Father and Mother under a service plan. Father agreed to, and initially participated in, recommended services even though he was neither the presumed or biological father to Chris or Pam.
8. In June 2016, Mother gave birth to Luke. Mother and Father voluntarily agreed to place Luke with the same foster family that was taking care of Chris and Pam.

Luke’s Case (Pretrial)

9. In August 2016, DFPS filed a petition seeking temporary managing conservatorship of Luke with the goal of reunification. Alternatively, DFPS sought to terminate Mother’s and Father’s parental rights to Luke.
10. Mother and Father failed to appear for a September 2016 adversary hearing, and DFPS was granted temporary managing conservatorship of Luke. During the hearing, Judge Bailey stated he would *sua sponte* expedite a termination trial as to Mother and “not play the normal year game” because of her noncompliance and instability.
11. Father informed Judge Bailey during an October 2016 status hearing that he planned to file an application for a court-appointed attorney that day with the goal of reunifying with Luke. The judge told Father that he had “been through this process for more than a year” with Pam and asked Father why he would “think that it is going to be any different this time around?”
12. Judge Bailey instructed DFPS to seek a trial date close in time to the February 2, 2017 permanency hearing, which they did. Judge Bailey directed comments to Father that he would consider resetting the trial date to a later date if his “participation in services is going well and it appears to me that you have made a good faith effort to engage in those services...”
13. Judge Bailey continued: “But, based upon your poor performance of services in the last case, I am frankly not holding my breath and I don’t think it is in [Luke’s] best interest to delay the inevitable if you are not going to do any more - - to stabilize yourself, much less demonstrate that you can provide a safe and stable environment for your child in this case.”
14. On January 27, 2017, DFPS filed a permanency report again noting that its primary goal was reunification. The report noted that Father was at least partially compliant with some of the recommended services. Four days later, CASA submitted its Guardian Ad Litem report, which also stated the primary goal for Luke was family reunification.
15. During a February 2, 2017, permanency hearing, counsel for DFPS informed Judge Bailey that it was not ready to proceed to a termination trial:

...the current goal is family reunification. [Father] has started making progress on his services. It is not as far as [DFPS] would like, but at this point we do not have grounds for termination.

16. During the hearing, counsel for Father informed the court that she had a scheduling conflict for the February 27, 2017, trial setting to which Judge Bailey responded "you are gonna have to be removed and we will appoint a new attorney."
17. Judge Bailey reaffirmed that the termination trial nevertheless would begin on February 27, 2017:

Father basically thumbed his nose at all this and said I'm not doing services until I know that it is my child. So he caused delay in performing services and then he waited until last month to come in and ask for - - I'm sorry, of December [2016] to ask for an appointed attorney when he could have made that request much earlier and any possible scheduling issues that would create could have been addressed.

So at this late date we are just gonna have to get somebody new in the case. And the case is set for trial at the end of this month, and what happens happens. But based on what I've heard today, when I set this on a short leash for trial, my intent was to see how [Father] is doing, and if there appears to be a miraculous turnaround then we can always push that out. I'm not hearing a miraculous turnaround.

In fact, the visits, we'll fix that little problem, there are no visits. I'm suspending possession until after the trial. And we are going to keep the trial date. That's not to say anybody can't file a motion for continuance.... But this does not, based on what I have heard, at least, classify as one of those extreme circumstances that will justify a continuance or extension of the case. I know we are not there yet, but the same logic applies. Bottom line is, [Father] is the one that elected to put himself in the corner, put his back against the wall. I think the child's permanency is an overriding concern and I'm gonna continue to focus on that.

....

... I will substitute appointed counsel and we will make sure it is somebody that's available for a trial on that date in the event the case proceeds to trial. But I can't allow a parent's decisions, being fully advised that those decisions may put their back against the wall with respect to the schedule that the case is on and the need for permanency that their child has, to then dictate the way all the rest of us are going to proceed.

....

... And [DFPS] can nonsuit this case at any time if it wishes to. Bottom line is, when a parent has already had their rights to two other children terminated, and they take the position that [Father] has taken in this case and, frankly, from what I hear he is not capable of looking out for himself right now, much less a child. To me, that is grounds for termination. . . .

I don't know what you need, but I don't know why we're having these cases at all if the expectation isn't for parents to actually do the things they are ordered to do.

