

Opinion Issued May 28, 2025



DOCKET NO. SCR 25-0001

SPECIAL COURT OF REVIEW

**IN RE HONORABLE STEPHEN ROGERS
(CJC Nos. 23-0875 & 24-0138)**

OPINION

Before this Review Tribunal is an appeal de novo from a *Public Admonition and Order of Additional Education* (the Public Admonition) issued on December 18, 2024, by the Texas State Commission on Judicial Conduct (the Commission) in CJC Nos. 23-0875 and 24-0138 against the Honorable Judge Stephen Rogers (Petitioner or Judge Rogers), District Court Judge of the 268th Judicial District Court, Fort Bend County, Texas. The Commission issued a Public Admonition finding that Petitioner (1) failed to comply with the law and maintain competence in it; (2) failed to treat attorneys in his court with patience, dignity, and courtesy; (3) failed to perform his duties without bias or prejudice; and (4) Petitioner had an inability or unwillingness to comply with the law on multiple occasions, demonstrated a pattern of lacking patience, dignity, and courtesy with attorneys in his courtroom, and his display of bias against criminal defense attorneys constituted willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and casts public discredit upon the judiciary or the administration of justice.

Petitioner appealed the findings of the Commission, and the matter was submitted to this Special Court of Review for a trial de novo.¹ The Special Court of Review convened a trial de novo and heard evidence from the Commission and the Petitioner on April 10, 2025. The parties also provided post-submission briefing.

For the reasons explained below, we conclude that the Commission sufficiently met its burden of proof on one of the charges but failed to meet its burden of proof on the remaining charges it brought against Petitioner.

Background

a. Judicial Complaints filed by Scott and Elliott

On August 15, 2023, Criminal Defense Attorney Annie Scott (Scott) filed a Sworn Complaint with the Commission against Petitioner for alleged misconduct that occurred in the 268th Judicial District Court on July 25, 2023 (CJC No. 23-0875). Scott alleged that she and her co-counsel, Michael Elliott (Elliott), appeared on behalf of their client in the matters styled *State of Texas v. Amanda Lynn Vasquez* (multiple criminal matters), to announce ready for trial and “make announcements.” Scott alleged:

The Judge listened to our announcements and then made a comment that he had heard a rumor that we were planning to try our client in her jail clothing. We confirmed that we had indeed spoken with our client and after our discussions, that was the consensus of the defense team, including our client, Amanda Vasquez. Judge Steve Rogers then stated that that was not going to happen in his courtroom. Michael Elliott then asked to go on the record and to have the court reporter record this brief hearing. Judge instructed the court reporter to go on the record and we continued to try to explain to the Court that our client has a right to make this decision and that it is part of our defense and that our client had agreed to it. Judge Steve Rogers then got up out of his seat and towered over me from his bench and

¹ When a judge appeals the Commission’s disciplinary sanction, a panel for a 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 procedures for appealing sanctions issued by the State Commission on Judicial Conduct). The Special Court of Review on this matter consists of the Honorable Leanne Johnson, Justice of the Ninth Court of Appeals participating and presiding by appointment; the Honorable Elizabeth Kerr, Justice of the Second Court of Appeals, participating by appointment; and, the Honorable Adrian A. Spears II, Justice of the Fourth Court of Appeals, participating by appointment.

started to yell at me in a very high and aggressive voice. Judge Steve Rogers then screamed at me that we are not going to pull that in his courtroom! Judge Rogers further stated that we are not going to go to trial with our client in her jail clothes. Michael Elliott told the Judge that our client had already agreed and then he asked the Judge if we could bring our client out from the inmate holding cells, which are outside the courtroom. The Judge continued screaming at Michael Elliott and I that we are not going to bring our client out in jail clothes for a trial and then he ordered us to go to Walmart and buy our client some clothes for trial because our client was not going to go to trial in jail clothes. The Judge continued to tell Michael Elliott and I that we would need to buy our client some clothes and to tell us that we couldn't bring her into his courtroom for trial in her jail clothes. The Judge then screamed "Don't fuck with me!" The Judge then slammed down a black item that he was holding in his hand onto the table, which made a very loud noise. Rather than follow well-established law (See *Estelle v. Williams*, 425 U.S. 501 (1976)), the Judge cussed us out in a completely unwarranted attack, showed inherent disdain for me and my co-counsel, and our client, and then stormed out of the courtroom. At the time, the courtroom was occupied by at least half a dozen individuals, not counting myself, Michael Elliott, nor the Judge. This event was also captured on the court reporter's record. We have obtained a transcript, however, it has been significantly edited and only includes two statements, one by defense counsel, and one by the Judge. Although I, Annie Scott, did the majority of the talking on that morning, and for what was essentially a five to ten minute event, none of my conversation with the court made it into the transcript. The additional orders made to me, by the Court, also did not make it onto the transcript. I am doing my best to investigate that discrepancy.

Scott also sent a six-page typewritten statement dated September 21, 2023, to the Commission about her complaint. In that statement, Scott also indicated that she had filed a motion to recuse, and Rogers denied her motion and sent the case to his associate judge to hear the pretrial and jury selection. According to Scott, Rogers then sent the motion to recuse to the Regional Presiding Judge.

Elliott filed a Sworn Complaint with the Commission on October 24, 2023, complaining about the same events from July 25, 2023, as well as about alleged misconduct that occurred on September 25, 2023 (CJC No. 24-0138). Elliott attached a five-page typewritten statement describing his complaint against Petitioner, which included his description of the events described

in Scott's Complaint, as well as events from September 25, 2023. Elliott described the September 25th event as follows:

