

Opinion Issued April 30, 2025



**DOCKET NO. SCR 24-0003**

**SPECIAL COURT OF REVIEW**

**IN RE INQUIRY CONCERNING HONORABLE  
FRANKLIN BYNUM  
(CJC No. 23-0186)**

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**PER CURIAM OPINION<sup>1</sup>**

Before this Review Tribunal is an appeal de novo from a Public Reprimand issued by the Texas State Commission on Judicial Conduct (Commission) on October 9, 2024, against the Honorable Judge Franklin Bynum (Respondent), former judge of County Criminal Court at Law No. 8, Harris County, Texas in CJC No. 23-0186.<sup>2</sup> The Public Reprimand stems from statements made by Respondent in his June 6, 2022 response to the Commission’s Request for Order of Suspension of Judge in CJC Nos. 20-1415 & 21-0679. The Commission’s Public Reprimand at issue here concluded that Respondent made false statements in his earlier response regarding an alleged conversation between Regional Presiding Judge Susan Brown and Chief Justice Nathan Hecht and

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<sup>1</sup> 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 Supreme Court of Texas. *See* TEX. GOV’T CODE § 33.034 (providing procedure for appealing sanctions issued by the State Commission on Judicial Conduct). This panel consists of the Justice Chari L. Kelly of the Third Court of Appeals, presiding by assignment; Justice Dennise Garcia of the Fifth Court of Appeals, sitting by assignment; and Justice Nancy Kennedy of the Fifth Court of Appeals, sitting by assignment.

<sup>2</sup> Respondent served as Judge of County Criminal Court of Law No. 8, Harris County, Texas from January 1, 2019, to December 31, 2022.

that his false statements constituted willful conduct that clearly cast public discredit upon the judiciary and the administration of justice, in violation of Article V, Section 1-a(6)A of the Texas Constitution.<sup>3</sup>

For the reasons set forth below, we find that the Commission did not meet its burden of proving by a preponderance of the evidence that Respondent committed willful conduct in violation of Article V, Section 1-a(6)A of the Texas Constitution. Thus, we vacate the Commission's Public Reprimand in CJC No. 23-0186 and dismiss the charge against Respondent without sanctions.

## **I. PROCEDURAL BACKGROUND**

### **A. Prior Complaints of Misconduct by the Harris County District Attorney's Office**

Beginning in July of 2020, the Harris County District Attorney's Office (HCDAO) filed numerous complaints with the Commission detailing what it described as Respondent's "incompetent," "willful," "persistent," "intentional or grossly indifferent" conduct. The HCDAO supplemented its complaints in September 2020, November 2020, January 2021, and October 2021. The details of those complaints are well known to the parties and, therefore, we will not fully recite them here. In essence, the HCDAO alleged that, while on the bench, Respondent "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 Respondent by letter of its concerns about his actions. TEX. GOV'T CODE § 33.022 (establishing procedures for investigating complaints against judges). Respondent provided a written response and made an informal appearance where he gave testimony before the Commission.

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<sup>3</sup> The statements that spurred the current charge are, "Again, I called Presiding Judge Brown. Her tone had shifted from confused and sympathetic the day before to outright hostile. She said that she had spoken with Chief Justice Hecht and that he was 'furious' and 'wants you off the bench.'"

On August 21, 2024, the Commission issued Respondent a Public Reprimand in CJC Nos. 20-1415 & 21-0679 after finding, in part, he failed to comply with the law and maintain professional competence in the law by requiring prosecutors to appear in person in the courtroom for jail docket during the COVID-19 pandemic in violation of several orders designed to protect court participants from the COVID-19 pandemic. Respondent appealed the Commission's disciplinary sanction in CJC Nos. 20-1415 & 21-0679. The Special Court of Review in that appeal found the Commission met its burden of proving Respondent willfully violated various Canons of the Texas Code of Judicial Conduct and Article V, Section 1-a(6)A of the Texas Constitution and issued a Public Reprimand. *See In re Bynum*, 704 S.W.3d 278, 283, 300 (Tex. Spec. Rev. Trib. 2024).

