

**Opinion Issued October 25, 2019.**



**DOCKET NO. SCR 19-0002**

**SPECIAL COURT OF REVIEW<sup>1</sup>**

**IN RE INQUIRY CONCERNING HONORABLE JAMES OAKLEY  
CJS NOS. 18-1214, 18-1227, 18-1283, 18-1329,  
18-1331, 18-1344, and 18-1613**

---

**OPINION**

The State Commission on Judicial Conduct determined that the Honorable James Oakley, Burnet County Judge, violated Canon 2B of the Texas Code of Judicial Conduct by lending the prestige of his office to advance the private interests of another. See TEX. CODE JUD. CONDUCT, Canon 2B, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. B. As a result, the Commission issued Judge Oakley a public admonition. See TEX. CONST. art. V, § 1–a(8). In the argument and briefs he submitted to this Special Court of Review, Judge Oakley did not dispute any of the factual allegations in the charging document, only the Commission's legal conclusion that his conduct violated Canon 2B.

---

<sup>1</sup> See TEX. GOV'T CODE ANN. § 33.034(c). This Special Court of Review consists of The Honorable Greg Perkes, Justice of the Thirteenth Court of Appeals at Corpus Christi-Edinburg, presiding by appointment; The Honorable Meagan Hassan, Justice of the Fourteenth Court of Appeals at Houston, participating by appointment; and The Honorable Robbie Partida-Kipness, Justice of the Fifth Court of Appeals at Dallas, participating by appointment.

See TEX. GOV'T CODE ANN. § 33.034. We agree with the Commission that Judge Oakley violated Canon 2B and that a public admonition is the appropriate sanction.

### **I. FACTS<sup>2</sup>**

The facts in this case are straightforward. Judge Oakley is the constitutional county judge of Burnet County, Texas. He performs judicial functions by presiding over uncontested probate and guardianship proceedings.

Judge Oakley also serves on the Board of Directors of the Pedernales Electric Cooperative (PEC), a member-owned, nonprofit corporation formed under the Texas Electric Cooperative Corporation Act (TECCA). The PEC's primary purpose is to provide electricity to its members. It is the largest electric cooperative in the country and nearly all of the residents living in the service area are members.

The board manages the PEC on the members' behalf. Each director is elected by the members to a three-year term. Only members are eligible to serve as directors.

Donna Holland Wilcox, a social acquaintance of Judge Oakley, asked him to publicly endorse her candidacy to serve as Director 1. Judge Oakley agreed and permitted Wilcox to use his name, likeness, and judicial title as "The Honorable James Oakley, Burnet County Judge" in her campaign materials. Some of these materials were mailed directly to the approximately 35,000 members in the district represented by Director 1; other campaign advertisements bearing Judge Oakley's name and/or likeness were available on various social media platforms. Wilcox's campaign was ultimately

---

<sup>2</sup> The following is taken from the evidence presented by the parties during a hearing conducted on August 26, 2019, including twelve admitted exhibits tendered by the Commission without objection and the testimony of Judge Oakley, the only witness called by either party.

unsuccessful, but had she been elected, she would have received a \$36,000 annual stipend.

It is undisputed that serving as a PEC director is not a public office. In fact, Judge Oakley believed his public endorsement of Wilcox was permissible under the Code of Judicial Conduct because the election did not concern a public office. See TEX. CODE JUD. CONDUCT, Canon 5(2) (“A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party.”).

## **II. RELEVANT STANDARDS & BURDEN OF PROOF**

The Code of Judicial Conduct establishes the basic standards that govern judicial conduct. TEX. CODE JUD. CONDUCT, Preamble. Article V of the Texas Constitution provides that a judge may be disciplined for a “willful violation of the Code of Judicial Conduct.” TEX. CONST. art. V, § 1–a(6)(A). “Willful conduct requires a showing of intentional or grossly indifferent misuse of judicial office, involving more than an error of judgment or lack of diligence.” *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)). The relevant inquiry is not whether the judge specifically intended to violate the Code of Judicial Conduct; rather, a willful violation occurs if the judge intended to engage in the conduct for which he or she is disciplined. *In re Slaughter*, 480 S.W.3d 842, 848 (Tex. Spec. Ct. Rev. 2015) (citing *Davis*, 82 S.W.3d at 148).