On Monday, September 25, 2023, I appeared in Judge Rogers 268th District Court on other un-related client matters. I had a case styled State of Texas vs. Marlen Lemus-Marchorro (21-DCR-94,232) as well as a case I was also appointed Cocounsel along with Kurt Hopke on a case Styled State v. Jared Loubser, 19-DCR-88502, 20-DCR-93342, 19-DCr-88502A and 23-DCR-104,021). As I entered the 268th District Court, I personally observed Judge Steve Rogers on the bench. As I entered the courtroom, I was quickly approached by the bailiff of the Court, Jared Reyes and escorted outside the Court against my will. I was told by uniformed Sheriff's officer Jared Reyes, that he was instructed by Judge Rogers that I was banned from the Courtroom and could not enter the Courtroom for any purposes. I asked the bailiff for any reason why I would have been banned and he just said "judges Orders". I told him I have 2 clients in the Courtroom that I needed to tend to and he told me I could not enter the Courtroom and that the Coordinator would reset my cases. While in the hallway outside the Courtroom, I texted the Coordinator Gabriella Romero and was told she would come see me in the hallway outside the Courtroom. Once she arrived, she also told me without any known reason as to why I had been banned. She said all she was told was that I was banned from the Courtroom and that all of my cases would be transferred out of his Court. I explained to her that I had done absolutely nothing wrong nor did I have any idea of why I would be banned except for judicial retaliation for my and my Co-Counsel's complaints about how we were treated in open Court on July 25, 2023 and for our lawful actions on behalf of our client to Subpoena the video and Court Reporters Audio Recording of Judge Steve Rogers terrible open Court conduct on July 25, 2023. She responded that she did not know why, but that she only knows that she was told by Judge Rogers that I was banned from the Courtroom and that all of my cases were to be transferred to other Courts. She also told me she would handle the 2 resets for that day. My Marlen Lemus Marchorro case was in fact reset until December 12, 2023, and Judge Rogers removed me as attorney on the Jarod Loubser cases after my Co-client Jared Loubser expressed concerns to me and CoCounsel Kurt Hopke about my continued representation of him in light of the Judges banning me from the Courtroom.

b. Public Admonition

On December 18, 2024, the Commission issued its findings and conclusions and a *Public Admonition and Order of Additional Education*.

c. Request for Appointment of Special Court of Review

Petitioner timely filed a written request with the Chief Justice of the Texas Supreme Court for appointment of a Special Court of Review. *See* Tex. Gov't Code Ann. § 33.034(b).

d. The Charging Document

In the Review Proceeding before this Court, the Commission filed a Charging Document with the Special Court of Review with exhibits attached thereto. *See* Tex. Gov't Code Ann. § 33.034(d) (charging document explained). In the Charging Document, the Commission alleged that criminal defense attorneys Scott and Elliott were co-counsel in the criminal matters of *State of Texas v. Amanda Lynn Vasquez* (the “Vasquez Cases”), which were pending in the 268th District Court with Judge Rogers presiding. On July 25, 2023, Scott and Elliott appeared in Judge Rogers’ courtroom for pretrial matters in the Vasquez Cases and during a bench conference, Judge Rogers inquired about a “rumor” he heard that Scott and Elliott were planning to have their client, Vasquez, appear for trial in jail clothing. When Scott and Elliott confirmed Vasquez would be appearing in jail clothing, Judge Rogers responded by stating that “was not going to happen in [my] courtroom” and that they “were not going to pull that in [my] courtroom.” Judge Rogers denied a request for Vasquez to be brought in from the inmate holding cell to confirm her desire to appear in jail clothing, and he ordered Scott and Elliott to go to Walmart to purchase clothes for Vasquez to wear during the trial. Judge Rogers ended the hearing by slamming his hand on the bench and yelling, “Don’t fuck with me in my court.” Judge Rogers’ words were accompanied by finger-pointing, finger-wagging, slamming his hands on the bench, and standing up while scolding Scott and Elliott.

According to the Charging Document, on August 4, 2023, Scott filed a *Motion for Recusal of Trial Judge*, seeking recusal of Judge Rogers from the Vasquez Cases. Three days after the *Motion for Recusal of Trial Judge* was filed, Judge Rogers filed an *Order on Motion for Recusal of Trial Judge*, which did not refer the motion to the Presiding Judge but instead stated: “DENIED. In the interest of preserving defendant’s right to speedy trial, the court is appointing a visiting judge.” Six days after the *Motion for Recusal of Trial Judge* was filed, Judge Rogers filed his *Order on Motion to Recuse and to Refer to Presiding Judge*, declining to voluntarily recuse himself and referring the motion to the Presiding Judge. On August 30, 2023, the Presiding Judge signed an *Order Denying Motion to Recuse as Moot* because Judge Rogers had already requested Judge James Shoemake be assigned to hear the Vasquez Cases. Judge Rogers transferred the Vasquez Cases but was not recused. Judge Rogers remained the Judge responsible for signing Scott and Elliott’s pay vouchers, and there was no order preventing the Vasquez Cases from being transferred back to Judge Rogers’ court.

The Charging Document also alleged that on September 25, 2023, Elliott appeared in Judge Rogers’ court for unrelated matters. As Elliott sat down, he was immediately approached by the bailiff and escorted out of the courtroom. Once outside the courtroom, the bailiff informed Elliott that he was “banned” from Judge Rogers’ courtroom and could not enter for any reason. When Elliott raised concerns regarding his clients, the bailiff informed Elliott that the Court Coordinator, Gabriella Romero (Romero), would reset his cases. Romero later met Elliott in the hallway and confirmed that Elliott was banned from the courtroom and that his cases would be transferred out of Judge Rogers’ court. One of Elliott’s cases was reset, and Elliott was removed as counsel of record in his other case.

The specific charges contained in the Charging Document are as follows:

Charge 1: Canon 2A and 3B(2)

Judge Rogers 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. Namely, Judge Rogers failed to comply with Tex. R. Civ. P. 18a(f)(1), which requires a judge to grant or refer recusal motions within three business days of filing; Tex. R. Civ. P. 18a(f)(2)(A), which prohibits a judge from taking any further action in the case until the [recusal] motion has been decided; and *Estelle v. Williams*,^[2] which allows a defendant, with the assistance of counsel, to make the strategic and tactical decision to stand trial before a jury while dressed in identifiable prison clothes.

Charge 2: Canon 3B(4)

Judge Rogers failed to treat Scott and Elliott with patience, dignity, and courtesy, in violation of Canon 3B(4) of the Texas Code of Judicial Conduct. Judge Rogers displayed a disrespectful, if not contemptible [sic], demeanor, during a bench conference on July 25, 2023, when he used profanity punctuated with aggressive body language, including pointing and wagging fingers, directed at Scott and Elliott. Judge Rogers' unprofessional behavior continued on September 25, 2023, when he ejected Elliott from his courtroom despite him having at least one case on the docket, and transferred all other cases in which Elliott was assigned out of his courtroom for approximately six months after September 25, 2023.