## **B. Current Complaint**

On November 8, 2022, Judge Brown filed a sworn complaint with the Commission in which she asserted:

On September 6th [2022] Judge Bynum filed a response to his Judicial Conduct complaint [CJC Nos. 20-1415 & 21-0679] with the Supreme Court of Texas. In the response he made statements indications [sic] that I had conversations with Chief Justice Nathan Hecht regarding Judge Bynum. The allegations made by Judge Bynum that such a conversation occurred or that certain statements were made is completely false.

That complaint was assigned CJC No. 23-0186 and is the subject of the current appeal. Respondent was advised by letter of this complaint and provided a written response. At a hearing on June 7, 2023, before the Commission, Respondent was the sole witness. On October 9, 2024, the Commission issued a Public Reprimand in connection with this complaint. The Commission's reprimand included its findings of facts and conclusions of law, including the following:

On September 6, 2022, Judge Bynum filed his response to the Request for Order of Suspension of Judge by the State Commission on Judicial Conduct [in connection with CJC Nos. 20-1415 & 21-0679].

In his response, Judge Bynum described that on June 4, 2020, the Harris County District Attorney's Office ("HCDAO") filed motions to recuse him in 84 of the 87 cases in his court because of an email requiring Assistant District Attorneys to appear

personally in his court during jail docket during the COVID-19 Pandemic.

Judge Bynum contacted Regional Presiding Judge Susan Brown for guidance as he did the previous day when the HCDAO filed motions to recuse him in 72 cases. According to Judge Bynum, “Her tone had shifted from confused and sympathetic the day before to outright hostile. She said that she had spoken to Chief Justice Nathan Hecht and that he was “furious” and “wants you off he bench.”

Presiding Judge Brown refutes Judge Bynum’s allegations that a conversation occurred between her and Chief Justice Hecht or that she told him that Chief Justice Hecht stated he wanted Judge Bynum off the bench.

Judge Bynum denies he made a false statement regarding Presiding Judge Brown and Chief Justice Hecht in his response. Judge Bynum claims that based on Section 10c of the Supreme Court of Texas 17th Emergency order Regarding the COVID-19 State of Disaster, Presiding Judge Brown, “following the rule, would have notified the office of the Chief Justice when the local district attorney alleged a judge was conducting court proceedings against the directive of the emergency order.”

On September 7, 2022, the Houston Chronicle published an article regarding Judge Bynum’s response to the Formal Proceeding and Request for Order of Suspension of Judge, entitled, “*Judge likens suspension legal battle to ‘second job’ as Texas Supreme Court considers his removal.*” In the article, Judge Bynum reiterated his allegation that Presiding Judge Brown had a conversation with Chief Justice Hecht regarding wanting him off the bench and filing a recusal motion against Chief Justice Hecht.

In his testimony before the Commission, Judge Bynum restated that Presiding Judge Brown did tell him about her conversation with Chief Justice Hecht. Also, Judge Bynum provided a statement from Sarah Wood, General Counsel of the Harris County Public Defender’s Office which included a picture of text messages where Judge Bynum texted Ms. Wood, “I’m overloaded with work. nathan hecht is threatening to file a judicial complaint for making the DA appear tomorrow.”

The Commission concluded Respondent should be publicly reprimanded for his false statements regarding an alleged conversation between Judge Brown and Chief Justice Hecht in his response to the Commission’s Request for Order of Suspension of Judge [CJC Nos. 20-1415 & 21-0679] “which constituted willful conduct that clearly cast public discredit upon the judiciary or the administration of justice, in violation of Article V, Section 1-a(6)A of the Texas Constitution.”

