Opinion Issued December 27, 2024

DOCKET NO. SCR 24-0002

SPECIAL COURT OF REVIEW

IN RE HONORABLE FRANKLIN BYNUM
(CJC Nos. 20-1415 & 21-0679)

OPINION

Before this Review Tribunal is an appeal de novo from a Public Reprimand issued by the Texas State Commission on Judicial Conduct (Commission) against the Honorable Judge Franklin Bynum (Petitioner), former judge of County Criminal Court at Law No. 8, Harris County, Texas.[1] The Commission's Public Reprimand concluded that Petitioner (1) failed to comply with the law and maintain competence in it; (2) lent the prestige of his office to advance his private interest in his admitted agenda of extreme criminal justice reform; (3) failed to treat people with whom he dealt in his official capacity with patience, dignity, and courtesy; (4) performed his judicial duties with bias and prejudice, and/or

[1]Petitioner served from January 1, 2019 to December 31, 2022.

manifested through words or conduct bias or prejudice in the performance of his judicial duties therewith; (5) failed to accord the State the right to be heard according to the law; (6) engaged in improper ex parte communications with defense attorneys and/or defendants while the State was not present; (7) made improper public comments regarding pending and impending criminal proceedings which suggested to a reasonable person Petitioner's probable decision in cases involving law enforcement officials and the Harris County District Attorney's Office; and (8) conducted extra-judicial activities that cast reasonable doubt on his capacity to act impartially as a judge and/or interfered with the proper performance of his judicial duties.

Based on the findings above, the Commission found that Petitioner engaged in "willful or persistent conduct clearly inconsistent with the proper performance of his duties, casting public discredit upon the judiciary and the administration of justice in violation of Canons 2A, 2B, 3B(2), 3B(4), 3B(5), 3B(6), 3B(8), 3B(10), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct, Section 33.001(b)(5) of the Texas Government Code, and Article V, Section 1-a(6)(A) of the Texas Constitution."

For the reasons set forth below, we conclude that the Commission met its burden of proving Petitioner willfully violated Canons 2A, 2B, 3B(2), 3B(4), 3B(5), 3B(6), 3B(8), 3B(10), 4A(1) and 4A(2) of the Texas Code of Judicial Conduct, and Article V, Section 1-a(6)A of the Texas Constitution and we issue a Public Reprimand to Petitioner.[2]

I. PROCEDURAL BACKGROUND

Petitioner campaigned for Judge of County Criminal Court No. 8 in Harris County as a Democratic Socialist. At the time, he was known as an advocate for radical criminal justice reform. While in office, Petitioner made several posts on his social media accounts disparaging the Harris County criminal justice system and expressing his support for reforms.

During Petitioner's judicial tenure, the Harris County District Attorney's Office (HCDAO) filed numerous complaints with the State Commission on Judicial Conduct carefully detailing what it described as Judge Bynum's "incompetent," "willful," "persistent," "intentional or grossly indifferent" conduct. In July of 2020, the HCDAO filed a complaint against Petitioner, adding supplemental complaints in

[2]When a judge appeals a Commission disciplinary sanction, the panel for Special Court of Review is chosen "by lot" and appointed by the Chief Justice of the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 33.034 (providing procedure for appealing sanctions issued by the State Commission on Judicial Conduct). This panel consists of the Honorable Robert Burns, Chief Justice of the Fifth Court of Appeals; Justice W. Bruce Williams of the Eleventh Court of Appeals, and Justice Jeff Rambin of the Sixth Court of Appeals.

September 2020, November 2020, January 2021, and October 2021. While the detail is too voluminous to include here, in sum, the HCDAO alleged that, while on the bench, Petitioner "repeatedly and willfully ignored basic principles of criminal jurisprudence and conducted proceedings in his court with an unprofessional and irredeemable bias against the State of Texas and its prosecutors."

Pursuant to Section 33.022 of the Texas Government Code, the Commission advised Petitioner by letter of its concerns about his actions. TEX. GOV'T CODE ANN. § 33.022 (establishing procedures for investigating complaints against judges). Petitioner provided a written response and made an informal appearance where he gave testimony before the Commission in April of 2022.

In August of 2024, the Commission issued a Public Reprimand containing its findings of facts and conclusions of law. The Commission determined Petitioner violated Canons 2A, 2B, 3B(2), 3B(4), 3B(5), 3B(6), 3B(8), 3B(10), 4A(1) and 4A(2) of the Texas Code of Judicial Conduct, Section 33.001(b)(5) of the Texas Government Code, and Article V, Section 1-a(6)(A) of the Texas Constitution.

Thereafter, Petitioner appealed the Commission's decision. The Special Court of Review convened a trial de novo and heard evidence from the Commission and Petitioner on November 7, 2024. After reviewing the post submission briefing, this is the opinion of the Court.

II. RELEVANT STANDARDS AND BURDEN OF PROOF

The Texas Constitution provides that a judge may be disciplined for demonstrating incompetence in performing the duties of his or her office, a willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with performance of his or her duties or that casts public discredit upon the judiciary or the administration of justice. TEX. CONST. Art. V, § 1–a(6)A. The function of such discipline "is not to punish; instead, its purpose is to maintain the honor and dignity of the judiciary and to uphold the administration of justice for the benefit of the citizens of Texas." *In re Lowery*, 999 S.W.2d 639, 648 (Tex. Rev. Trib. 1998, pet. denied).

The type of alleged judicial error, legal or non-legal, determines the applicable standard of review. *In re Ginsberg*, 630 S.W.3d 1, 8–9 (Tex. Spec. Ct. Rev. 2018). Here, the Commission alleged both legal and non-legal errors. Charge One alleges legal error—specifically, that Petitioner refused to enforce or follow Texas law on numerous occasions— and Charges Two through Eight allege non-legal errors and concern Petitioner's conduct and use of his judicial authority.