Charge 3: Canon 3B(5)

Judge Rogers failed to perform his duties without bias or prejudice, in violation of Canon 3B(5) of the Texas Code of Judicial Conduct. Judge Rogers displayed bias against Elliott when he did not allow Elliott to remain in his courtroom on September 25, 2023, and transferred his cases out of his court after Elliott corrected Judge Rogers regarding his seeming misunderstanding of the law. Judge Rogers continued to display this bias in his written responses to the Commission, stating he was "aware that Mr. Elliott seemed to be of the opinion that he was smarter than just about everyone else and seemed to be of the opinion that he could do or get away with whatever he wanted." Judge Rogers further demonstrated bias against Scott, stating that someone might question Scott's credibility or practice skills "if she was asking for an extraordinary request-having her client tried before a jury wearing jail clothes-without having a clear and well-reasoned motion on file with case law or statutory authority to back up the request in hand to present to the judge." Judge Rogers' demonstrated bias arose from his ignorance of the law and inability or unwillingness to listen to the arguments from attorneys with more criminal law experience citing well-established law.

² 425 U.S. 501, 512-13 (1976).

Charge 4: Article V, Section 1-a(6)A of the Texas Constitution

Judge Rogers' inability or unwillingness to comply with the law on multiple occasions, demonstrated pattern of lacking patience, dignity, and courtesy with attorneys in his courtroom, and display of bias against criminal defense attorneys constitutes willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and cast public discredit upon the judiciary or the administration of justice.

Standards of Review, Burden of Proof, and Applicable Law

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 the 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). For purposes of Article V, Section 1-a, “wilful [sic] or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties” includes a willful violation of a provision of the Code of Judicial Conduct. Tex. Gov’t Code Ann. § 33.001(b)(2). “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 Slaughter*, 480 S.W.3d 842, 848 (Tex. Spec. Ct. Rev. 2015) (per curiam) (quoting *In re Sharp*, 480 S.W.3d 829, 833 (Tex. Spec. Ct. Rev. 2013); *In re Davis*, 82 S.W.3d 140, 148 (Tex. Spec. Ct. Rev. 2002); *In re Bell*, 894 S.W.2d 119, 126 (Tex. Spec. Ct. Rev. 1995)). 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 Slaughter*, 480 S.W.3d at 848.

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.” *Id.* at 845 (quoting *In re Lowery*, 999 S.W.2d 639, 648 (Tex. Rev. Trib. 1998, pet. denied)). Similarly, our primary task is not “to punish judges but rather it is to provide guidance

to judges and to protect the public.” *In re Uzomba*, 683 S.W.3d 358, 365 (Tex. Spec. Ct. Rev. 2024).

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 1 alleges legal errors—specifically, that Petitioner refused to enforce or follow Texas law pertaining to a recusal motion and by not allowing a criminal defendant to appear in jail clothing—Charges 2-3 allege non-legal errors; and, Charge 4 alleges Rogers’ inability or unwillingness to comply with the law on multiple occasions, demonstrated pattern of lacking patience, dignity, and courtesy with attorneys in his courtroom, and display of bias against criminal defense attorneys constitutes willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and cast public discredit upon the judiciary or the administration of justice which alleges both legal and non-legal errors.

Non-legal errors are reviewed under a willfulness standard. *See In re 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. *In re Sharp*, 480 S.W.3d at 833 (citing *In re Davis*, 82 S.W.3d at 148). 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.”” *In re Ginsberg*, 630 S.W.3d at 7 (quoting *In re Barr*, 13 S.W.3d 525, 534 (Tex. Rev. Trib. 1998)). 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.* at 7-8.

The standard for an alleged legal error is more rigorous. This is so because every judge's ruling is intentional and thus willful, and otherwise any legal error could 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 legal error, or (3) made in bad faith.” *Id.* (internal quotation omitted). 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) (internal quotation omitted).

The rules of law, evidence, and civil procedure govern our review. Tex. Gov’t Code Ann. § 33.034(f); *In re Sharp*, 480 S.W.3d at 833. The Commission has the burden to prove the charges against Petitioner by a preponderance of the evidence. *In re Slaughter*, 480 S.W.3d at 845.

Canon 2A of the Texas Code of Judicial Conduct provides, “A judge shall comply with the law....” Tex. Code Jud. Conduct, Canon 2(A). Canon 3(B)(2) of the Texas Code of Judicial Conduct provides, in relevant part, “A judge ... shall maintain professional competence in [the law].” Tex. Code Jud. Conduct, Canon 3(B)(2). Canon 3(B)(4) of the Texas Code of Judicial Conduct 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 3(B)(2). Canon 3(B)(5) of the Texas Code of Judicial Conduct provides: “A judge shall perform judicial duties without bias or prejudice.” Tex. Code Jud. Conduct, Canon 3(B)(5).

When a motion to recuse is filed in a trial court, Texas Rule of Civil Procedure 18a(f)(1) in part provides that “the respondent judge, within three business days after the motion is filed, must either: (A) sign and file with the clerk an order of recusal or disqualification; or (B) sign and file with the clerk an order referring the motion to the regional presiding judge.” Tex. R. Civ. P. 18a(f)(1). Texas Rule of Civil Procedure 18a(f)(2)(A) provides, in relevant part, “If a motion is filed before evidence has been offered at trial, the respondent judge must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record.” Tex. R. Civ. P. 18a(f)(2)(A). In *Arnold v. State*, 853 S.W.2d 543, 544 (Tex. Crim. App. 1993), the Texas Court of Criminal Appeals concluded that Texas Rule of Civil Procedure 18a explicitly applies to criminal cases.

In *Estelle v. Williams*, the United States Supreme Court concluded that

although the State cannot, consistently with the Fourteenth Amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes, the failure to make an objection to the court as to being tried in such clothes, for whatever reason, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation.

425 U.S. 501, 512-13 (1976). In *Estelle*, the Supreme Court also stated as follows:

Nothing in this record, therefore, warrants a conclusion that respondent was compelled to stand trial in jail garb or that there was sufficient reason to excuse the failure to raise the issue before trial. Nor can the trial judge be faulted for not asking the respondent or his counsel whether he was deliberately going to trial in jail clothes. To impose this requirement suggests that the trial judge operates under the same burden here as he would in the situation in *Johnson v. Zerbst*, 304 U.S. 458 (1938), where the issue concerned whether the accused willingly stood trial without the benefit of counsel. Under our adversary system, once a defendant has the assistance of counsel the vast array of trial decisions, strategic and tactical, which must be made before and during trial rests with the accused and his attorney. Any other approach would rewrite the duties of trial judges and counsel in our legal system.