And if [DFPS] is not going to expect the parents to follow the orders and, unless they commit some cardinal sin, not going to pursue the case to termination, I, for one, don't want them in my court anymore. . . . I don't like jerking around with these cases and parents that aren't gonna do the things that they are ordered to do. And I had a one-on-one conversation with [Father], you understand you can wait and not do services until you are sure that this is your child. But if you do that, you are gonna be wasting every day, every week, every month it takes to get those paternity test results back, and that's what he chose to do. I am not letting that decision back the rest of us into a corner.

So . . . [DFPS] needs to decide what they want to do, because apparently [DFPS's] expectations are not consistent with my own. . . .

18. The following day, Judge Bailey appointed Kelly Robb to substitute in as counsel for Father. Approximately one week later, Robb filed a verified motion for continuance based on the following grounds: (1) DFPS's goal was reunification, (2) she needed additional time to prepare for trial, and (3) mediation would be "advantageous." The motion noted that CASA did not oppose their request for a continuance.
19. DFPS also filed a motion for continuance, which also noted that the dismissal date was not until September 18, 2017.
20. At the beginning of the February 23, 2017, hearing on the parties' motions for continuance, Judge Bailey stated that he was not inclined to continue the trial date primarily based on the prior termination case regarding Chris and Pam:

I want to give you all an idea where I'm coming from. It would be one thing just to look at the immediate cause and consider where we are in the motion for continuances in the context of this case, but I think that would be wholly insufficient. I am [*sua sponte*] taking judicial notice also of [the case regarding Chris and Pam] and the contents of the court's file in that case as well, because what that reveals is that [Father] has had two children before the court, including the one in the instant case. And that the child in the instant case was born during the pendency of the 2015 case.

The 2015 case resulted in the removal of the children [i.e., Chris and Pam] by [DFPS], one of whom was [Father's]. It eventually resulted in the entry of a temporary order on November 4, 2015 following an adversary hearing, at which time [Father], although he had been served, did not appear. In other words, knowing that [Pam] had been removed by [DFPS], and that his parental rights were at risk, he simply didn't even bother coming to court and defaulted. He was ordered to perform services, and during the pendency of that case that began in October of 2015 he wholly failed at satisfactorily completing services.

And while he voluntarily relinquished his right to [Pam], I guess you could say to his credit he did so, the handwriting was really on the wall. We were up against a trial setting in that case and it was clearly headed towards termination. Frankly, he did the right thing in relinquishing his rights to that child, based on his complete failure to demonstrate that he was capable of providing a safe and stable

environment supporting his child. And that final order of termination was entered October 3rd, 2016 during the pendency of the immediate case. . . .

So, backing up, the child in the instant case is born in June of 2016 at a point in time where we're kind of at the tenth hour in the case involving the older child, and at a point where he's wholly failed to do services and to work in any way productively towards reunification of his relationship and retention of his rights to that child.

And it is really against that backdrop that this proceeding has taken place to this point in time, and against that backdrop for which I'm considering the merits of the motions for continuance and the trial setting next Monday. In other words, this isn't new and independent from all of that, and I don't think it would be appropriate for me, or the Court of Appeals if they were to second guess me down the road, to look at this in a vacuum without also considering all of that other history in that other unrelated but intertwined case involving a different child and sibling of the child before me today.

. . . .

. . . [Father] has had the opportunity to do services for well over a year. He failed to in the other case, so he shouldn't be credited in this case because he needs more time to complete services. All of that was at a time when he knew this child was on the way. And then after the child was born, that he knew he may be the father of this child, he chose to even then delay any consideration of services until after a DNA test proved that he was the father.

So, in my view and in my perspective, it would be nothing but rewarding him for his indifference, his flippant attitude about bettering himself for the benefit of his children in this case, to disregard his opportunity to have been doing that since 2015.

21. During the hearing, counsel for DFPS informed Judge Bailey that Luke had not been in its care for nine months, which was a requirement for one of the alleged termination grounds in its petition, and that "mediation could be a benefit." Later in the hearing, counsel for Father also argued for a continuance by telling the court "I will certainly spend the weekend and do everything I can to prepare for this, but I don't believe that my client is getting adequate representation at trial if we go next week."
22. On February 23, 2017, DFPS filed another motion for continuance asserting that one of its witnesses was unavailable for the upcoming trial. The following day, Luke's attorney ad litem filed a motion for mediation. Judge Bailey entered a written order granting the motion and ordered that mediation be conducted by Sunday, March 5, 2017.
23. On February 27, 2017, Judge Bailey presided over the Mother's portion of the termination trial and heard evidence regarding whether termination would be in Luke's best interest. Judge Bailey ultimately signed an interlocutory order terminating Mother's parental rights.
24. The following day, the guardian ad litem submitted her report, which stated that it was her "understanding that DFPS's goal [was] Kinship Adoption [by the foster family] with concurrent goal of Family Reunification," which she recommended.