Non-legal errors are reviewed under a willfulness standard. *See Ginsberg*, 630 S.W.3d at 7–9. In judicial misconduct cases, "willful" error occurs when a judge intentionally or with gross indifference misuses the power of the judicial office. *See*

In re Sharp, 480 S.W.3d 829, 833 (Tex. Spec. Ct. Rev. 2013) (citing *In re Davis*, 82 S.W.3d 140, 148 (Tex. Spec. Ct. Rev. 2002)). A judge acts intentionally "when the act is done with the conscious objective of causing the result or of acting in the manner defined in the pertinent rule of conduct." *Ginsberg*, 630 S.W.3d at 7. Indifference is gross when it is "flagrant, shameful and beyond all measure and allowance." *Id.* The inquiry is not into whether the judge intended to violate the Code of Judicial Conduct itself, but whether the judge intended to engage in the conduct for which he or she is disciplined. *Id.*

The standard for legal error is more rigorous; because every judge's ruling is intentional and thus willful, any legal error would constitute judicial misconduct under the willfulness standard. *Id.* at 8. For a legal error to rise to the level of judicial misconduct, the challenged ruling must be "made contrary to clear and determined law about which there is no confusion or question as to its interpretation, and the complained-of legal error additionally must be (1) egregious, (2) made as part of a pattern or practice of behavior, or (3) made in bad faith." *Id.* Given this heightened standard, "disciplinary proceedings are inappropriate when the judge's complained-of ruling is made under a law that is arguably unclear or ambiguous." *In re Bailey*, 692 S.W.3d 900, 907 (Tex. Spec. Ct. Rev. 2022).

The rules of law, evidence, and civil procedure govern our review. *Sharp*, 480 S.W.3d at 833. The Commission has the burden to prove the charges against

Petitioner by a preponderance of the evidence. TEX. GOV'T CODE ANN. § 33.034(f); *In re Slaughter*, 480 S.W.3d 842, 845 (Tex. Spec. Ct. Rev. 2015).

III. CHARGES

The Commission claims Petitioner violated numerous Canons of the Texas Code of Judicial Conduct. We address each alleged violation in turn.

A. LEGAL ERRORS

CHARGE I: CANONS 2A & 3B(2)

The Commission alleges Petitioner repeatedly failed to comply with and maintain professional competence in the law, in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct. Canon 2A provides, in relevant part, "[a] judge shall comply with the law . . . ." TEX. CODE JUD. CONDUCT, Canon 2A. Canon 3B(2) provides, in relevant part, a judge "shall maintain professional competence in" the law. *Id.*, Canon 3B(2).

As set forth below, the evidence demonstrates by a preponderance of the evidence that Petitioner refused to set aside his own personal views of what he wanted the law to be, failing to enforce Texas law as written.

1. Petitioner required prosecutors to appear in person for court proceedings in violation of Texas Supreme Court emergency COVID-19 orders.

The Commission claims that during the COVID-19 pandemic, Petitioner required prosecutors to appear in person for court proceedings despite several

Supreme Court orders stating "all courts in Texas . . . must to avoid risk to court staff, parties, attorneys, jurors, and the public . . . allow or require anyone involved in any hearing, deposition or other proceeding of any kind . . . to participate remotely, such as by teleconferencing, videoconferencing, or other means." Texas Supreme Court's First (issued March 13, 2020), Twelfth (issued April 27, 2020), and Seventeenth (issued May 26, 2020) Emergency Orders Regarding COVID-19 State of Disaster. The Commission further contends Petitioner's actions indicate bias against the State because Petitioner did not similarly require defense attorneys to appear in person.

To support its assertion, the Commission points to an email Petitioner sent to prosecutors on Monday June 1, 2020, directing them to appear in person for jail dockets. In it, Petitioner stated:

> We will hold jail dockets in Court 8 on Wednesday and Thursday. On those days, the State will not be allowed to appear remotely. At least one prosecutor who can speak for every case will appear in person in Court 8 every Wednesday and Thursday morning.

Further, Petitioner informed prosecutors:

> I will not answer any questions about this. Do not make any inquiry of me or my staff about these procedures. This is very simple: a prosecutor with authority to bind their client on every case will appear personally on Wednesday and Thursday at 9 a.m. until further notice.

In his local rules, however as it related to defense attorneys, Petitioner provided:

> [A]s a temporary measure during the Covid-19 emergency, Judge Bynum presides over two jail dockets per week, on Wednesday and Thursday morning in Court 8. Counsel with matters on the jail docket should appear remotely for the jail docket absent exceptional circumstances.

At the height of the COVID-19 pandemic, HCDAO prosecutors would either have to involuntarily risk exposure or risk being in contempt of Petitioner's clearly stated order. HCDAO sought the intervention of Judge Susan Brown, Presiding Judge of the Eleventh Administrative Judicial Region, but by the end of Tuesday, Petitioner had not rescinded his order. Therefore, HCDAO prosecutors filed motions to recuse for every case on Petitioner's June 3, 2020 docket—thus preventing the judge from taking any action on those cases while the motion to recuse was pending. As of June 3, 2020, Petitioner had not rescinded his order to prosecutors to appear in person. Accordingly, Judge Brown informed Petitioner that he was in violation of the Supreme Court's emergency orders and that if he did not rescind his order requiring prosecutors to appear in person, she would notify the Supreme Court of his violation. Finally, in response to Judge Brown's email, Petitioner agreed to allow prosecutors to appear remotely.[3]

We find Petitioner's order to prosecutors to appear in person violated the Supreme Court's emergency orders and is legal error that rises to the level of

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[3]But he did not do so without passive resistance and continuing stratagem, which is unnecessary to detail here.

sanctionable judicial misconduct. The orders were clearly written and required no interpretation. Further, as evidenced by Petitioner's disparate treatment of prosecutors—who were required to appear in person where defense attorneys were permitted to appear virtually—Petitioner's error potentially placed prosecutors at unnecessary risk, and was egregious and made in bad faith. *Ginsberg*, 630 S.W.3d at 8.

Petitioner's order, refusal to permit further discussion with him or his staff, and delay in rescinding that order demonstrates a failure to comply with the law and a failure to maintain professional competence in the law.

2. Petitioner, sua sponte and without notice to the state, made no probable cause findings in violation of Article I, Section 13 of the Texas Constitution.

The Commission further alleges Petitioner violated Canons 2A and 3B(2) by sua sponte entering no probable cause orders, without notifying the State, was outside the due course of law and was in violation of the Texas Constitution. Article I, Section 13 provides, "[a]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." TEX. CONST. art. I, § 13.

We agree with the Commission's allegations. In one case, Petitioner found no probable cause on the day a defendant was scheduled to enter his guilty plea. In that case, a magistrate had previously found probable cause, after which the defendant

conceded the issue. The defendant appeared in Petitioner's courtroom numerous times following the magistrate's finding. Yet, on the day the defendant was scheduled to enter his guilty plea, Petitioner sua sponte and without notice to the State found there was no probable cause to charge the defendant.