Id. at 512 (footnote omitted).

In *Randle v. State*, the Texas Court of Criminal Appeals concluded that if a defendant objects to being put to trial while dressed in prison clothes, he should not be compelled to stand trial in that attire because it would result in a violation of the defendant's right to be presumed innocent. 826 S.W.2d 943, 944-45 (Tex. Crim. App. 1992) (per curiam). "Thus[,] if an accused asserts his right to not be placed before the jury while wearing clothing which bears the indicia of incarceration, thus invading his right to a presumption of innocence, it is the duty of the trial court, the accused's attorney, the state's attorney, and the peace officers in control of the accused to offer the accused an opportunity to wear civilian clothes." *Id.* at 946.

While compelling a criminal defendant to appear in jail attire may impinge upon a defendant's presumption of innocence, that does not mean a criminal defendant has a *constitutional right* to appear at trial in prison attire or whatever she may desire. Neither *Estelle* nor *Randle* supports that argument. A trial court judge has discretion in the administration of the courtroom to maintain a proper level of decorum and dignity, and the trial court judge may in exercising that discretion reject a defendant's request to wear a particular style of clothing at trial. *See Lantrip v. State*, 336 S.W.3d 343, 351-52 (Tex. App.—Texarkana 2011, no pet.) (not an abuse of discretion to deny defendant's request to wear camouflage) (citing *Johnson v. State*, 838 S.W.2d 906, 909 (Tex. App.—Corpus Christi 1992, pet. ref'd)); *Delgado v. State*, No. 04-10-00797-CR, 2012 Tex. App. LEXIS 5301, at **26-27 (Tex. App.—San Antonio July 5, 2012, pet. ref'd) (mem. op., not designated for publication) (not an abuse of discretion to deny defendant's request to wear military uniform).³

³ See also *State v. Caver*, 381 P.3d 191, 198 (Wash. App. 2016) (holding a trial court did not abuse its discretion by compelling a criminal defendant to wear civilian clothes at trial), *review denied*, 388 P.3d 496 (Wash. 2017).

Evidence Submitted at the Review Proceeding

In the trial de novo proceeding before this Court, the Commission called three witnesses—Michael Elliott, Annie Scott, and Gabriella Romero—and introduced 10 exhibits. Prior to trial, the Commission also filed Notice of Service of Declaration with Attached Business Records, which included the two Complaints; the Commission’s *Public Admonition and Order of Additional Education*; the Charging Document with the papers, documents, records, and evidence upon which the Commission based its decision; and a transcript of Judge Rogers’ informal appearance before the Commission.

The Petitioner called one witness, Judge Stephen Rogers, and introduced 50 exhibits. The parties stipulated to the admission of all the exhibits offered by each other party and there were no pretrial objections made to any exhibits or witnesses.

Testimony of Michael Elliott

Elliott testified that he had been an attorney for about thirty-two years and that he had been in Judge Rogers’ court on a “few cases.” Elliott and Scott, his co-counsel, were before Judge Rogers on July 25, 2023, representing Amanda Vasquez, and there was a discussion that Ms. Vasquez had been in jail a long time and needed a speedy trial, and that the other case that was being tried in Judge Rogers’ court was finishing up and ready for closing arguments. Elliott stated that he and Scott believed that Ms. Vasquez had the right to wear her jail clothing for trial, as Ms. Vasquez had agreed to this as part of their trial strategy. According to Elliott, the Judge was “stepping on” his defendant’s right to a fair and speedy trial and “not letting me try the case as it should be tried...in defense counsel discretion.”

Elliott agreed that he filed a complaint against Judge Rogers with the Judicial Conduct Commission dated October 24, 2023.⁴ Elliott testified that he felt it was necessary to file the complaint because on July 25, 2023, he and Scott told Judge Rogers their client would be appearing before the jury in her “jail clothes” for strategic reasons, and they “experienced the worst demeanor” he had “ever seen” of a Judge in “32 years.” Elliott testified that Judge Rogers “us[ed] terrible four-letter words in front of everybody in the courtroom.”⁵ Elliott also stated that he filed a grievance “for the Judge’s retaliation against him; and for kicking him out of the courtroom” on September 25, 2023, the day Elliot had another hearing in the Judge’s courtroom and was informed by the bailiff that he was “banned from the courtroom” and that the Judge was transferring all of Elliott’s cases out of the Judge’s court.

That said, Elliott agreed that since then he has represented some other clients in Judge Rogers’ court.⁶ Elliott agreed he did not file a motion to recuse Judge Rogers: “I did not file a motion to recuse because after that, he just automatically transferred my cases out. And so, it wasn’t necessary to file a recusal ‘cause they just got transferred out.” But Elliott testified that he had to provide an explanation to his clients:

I’ve had to tell the retained – the appointed clients that I’ve had, you know, our case is in there, I don’t know what’s going to happen. It’s always what did you do wrong? And, of course, I didn’t do anything wrong.

Elliott testified that he does not believe that Judge Rogers should be on the bench because he lacks “the judicial temperament or the knowledge, training, or skill to be a Judge.”

⁴ A copy of that complaint was admitted into evidence as Commission Exhibit 6.

⁵ State’s Exhibit 3 is a copy of the official court reporter’s transcript from a Docket Hearing for the Vasquez case dated July 25, 2023, and the entire transcript is as follows:

Mr. Elliott: Judge, we need to put some stuff on the record.

The Court: There is no discussion. I’m ordering you. You hear that? Don’t Fuck with me in my court.

(Hearing Adjourned)

⁶ According to Petitioner’s Exhibits 48-53, Judge Rogers approved fee payments to Elliott as the appointed attorney for work performed on behalf of other criminal defendants in other criminal cases in 2024.