When, as here, a sanction is issued through an informal proceeding, our review “is by trial de novo as that term is used in the appeal of cases from justice to county court.” TEX. GOV’T CODE ANN. § 33.034(e)(2). The Commission bears the burden of proving its

charges by a preponderance of the evidence. See TEX. GOV'T CODE ANN. § 33.034(f); *Slaughter*, 480 S.W.3d at 845.

### III. ANALYSIS

Judge Oakley was charged by the Commission with violating Canon 2B by lending the prestige of his office to advance Wilcox's private interests. See TEX. CODE JUD. CONDUCT, Canon 2B ("A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others . . . ."). Judge Oakley did not dispute that his conduct was willful; he readily admits that he knowingly authorized Wilcox to use his name, likeness, and judicial title to endorse her in campaign materials. See *Slaughter*, 408 S.W.3d at 848. Instead, he contends that Wilcox's election to the PEC Board of Directors would not have advanced her "private" interests because the position "provides no secret or clandestine benefits." Additionally, Judge Oakley relies heavily on *In re Hecht* for the proposition that compensation paid to an elected official does not constitute a private interest under Canon 2B. See 213 S.W.3d 547, 577 (Tex. Spec. Ct. Rev. 2006). We address each argument in turn.

#### A. The Ordinary Meaning of Canon 2B

The Code of Judicial Conduct is interpreted in accordance with the rules of statutory construction. *Id.* at 564–65; see also *O'Quinn v. State Bar of Tex.*, 763 S.W.2d 397, 399 (Tex. 1988) ("[O]ur disciplinary rules should be treated like statutes."). Statutory construction is a question of law. *Hecht*, 213 S.W.3d at 564; *In re Caballero*, 272 S.W.3d 595, 599 (Tex. 2008) (citing *State ex rel. State Dep't of Highways & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002)).

Our role is to give effect to the drafters' intent. *Hecht*, 213 S.W.3d at 564 (citing *Crown Life Ins. v. Casteel*, 22 S.W.3d 378, 383 (Tex. 2000)). We read words and phrases in context and construe them according to the rules of grammar and common usage. TEX. GOV'T CODE ANN. § 311.011(a). Words are given their ordinary meaning and we may consult legal or other well-accepted dictionaries to aid our inquiry. *Hecht*, 213 S.W.3d at 565.

We start, of course, with the language itself:

**Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities**

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. 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; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

TEX. CODE JUD. CONDUCT, Canon 2.

Judge Oakley correctly notes that the Code of Judicial Conduct does not define the term "private interests." See TEX. CODE JUD. CONDUCT, Canon 8B (defining other terms in the code). He focuses on the word "private" and asks us to adopt one of three alternative meanings of the word provided in Black's Law Dictionary: "Confidential; secret." *Private*, BLACK'S LAW DICTIONARY (11th ed. 2019). However, we must construe "private" in the context of Canon 2B, see TEX. GOV'T CODE ANN. § 311.011(a), where it modifies the noun "interests." See TEX. CODE JUD. CONDUCT, Canon 2B. When we place

Judge Oakley’s proffered definition into context, the result is nonsensical. See TEX. CODE JUD. CONDUCT, Canon 8A (stating that the Code of Judicial Conduct sections are “rules of reason”); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 632 (Tex. 2008) (Willet, J., dissenting) (considering language in context “is rooted in common sense”). Under Judge Oakley’s construction, a judge would only violate Canon 2B by lending the prestige of their office to advance the “confidential” or “secret” interests of the judge or others. He concludes that because a director’s compensation is publicly available information (i.e., not “confidential” or “secret”) and the PEC provides electricity to the vast majority of the community it serves, Wilcox’s potential compensation did not constitute a “private” interest.

We find Judge Oakley’s narrow construction to be inconsistent with the stated objective of Canon 2 as expressed in its title: “Avoiding Impropriety and the Appearance of Impropriety in All of the Judge’s Activities.” See TEX. CODE JUD. CONDUCT, Canon 2; see also *Hecht*, 213 S.W.3d at 564–65 (explaining that in addition to the statute’s language, courts should consider “the objective sought, and the consequences that would flow from alternative constructions.” (citing *Casteel*, 22 S.W.3d at 383)); *Ad Villarai, LLC v. Pak*, 519 S.W.3d 132, 138 (Tex. 2017) (per curiam) (explaining that titles and headings are “permissible indicators of meaning.” (quoting Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 221 (2012))). If we followed Judge Oakley’s construction to its natural conclusion, any impropriety or appearance of impropriety would be permissible as long as it occurred openly. But violations take many forms; some are committed surreptitiously, see, e.g., *In re Thoma*, 873 S.W.2d 477, 490–95 (Tex. Rev. Trib. 1994, no appeal) (conspiring to extort money from a party), while

