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**IN RE HONORABLE ROBERT JENEVEIN, FORMER JUDGE, COUNTY COURT AT
LAW NO. 3 DALLAS COUNTY, TEXAS.**

DOCKET NO. A-2003-1

REVIEW TRIBUNAL OF TEXAS

158 S.W.3d 116; 2003 Tex. LEXIS 80

June 12, 2003, Issued

DISPOSITION: **[**1]** Appeal Dismissed.

JUDGES: Special Court of Review consists of Justices Yates, n4 Taft, n5 and Wright. n6.

n4 The Honorable Leslie Brock Yates, Justice, Court of Appeals, Fourteenth District of Texas at Houston, presiding by appointment.

n5 The Honorable Tim Taft, Justice, Court of Appeals, First District of Texas at Houston, participating by appointment.

n6 The Honorable Jim Wright, Justice, Court of Appeals, Eleventh District of Texas at Eastland, participating by appointment.

OPINIONBY: Tim Taft

OPINION:

[*116] This is a review of the State Commission on Judicial Conduct's (the Commission's) **[*117]** Order of Public Censure against respondent, the Honorable Robert Jenevein, former Judge of County Court at Law Number 3 in Dallas County. The review was conducted by a special court of review, a panel of three justices of the Texas courts of appeals appointed by the Chief Justice of the Texas Supreme Court to sit as a trial court to hear allegations of judicial misconduct in a trial de novo. *See TEX. GOVT CODE ANN. § 33.034(a), (c), (e)* (Vernon Supp. 2003). We address whether a special court of review has jurisdiction to review a **[**2]** decision of the Commission after formal proceedings have been conducted before a special master. We hold that we do not have jurisdiction.

Facts and Procedural History

On July 28, 2000, respondent held a news conference in his courtroom. Respondent used the news conference

to read a press release that he had prepared. The purpose of the press release was to explain why respondent would not be presiding in a case that was pending in the County Courts of Dallas County. The explanation related to certain allegations that an attorney in the pending case had made. In the press release, respondent stated that it was his intention to file a grievance against the attorney in connection with the allegations. Later, in response to inquiries that had been made of him, respondent sent an e-mail to approximately 100 persons, in which e-mail respondent again explained the situation and the reasons for his recusal.

A complaint was filed with the Commission, which resulted in formal proceedings before the Honorable Mike Westergren on September 24, 2002. On October 17, 2002, Judge Westergren signed findings of a violation of the Code of Judicial Conduct. On December 4, 2002, the Commission **[**3]** made its findings based on Judge Westergren's formal proceedings. The Commission found that respondent's press conference and e-mail violated both *Article V, Section 1-a(6)(A) of the Texas Constitution* n1 and Canon 2B of the Texas Code of Judicial Conduct. n2 The Commission issued an Order of Public Censure on January 17, 2003.

n1 *Article V, Section 1-a(6)(A)* provides, in pertinent part:

Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for . . . willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or causes public discredit upon the judiciary or administration of justice. Any person holding such office may be dis-

ciplined or censured, in lieu of removal from office, as provided by this section.

TEX. CONST. art. V, § 1-a(6)(A).

n2 Cannon 2B provides, in pertinent part:

A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others;

TEX. GOV'T CODE ANN. T. 2, Subt. G, App. B, Cannon 2B (Vernon 1998).

[**4]

By letter dated January 22, 2003, respondent requested the appointment of a special court of review to hear the matter de novo. Supreme Court Chief Justice Thomas R. Phillips appointed such a special court of review by letter dated February 6, 2003. On April 14, 2003, this Special Court of Review convened to hear the matter de novo.

Jurisdiction

This case comes to us in an unusual procedural posture. Generally, an investigation of the Commission that finds merit in a complaint of judicial misconduct follows one of two paths: (1) informal proceedings, [*118] in which the judge may be afforded a personal appearance before the Commission, or (2) formal proceedings before a special master. *See In re Thoma*, 873 S.W.2d 477, 483-84 (Tex. Rev. Trib. 1994) (setting out comprehensively the procedures for handling judicial misconduct complaints). Judges dissatisfied with the Commission's decision after informal proceedings may appeal to a special court of review composed of three courts-of-appeals justices appointed by the Chief Justice of the Texas Supreme Court. *See id.* at 483. The special court of review functions as a trial court, providing a trial de [*5] novo from which there is no further appeal. *See TEX. GOV'T CODE ANN. § 33.034(e), (i)* (Vernon Supp. 2003). Judges dissatisfied with the Commission's decision after formal proceedings may appeal to a review tribunal composed of seven courts-of-appeals justices appointed by the Chief Justice of the Texas Supreme Court. *See In re Thoma*, 873 S.W.2d at 484. The review tribunal functions as an appellate court that reviews the proceedings before the special master; further review may be sought from the Texas Supreme Court. *See id.*

The procedure here is a hybrid. The Commission pros-

ecuted respondent in formal proceedings, but respondent has sought and obtained a trial de novo before a special court of review. This raises a jurisdictional question we must first address before proceeding: Does the Texas judicial discipline system provide for a special court of review after formal proceedings? Even though no party has questioned our jurisdiction, an appellate court is obligated to determine the threshold question of jurisdiction. *See Walker Sand, Inc. v. Baytown Asphalt Materials, Ltd.*, 95 S.W.3d 511, 514 (Tex. App.—Houston [*6] [1st Dist.] 2002, *pet. denied*).