On cross-examination, Elliott was questioned about video footage taken by the camera located in the courtroom that recorded video (with no audio) of the courtroom on the dates in question, and he was questioned about Elliott's sworn statement that he gave in support of his complaint.⁷

The video from July 25, 2023, shows the Judge enter the courtroom at approximately 9:14 a.m., and at that time Elliott and Scott are standing past the bar and near the bench, along with court staff, and other attorneys are present in the courtroom. The prosecuting attorney, assistant district attorney John Brewer⁸ enters the courtroom at approximately 9:15 a.m. and he approaches

⁷ The video recording from July 25, 2023, begins at approximately 9:00 a.m. and ends at 9:30 a.m. The video recording dated September 25, 2023, begins at 8:00 a.m. and ends at 10:30 a.m. Neither party displayed the September 25th video at trial, but it was admitted into evidence. The video was admitted into evidence and referenced as Petitioner's Exhibit 9 during the trial de novo, and it is contained on a thumb drive and attached as Petitioner's Exhibit 35 in the Petitioner's notebook of exhibits. Petitioner's Exhibit 35 contains date- and time-stamped video footage of the courtroom from both July 25 and September 25, 2023. At trial both parties agreed that no one questions the accuracy or authenticity of the videos. Neither video has any audio or sound.

⁸ Brewer did not testify at the trial before the Special Court of Review. That said, the State introduced a copy of an Affidavit from Brewer which is attached to State's Exhibit 7. Brewer's affidavit, which he provided to the Commission in response to a subpoena, states in relevant part:

One of the cases on my trial docket is *The State of Texas v. Amanda Vasquez*, which had been set to be tried in the 268th District Court on July 25, 2023. Ms. Vasquez is represented by Mike Elliott and Annie Scott. On that day, I went to the 268th District Court's associate judge's courtroom because another trial had already started in the 268th District Court. Sometime after arriving in the associate judge's courtroom, I was told to go to the 268th District Court's main courtroom.

Upon my arrival, I saw attorneys sitting at both counsel tables apparently ready to continue with the ongoing trial. I also saw Mr. Elliott and Ms. Scott at the bench speaking to Judge Steve Rogers, the presiding judge. As I walked towards the bench, it appeared that they were talking about the *Vasquez* case. I heard Mr. Elliott telling Judge Rogers that they were ready for trial. Judge Rogers responded by pointing out that he was already in trial. Mr. Elliott continued to argue that his client wanted her trial. Judge Rogers asked him if he wanted the Court to stop the trial he was in[,] so Mr. Elliott could have his trial?

At some point, Judge Rogers inquired about the State's position. I responded that the primary investigating officer in the *Vasquez* case was out of the state on vacation the entire week and, if needed, the State would file its First Motion for a Continuance. Judge Rogers told me to file the motion and indicated that the case would get a new trial setting.

At some point thereafter, Judge Rogers asked Mr. Elliott if he intended on having his client dress in jail clothes during the trial? Mr. Elliott confirmed that it was his intention. Judge Rogers told Mr. Elliott that he was not going to allow the defendant to remain in jail clothes during her trial and that she would need to be dressed in civilian clothes.

Judge Rogers ordered Mr. Elliott to go to Walmart and buy the defendant clothes to wear in her trial, and asked Mr. Elliott if he understood the order. Elliott said that he did. Judge Rogers repeated the order. Mr. Elliott started to explain his decision to not "dress-out" his client, but then expressed a desire to go on the record. The [J]udge agreed to go on the record, but then pointed at

the bench and stands in the same area where Elliott and Scott are standing. Elliott testified that initially they were just discussing some items with the Judge including the State's request for a continuance, and the fact that "Ms. Vasquez had been in jail a long time," the case needed to be tried, and that the existing jury trial that the court was conducting at that time was almost finished. Elliott admitted on cross-examination that the court reporter did not appear to be "on the record" during the discussion with the Judge because he could not see her fingers moving. That said, Elliott testified that he asked the reporter more than once to go on the record. But Elliott could not remember if Judge Rogers ever instructed the court reporter to go on the record.

Elliott testified that in the video at approximately 9:24 a.m., the Judge is yelling and shouting profanity, and "you see his finger right there banging on the desk? He is saying four-letter words that should have never ever come out of a Judge's mouth." According to Elliott, the Judge stood up, he said some nasty things, he turned, and then left the courtroom and did not come back. Elliott testified that he believes his criminal defendant has a "constitutional right" to choose the clothes she is going to wear as part of her trial strategy according to "due process and *Williams*" and based on his thirty-two years of experience as both a prosecutor and a defense attorney.

On September 25, 2023, Elliott was in the Petitioner's courtroom for two different cases (Loubser and Marchorro), and according to Elliott, when he entered the courtroom he was greeted by the bailiff and escorted outside, and he was told that he was "banned from the courtroom," or that he was "not allowed" in the courtroom. He was told that his two cases would be reset, and the court coordinator would meet him in the hallway outside the courtroom to reset those cases, and

Mr. Elliott and said in a loud voice, "Do not fuck with me in my courtroom." Judge Rogers slammed something down on the bench, making a loud noise, and immediately left the bench.

The attorneys remained silent briefly and then someone said "Okay, what now?" Shortly thereafter, the court's bailiff came out from the back of the courtroom and told both parties to go to Judge Shoemaker to get a new trial date.

he met Romero in the hallway to confirm that his two cases were reset. One of his clients, Loubser, requested that Elliott be removed as co-counsel. Elliott testified that “Loubser was so scared of what he saw and witnessed, he said Mr. Elliott, I don’t mean any harm, but I don’t want you on my case, I’m scared of what the Judge did. I’m scared of you being on my case and I will get hurt.”

Elliott agreed he did not ever see the court reporter taking anything down during the July 25th hearing, even after asking her to record what everyone was saying, and he did not recall if the Judge ever asked the reporter to go on the record. Elliott subpoenaed a copy of the court reporter’s recording and transcript from July 25th. Elliott testified that he did not accuse the court reporter of any crime for producing only two sentences in the transcript, but he agrees that he believed “something was amiss” and that his “implication was that the court reporter destroyed part of the record” and deleted notes. Elliott also stated that he felt the Judge had violated Rule 18a by not recusing himself within three days after Scott filed a motion to recuse.