others take place in plain view. See, e.g., *In re Roach*, No. SCR 18-0006, at 4–12 (Tex. Spec. Ct. Rev., July 24, 2018) (publishing a book in conjunction with operating a referral service and advertising both through various mediums). Thus, we find Judge Oakley’s construction to be inconsistent with the Code’s broad objectives of maintaining public trust and confidence in a fair and impartial judiciary. See TEX. CODE JUD. CONDUCT, Preamble, Canon 2A; *Hecht*, 213 S.W.3d at 564–65 (citing *Casteel*, 22 S.W.3d at 383).

Instead, we find the following definition of “private” in Black’s Law Dictionary to be consistent with the context of Canon 2B: “Of, relating to, or involving an individual, as opposed to the public or the government.” *Private*, BLACK’S LAW DICTIONARY (11th ed. 2019). Thus, a judge violates Canon 2B by lending the prestige of the judge’s office to advance the “individual” interests of the judge or others. See TEX. CODE JUD. CONDUCT, Canon 2B. The *Hecht* panel reached the same conclusion: “We conclude that a private interest pursuant to Canon 2B is a personal or individual advantage or benefit gained by use of judicial office.” *Hecht*, 213 S.W.3d at 577. This construction is consistent with Canon 2’s overall goal of avoiding impropriety or the appearance of impropriety, regardless of whether the violation is clandestine or overt. See TEX. CODE JUD. CONDUCT, Canon 2; *Hecht*, 213 S.W.3d at 564–65 (citing *Casteel*, 22 S.W.3d at 383).

When we apply the plain meaning of Canon 2B to the facts of this case, it becomes clear that Judge Oakley used the prestige of his office to advance Wilcox’s private interests. The compensation Wilcox would have received—\$108,000 over her three-year term—constituted a private interest because it would have benefited her individually. See TEX. CODE JUD. CONDUCT, Canon 2B; *Hecht*, 213 S.W.3d at 577; *Private*, BLACK’S LAW DICTIONARY (11th ed. 2019).

**B. *In re Hecht* is Inapplicable**

Judge Oakley insists, however, that this issue was already resolved in his favor by *In re Hecht*. See 213 S.W.3d at 577. Judge Oakley’s reliance on *In re Hecht* is misplaced; a key distinction in that case actually supports our determination that Judge Oakley violated Canon 2B. See *id.*

Then-Justice Nathan L. Hecht was charged by the Commission with violating Canon 2B after he publicly supported the nomination of his close friend Harriet Miers to the United States Supreme Court. *Id.* at 552–58. The Commission argued that Miers’ private interests were advanced because serving as a Supreme Court Justice is a powerful and prestigious position with a guaranteed lifetime salary. *Id.* at 577. In rejecting the Commission’s argument, the special court of review concluded that those benefits ultimately served the public’s interest because “[l]ifetime tenure and guaranteed salary safeguard the judiciary from interference from the other branches of government and promote judicial independence.” *Id.* In other words, those benefits were ancillary to the public office and its role in serving the public’s interest. *Id.*

Obviously, none of those concerns are present here. As Judge Oakley repeatedly acknowledged, serving on the PEC Board of Directors is not a public office. Therefore, the compensation Wilcox would have received was not ancillary to some greater public interest. See *id.* Instead, it constituted a “private interest” as the term is commonly understood in the context of Canon 2B. See TEX. CODE JUD. CONDUCT, Canon 2B.

**C. The Appropriate Sanction**

After an informal proceeding, the Commission may sanction a judge by issuing a private or public admonition, warning, or reprimand, and ordering additional education.

TEX. CONST. art. V, § 1–a(8); TEX. GOV'T CODE ANN. § 33.001(a)(10). There are six ascending levels of sanctions, starting with a private admonition and ending with a public reprimand. See TEX. CONST. art. V, § 1–a(8); TEX. GOV'T CODE ANN. § 33.001(a)(10). Other than the private or public designation, only a public reprimand adversely affects a judge's substantive rights. See TEX. GOV'T CODE ANN. § 74.055(c)(4)(A) (prohibiting a former or retired judge from sitting by assignment after public reprimand). In this case, the Commission issued Judge Oakley a public admonition, the lowest public sanction available, but higher than the three private sanctions.