In another case, Petitioner made a no probable cause finding on the day a defendant failed to appear for a trial court setting. The defendant in that case had failed to show up for his trial court settings on several occasions. Accordingly, his case was set for bond forfeiture, and his court-appointed counsel sought to withdraw, citing no contact with the defendant. It was not until about a month later, however, prosecutors learned Petitioner had made a finding of no probable cause on the day the case was set for bond forfeiture. Petitioner did this sua sponte, outside of court, and without notice to or participation by the trial court prosecutors.

Petitioner's action in sua sponte entering no probable cause orders without notifying the State in violation of Article I, Section 13 of the Texas Constitution constitutes legal error that rises to the level of sanctionable judicial misconduct. His multiple findings of no probable cause, essentially made in secret without notice to the State and without any urging from defense counsel, was egregious error made in bad faith. *Ginsberg*, 630 S.W.3d at 8.

Petitioner's actions demonstrate a failure to comply with the law and a failure to maintain professional competence in the law.[4]

3. Petitioner sua sponte issued orders of protection prohibiting the Harris County Sheriff's Department from collecting DNA specimens in violation of the Texas Government Code.

The Commission further claims Petitioner violated Canons 2A and 3B(2) by sua sponte issuing what Petitioner styled and drafted as "orders of protection" prohibiting the Harris County Sheriff's Office from collecting DNA specimens from defendants in violation of the Texas Government Code. Texas Government Code Section 411.1471 provides "the court shall require the defendant[s] [convicted of certain enumerated misdemeanor offenses] to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record." *See* TEX. GOV'T CODE ANN. § 411.1471(b)(1).

To support its assertion, the Commission points to Petitioner's April 19, 2022 testimony discussing his rationale for the orders. Petitioner explained he was aware of a "Texas law that said that people convicted of Class A misdemeanor assault would be swabbed," but he ignored the statute because he believed it to be unconstitutional. In Petitioner's opinion, the Fourth Amendment does not authorize

[4]This opinion should not be read for the proposition that any particular mistake or legal error by a judge is subject to investigation or sanction by the State Commission on Judicial Conduct. All judges make mistakes and of course this is why there is an appellate process. A judge who makes a good faith finding of no probable cause, or in an appropriate case, with due deliberation and the proper procedural posture, feels compelled to find a statute unconstitutional, should make what he or she feels is the appropriate decision.

a warrantless buccal swab of a person convicted of a misdemeanor. Petitioner acknowledged that he issued the protective orders without a motion or request from either party.

Petitioner's action in refusing to allow the Sheriff's office to collect specimens for the purpose of creating DNA records constitutes legal error that rises to the level of sanctionable judicial misconduct.[5] The Government Code's language requiring Petitioner to obtain the specimens is clear, and there is no confusion or question as to its interpretation. We find Petitioner's legal error was egregious, made as part of a pattern or practice of behavior, and made in bad faith. *Ginsberg*, 630 S.W.3d at 8.

4. Petitioner set aside charging documents in violation of the Texas Code of Criminal Procedure.

The Commission further alleges that Petitioner violated canons 2A and 3B(2) by setting aside charging documents in violation of Texas Code of Criminal Procedure Article 21.22. Article 21.22 provides, "[n]o information shall be presented until affidavit has been made by some credible person charging the defendant with an offense." TEX. CODE CRIM. PROC. ANN. art. 21.22.

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[5]Here, beyond committing legal error by refusing to comply with the Texas Government Code's requirement to collect specimens for DNA records, Petitioner committed legal error by sua sponte addressing the constitutionality of the statute. *See Ginsberg*, 630 S.W.3d at 10 (holding a trial court generally should not address a constitutional issue sua sponte and doing so is legal error).

The term "affidavit" as used in Article 21.22 refers to the complaint itself and not to a probable cause affidavit. *Holland v. State*, 623 S.W.2d 651, 652 n.1 (Tex. Crim. App. 1981). Moreover, Texas Code of Criminal Procedure Article 15.05 provides a complaint is sufficient, without regard to form, if it has these substantial requisites:

> (1) It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him;
>
> (2) It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense;
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> (3) It must state the time and place of the commission of the offense, as definitely as can be done by the affiant; and
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> (4) It must be signed by the affiant by writing his name or affixing his mark.

TEX. CODE CRIM. PROC. ANN. art. 15.05.

The Commission points out Petitioner sua sponte dismissed twenty complaints for failure to include sworn probable cause affidavits even though the law does not require such an affidavit and no defendant filed a motion or made any argument pointing out any alleged defect. The State repeatedly explained to Petitioner that the law does not require a complaint to contain a probable cause affidavit, however, Petitioner emphatically refused to reconsider his interpretation of the law**.** Thus, the State was forced to appeal Petitioner's dismissals of the

complaints. In its opinion on appeal, the First Court of Appeals held "there was no ground to support the trial court's dismissal of the informations based on invalid complaints." *State v. Santillana*, 612 S.W.3d 582, 588 (Tex. App.—Houston [1st Dist.] 2021, pet. ref'd). The Court of Appeals subsequently reversed the trial court and remanded the cases for further proceedings. *Id.*

Petitioner's sua sponte dismissal of the complaints based on a theory that has no foundation in law, nor based on any argument by defense counsel, constitutes legal error that rises to the level of sanctionable judicial misconduct.

5. Petitioner conducted bench trials without obtaining the State's consent to a jury waiver in violation of the Texas Code of Criminal Procedure.

The Commission also claims Petitioner violated canons 2A and 3B(2) by conducting bench trials without the State's consent to a jury waiver, in violation of Texas Code of Criminal Procedure Article 1.13. *See* TEX. CODE CRIM. PROC. ANN. art 1.13. The Code of Criminal Procedure provides that a trial court does not have the discretion to serve as a factfinder in a trial absent the consent and approval of the State to the accused's waiver of a jury trial. *Id.*; *see also State ex rel. Mau v. Third Court of Appeals*, 560 S.W.3d 640, 646 (Tex. Crim. App. 2018) (orig. proceeding) ("Absent consent of the State as prescribed by Article 1.13 of the Code of Criminal Procedure, the trial court had no discretion to resolve the issue of [the defendant's] guilt in any manner but by a jury trial.").