Testimony of Annie Scott

Scott testified that she had been a practicing criminal defense attorney for about seventeen years. She explained that she felt the need to file a complaint against Judge Rogers because of his “unbecoming attitude” and because she “felt intimidated[]” and “demeaned” by how she was treated in his courtroom. She explained that she and her co-counsel appeared on July 25, 2023, for a pre-trial hearing in Judge Rogers’ court, and they knew the Judge was in the middle of another trial, but “we wanted to let him know that we were there and we were ready to proceed,” and at some point, the Judge questioned Scott and co-counsel, Michael Elliott, about why their client, Amanda Vasquez, was going to be wearing jail clothes at trial. Scott told the Judge that as a defense strategy, Scott and Elliott had decided they were going to allow Vasquez to wear her jail clothes, and they also would have Vasquez announce that she had agreed to wear jail clothes. According to

Scott, the Judge began to yell and became “very irate” and said that Ms. Vasquez was not going to be wearing her jail clothes at trial, and the Judge ordered Scott and Elliott to go to Wal-Mart and buy their client some clothes for the criminal trial. Scott testified that she “kept asking let’s put her—let’s bring her out. Let her say that this is what she wants to do.” At some point, he just got really upset and slammed the table...and he said don’t fuck with me in my court.”

Scott agreed that she filed a motion to recuse because she felt the Judge was trying to intimidate her and it made her fear that she would not have a fair trial for Ms. Vasquez. Scott does not remember if the Judge spoke any other expletives other than “don’t f with me.” Scott could not remember if she had filed a motion to dismiss for lack of a speedy trial in the middle of the hearing, or before the hearing but she files a speedy trial motion in most of her cases.

Scott agreed that Judge Rogers told them more than two times to go the store and buy clothes for their client to wear, and she agrees they did not file anything with the trial court like a motion or pleading explaining their strategy. Scott believes that under the *Estelle* case Ms. Vasquez had a constitutional right to choose her style of clothing to wear as part of her trial strategy. When asked if she asked for a transcript of the pre-trial hearing held on July 25th, she stated that she had asked for the transcript, and it was later determined that there was a video recording but no audio recording, and that she finally received a copy of the transcript with only two lines on it.

Testimony of Gabriella Romero

Gabriella Romero was the court coordinator for Rogers in the 268th District Court for about two years, and she served as the court coordinator at the time of the events in question. Romero testified that she is no longer the court coordinator in that court because one day HR informed her that Judge Rogers was letting her go and “saying that she was not inputting information in the

PSRS system” correctly. Romero stated it was not part of her job duties to input that data because it was the duty of the court coordinator for the Magistrate Court to do that task.

Romero testified that she remembered Elliott having two cases in the Judge’s court on September 25, 2023, and as Elliott came into the courtroom he was escorted out by the bailiff. She recalled that she met Elliott later outside the courtroom and gave him the resets for his clients, Elliott questioned her about the Judge’s behavior and what had taken place that day, and she told him she was just doing her job. On cross-examination Romero agreed that Elliott had been Romero’s personal attorney on certain divorce matters.⁹

Testimony of Judge Stephen Rogers

Judge Rogers testified that he had been on the bench only a short time as of July 25, 2023, and the motion to recuse filed by Scott was the first and only recusal motion he has ever had filed in his court. After Scott filed the motion for recusal on August 4, 2023, Rogers signed an order on August 7th which he believes was timely. At that time, Rogers believed that after signing his order, the request would be automatically forwarded to the Presiding Judge, Susan Brown, but he later found out he was mistaken. He then filed a second order at 10:30 a.m. on Thursday, August 10th, which he believed was the fourth business day after the motion to recuse, but only about two

⁹ At the trial before the Special Court of Review, the Commission also sought to introduce some unspecified additional testimony from Romero about statements Judge Rogers allegedly made in his chambers to court personnel about Elliott after the September 25th incident. Petitioner objected to the additional testimony because it was outside of the allegations in the charging document, not relevant, and contains hearsay. This Court allowed the Commission to supply an offer of proof and briefing as to why the additional testimony should be admitted into evidence. In its Post-Submission Brief, the Commission did not address the objections, but it includes as Exhibit A an affidavit of Ms. Romero that includes additional allegations that Judge Rogers said a curse word and “yelled” when Romero later went back into the Judge’s chambers to relay a verbal message to the Judge which Elliott told her to relay to Judge Rogers after the September 25th incident. Petitioner objected again to the Affidavit based on relevancy and because the alleged statement was made in the Judge’s chambers to his inner circle of court personnel. We find the affidavit is not relevant to the charges contained in the charging document, and it is somewhat cumulative of the testimony already given by Romero. Therefore, we do not consider the affidavit marked as Exhibit A to the Post-Submission Brief.

business hours late. To his knowledge neither Elliott nor Scott ever objected to the orders he filed, and he did not think anyone was harmed by his orders.

The Judge testified that he had never had a defense attorney ask for their criminal defendant to appear in jail clothing at trial, and he thought that was unusual. He told Elliott and Scott three times that Ms. Vasquez should not wear her jail clothes and to go get her some civilian clothes. The Judge explained that he did not want Ms. Vasquez to look guilty in front of the jury or have her appearance in jail clothing create an issue for an appeal. He did not explain his reasons to Elliott or Scott because Elliott “wasn’t wanting any explanation.” The Judge testified that he did not stand up until the end of the hearing, and he did not yell or scream.

With respect to the September 25th incident, the Judge explained that he asked the bailiff to take Elliott “out of the courtroom” because his court reporter at the time, Gina Jackson, was very upset. She was upset because by that time Elliott had requested the transcript from the July hearing and had approached her and accused her of destroying a public record, and she was “very distraught.” The Judge saw her “in her office and she was crying,” and she did not want to go out into the courtroom and face Elliott. The Judge had to have a court reporter and record for his cases, so he had Elliott removed and transferred Elliott’s two cases to another courtroom. The Judge denied ever requesting or asking his court reporter to alter the transcript, and he noted that the court reporter would never have recorded anything if he had not told her to do so. The Judge had his court coordinator, Romero, go out into the hall to speak with Elliott about the resetting of his two cases for that day. The Judge testified he did not “retaliate” against Elliott because of anything in this case.

The Judge never apologized to Elliott or Scott, but he stated at trial that he regrets using the language he used that day because it has brought some disrespect to the judiciary in the State

of Texas and he “apologizes to the judiciary.” The Judge stated that as a Judge, he believes he has the discretion to control his courtroom. Since the filing of the Complaints by Elliott and Scott, he stated he has learned that there is case law that he believes supports his belief that he has discretion to deny a criminal defendant’s request to wear their jail clothing at trial.