25. On March 3, 2017, DFPS filed an amended petition seeking to terminate Father's parental rights, generally alleging that his conduct endangered Luke's physical and/or emotional well-being, waived his parental rights, and constructively abandoned Luke.

Luke's Case (Trial)

26. Three days later, Judge Bailey called Father's case to trial. He informed the parties that he was going to *sua sponte* take "judicial notice of the entire contents of the court's file" in the termination case regarding Chris and Pam.
27. During the first day of Father's termination bench trial, Father's ex-girlfriend, Holly, (Brynn's mother) testified that Father told her he was drunk driving in December 2016 and hit a mailbox with his car. Father later contradicted Holly's testimony by asserting that he stopped drinking alcohol in September 2016. Judge Bailey immediately challenged the veracity of Father's testimony:

THE COURT: What about drinking and driving and hitting the mailbox [in December 2016]? Be sure about your answers. Don't sit up there and start lying to me or I'll call downstairs and have them prosecute you for perjury. You've already admitted that under oath, right? So you think I'm stupid and I wasn't listening?

28. Also during the first day of trial, counsel for DFPS questioned Father about his child support obligations to Brynn:

DFPS COUNSEL: How far behind are you in your child support for [Brynn] at this time?

FATHER: I would say a couple years.

DFPS COUNSEL: Would that be around \$8,000?

FATHER: That's incorrect.

DFPS COUNSEL: Okay. So a couple of years and how many dollars?

FATHER: \$4,000.

Judge Bailey then proceeded to question Father about the apparent discrepancy between his trial testimony of owing \$4,000 in past child support and the \$8,000 he listed in his application for a court-appointed attorney:

THE COURT: So when it comes to your testimony here, you want the record to reflect your estimate. But when it comes to the Court considering whether you are indigent, you want the Court to consider the [Texas Attorney General's] estimate because it looks better for you in one way and worse for you in another; is that about right?

[Father]: No.

THE COURT: So why did you tell me 8,000 there and you are telling me 4,000 today?

[Father]: Because if I would have told you 4,000 [in the affidavit] then I would have been lying.

THE COURT: Or you are telling me 4,000 today and you are lying?

[Father]: That's what it is supposed to be.

29. During the second day of testimony, Father explained that he previously had not agreed to a service plan or visited Luke before his paternity was established in October 2016 because he got "a bad reaction" from the trial court when he participated in court-ordered services for Pam before he and Mother voluntarily relinquished their parental rights to her. Father proceeded to introduce pictures of some of the items he had received after Luke was born, such as a traveling crib, clothes, toys, diapers, a car seat, and formula. In response, Judge Bailey questioned Father's about his ability to support Luke:

THE COURT: So you couldn't afford a DNA test for this child, but you think you are in an appropriate position to raise the child?

[Father]: Yes.

THE COURT: Do you understand why that seems ridiculous?

[Father]: I do.

THE COURT: And since I have interrupted, let me go ahead and ask. All of this stuff [shown in the pictures], you didn't offer to provide any of that to the [foster family] for [Luke's] use, right?

[Father]: I believe that they already had it.

THE COURT: Okay. Did you hear my question? Was it confusing?

[Father]: No.

THE COURT: Do you think you understood what my question was?

[Father]: Yes.

THE COURT: Then how about let's answer it. You didn't offer to provide any of that stuff to the [foster family], did you?

[Father]: No.

THE COURT: You haven't paid financial child support for [Luke], right?

[Father]: Correct.

THE COURT: At least up until apparently the last paycheck. After this trial began, right?

[Father]: Yes.

THE COURT: No child support whatsoever, zero. No medical support, zero. You are not disputing that, right?

[Father]: Yes.

THE COURT: And you even had clothing, food, other items, a bassinet or a bed, a car seat, things that you know this child could use, and you didn't offer them to the [foster family] to use for his benefit, right?

[Father]: Yes.

THE COURT: So what are you doing? Are you holding on to all these things as leverage? If I get the child then I will use them for his benefit, otherwise I don't want anybody else to have them, is that what's going on?

[Father]: No.