The Commission points out that on December 2, 2020, Petitioner conducted a bench trial without the State's consent. At the conclusion of the trial, Petitioner acquitted the defendant. The State sought a writ of mandamus from the Fourteenth Court of Appeals ordering the trial court to vacate the judgment of acquittal. Petitioner refused to stay the proceedings pending the State's petition for writ of mandamus. On May 27, 2021, the Court of Appeals conditionally granted the State's petition for writ of mandamus and ordered Petitioner to vacate his judgment of acquittal. *See In re State ex rel. Ogg*, No. 14-20-00793-CR, 2021 WL 2153297 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.) (mem. op., not designated for publication).

On July 6, 2021, because Petitioner had still not vacated the judgment of acquittal, the State filed a motion with the Court of Appeals requesting it issue the writ of mandamus. On July 15, 2021, the Court of Appeals ordered Petitioner to vacate the judgment by August 1, 2021. Petitioner continued to ignore the Court's order, so on August 2, 2021 the State filed a status update with the Court of Appeals as ordered, and again requested the issuance of the writ in light of Petitioner's failure to comply with the Court of Appeals' order. On August 5, 2021, the Court of Appeals issued the writ and ordered any constable to effect personal service on Petitioner. It was only after Petitioner was served on August 17, 2021, that he issued an order vacating the improper judgment of acquittal.

Petitioner testified he believed the Texas Supreme Court's emergency powers allowed him to circumvent Article 1.13.[6] Petitioner, however, learned his belief was incorrect on March 3, 2021, when the Court of Criminal Appeals decided *In re State ex. rel. Ogg*. *See* 618 S.W.3d 361 (Tex. Crim. App. 2021) (orig. proceeding). In *Ogg*, the Court of Criminal Appeals held the Texas Supreme Court's emergency orders did not allow a trial court to conduct a bench trial without the State's consent. *Id.* at 366. Incredibly, Petitioner waited more than five months after the Court of Criminal Appeals decided *Ogg* and almost three months after the Court of Appeals conditionally granted the State's writ before finally vacating the acquittal order.

Petitioner's legal error in conducting a bench trial without the State's consent is a sanctionable act of judicial misconduct. Moreover, Petitioner's intentional refusal to follow the Court of Appeals' mandamus order for over five months despite clear and unambiguous authority from this State's highest criminal court as well as from the Fourteenth Court of Appeals is beyond any doubt egregious error made in

[6]When the Panel asked Petitioner why he had failed to comply with the Court of Appeals' order to vacate the judgment, he responded that he did not understand what he was supposed to do. We note that Petitioner is board certified in criminal appellate law and as such is surely able to read and understand an appellate court's opinion. Additionally, as support for his failure to follow the Court of Appeals' order, issued in May 2021, Petitioner stated he was distracted by the recent deaths of his parents. However, we note in the interview he gave to *The Nation* magazine in 2019, Petitioner reported his father had recently passed away. In 2022, Petitioner testified his mother was alive.

bad faith. Petitioner's action demonstrates a failure to comply with and failure to maintain professional competence in the law.

6. Petitioner refused to impose mandatory jail time in violation of the Texas Code of Criminal Procedure.

The Commission also claims Petitioner violated canons 2A and 3B(2) by refusing to impose the required mandatory seventy-two-hour jail time as a condition of probation in violation of Texas Code of Criminal Procedure Article 42A.401. Texas Code of Criminal Procedure Article 42A.401(a)(1) requires defendants placed on community supervision for certain intoxication offenses, such as DWI-second, to serve seventy-two hours in jail as a condition of probation. *See* TEX. CODE CRIM. PROC. ANN. art 42A.401(a)(1) (using the language "shall require"); *State v. Cooley*, 401 S.W.3d 748, 751 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd) (vacating DWI sentence due to trial court's failure to assess statutory minimum jail time).

In one case in which a defendant entered a plea of guilty to DWI-second, Petitioner proclaimed that pursuant to the trial court's emergency powers, he waived the statutory provision requiring the defendant to serve seventy-two hours in jail. The emergency orders that were in place at the time, however, did not grant Petitioner the discretion to waive such statutory requirements.

Petitioner prohibited the State from making a record of that proceeding in court, thus, the State filed a motion for nunc pro tunc in order to make a record of

the proceeding for appeal. In its nunc pro tunc motion, the State requested the judgment reflect Petitioner's oral pronouncement that he waived the seventy-two hours of mandatory jail time as a condition of probation pursuant to the trial court's emergency powers. Petitioner refused to timely rule on the State's nunc pro tunc motion even though the court's chief prosecutor informed him that the motion was in his queue and awaiting a ruling. Rather than rule on the motion, Petitioner replied, "There are all kind of motions I have pending. I'll get to them when I feel like it."

Petitioner's legal error in refusing to impose mandatory jail time in violation of the Texas Code of Criminal Procedure is a sanctionable act of judicial misconduct. Moreover, Petitioner's refusal to allow the State to make a record of the proceeding and his refusal to timely rule on the State's nunc pro tunc motion demonstrates the error was egregious and made in bad faith. Petitioner failed to comply with the law and failed to maintain professional competence in the law.

7. Petitioner refused to forfeit defendants' bonds after the defendants failed to appear in court in violation of the Texas Code of Criminal Procedure.

The Commission also claims Petitioner violated Canons 2A and 3B(2) by refusing to forfeit defendants' bonds in violation of Texas Code of Criminal Procedure Article 22.01. Article 22.01 provides:

> When a defendant is bound by bail to appear and fails to appear in any court in which such case may be pending and at any time when his personal appearance is required under this Code, or by any court or magistrate, a forfeiture of his bail and a judicial declaration of such

> forfeiture shall be taken in the manner provided in Article 22.02 of this Code and entered by such court.

TEX. CODE CRIM. PROC. ANN. art. 22.01.

Petitioner refused to forfeit defendants' bonds after the defendants failed to appear to court setting on multiple occasions. In one case, a defendant failed to appear in court for his scheduled setting at least nine times. Yet, Petitioner refused to forfeit his bond. Instead, each time the defendant failed to show up, Petitioner granted him a $100 cash bond. When the defendant failed to appear the tenth time, the State filed a motion requesting his bond forfeited. In reply, Petitioner became incredibly angry and stated, "There is no such thing as a State's motion for bond forfeiture."

In another case, a defendant failed to show up for trial on three occasions but again Petitioner refused to forfeit the defendant's bond. After the third no-show, the two prosecutors assigned to Petitioner's courtroom asked Petitioner to forfeit the defendant's bond. Petitioner responded angrily and berated and mocked the prosecutors. He asked one prosecutor "why do you care . . . soon you will be a blip on the annals of court history."