## **II. THE CHARGE**

Respondent appeals the Commission’s decision in CJC No. 23-0186. The Examiner’s

Charging Document in this de novo review alleges Respondent violated Article V, Section 1-a(6)A of the Texas Constitution by making false statements about a conversation he had with Judge Brown concerning Chief Justice Hecht and repeating these alleged false statements in filings before the Supreme Court of Texas, to the Houston Chronicle, and to Sarah Wood, the General Counsel of the Harris County Public Defender's Office. The Charging Document concludes, "Judge Bynum's behavior and actions set forth [therein] constituted willful or 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 in violation of Article V, Section 1-a(6)A of the Texas Constitution." We note that the Commission's Public Reprimand concluded Respondent engaged in willful conduct that clearly cast public discredit upon the judiciary or the administration of justice, it did not conclude he engaged in persistent conduct or that his conduct was inconsistent with the proper performance of his duties. Accordingly, our review here is limited to the Commission's assertion Respondent engaged in willful conduct that clearly cast public discretion upon the judiciary or the administration of justice in violation of Article V, Section 1-a(6)A of the Texas Constitution.

### **III. RELEVANT STANDARDS AND BURDEN OF PROOF**

The Texas Constitution provides that a judge may be disciplined for willful conduct that casts public discredit upon the judiciary or 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 asserts non-legal error concerning statements made by Respondent in his written response to the Commission's earlier Request for Order of Suspension.

Non-legal errors are reviewed under a willfulness standard. *See id.* 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 or the Constitution, but whether the judge intended to engage in the conduct for which he or she is disciplined. *See id.*

Review of a Commission-issued sanction by the Special Court of Review is by trial de novo as that term is used in the appeal of cases from justice to county court. GOV’T § 33.034(e)(2). 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 Respondent by a preponderance of the evidence. GOV’T § 33.034(f) (“Except as otherwise provided by this section, the procedure for the review of a sanction issued in an informal proceeding is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of civil actions generally.”); *In re Slaughter*, 480 S.W.3d 842, 845 (Tex. Spec. Ct. Rev. 2015) (Commission has the burden to prove charges against respondent by a preponderance of evidence). A preponderance of the evidence is the greater weight and degree of credible testimony. *Upjohn Co. v. Freeman*, 847 S.W.2d 589, 591 (Tex. App.—Dallas 1992, no writ).

#### **IV. DECISION ON THE MERITS**

On March 3, 2025, the Special Court of Review convened a trial de novo on the merits of the complaint presented by the Examiner’s Charging Document and heard evidence from the

Commission and Respondent. Several exhibits were admitted into evidence without objection<sup>4</sup> and Judge Brown and Respondent testified. The evidence presented established the following backdrop to the complaint before us. On Monday June 1, 2020, Respondent sent an email to prosecutors assigned to his court setting forth updated protocols for the Wednesday and Thursday jail dockets in his court. The email provided that at least one prosecutor, who could speak for every case, was to appear in person for the dockets. This email spurred a flurry of activity during that first week of June 2020 with several communications between and among Respondent, Judge Brown, and the HCDAO, and the HCDAO's filing of numerous motions to recuse Respondent for both the June 3rd and June 4th jail dockets, alleging a violation of the then-existing "Emergency Order Regarding the COVID-19 State of Disaster." Judge Brown advised Respondent that his order to appear violated the Supreme Court's emergency order regarding the COVID-19 pandemic. She asked him to consider withdrawing same so that she would not have to make a report to the Supreme Court.<sup>5</sup> Respondent maintained that his June 1, 2020 email was not an order and, after several emails and phone calls, indicated that he would allow prosecutors to appear remotely. The HCDAO then withdrew its motions to recuse and Judge Brown commented, "Now back to business as usual."