On cross-examination, Judge Rogers agreed he used the “F word” that day and it would have been better if he had said “don’t mess with me or some less strong language.” He testified that he never threatened Elliott or Scott with contempt. He also stated, “at the time I was getting very upset and that’s why I got up and left.”

With respect to the first Order on August 7th, the Judge issued it on the first business day, and he added the “speedy trial” language because he was thinking that if he just checked the “box granted” and referred it to the presiding judge it would hurt Ms. Vasquez’s speedy trial. In the second Order signed August 10th, he referred the motion to recuse to the presiding Judge and Judge Rogers agreed he did not sign it until the fourth business day after the motion to recuse was filed, and he agreed that Texas Rule of Civil Procedure 18a requires the referral to be done by the third business day. Judge Rogers believed his failure to comply with Rule 18(a) should be unsanctionable. That said, he agreed that he does not accept late Orders in his court; he agreed a Judge should not be excused from following the rules; and when someone misses their deadline with an Order or a pleading the consequences can be severe, depending upon the case. According to the Judge, he filed the August 10th Order after he spoke with the Regional Presiding Judge.¹⁰

¹⁰ With respect to the motion to recuse and Rule 18a, the Commission also elicited the following testimony from Judge Rogers:

Q. Are you permitted to transfer the case before the Presiding Judge rules on a motion?

A. Apparently not.

Q. Okay. So, you’re agreeing you don’t know the rule?

A. I don’t have the rule in front of me.

Q. And did you read the rule after finally receiving the motion to recuse?

A. No, I did not.

Analysis of Charges

Charge 1: Canon 2(A) and 3(B)(2)

The Commission contends that Judge Rogers failed to comply with and maintain professional competence in the law, in violation of Canons 2(A) and 3(B)(2) of the Texas Code of Judicial Conduct, because he failed to comply with Texas Rule of Civil Procedure 18a(f)(1), which requires a judge to grant or refer recusal motions within three business days of filing, and he failed to comply with Texas Rule Civil Procedure 18a(f)(2)(A), which prohibits a judge from taking any further action in the case until the motion has been decided; and, the Commission contends he failed to follow *Estelle v. Williams*, which the Commission contends allows a defendant, with the assistance of counsel, to make the strategic and tactical decision to stand trial before a jury while dressed in identifiable prison clothes. *See Estelle*, 425 U.S. at 512-13.

A trial court judge may make mistakes in the legal rulings he or she renders, but not every legal mistake constitutes sanctionable misconduct. “For legal error to rise to the level of judicial misconduct, a legal ruling or action 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 legal error, or (3) made in bad faith.” *In re Ginsberg*, 630 S.W.3d at 8.

Here, we agree with the Commission that Rule 18a is clear and determined regarding the procedure that should be followed when a motion to recuse is timely filed in the trial court, and we agree that Judge Rogers failed to comply with Rule 18a when he issued his Order dated August 10th because he did not refer the motion to recuse to the Administrative Judge within three business

Q. Okay. Wouldn't that be what a Judge would do if they were questioning what the rule actually says?

A. At the time I wasn't questioning the rule.

days, and instead it was referred to the Administrative Judge on the morning of the fourth business day. That said, based on all the evidence in this case, we cannot say that Judge Rogers' legal error was egregious, made as part of a pattern or practice of legal error, or made in bad faith. *See id.*

Judge Rogers testified he had never had a motion to recuse filed before, that he signed and filed his first order one day after the motion to recuse was filed, and that in that order he denied the motion and sent the case to Judge Shoemaker so the criminal defendant's right to a speedy trial would not be harmed. The evidence also showed Judge Rogers mistakenly believed the motion would automatically be forwarded to the Administrative Judge. Once Judge Rogers discovered he needed to refer it to the Presiding Administrative Judge, he entered a second order on August 10th. *Cf. In re Mullin*, No. 15-0002, 2015 Tex. LEXIS 1170, at **35-36 (Tex. Spec. Ct. Rev. Oct. 21, 2015) (trial judge was sanctioned for misconduct where the county criminal court judge had previous experience with motions to recuse, had previous complaints for the same behavior, and knew or should have known not to intervene in a pending recusal proceeding, yet she still filed a motion for reconsideration of her recusal alleging she had a right to defend herself in a recusal proceeding, engaged in communications with the presiding administrative judge in connection with a subsequent recusal, and demonstrated a persistent course of improper conduct).

With respect to the Commission's allegations pertaining to *Estelle v. Williams*, we do not agree with the Commission's position that Judge Rogers violated well-established law in failing to allow a criminal defendant to appear in jail attire. A criminal defendant does not have a *constitutional right* to appear at trial in whatever clothing she may desire. *See Lantrip*, 336 S.W.3d at 351-52; *Johnson*, 838 S.W.2d at 909. We conclude the Commission failed to meet its burden on the charges contained in Charge 1.

Charge 2: Canon 3(B)(4)

In Charge 2, the Commission alleges Judge Rogers failed to treat Scott and Elliott with patience, dignity, and courtesy, in violation of Canon 3(B)(4) of the Texas Code of Judicial Conduct when he used profanity during the hearing on July 25, and when he had Elliott removed from or ejected from his courtroom on September 25, and Elliott's cases were reassigned for approximately six months after September 25, 2023.

It is undisputed that during the July 25 hearing Judge Rogers "was getting very upset" and he used the "F word" after the attorneys persisted in their desire to have their client appear at trial in jail clothing, even after the trial judge had told them at least twice to go and get civilian clothes for the defendant. The Commission must prove by a preponderance of the evidence that Judge Rogers "willfully" committed the charged violation of Judicial Canon 3(B)(4). *See* Tex. Gov't Code Ann. § 33.001(b)(2); *In re Davis*, 82 S.W.3d at 142; *In re Bell*, 894 S.W.2d at 131. 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 Davis*, 82 S.W.3d at 148; *In re Bell*, 894 S.W.2d at 126. A judge need not have formed the specific intent to violate the Code, if he intended to engage in the conduct for which he is disciplined, he is guilty of a willful non-legal violation of the Code. *See In re Barr*, 13 S.W.3d at 539. We conclude that in angrily telling the attorneys in open court not to "F with me in my court," Judge Rogers *willfully* failed to treat Scott and Elliott with patience, dignity, and courtesy, in his courtroom in violation of Canon 3(B)(4) of the Texas Code of Judicial Conduct.¹¹ *See* Tex. Code Jud. Conduct, Canon 3(B)(4).