THE COURT: You understand that's the way it looks?

[Father]: Yes.

THE COURT: By even introducing these today, it begs the question, are you just holding these things back, offering to use them for your child's benefit as long as you can control it, but you don't really care about your child's needs because you haven't supported him otherwise? You understand that's how it looks?

[Father]: Yes, sir.

THE COURT: Can you point me to one thing you've done in your life as an adult, so we are talking about since you turned 18, that would demonstrate, not just words, but demonstrate that you can stick with something to the end, see it through and successfully completed? Because the evidence is that you bounced around from job to job, just don't generally complete things. You bounce around from house to house. You are saying you are ready to be a father, but everything that I've heard says, no, you are not. You don't see things through. Can you point me to something?

[Father]: I have always been there for my daughter and I have raised her since day

....

THE COURT: But you are holding those [gifts] back in case [Luke] comes home, not offering them to the people that can actually use them, right? Is that right?

[Father]: Well, I need them in case - -

THE COURT: Is that right? You are holding them back? Is that right?

[Father]: Yes.

THE COURT: You understand why that upsets me? It insults me as a father and as a judge to hear that crap. Because all you care about is you, not that child. Please continue. In fact, let's just take a break. I'm gonna go cool off. We will be back in 15.

30. During her closing argument, counsel for DFPS stated that they were seeking termination of Father's parental rights on grounds of: (1) constructive abandonment and (2) endangerment. DFPS recognized that it had not satisfied the constructive-abandonment requirement that Luke be in its care for six months prior to trial; however, they argued that the trial court could "interpret the constructive abandonment in light of the facts here" and terminate Father's parental rights on that ground as well.
31. Judge Bailey found the "totality of the evidence" supported both the endangerment and constructive-abandonment grounds alleged and that termination of Father's parental rights would be in Luke's best interest.
32. On April 10, 2017, Judge Bailey entered a written order terminating Father's parental rights over Luke.

Luke's Case (Post Trial)

33. On April 19, 2017, Robb filed a timely notice of appeal on Father's behalf, along with a motion to withdraw, which requested the trial court to appoint Father with appellate counsel. The next day, Judge Bailey made the following docket entry:
- [Father] appeared requesting appointment of appellate counsel. Reviewed record and discovered that [Robb] filed Motion to Withdraw and Appoint Appellate Counsel on 4/19/17, but did not present same or corresponding order to trial court prior to filing Notice of Appeal on same date. Per TRAP 25.1(b), COA now has jurisdiction and since no motion for new trial, to correct or modify judgment has been filed, trial court appears to lack plenary power to consider motion absent abatement by COA.
34. On April 21, 2017, Robb filed a motion to withdraw as counsel with the Fort Worth Court of Appeals, which the court granted. The Court referred the case back to the trial court solely "for the appointment of new appellate counsel."
35. Judge Bailey subsequently presided over an "Indigency Status Hearing" on May 5, 2017. At that hearing, Judge Bailey, counsel for DFPS, and the guardian ad litem all questioned Father extensively about his financial status. Because the appellate court had allowed Robb to withdraw as counsel, Father did not have counsel at the hearing.
36. At the conclusion of the hearing, Judge Bailey made the following declaration:
- THE COURT: ...so my finding is that [Father] is no longer indigent for purposes of appeal and is not entitled to the appointment of counsel for purposes of appeal. However, in an abundance of caution, in the event that the Court of Appeals considers this record and wishes to find otherwise, to avoid any further delay this Court would appoint Dorothea Laster, L-a-s-t-e-r, be appointed to represent [Father] for purposes of appeal.
37. Judge Bailey did not sign a written order until May 15—ten days after the "Indigency Status Hearing" and five days after Father's deadline to file a motion for new trial passed.
38. On May 16, 2017, the appellate court entered a written order concluding that Judge Bailey had exceeded the scope of their order, which was solely to appoint appellate counsel and report the appointment to their court. The court of appeals recognized that no party had formally challenged Father's presumed, continued indigence as required by statute and concluded that attorney Dorothea Laster was listed as Father's court-appointed attorney for appeal.