Petitioner's legal error in refusing to forfeit defendants' bonds is a sanctionable act of judicial misconduct. Specifically, his refusal to forfeit bonds—after one defendant failed to appear for his scheduled setting ten times and another failed to show up for trial three times—is egregious error. Moreover, Petitioner's

error appears to be part of an ongoing practice of ignoring Texas law in lieu of advancing his stated goals of ending pretrial detention and disrupting the criminal justice system.[7]

Petitioner's failure to forfeit defendants' bonds is a failure to comply with the law and a failure to maintain professional competence in the law.

8. Petitioner improperly credited a defendant with thirty days of jail time when he had not earned thirty days credit, in violation of the Texas Code of Criminal Procedure.

The Commission also claims Petitioner violated Canons 2A and 3B(2) by crediting a defendant thirty days of jail time even though the defendant had spent at most two days in custody in violation of Texas Code of Criminal Procedure Article 42.03. Article 42.03 Section Two provides that the judge of the court in which a defendant is convicted shall give the defendant credit on the defendant's sentence for the time the defendant has spent in jail. TEX. CODE CRIM. PROC. ANN. art. 42.02, § 2(a) (1).

In the case of *Texas v. Martinez-Contreras*, the defendant was charged with driving while intoxicated. The defendant entered a plea of guilty in exchange for a

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[7]During his July 2, 2019 interview with *The Nation* magazine on the magazine's podcast, "Next Left," Petitioner stated he had campaigned on a platform of "telling people that I was a socialist, that I was a prison abolitionist, and that I was trying to end pretrial detention." http://www.the nation.com/podcast/politics/franklin-bynum-next-left. Further, Petitioner stated he did not consider a bail reform lawsuit to be "disrupting" enough. *Id.* That same month, Petitioner appeared on a local television show and stated he now has a badge that "opens gates" and that his signature can "free people." Broadcast available at www.youtube.com/watch?v=3LFiuTWeE41.

sentence of thirty days in jail. Petitioner followed the plea-bargain agreement but awarded the defendant thirty days' jail-time credit even though the defendant had served at most two days in custody.

The State filed a nunc pro tunc motion in the trial court in an attempt to correct the judgment to reflect the defendant had not earned thirty days' jail time credit. Petitioner appeared angry that the State filed the motion to correct the judgment even though there was no evidence the defendant had spent thirty days in jail. Petitioner remarked that the prosecutor who filed the nunc pro tunc motion was "stupid."

During the trial de novo, a prosecutor testified about her recollection of this case. The prosecutor explained that if a defense attorney informs a prosecutor a defendant has acquired custody time outside of the county, the prosecutor confirms the defense attorney's representation. She testified the State would have never filed the nunc pro tunc motion seeking to correct the custody time on the judgment without double-checking the amount of jail time the defendant had acquired elsewhere.

Petitioner's legal error in awarding a defendant thirty days' jail time credit when the defendant had served at most two days in jail is a sanctionable act of judicial misconduct. Petitioner's error again appears to be a part of an ongoing personal effort to prevent defendants from spending time in jail, regardless of Texas law.

We find this act of judicial misconduct, along with Petitioner's numerous other legal errors discussed above, supports a conclusion that Petitioner violated Texas Code of Judicial Conduct Canons 2A and 3B(2). *See* TEX. CODE JUD. CONDUCT, Canons 2A, 3B(2).

B. NON-LEGAL ERRORS

The following charges allege non-legal errors and are reviewed by a willfulness standard. *See Ginsberg*, 630 S.W.3d at 7–9.

CHARGE II: CANON 2B

The Commission alleges Petitioner lent the prestige of his judicial office to advance his private interests in violation of Canon 2B of the Texas Code of Judicial Conduct. Canon 2B provides, in relevant part, "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others." TEX. CODE JUD. CONDUCT, Canon 2B. Specifically, the evidence demonstrates that after assuming the bench, Petitioner:

> (1) openly expressed his continuing desire to contribute to the "demolition" of the criminal justice system as it currently exists during an interview with *The Nation* magazine;
>
> (2) in public statements, made clear he would continue his advocacy for criminal justice reform in his role as a judge, only now from "within" the system; and
>
> (3) took a selfie while wearing a "Defund Police" t-shirt given to him by the Chicago Public Defender's Office, which was posted on his Twitter feed and reposted on the Houston Police Officers Union's Facebook page.

During his testimony, Petitioner admitted he publicly expressed his desire for the destruction of the criminal justice system on at least two or three occasions. He explained, however, that he made such statements "sparingly" and only in the context of "seeking judicial office," and not for the purpose of the "destruction of criminal courts in general." We know, however, that Petitioner gave an interview to *The Nation* magazine stating his desire to "destroy" the criminal justice system *after* he was elected to the bench.

As for the "Defund Police" t-shirt, Petitioner initially testified he did not recall wearing the shirt. But after he was shown a picture of himself posted on his twitter account—wearing the t-shirt while thanking the Chicago Public Defender's Office for giving it to him—he acknowledged that he indeed wore the t-shirt after he assumed the bench. Petitioner also admitted that all or virtually all the cases before him involved law enforcement officials. Petitioner stated, however, that he did not believe wearing such a t-shirt would cause the public to perceive him as not impartial in the administration of justice because he did not "wear the shirt on the bench."

Petitioner testified he did not intend to lend the prestige of his judicial office to advance his private interests, but this alone is not dispositive of our inquiry. *See Davis*, 82 S.W.3d at 148 (holding that a judge need not have specifically intended to violate the Code of Judicial Conduct; a willful violation occurs if the judge intended to engage in the conduct for which he or she is disciplined); *In re Barr*, 13 S.W.3d

525, 539 (Tex. Rev. Trib. 1998) (same). The evidence shows Petitioner intended to take the actions detailed above, satisfying the willfulness test.