¹¹ The Commission also added an allegation in its Post-Submission Brief that, "[i]n addition, Judge Rogers intimidated and cursed at his court [coordinator], Gabriela Romero," citing to the subsequently filed Romero Affidavit. We do not consider this allegation or the affidavit as it was not part of the Charging Document nor is it relevant to the charges before us.

As to the incident on September 25th, the evidence at trial showed that Elliott perceived he was being “banned” from the courtroom because of the grievance and motion to recuse filed by his co-counsel Scott. That said, Judge Rogers explained that he was only asking Elliott to leave the courtroom on the two cases Elliott had that day because the Judge’s court reporter was distraught and crying and said she did not want to see Elliott because he had accused her of a crime and of destroying a court record. The Judge explained that he had to do something, or he would not have had a court reporter for his docket that day. According to all the witnesses, the court coordinator quickly reset the hearing for both of those cases. While we agree that Judge Rogers could have handled the matter more judiciously, we cannot say that the actions of the trial court constituted misconduct. The Commission failed to meet its burden of proof to establish that all of Elliott’s cases were reset during a six-month period as alleged.

Charge 3: Canon 3(B)(5)

The Commission contends that Judge Rogers failed to perform his duties without bias or prejudice, in violation of Canon 3(B)(5) of the Texas Code of Judicial Conduct. More specifically the Commission argues Judge Rogers displayed bias against Elliott when he did not allow Elliott to remain in his courtroom on September 25, 2023, and transferred his cases out of his court “after Elliott corrected Judge Rogers regarding his seeming misunderstanding of the law.” The Commission also argues that Judge Rogers “continued to display this bias in his written responses to the Commission” or that his bias arose from his ignorance of the law and inability or unwillingness to listen to the arguments from attorneys with more criminal law experience citing well-established law. We have concluded that Judge Rogers was correct in his assessment that *Estelle v. Williams* does not grant a criminal defendant a “constitutional right” to appear in jail

attire. This charge is premised on an alleged legal error that we have concluded did not occur, and we find the Commission failed to meet its burden of proof on Charge 3.

Charge 4: Article V, Section 1-a(6)A of the Texas Constitution

The Commission alleges Judge Rogers’ “inability or unwillingness to comply with the law” on multiple occasions, demonstrated a “pattern” of lacking patience, dignity, and courtesy with attorneys in his courtroom, and his “display of bias” against criminal defense attorneys constitutes “willful and persistent” conduct that is clearly inconsistent with the proper performance of his duties and cast public discredit upon the judiciary.

We find the Commission failed to meet its burden of proof on Charge 4 because the Commission failed to demonstrate a “pattern” of such conduct or any “willful and persistent conduct” that is clearly inconsistent with the proper performance of his duties and casts public discredit upon the judiciary. As explained above, the Commission failed to meet its burden to prove that Judge Rogers’ order that Elliott and Scott get their client civilian clothes to wear at trial was contradictory to or violated clear and established law. *See In re Ginsberg*, 630 S.W.3d at 8. Based on the evidence submitted, Judge Rogers’ legal error or mistake as to the recusal motion does not appear to have been egregious or made as part of a “pattern or practice” or made in bad faith. *Id.* “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 Slaughter*, 480 S.W.3d at 848.

As to the events of September 25, and the allegations that Judge Rogers showed a persistent bias and prejudice against Mr. Elliott, the evidence shows Judge Rogers removed Elliott from his courtroom and reset two cases that day. Clearly, Elliott perceived or believed that the Judge was retaliating against him on that date. Judge Rogers denied that his actions were based on bias, and

he credibly explained why he felt he needed to take that action because his court reporter was distraught that day. Additionally, other evidence in the record shows on October 18 and 19, 2024, Elliott submitted payment vouchers to Judge Rogers for several different cases of indigent defense representation. And Judge Rogers approved the payments to Mr. Elliott in full. Accordingly, we conclude the Commission failed to meet its burden of proof on Charge 4. *See id.*

Appropriate Sanction

Having found that the State met its burden of proof on Charge 2 and that Petitioner violated Canon 3(B)(4) of the Texas Code of Judicial Conduct, we must now determine an appropriate degree of discipline to impose against Petitioner. The options available to a special court of review following a trial de novo include dismissal of the charges, affirmation of the Commission's decision, imposition of a lesser or greater sanction, or an order to the Commission to file formal proceedings. *In re Davis*, 82 S.W.3d at 142-43. This Special Court of Review may consider the *Deming* factors when determining the appropriate sanction for Petitioner. *See In re Sharp*, 480 S.W.3d at 839 (citing *In re Deming*, 736 P.2d 639, 659 (Wash. 1987)). The *Deming* factors are as follows: (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 Sharp*, 480 S.W.3d at 839 (citing *In re Deming*, 736 P.2d at 659).

In this matter, we conclude that the *Deming* factors do not support the Commission's decision to issue a Public Reprimand to Petitioner. The Commission did not establish a pattern of misconduct. It was established that the July 25th bad language occurred in the courtroom, and it occurred in the judge's official capacity. The Judge acknowledged his bad language reflected poorly on the Judiciary and he apologized for it. At the time of the July 25th incident, Judge Rogers had served as a Judge for only seven months, and there was no evidence presented that the Judge exploited his position to satisfy his personal desires, or that he had any personal bias against all criminal defendants or criminal defense attorneys. We therefore conclude that a Private Reprimand is appropriate.

After considering the pleadings, all of the evidence submitted during the trial, the arguments of counsel, and having reviewed the parties' pleadings, and pre- and post-trial briefing, we issue a **Private Reprimand** against Petitioner for failing to treat Scott and Elliott with patience, dignity, and courtesy, in violation of Canon 3(B)(4) of the Texas Code of Judicial Conduct when he used profanity and lost his temper during the July 25th hearing.

We order Judge Rogers to take two additional hours of continuing judicial education with a mentor assigned to him through the Texas Center for the Judiciary. The education shall specifically focus on maintaining a judicial temperament and treating all parties and their attorneys with patience, dignity, and courtesy. It is Judge Rogers' responsibility to contact the Texas Center for the Judiciary to obtain the name of the assigned mentor and to then schedule and complete the additional education on or before December 31, 2025.

Per Curiam