Viewing the charts that accompanied the publication of the Rules for Removal or Retirement of Judges, particularly Exhibit C, it appears that no appeal was contemplated from the Commission's order of public censure entered after formal proceedings. *See RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES*, 56 Tex.B.J. 823, 829-31 (1993), Exhibits A-C (reproduced at the end of this opinion). Nevertheless, *section 33.034(a) of the Texas Government Code* provides that "[a] judge who receives from the commission any type of sanction is entitled to a review of the commission's decision as provided by this section." TEX. GOV'T CODE ANN. § 33.034(a) (Vernon Supp. 2003) (emphasis added). However, "sanction" is defined for purposes of Chapter 33 of the Texas Government Code (entitled State Commission on Judicial Conduct) as including only a private or public admonition, a warning, a reprimand, or a requirement that a person obtain additional training or education. *See Tex. GOV'T CODE ANN. § 33.001(a)(10)* (Vernon Supp. 2003). Thus, "sanction" has a technical, legal [*7] meaning in the area of judicial misconduct that does not include "censure." Indeed, "censure," is defined separately as an order of denunciation issued by the Commission under *Article V, Section 1-a(8) of the Texas Constitution* or an order issued by a review tribunal under *Article V, Section 1-a(9) of the Texas Constitution*. TEX. GOV'T CODE ANN. § 33.001(a)(1) (Vernon Supp. 2003). *Article V, Sections 1-a(8) and 1-a(9) of the Texas Constitution* refer to censure only within the context of formal proceedings, while sanctions are contemplated under *Section 1-a(8)* in the context of informal proceedings. TEX. CONST. art. V, §§ 1-a(8), 1-a(9). Therefore, we conclude that an appeal to a special court of review is provided only after informal proceedings and not after formal proceedings resulting in a public censure.

[*119] The published cases demonstrate that the practice has been consistent with the view that only special courts of review follow informal proceedings and only review tribunals follow formal proceedings. *See In re Davis*, 82 S.W.3d 140 (Tex. Spec. Ct. Rev. 2002) (special court of review following informal proceedings); *In re Jones*, 55 S.W.3d 243 (Tex. Spec. Ct. Rev. 2000) [*8]

(same); *In re Bell*, 894 S.W.2d 119 (Tex. Spec. Ct. Rev. 1995) (same); *In re Jimenez*, 841 S.W.2d 572 (Tex. Spec. Ct. Rev. 1992) (same); *In re Sheppard*, 815 S.W.2d 917 (Tex. Spec. Ct. Rev. 1991) (same); cf. *In re Barr*, 13 S.W.3d 525 (Tex. Rev. Trib. 1998) (review tribunal following formal proceedings); *In re Lowery*, 999 S.W.2d 639 (Tex. Rev. Trib. 1998) (same); *In re Thoma*, 873 S.W.2d 477 (Tex. Rev. Trib. 1994) (same).

We acknowledge that it may seem counterintuitive that a judge would have a right to appeal, by special court of review, for lesser sanctions, but have no right to appeal for the more serious censure. n3 Nevertheless, the right to appeal is not of constitutional magnitude, but is derived entirely from statute. See *Rushing v. State*, 85 S.W.3d 283, 285 (Tex. Crim. App. 2002). That which the Legislature may withhold altogether, it may withhold in part. *Id.* at 285–86. Thus, our lawmakers may deny the right to appeal entirely, the right to appeal only some things, or the right to appeal all things only under some circumstances. *Id.* Here, [**9] the Legislature has provided an appeal by special court of review only for the Commission's sanctions assessed as a result of informal proceedings. The Rules for the Removal or Retirement of Judges have provided an appeal by a review tribunal after formal proceedings only for recommendations of removal or retirement. See *TEX. R. REM'L/RET. JUDG. 12(a)* (West 2003). These Rules have not provided for any appeal when the Commission recommends a public cen-

sure after formal proceedings. We do note, however, that a judge assessed a censure will have been given a public hearing before either the Commission or a special master. See *RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES*, 56 Tex.B.J. at 831 (Exhibit C).

n3 In Rule 1(f) of the Rules for the Removal, Retirement of Judges, "censure" is defined as being more severe than the remedial sanctions issued prior to a formal hearing. See *TEX. R. REM'L/RET. JUDG. 1(f)* (WEST 2003).

Accordingly, we hold that we do not have jurisdiction to review [**10] by trial de novo the Commission's Order of Public Censure after formal proceedings. Because we do not have jurisdiction, we can only dismiss this appeal. See *Walker Sand*, 95 S.W.3d at 514.

Conclusion

We dismiss this appeal.

Tim Taft

Justice

[SEE EXHIBIT A IN ORIGINAL]

[SEE EXHIBIT B IN ORIGINAL]

[SEE EXHIBIT C IN ORIGINAL]