In his post-submission brief, Petitioner argues that these statements were "within his First Amendment rights as recognized in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002)." While it is true that a candidate for judicial office in a state where judges are selected by elections has a right to make statements about topics that he may decide—that right is not without limitation. Furthermore, *Republican Party* only delineates those rights to a candidate for office. The matter before us now involves statements made while Petitioner was a judge.[8]

Petitioner has publicly expressed an interest in "demolishing" the criminal justice system; defunding the police force certainly has the appearance of furthering that goal. We find the Examiners established by a preponderance of the evidence that Petitioner willfully violated Canon 2B by lending the prestige of his judicial

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[8]A passage from Justice McClure's concurrence in *In re Hecht*, at page 596 is instructive here:

> I offer [a] caveat before I close . . . the robe means something to me. Every time I slip it on, I remember my oath—a vow to preserve, protect and defend the constitution and laws of the United States and of this state. If ever I look in the mirror and see a judge who has ruled on the basis of politics, expediency, or personal gain rather than the rule of law, it is time to remove the robe and leave the bench. The citizens of this state deserve nothing less. As for the 3700 judges who want to know what to do, it is my fervent hope that each one will pause to consider this: *Our ability to speak does not mean that we should speak*. (emphasis added). I haven't, and I won't.
>
> 213 S.W.3d 547, 596 (Tex. Spec. Ct. Rev. 2006) (McClure, J., concurring).

office during his efforts to advance his private interest of undermining the existing criminal justice system. *See* TEX. CODE JUD. CONDUCT, Canon 2B.

Charge III: Canon 3B(4)

The Commission further alleges Petitioner failed to treat with patience, dignity, and courtesy people with whom he dealt in his official capacity in violation of Canon 3B(4) of the Texas Code of Judicial Conduct. Canon 3B(4) provides, in relevant part, "[a] judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity." TEX. CODE JUD. CONDUCT, Canon 3B(4).

The evidence demonstrates Petitioner committed numerous acts that violated Canon 3B(4). Among them, Petitioner implemented a series of targeted court policies directed toward the HCDAO which included:

> (1) denying HCDAO staff the opportunity to communicate with the judge or his staff by email, while not prohibiting similar communications between the judge or his staff and defense attorneys;
>
> (2) prohibiting HCDAO staff from communicating with other court participants during Zoom proceedings;
>
> (3) adopting a blanket policy of not accepting agreed pleas from the State;
>
> (4) refusing to allow HCDAO staff to view court proceedings remotely; and
>
> (5) forcing prosecutors to wait for hours on Zoom hearings before Petitioner showed up for court.

Petitioner further failed to act in a patient, dignified, and courteous manner when he disregarded the health of the HCDAO's employees and ordered them to appear in person at the height of the COVID-19 pandemic.

Petitioner was known to bully the prosecutors in his courtroom. In one case, where the State obtained a probable cause finding from the grand jury after Petitioner sua sponte dismissed the case for lack of probable cause, Petitioner angrily informed the prosecutors that they "were wasting their resources" and that they should be "acting collaboratively." The prosecutor involved in that case stated Petitioner "seemed pretty hostile to the idea that we [the State] would proceed on this case."

Prosecutors described Petitioner's courtroom as "tense" and said they felt as if they "had to be on guard." One prosecutor testified, "you always had to walk on eggshells, because if you said something or brought up a case that got under his skin, you know, [he would] yell, kick you out of Zoom. So the tension was high. You had to always be wary of whether or not you were going to set him off." The prosecutor stated Petitioner "was not patient, not dignified or courteous."

Petitioner was asked to respond to the Commission's allegations that he failed to treat with patience, dignity, and courtesy people with whom he dealt in his official capacity. In response, he accused the Harris County District Attorney, Kim Ogg, of persuading prosecutors to be "confrontational." According to Petitioner, Ms. Ogg manipulated prosecutors to manufacture charges against him because he criticized

her for disagreeing with his stance on bail reform. Petitioner stated that the HCDAO "deploy[ed] waves and waves of people who have been instructed to be deliberately defiant." Petitioner stated, however, that he considered the assignment of one of the prosecutors to his court to be an attempt at reconciliation by the HCDAO. This prosecutor, though, testified that Petitioner made a thinly veiled threat against her law license over an unintentional and quickly corrected oversight. She further testified that she operated under constant threat of being held in contempt by Petitioner.

That the momentary conduct and levels of patience of trial judges may vary is expected when under stress, when faced with legal uncertainties and in efforts to control their courtroom. Judges are entitled to deference in how they manage their courtrooms. With regard to the reported conduct of Petitioner, this is different, particularly in his dealings with attorneys in the HCDAO. Cumulatively, these incidents paint a picture of impatience, bias and lack of courtesy, and a judicial arrogance that would not be expected of a Texas district judge. The reported performance of Petitioner in his judicial duties is idiosyncratic - both in temperament and in rulings on legal issues that were well established, not novel. It is as if Covid-19 emergency orders from our highest courts were used to experiment in and buttress his self-proclaimed destruction of select statutes and rules of criminal procedure not to his liking. The testimony of those working in the HCDAO is telling, describing

Petitioner's courtroom as "tense," feeling as if they "had to be on guard" in that, "you always had to walk on eggshells," "the tension was high. You had to always be wary of whether or not you were going to set him off." This is a vivid description of what was subtly happening on a regular basis in Petitioner's courtroom which we recognize as—not patient, not dignified, not unbiased, or courteous.

Accordingly, we reject Petitioner's denial of these claims as well as his assertion that prosecutors manufactured the claims at the behest of Ms. Ogg. The conduct described above falls below that acceptable under 3B(4), and we are concerned that any judge would choose to use such disturbing tactics to respond to those who might question his decisions. We are even more concerned that Petitioner still refuses to acknowledge that his actions rebuking prosecutors violated the Code of Judicial Conduct.

We agree with the Commission; the record overwhelmingly establishes that Petitioner's actions constituted a willful violation of his duty to be patient, dignified, and courteous to litigants and others with whom he dealt with in an official capacity. Accordingly, we find the Examiners established by a preponderance of the evidence that Petitioner willfully violated Canon 3B(4).

CHARGE IV: CANONS 3B(5) & 3B(6)

The Commission alleges Petitioner routinely performed his judicial duties with bias and prejudice, and/or manifested through words or conduct such bias or prejudice in the performance of same, in violation of Canons 3B(5) and/or 3B(6) of the Texas Code of Judicial Conduct. Canon 3B(5) of the Texas Code of Judicial Conduct provides, "[a] judge shall perform judicial duties without bias or prejudice." TEX. CODE JUD. CONDUCT, Canon 3B(5). Canon 3B(6) of the Texas Code of Judicial Conduct provides, in relevant part, "[a] judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice." TEX. CODE JUD. CONDUCT, Canon 3B(5).

