

NO. 2019-307

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
v.	§	402ND JUDICIAL DISTRICT
	§	
O.W. LOYD, II	§	WOOD COUNTY, TEXAS

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Pursuant to the Court's Order entered on the 30th day of May, 2019, and subsequent hearing and order on the 25th day of July, 2019 the Court finds the following to be the Findings of Fact and Conclusion of Law, to wit:

I.
FINDINGS OF FACTS

The following constitute the Court's Findings of Facts:

1. Venue is appropriate in the 402nd Judicial District, Wood County, Texas.
2. The 402nd Judicial District, Wood County, Texas, has jurisdiction of the subject matter and the parties.
3. Counsel for OW Loyd II stipulated that proper legal notice was provided and announced ready for trial with no objections regarding notice.
4. OW Loyd II admitted he was an officer of the court.
5. OW Loyd II confirmed he was the attorney of record for Cause No.'s 23,714-2018, 23,759-2018, and 23,590-2018.
6. On 01/30/2019, the Court ordered OW Loyd II and his client(s) to appear on 02/08/2019 at 9:00 a.m. for a docket call announcement in Cause No.'s 23,714-2018 and 23,590-2018. On 02/04/2019, the Court ordered OW Loyd II and his client(s) to appear on 02/08/2019 for a docket call announcement in Cause No. 23,759-2018.

7. The date, time, and location of each order to appear was clear and unambiguous. OW Loyd II testified he understood his obligations under the order(s).
8. At no time were any changes made to any of the dates, times, or locations of each order.
9. Copies of each order were emailed to OW Loyd II to his email address on file with the Court, owloyd@gmail.com
10. OW Loyd II confirmed that his email was owloyd@gmail.com and never denied receiving each of the orders to appear.
11. OW Loyd II failed to appear on 02/08/2019 as ordered. Specifically, OW Loyd II failed to appear at 9:00 a.m. on 02/08/2019 as ordered. At the Court's request, the Court Coordinator contacted OW Loyd II regarding his failure to appear as ordered, and OW Loyd II eventually appeared.
12. On 02/08/2019, the Court ordered OW Loyd II and his client(s) to appear on 03/08/2019 at 9:00 a.m. for a docket call announcement/status in Cause No.'s 23,714-2018, 23,759-2018, and 23,590-2018. OW Loyd II signed each order to appear/notice of setting acknowledging his receipt. OW Loyd II admitted that each signature was his and that he received each order to appear/notice of setting.
13. The date, time, and location of each order to appear was clear and unambiguous. OW Loyd II testified he understood his obligations under the order(s).
14. At no time were any changes made to any of the dates, times, or locations of each order.
15. OW Loyd, II failed to appear on 03/08/2019 as ordered. When contacted by the Court Coordinator regarding his failure to appear, OW Loyd, II stated he spoke with someone and was told that he did not have to appear. OW Loyd, II could not recall the name of the person he spoke with but advised that it was a female who gave him permission to not appear. Judge Fletcher under oath testified that the Judge was the only person with authority to excuse an appearance previously ordered. Judge Fletcher testified that he gave no such permission to OW Loyd, II to not appear but further testified that he did not make any investigation other than to inquire of Court Coordinator Kim Carpenter. He relied upon the statement of Kim Carpenter that she did not give OW Loyd, II permission to not appear. Kim Carpenter testified that she did not give OW Loyd, II permission to not appear. OW Loyd, II conceded that he was

aware that the only person with the authority to excuse him from appearing at a previously ordered docket is Judge Fletcher.