Court of Appeals' Decision

39. On September 21, 2017, the Fort Worth Court of Appeals issued a 54-page opinion reversing Judge Bailey's order terminating Father's parental rights and remanded the case for a new trial in front of a different judge. *In the Interest of L.S.*, No. 02-17-00132-CV, 2017 Tex.App. LEXIS 8963 (Tex.App.—Fort Worth Sept. 21, 2017, no pet.) Writing for the panel, Justice Lee Gabriel concluded that Judge Bailey's course of conduct throughout the proceeding demonstrated a deep-seated antagonism towards Father that violated Father's constitutional right to a fair trial, resulting in an improper judgment. The opinion detailed Judge Bailey's inappropriate conduct at each stage of the proceedings.

A. Pretrial Conduct

40. The opinion noted that despite repeated opposition from all of the parties, Judge Bailey insisted on scheduling the termination trial in February 2017 – almost six months before the statutory dismissal date<sup>2</sup> because of the “Father’s poor performance of services in the last case.”
41. The *L.S.* court found that Judge Bailey treated the two termination proceedings as one proceeding: because Father did not complete services before relinquishing his parental rights to Pam (not his biological child), he could be found to have not complied with a similar, yet different, service plan regarding Luke:

Although a trial court may terminate before the dismissal date and otherwise accelerate the statutory scheme governing termination proceedings, [Judge Bailey] did so without making the requisite statutory findings and based on conduct occurring in a prior termination proceeding that did not result in the involuntary termination of Father’s parental rights....And he did so by taking judicial notice of the truth of the facts admitted in the prior termination proceeding without admitting the record from that proceeding into evidence.
42. The *L.S.* court also noted that DFPS originally sought reunification, rather than termination, of Father’s parental rights, and did not seek to terminate his rights until after Judge Bailey decreed at the permanency hearing that he did not want DFPS in “[his] court” unless DFPS sought termination, just three days before the evidentiary portion of Father’s trial began.
43. The *L.S.* court concluded that Judge Bailey badgered DFPS into seeking termination because he had already determined that Father would never be compliant based on his knowledge of the prior proceeding and his personal “expectations.”
44. The opinion also pointed out that during the February 2, 2017, permanency hearing, Judge Bailey suspended Father’s visitation based on unidentified “extreme circumstances” without “outlin[ing] specific steps” Father could have taken to resume visitation.
45. The *L.S.* court further observed that Judge Bailey appointed Robb to represent Father only twenty-five days before he called DFPS’s case to trial. The court concluded that the amount of time was insufficient for Robb to discharge her statutorily mandated duties as Father’s attorney ad litem given the fact that the events of two prior proceedings were going to be considered by Judge Bailey.
46. Justice Gabriel noted that although Father’s first attorney had failed to timely notify Judge Bailey of her scheduling conflicts for trial, Judge Bailey “laid that failure at Father’s feet because Father had ‘thumbed his nose at all this and said I’m not doing services until I know that it is my child.’”
47. The opinion further observed that as late as the February 23, 2017, hearing on the parties’ unopposed motion for continuance, DFPS had not yet decided whether to seek termination of Father’s parental rights.

---

<sup>2</sup> The “statutory dismissal date” refers to the one year deadline provided by Section 263.401(a) of the Texas Family Code over a suit affecting the parent-child relationship between the filing of the action and the commencement of trial.

*B. Trial Conduct*

48. The appellate court's opinion noted that on the first day of trial, Judge Bailey accused Father of "lying" and threatened to have him prosecuted for perjury. The panel further held that by the second day of trial, Judge Bailey's questioning of Father showed that he had ceased to be an impartial fact-finder, and was acting as an advocate in favor of termination.

*C. Post-Trial Conduct*

49. Justice Gabriel also found that after Robb timely filed a notice of appeal and a motion to withdraw, which included a request that new appellate counsel be appointed to represent Father, Judge Bailey refused to rule on the motion, which resulted in the eventual appointment of appellate counsel occurring after the time to file a motion for new trial had passed. Furthermore, Judge Bailey scheduled an evidentiary hearing to re-visit Father's indigency status *sua sponte* despite Father's presumed indigence. At that hearing, without the benefit of counsel, Judge Bailey questioned Father regarding his finances, and subjected Father to questioning by counsel for DFPS and the guardian ad litem.
50. The *L.S.* Court ultimately held that the appellate record, taken as a whole, revealed a deep-seated antagonism by Judge Bailey against Father, apparently rooted in prior separate termination proceeding regarding Chris and Pam, neither of whom were Father's children. The appellate court further determined that Judge Bailey's bias against Father was demonstrated as a matter of record when he:
- (1) coerced DFPS into seeking termination of his parental rights;
  - (2) fast-tracked the termination trial;
  - (3) impermissibly considered evidence admitted in the termination proceeding regarding Chris and Pam;
  - (4) failed to consider Father's request for appointment of counsel at October 2016 status hearing;
  - (5) failed to give Father's counsel sufficient time to prepare for trial;
  - (6) refused to grant more than a week continuance despite the parties' request;
  - (7) acted as an advocate during the trial by his questioning;
  - (8) insisted that Father pay for a paternity test despite being found indigent; and
  - (9) refused to rule on Robb's motion to withdraw and delay in appointing appellate counsel before Father's deadline to file a motion for new trial.
51. The *L.S.* Court ultimately concluded that Judge Bailey's conduct "deprived Father of a fair trial before an impartial fact-finder" and ordered the case remanded "for a new trial regarding Father before a different trial judge."
52. DFPS did not file a petition for discretionary review with the Supreme Court of Texas. On October 6, 2017, the Fort Worth Court of Appeals issued its mandate reversing Judge Bailey's order of termination and remanding the case for a new trial before a different judge.