Thereafter, the HCDAO filed several complaints against Respondent, including a complaint

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<sup>4</sup> Those exhibits are: the sworn complaint filed by Judge Brown with the Commission; Respondent's response in CJC Nos. 20-1415 & 21-0679; the Houston Chronicle article; Respondent's response to the complaint in CJC No. 23-0186; the Public Reprimand issued by the Commission in CJC No. 23-0186; Respondent's pre-hearing supplemental response in CJC No. 23-0186 correcting the date he claimed he had the conversation with Judge Brown regarding Chief Justice Hecht; the sworn statement of Sarah Wood, General Counsel for the Harris County Public Defender's Office, regarding her conversations with Respondent on June 2, 2020, concerning Chief Justice Hecht; an admonition and order in another matter; the Public Reprimand in CJC Nos. 20-1415 & 21-0679; Respondent's Motion to Recuse Chief Justice Hecht in the inquiry of CJC Nos. 20-1415 & 21-0679; the letter notifying Respondent the Supreme Court of Texas denied his Motion to Recuse; the transcript from the hearing before the Commission in CJC No. 23-0186; the First, Twelfth, and Seventeenth Emergency Orders Regarding the COVID-19 State of Disaster; the May 21, 2020 Order of County Judge Lina Hidalgo, Fourth Amended Stay Home, Work Safe Order; the Special Court of Review's opinion in Docket No. SCR 24-0002; the appeal of the Commission's sanction in CJC Nos. 20-1415 & 21-0679; and various emails dated June 1, 2020 through June 4, 2020, between Respondent and the HCDAO, Respondent and Judge Brown, Judge Brown and the HCDAO, and Respondent and Judge Schaffer, who was involved in the operating plan for Harris County.

<sup>5</sup> Under the then-existing emergency order, the regional presiding judge had the duty to ensure compliance with the order and also to report inconsistent proceedings to the office of the Chief Justice of the Supreme Court of Texas.

about Respondent's June 1, 2020 email requiring in person appearances. Those complaints were assigned CJC Nos. 20-1415 & 21-0679. The subject of the current complaint stems from statements Respondent made in response to those complaints. More particularly, the statements at issue are, "Again, I called Presiding Judge Brown. Her tone had shifted from confused and sympathetic the day before to outright hostile. She said that she had spoken to Chief Justice Hecht and that he was 'furious' and 'wants you off the bench.'"

With respect to the current complaint about these statements, Judge Brown testified at the de novo trial that her duties as presiding judge for the 11th Administrative Judicial Region of Texas include assuring compliance with the Supreme Court of Texas's general and emergency orders, including the emergency orders regarding the COVID-19 State of Disaster. She testified that she did not report to the Supreme Court of Texas that Respondent was violating the emergency orders regarding the COVID-19 State of disaster. In addition, she testified she never had a conversation with Chief Justice Hecht about Respondent, she never had a conversation with Respondent about Chief Justice Hecht being furious and wanting him off the bench, and that Respondent's statements concerning same were untrue.

Respondent testified that with the governor's back-to-work announcement the first week of June 2020, he considered how the court could update its procedures to make the court run better. He consulted with his court personnel, who indicated that their work load had increased with prosecutors appearing remotely for jail dockets. Those conversations led to Respondent sending the email to prosecutors advising that going forward one prosecutor was to appear in person for jail dockets. With respect to when Respondent claimed his conversation with Judge Brown about Chief Justice Hecht occurred, Respondent acknowledged that he made some mistakes in recalling the date during some of his accounts of when he claimed it occurred. He first recalled that the communication occurred by phone on Thursday June 4, 2020, after the second wave of recusal motions were filed by the