16. Judge Fletcher testified that as a result of OW Loyd II's failure to appear, court proceedings were disrupted, impeded, and obstructed in various ways.
17. On 03/08/2019, Judge Fletcher sent OW Loyd II an email detailing the infractions that he alleged against OW Loyd, II. Judge Fletcher alleged that OW Loyd, II had lied to his staff, lied to his court coordinator, and threatened OW Loyd, II with the filing of a grievance with the State Bar. Judge Fletcher in his email further alleged that OW Loyd, II was dishonest with his staff and that he had utterly disregarded his duties as a lawyer. He alleged that OW Loyd, II lacked candor and had conduct unbecoming the profession. At the trial, Judge Fletcher testified that he did not do any independent investigation other than talk to Kim Carpenter, did not talk to anyone in the District Clerk's office to determine if OW Loyd, II had been informed by any female that he was excused on the pertinent dates. Judge Fletcher testified that he was angry at OW Loyd, II when he wrote the email in which he alleged that OW Loyd, II had lied. He further testified that he understood that when a Judge says something from the bench or in comment that it is magnified to the members of the bar and to the public. In the 03/08/2019 email, Judge Fletcher ordered OW Loyd, II to pay \$500.00 to the Wood County District Clerk on or before 03/15/2019. OW Loyd, II failed to pay as ordered.
18. On 03/18/19, the Court entered an order for, OW Loyd II, to show cause why he should not be held in contempt of Court and punished. Notice of Allegations of Contempt including specific factual allegations were also provided. Bryan White was appointed as counsel on behalf of the state and the Honorable Judge Amy Smith was assigned as Presiding Judge to determine the guilt or innocence of OW Loyd II. Furthermore, OW Loyd II retained counsel.
19. On 04/24/2019 and 04/25/2019, the Court ordered OW Loyd II and his client(s) to appear on 05/03/2019 at 9:00 a.m. for a docket call announcement/status in Cause No.'s 23,372-2017 and 23,645-2018.
20. The date, time, and location of each order to appear was clear and unambiguous. OW Loyd II testified he understood his obligations under the order(s).
21. At no time were any changes made to any of the dates, times, or locations of each order.

22. Copies of each order were emailed to OW Loyd II to his email address on file with the Court, owloyd@gmail.com
23. OW Loyd II confirmed he was the attorney of record for Cause No.'s 23,372-2017 and 23,645-2018.
24. OW Loyd II failed to appear on 05/03/2019 as ordered. When contacted by the Court Coordinator regarding his failure to appear, OW Loyd II stated he believed his cases had been reset to 05/15/2019. OW Loyd II could not show cause of why he believed his cases had been reset to 05/15/2019. The Honorable Judge Jeff Fletcher and Court Coordinator, Kim Carpenter, denied any such changes/resets and further testified that there was no docket even scheduled for 05/15/2019.
25. OW Loyd, II never apologized or made amends to Judge Fletcher for failing to appear at the ordered docket call.
26. As to the contempt issue that Mr. Loyd lied to the Court, was dishonest and unprofessional, the Court found this complaint to be unfounded. Mr. Loyd was never given the opportunity to apologize, explain or make amends to the Court before Judge Fletcher emailed him with these accusations.
27. OW Loyd II was found guilty of two counts of constructive (indirect) contempt and his punishment was fixed at a fine of \$500.00.

II.

CONCLUSIONS OF LAW

1. Venue and Jurisdiction are proper.
2. OW Loyd II was charged with constructive contempt of court, a show cause order was issued with specific notices of the allegations and facts, timely service was provided, and OW Loyd II was given an adequate hearing with representation of counsel.
3. OW Loyd II was provided sufficient and adequate due process and was given full and complete notification of the charges against him so as to afford him a fair opportunity to defend against them. At trial, counsel for OW Loyd II stipulated that proper legal notice was provided and announced ready for trial with no objections regarding notice.

4. All State's exhibits were admitted into evidence with no objection by defense counsel.
5. OW Loyd II was determined to be an officer of the Court.
6. The date, time, and location of each order to appear was clear and unambiguous. OW Loyd II understood his obligations under the order(s).
7. OW Loyd II had proper notice of each order to appear.
8. OW Loyd II intentionally or knowingly failed to obey the order(s).
9. OW Loyd II's actions obstructed, impeded, and/or otherwise disrupted the Court's proceedings and the proper administration of justice.
10. OW Loyd II was found guilty of two counts of constructive (indirect) contempt for the acts committed on 03/08/2019 and 05/03/2019 and his punishment was fixed at a fine of \$500.00. Evidence was sufficient to support finding that OW Loyd II was guilty of the acts alleged, thereby supporting the judgment holding OW Loyd II, an attorney, in constructive contempt for failing to attend a pretrial hearing as alleged.
11. In the instant case, the record reflects Judge Amy Smith heard testimony from OW Loyd II and other witnesses which, taken collectively, could reasonably be said to have proven OW Loyd II guilty of the acts alleged. When viewed in the light most favorable to the order, the evidence is sufficient to warrant Judge Amy Smith's decision.
12. There is no fatal variance between the allegations in the notice to appear and judgment and the proof offered.
13. Punishment may be assessed for more than one act of contempt in a single hearing where, as here, the show cause order specifically alleges each act.
14. Punishment was properly assessed within the standards set forth in Texas Government Code - GOV'T § 21.002.

These Findings of Facts and Conclusions of Law are hereby ORDERED by this Court.

SIGNED on this _____ the day of _____, 2019.

JUDGE PRESIDING