### Judge Bailey's Responses

53. In his written responses to the Commission's inquiry, Judge Bailey stated that, in hindsight, he agreed with the appellate court's conclusion. The judge explained that he allowed his concern for what he perceived to be the child's best interest to override his obligation to ensure that Father received due process.
54. Judge Bailey further asserted that the evidence presented during the permanency hearing supported his decision to terminate Father's visitation rights, but conceded that he "erred by not entering a written order in compliance with Family Code §263.109(b)."<sup>3</sup>
55. Judge Bailey agreed with the appellate court's opinion holding that by the second day of trial he "had ceased to be an impartial fact-finder or umpire and was acting as an advocate in favor of termination." In fact, Judge Bailey went so far as to say that "[i]f anything, I think the record reflects that my impartiality was compromised long before the second day of trial," and that he should have voluntarily recused himself from the matter.
56. Judge Bailey judge ultimately agreed with the appellate court's conclusions that: (1) his course of conduct throughout the entire proceeding showed a deep-seated antagonism for Father that violated Father's constitutional rights, (2) he abdicated his responsibility to be neutral and unbiased, and (3) his conduct tainted the entire proceeding. He reiterated that his concern for what he perceived to be in the child's best interest overrode his obligation to ensure that Father received both due process and a fair trial. Judge Bailey acknowledged that "in hindsight...the manner in which I presided over this trial demonstrated *judicial* bias toward Father" and that "it was consistent with my obligations under Canon 3B(5)."
57. The judge concluded that he "was humbled to read the appellate court's opinion" and asserted that his "handling of this case can only be characterized as an anomaly." He stated that he recognizes the mistakes he made in Father's case and "will not repeat them."

### **RELEVANT STANDARDS**

1. Canon 3B(1) of the Texas Code of Judicial Conduct states: "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.
2. Canon 3B(4) of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others whom the judge deals in an official capacity..."
3. Canon 3B(5) of the Texas Code of Judicial Conduct states: "A judge shall perform judicial duties without bias or prejudice."

---

<sup>3</sup> Tex. Fam. Code § 263.109(b) provides that "if the court finds that visitation between a child and a parent is not in the child's best interest, the court shall render an order that: (1) states the reasons for finding that visitation is not in the child's best interest; and (2) outlines specific steps the parent must take to be allowed to have visitation with the child."

## CONCLUSION

The Commission concludes based on the facts and evidence before it that that under the facts of this case, Judge Bailey's course of conduct throughout the entire proceeding showed a deep-seated antagonism for Father that violated Father's constitutional right to a fair trial. Furthermore, the judge failed to treat Father with patience, dignity and courtesy by characterizing his trial testimony as "ridiculous" and "crap" and threatening him with prosecution for perjury. The Commission agrees with Judge Bailey that his impartiality was compromised long before the second day of trial, and that he should have voluntarily recused himself from the matter. The Commission concludes that Judge Bailey's conduct, described above, constitutes a willful violation of Canons 3B(1), 3B(4) and 3B(5) of the Texas Code of Judicial Conduct.

\*\*\*\*\*

In condemnation of the conduct described above that violated Canons 3B(1), 3B(4) and 3B(5) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Jonathan Bailey, Judge of the 431<sup>st</sup> Judicial District Court in Denton 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 ADMONITION** 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 16 day of July, 2019.

Catherine N. Wylie  
Hon. Catherine N. Wylie, Chair  
State Commission on Judicial Conduct