The Commission points out Petitioner's bias against the State was demonstrated by his act of denying the HCDAO staff the opportunity to communicate with him or his staff by email, while not prohibiting similar communications between himself or his staff and defense attorneys. One prosecutor testified:

> Q. What was the motivating factor for why the State chose to file Motions to Recuse on every case?
>
> A. It seemed that Judge showed hostility to the State and it was treating State defense unequally. And that would be part of his bias, and it certainly was consistent with his prior actions as well.
>
> Q. So were these Motions to Recuse filed in an effort to clog the wheels of the justice system?

A. No.

Q. Were there any other instances where Judge Bynum showed bias against the State?

A. I think there's another instance where we were ordered not to communicate with William, his court coordinator. And that seemed to be an effort to prevent us from being able to do our jobs, especially since we're appearing remotely. And the fact that he would mute us or not allow us to get into the Zoom room to communicate in other means.

Petitioner also appeared prejudiced against victims of domestic violence and exhibited a pattern of refusing to protect victims of family violence. For instance, Petitioner made no probable cause findings in at least twenty cases of alleged family violence cases. And Petitioner refused to issue protective orders in domestic violence cases. Prosecutors testified that Petitioner's behavior interfered with their ability to represent victims in the state of Texas.

According to Petitioner, "the county is pretty safe right now" and family-violence cases are "over done."[9] Petitioner believed and publicly stated that the HCDAO used domestic violence victims as "pawns."[10]

[9]After Petitioner stated that family violence cases are "over done," he remarked, "A person who murders will only do it once, so he is essentially harmless after that one murder is accomplished." One prosecutor testified that it was not uncommon for Petitioner to comment, "people don't normally murder again."

[10]Petitioner's comment was not recorded. One of the prosecutors, who was present and heard the statement, requested Petitioner make a record of their conversation. The prosecutor testified Petitioner became "furious" when he requested a record of the "pawn" conversation.

Prosecutors expressed Petitioner's treatment of domestic violence victims left them with doubt regarding Petitioner's capacity to act impartially in dealing with domestic violence cases.

Through his words and conduct, Petitioner manifested bias and prejudice against the staff of the HCDAO as well as against domestic violence victims. Accordingly, we find that the Examiners established by a preponderance of the evidence that Petitioner willfully violated Canons 3B(5) and 3B(6). *See* TEX. CODE JUD. CONDUCT, Canons 3B(5), 3B(6).

CHARGE V: CANON 3B(8)

The Commission further alleges Petitioner failed to accord the State the right to be heard according to law, in violation of Canon 3B(8) of the Texas Code of Judicial Conduct. Canon 3B(8) of the Texas Code of Judicial Conduct provides, in relevant part, "[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," and "[a] judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney . . . or any other court appointee concerning the merits of a pending or impending judicial proceeding." TEX. CODE JUD. CONDUCT, Canon 3B(8).

The evidence demonstrates Petitioner

(1) issued improper sua sponte orders of protection directing the Harris County Sheriff's Office not to collect DNA specimens from defendants convicted of certain enumerated misdemeanor offenses, in violation of the requirements of Texas Government Code Section 411.1471(b-1) without notice to or participation of the State; and

(2) made sua sponte findings of "No Probable Cause" in at least four cases without a motion and without notice to or participation of the State or defendant, in situations where the defendant had been previously magistrated and already appeared in court.

Moreover, beyond failing to provide notice to the State of his sua sponte findings and orders, Petitioner prohibited the prosecutors assigned to his courtroom the opportunity to be heard during court dockets. One such prosecutor described her experience as follows:

> JUSTICE WILLIAMS: Let me ask you a question. You talked about in Exhibit No. 12, pages 199 and 200, there's a conversation where the judge says, court is over, goodbye. It says, I still try to talk to judge cuts me off. Judge -- not now, court is over, bye. You go on and you say, Judge, I wanted to -- Judge says, When I say court is over it means court is over. I don't want to hear anything from anyone. It's my courtroom, when I say we stop court, we stop. William, will you end the meeting, please.
>
> Okay. So my question is, one of the -- under Cannon 3, it says, A judge shall afford every person who has a legal interest in a proceeding the right to be heard according to law. Do you feel like you had the right to be heard?
>
> THE WITNESS: At that point, we were not.
>
> JUSTICE WILLIAMS: Okay. Did that happen any other time? Was this a frequent occasion, or did it

just -- this type of thing happened just this one time?

> THE WITNESS: Oh, no, it happened multiple times and sometimes I would be - and, again, I also be respectful to judge - I would say, Your Honor, I have -- I have something to say. But then sometimes, Court is over, bye, and literally get kicked out from Zoom.

Petitioner's refusal to allow the HCDAO the right to be heard is further illustrated by the language in Petitioner's order to prosecutors to appear in person for all proceedings at the height of the COVID-19 crisis, despite the Texas Supreme Court's orders to conduct proceedings virtually. Petitioner informed prosecutors:

> I will not answer any questions about this. Do not make any inquiry of me or my staff about these procedures. This is very simple: a prosecutor with authority to bind their client on every case will appear personally on Wednesday and Thursday at 9 a.m. until further notice.

We agree the record establishes Petitioner's actions constituted a willful violation of Canon 3B(8) to the extent it shows Petitioner had a practice of failing to accord the State the right to be heard according to law on numerous occasions. We find; however, the record does not support a finding Petitioner initiated, permitted, or considered ex parte communications or other communications made to him outside the presence of the parties.

Accordingly, we find that the Examiners established by a preponderance of the evidence that Petitioner willfully violated Canons 3B(8) to the extent that he failed to accord the State the right to be heard according to law. *See* TEX. CODE JUD. CONDUCT, Canon 3B(8).

CHARGE VI: CANON 3B(10)

The Commission alleges Petitioner made adverse public comments regarding pending and impending criminal proceedings which suggested to a reasonable person the Petitioner's probable decision in cases, in violation of Canon 3B(10) of the Texas Code of Judicial Conduct. Canon 3B(10) of the Texas Code of Judicial Conduct provides, in relevant part, "[a] judge shall abstain from public comment about a pending or impending proceeding which may come before a judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case." TEX. CODE JUD. CONDUCT, Canon 3B(10).