Sanctions should be determined on a case-by-case basis. *In re Canales*, 113 S.W.3d 56, 73 (Tex. Rev. Trib. 2003, pet. denied). “The function of the Commission 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) (citing *Thoma*, 873 S.W.2d at 484–85).

In assessing the appropriate sanction, factors we should consider include “the seriousness of the transgression, whether there is a pattern of improper activity[,] and the effect of the improper activity on others or on the judicial system.” TEX. CODE JUD. CONDUCT, Canon 8A. Previous courts have also considered:

(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; (h) whether there have been prior complaints about this judge; (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.

*In re Deming*, 736 P.2d 639, 659 (Wash. 1987) (en banc); see also *Sharp*, 480 S.W.3d at 839 (referring to *Deming* factors); *In re Rose*, 144 S.W.3d 661, 733 (Tex. Rev. Trib. 2004, no appeal) (same).

There were several mitigating factors in this case: (1) there was no evidence presented that Judge Oakley has engaged in this particular type of conduct before; (2) the conduct occurred outside the courtroom; (3) although he disputed whether it constituted a violation, Judge Oakley fully acknowledged his conduct; and (4) there was no direct benefit to Judge Oakley or his family—he supported Wilcox because he believed she “would be a good person [for the position].” See TEX. CODE JUD. CONDUCT, Canon 8A; *Sharp*, 480 S.W.3d at 839.

On the other hand, there were several aggravating factors: (1) Wilcox’s campaign materials were widely disseminated and publicly available on social media, resulting in seven separate complaints against Judge Oakley; (2) Judge Oakley failed to consult any available resources before making his decision to publicly endorse Wilcox; and (3) Judge Oakley was previously sanctioned by the Commission in 2018 for casting reasonable doubt on his capacity to act impartially in the performance of his duties in violation of Canon 4A(1). See TEX. CODE JUD. CONDUCT, Canon 8A; *Sharp*, 480 S.W.3d at 839; see generally TEX. CODE JUD. CONDUCT, Canon 4(A)(1). As a result of that previous sanction, he was issued a Public Reprimand and Order of Additional Education.

Judge Oakley has not argued for a less severe sanction; he prayed only that “the finding of the commission be dismissed.” Nevertheless, after independently weighing

these relevant factors and considering the purpose of issuing a sanction, we agree with the Commission that a public admonition strikes the appropriate balance in this case.

#### **IV. CONCLUSION**

Judge Oakley willfully violated Canon 2B as alleged in Charge I by lending the prestige of his office to further the private interests of Wilcox. The appropriate sanction for his conduct is a public admonition.

GREGORY T. PERKES  
Justice

Panel consists of Justices Perkes, Hassan, and Partida-Kipness.

PUBLISH — TEX. RULES REM'L /RET. JUDG. R. 9(e)

## Judgment and Public Admonition Issued October 25, 2019.



**DOCKET NO. SCR 19-0002**

**SPECIAL COURT OF REVIEW**

**IN RE INQUIRY CONCERNING HONORABLE JAMES OAKLEY  
CJS NOS. 18-1214, 18-1227, 18-1283, 18-1329,  
18-1331, 18-1344, and 18-1613**

---

### **JUDGMENT AND PUBLIC ADMONITION**

The Special Court of Review has considered the pleadings, the evidence, and the arguments of counsel and finds that the Honorable James Oakley willfully violated Canon 2B of the Code of Judicial Conduct as alleged in Charge I by lending the prestige of his office to further the private interests of another person. The appropriate sanction for this conduct is a **Public Admonition**.

**SPECIAL COURT OF REVIEW<sup>1</sup>**

---

<sup>1</sup> See TEX. GOV'T CODE ANN. § 33.034(c). This Special Court of Review consists of The Honorable Greg Perkes, Justice of the Thirteenth Court of Appeals at Corpus Christi-Edinburg, presiding by appointment; The Honorable Meagan Hassan, Justice of the Fourteenth Court of Appeals at Houston, participating by appointment; and The Honorable Robbie Partida-Kipness, Justice of the Fifth Court of Appeals at Dallas, participating by appointment.