HCDAO, and later stated the call occurred on June 3, 2020, after the first wave of recusal motions. He subsequently corrected his statement to reflect the call occurred on June 2, 2020, after his recollection was refreshed by a text message he sent to Sarah Wood on that day referencing Nathan Hecht, and explained that in the earlier recollections he went off memory and didn't double check the dates. Respondent pointed out that, notwithstanding the different date references, within a very condensed period of time, his recollection of the substance of the call has remained the same. When questioned about why Judge Brown would continue to caution him after June 2nd that she would have to report him to the Supreme Court if he did not withdraw his order for in person appearance if she had already reported him to Chief Justice Hecht, Respondent explained that when he had the claimed conversation with Judge Brown about Chief Justice Hecht he believed that Judge Brown had simply taken some action at that time and made an informal report and that her subsequent references to making a report to the Supreme Court were to taking further action and making a formal report. When questioned about the discrepancy of his recollection of the call with Judge Brown and Judge Brown's recollection, Respondent testified he thought he would have a better recollection of the conversation because it concerned him, it was not every day he heard a comment that the Chief Justice said something about him, and it was very personal to him. He further explained, the call was brief and occurred during a very busy and frantic week. Respondent further urged that by sending a text message to Sarah Wood and having a phone conversation with her on June 2, 2020, shortly after he claimed he had the conversation with Judge Brown, he made a contemporaneous record of the event and his recollection of same.<sup>6</sup> Respondent also urged that he sent a long defensive email at 2:38 p.m. on June 2, 2020 in response to the conversation he claims he had with Judge Brown because

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<sup>6</sup> Sarah Wood's sworn statement was admitted into evidence without objection. Therein, Sarah Woods stated, "I remember Judge Bynum explaining to me that since the Harris County District Attorney had complained to Judge Brown about a potential violation of Covid protocol, she had been obligated to contact the Texas Supreme Court. He said that Judge Brown then called and told him that she spoke to Justice Hecht about him and that Justice Hecht was angry and threatening to file a grievance."

he felt the “temperature being turned up” and he was frightened by what he heard.<sup>7</sup>

Clearly, the witnesses disagree as to whether a communication occurred between Respondent and Judge Brown during which Judge Brown advised Respondent that she had spoken with Chief Justice Hecht and that he was furious and wanted Respondent off the bench. We find Judge Brown and Respondent to be equally credible in their statements before the Review Tribunal concerning their recollection of what transpired more than four years ago. Accordingly, we conclude the Commission failed to establish by a preponderance of the evidence (by the greater weight and degree of credible testimony) that Respondent engaged in willful conduct that clearly cast public discredit upon the judiciary or the administration of justice, in violation of Article V, Section 1-a(6)A of the Texas Constitution. *See Gov’t § 33.034(f); Slaughter, 480 S.W.3d at 845.*

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<sup>7</sup> The email was addressed to Judge Brown and stated:

I understand that there is a lot of talk about my decision to make at least one prosecutor appear at our jail docket. Certainly, I am not the only judge in Texas to make a prosecutor appear in court after the new guidance that took effect June 1.

As you know, I was the first judge to close court due to Covid, maybe the first judge in the state to do so. The safety of the staff and the lawyers is always my first priority. My actions speak the loudest.

After nearly three months away, the problems with remote appearance at jail docket have become apparent. I am the first of my colleagues to make this change but will not be the only one. As one of my colleagues put it, “I’m sick of them trying to use court/staff to do their jobs.”

That is exactly the issue. Every week, the DA is using the clerks and court staff to print, copy, and file materials for them well in excess of their usual job duties. The clerks are already overburdened. Long after the Zoom call ends, I am working with the clerks to sort out all the papers that they printed and scanned for the DA. Every single agency but the DA has at least one person there, and the DA wants to use the people present to do their tasks for them. That is not fair to the staff.

The common refrain is that “defense lawyers don’t have to come” but this is not true. There are cases every week where defense lawyers, practically, have to come. When the DA says “defense lawyers don’t have to come” what they mean practically is “since defense lawyers have to come, we should not have to.”

These are far from the only issues. Of course, accommodations will be made: access to non-public work space and bathrooms will be provided. Judges long ago opened the “judges elevator” to all county staff.

I have made the decision that is, for now, the best fit for my court under the present circumstances. My actions are in accordance with the current emergency orders. The DA is welcome to try to constructively address the problems raised here but in the meantime we have jail docket tomorrow morning.

## V. CONCLUSION

The sole charge before this Review Tribunal (as alleged in the Charging Document) is dismissed. Having found that Respondent did not violate the Texas Constitution as alleged, we vacate the Commission's Public Reprimand CJC No. 23-186 and dismiss the charge against Respondent without sanctions.