The evidence demonstrates Petitioner took a selfie while wearing a "Defund Police" t-shirt given to him by the Chicago Public Defender's Office, which was posted on his Twitter feed and reposted on the Houston Police Officers Union's Facebook page. As Petitioner acknowledged, he presided over a misdemeanor criminal court and virtually all of the cases before him involved law enforcement officials. He also stated he understood, as it related to the message on his t-shirt, "it's a controversial thing to say." Yet, despite the negative message displayed on his t-shirt, Petitioner claimed he treated all parties in his courtroom fairly, including police officers. He maintained the words "Defund Police" would not cause a reasonable person to anticipate his rulings in cases involving law enforcement officials and the HCDAO.

We disagree. The message on Petitioner's t-shirt to "Defund" police could reasonably be seen by the public as an expression of animosity towards law enforcement officers—suggesting to a reasonable person Petitioner's probable decision in cases involving police officers. We are concerned that Petitioner continues to overlook the harm created by even the appearance of bias or prejudice. *See Davis*, 82 S.W.3d at 148 (holding the appearance of bias or prejudice alone is enough to find a judge violated the Code of Judicial Conduct). Accordingly, we find the Examiners established by a preponderance of the evidence that Petitioner willfully violated Canons 3B(10). *See* TEX. CODE JUD. CONDUCT, Canon 3B(10).

CHARGE VII: CANONS 4A(1) AND 4A(2)

The Commission alleges Petitioner conducted extra-judicial activities in a manner that cast reasonable doubt on his capacity to act impartially as a judge and/or interfered with the proper performance of his judicial duties, in violation of Canons 4A(1) and 4A(2) of the Texas Code of Judicial Conduct. Canon 4A(1) of the Texas Code of Judicial Conduct provides, "[a] judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge." TEX. CODE JUD. CONDUCT, Canon 4A(1). Canon 4A(2) of the Texas Code of Judicial Conduct provides, "[a] judge shall conduct all of the judge's extra-judicial activities so that they do not interfere with the proper performance of judicial duties." *Id.* at 4A(2).

Petitioner engaged in willful and persistent conduct that was clearly inconsistent with the proper performance of his duties and cast public discredit upon the judiciary and the administration of justice. On July 2, 2019, in an interview with *The Nation* magazine, Petitioner openly expressed his desire to contribute to the "demolition" of the criminal justice system. In another public statement made while on the bench, Petitioner made clear he would continue his advocacy for criminal justice reform in his role as a judge, only now from "within" the system. He furthermore exhibited contempt for the pillars of the criminal justice system, including the HCDAO.

Petitioner's public attacks on the criminal justice system in general, and the HCDAO specifically, created doubt that he could be fair in dealing with the State, despite his proclamation that his feelings about the criminal justice system would never influence his judgment.[11]

We find the Examiners established by a preponderance of the evidence that Petitioner willfully violated Canons 4A(1) and 4A(2). *See* TEX. CODE JUD. CONDUCT, Canons 4A(1), 4A(2).

[11]We note that no complaint was filed against Petitioner until after he ordered prosecutors, but not defense counsel, to appear in-person during the height of the COVID-19 pandemic.

CHARGE VIII: Article V, Section 1-a(6)A of the Texas Constitution

Article V, Section 1-a(6)A of the Texas Constitution provides, in pertinent part, that a judge shall not engage in "willful or persistent conduct" that is "clearly inconsistent with the proper performance of his duties or cast[s] public discredit upon the judiciary or administration of justice." TEX. CONST. art. V, § 1-a(6)A.

As set out above, the evidence showed that Petitioner failed to comply with and maintain professional competence in the law in his handling of cases, exhibited bias in favor of criminal defendants and prejudice against the State, denied litigants and attorneys the right to be heard according to law, made public comments about pending or impending proceedings that suggested to a reasonable person his probable decision on particular cases, and engaged in willful and persistent conduct that was clearly inconsistent with the proper performance of his duties and cast public discredit upon the judiciary and the administration of justice.

We find the Examiners established by a preponderance of the evidence that Petitioner willfully violated Article V, Section 1-a(6)A of the Texas Constitution. *See* TEX. CONST. art. V, § 1-a(6)A.

IV. DISCIPLINE

Having found that Petitioner violated Canons 2A, 2B, 3B(2), 3B(4), 3B(5), 3B(6), 3B(8), 3B(10), 4A(1) and 4A(2) of the Texas Code of Judicial Conduct and Article V, Section 1-a(6)A of the Texas Constitution, we must now determine an

appropriate degree of discipline to impose against Petitioner. *See* TEX. R. REM'L/RET. JUDGES 9(d).

This Special Court of Review may consider the *Deming* factors when determining the appropriate sanction for Petitioner. *See Sharp*, 480 S.W.3d at 839 (citing to *In re Deming*, 108 Wash.2d 82, 119–20, 736 P.2d 639 (1987)).

The *Deming* factors are:

(a) whether the misconduct is an isolated instance or evidenced a pattern of conduct;

(b) the nature, extent, and frequency of occurrence of the acts of misconduct;

(c) whether the misconduct occurred in or out of the courtroom;

(d) whether the misconduct occurred in the judge's official capacity or in his private life;

(e) whether the judge has acknowledged or recognized that the acts occurred;

(f) whether the judge has evidenced an effort to change or modify his conduct;

(g) the length of service on the bench;

(i) the effect the misconduct has upon the integrity of and respect for the judiciary; and

(j) the extent to which the judge exploited his position to satisfy his personal desires.

Deming, 736 P.2d at 659.

In this matter, the *Deming* factors support the Commission's decision to issue a Public Reprimand to Petitioner. Petitioner has (1) demonstrated a pattern of conduct, specifically with his inability to follow the law; (2) frequently engaged in misconduct; (3) engaged in the conduct when he was in the courtroom and in his official capacity (4) failed to acknowledge any wrongdoing, as exhibited in his testimony before this panel and his inability to follow the ruling of the appellate court; (5) made no effort to change or modify his conduct; (6) received a private admonition from the Commission in August 2020 for making numerous inflammatory injudicious statements in various cases before him; and (7) made negative remarks about the criminal justice system and the HCDAO during interviews as well as expressing his disdain for law enforcement.

Accordingly, to preserve the integrity and independence of the judiciary, to restore and reaffirm public confidence in the administration of justice, and in recognition that judges must respect and honor the judicial office as a public trust, we conclude a Public Reprimand is appropriate. Therefore, after considering the pleadings, all of the evidence, the arguments of counsel, and the parties' post-trial briefing, we issue this Public Reprimand against Petitioner for his violations of the Code of Judicial Conduct.

PER CURIAM